

ST 18-0032-GIL 11/29/2018 ENTERPRISE ZONES

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of materials that will be incorporated, by remodeling, rehabilitation, or new construction, into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act. (See 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951(e).) (This is a GIL.)

November 29, 2018

Dear Xxxxx:

This letter is in response to your letter, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting the legal department to make a determination as to a specific piece of equipment we will be installing into our new building expansion qualifies for the Illinois Enterprise Zone Sales Tax (BMEC) exemption. The expansion will have the same address as our current building..

We are a manufacturing company of dental materials. We require a "clean" environment in the production facilities. The piece of equipment we are inquiring about is a Hygiene Station for all associates and guests entering the production floor. It is a station where you wash, dry and sanitize your hands and it will disinfect the bottom of your shoes. It is purchased from COMPANY and will be installed by our building

CONTRACTOR. The unit will be plumbed into the concrete and hard wired. We will be installing 2 of these.

I have also enclosed Central Registration's "opinion" on this matter.

We would also like your determination on the cabinetry and workstations that will be installed in the 2<sup>nd</sup> floor training center. They will be supplied by COMPANY 1 and installed by our building CONTRACTOR. The workstations will be hardwired with compressed air running to each station as well as data ports.

And one more item in question – the internal wall systems that will be used to enclose all the offices and conference rooms in the new building extension. The wall systems will be furnished by COMPANY 2. They will be installed by the building CONTRACTOR.

Please contact me if you need any further information. I appreciate your consideration of these matters.

#### **DEPARTMENT'S RESPONSE:**

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of building materials that will be incorporated into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. 35 ILCS 120/5k. All "qualified sales" of building materials sold for incorporation into any Illinois enterprise zone are eligible for the deduction. 86 Ill. Adm. Code 130.1951(d)(1). A "qualified sale" means a sale of building materials: a) for incorporation into real estate in an Illinois enterprise zone, b) as part of a building project, c) for which a Certificate of Eligibility for sales tax exemption has been issued, d) by the administrator of the enterprise zone in which the project is located. 86 Ill. Adm. Code 130.1951(d)(2). In order to qualify for the deduction, the materials being purchased must be building materials. 86 Ill. Adm. Code 130.1951(e).

The Department's regulation at 86 Ill. Adm. Code 130.1951(e) provides examples of qualifying building materials. The enterprise zone exemption includes component

parts of building materials that are permanently affixed to realty. While the examples in the Department's regulation reflect more conventional buildings, the fundamental concept of the building materials exemption is that to qualify, provided that the other requirements of the regulation are met, the materials at issue must also be physically incorporated into real estate.

The Department has invoked the intention test in the context of letter rulings concerning construction contractors. ST 08-0003-PLR (April 1, 2008) identifies a number of letters invoking the test. ST 00-0156 sets forth the intention test as follows:

"In determining whether an item is permanently affixed to real estate, a very fact-specific inquiry must be made regarding whether the item is intended to remain with the realty. In order to make a finding that the item is permanently affixed, at least three factors must generally be examined. First, the item must be affixed to the realty. The item must also be applied to the use or purpose to which the realty is put. Finally, the intent of the person affixing the item must be examined. Another factor often examined is whether the item is essential to the use to which the real estate has been put."

To qualify for the exemption the property must be located within an enterprise zone and the Company must possess an Exemption Certificate at the time the building materials are purchased.

Based on the limited information provided in your letter, it appears the items are permanently affixed to the realty and would qualify for the exemption.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:bkl