

The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2) and 86 Ill. Adm. Code 130.305. (This is a GIL.)

December 6, 2018

Dear Xxx:

This letter is in response to your letter received November 1, 2018, 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 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:

I am inquiring about the sales tax on fuel trailers used for farm. We are going to be sell [sic] PRODUCT and was wondering what the rules for sales tax are for them. I was looking into the ref 130.305 but it is not clear on fuel trailers.

I also have a question about GPS subscriptions, I know for Ag it is exempt but what about for a CE customer? We have someone who can purchase a 5 year subscription, on a lease unit that will track the machine is and how it is running and log maintenance and error codes along with fuel consumption and other features.

DEPARTMENT'S RESPONSE:

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. Production agriculture is defined under the Retailers' Occupation Tax Act as "the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture." See 35 ILCS 120/2-35.

Under 86 Ill. Adm. Code 130.305, "Farm Machinery and Equipment," Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. The sale of individual replacement parts for such machinery and equipment is also exempt. In order to obtain the exemption, the purchaser must certify that the equipment or machinery is used primarily in production agriculture. See Section 130.305(a).

Machinery means major mechanical machines or machine components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Machinery would include such things as tractors, combines, balers, irrigation equipment and cattle and poultry feeders. Improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery.

Please review the Department's regulation at 86 Ill. Adm. Code 130.305(h). It provides that the exemption includes implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code. Further, it states that while it excludes motor vehicles required to be registered under the Illinois Vehicle Code, "[r]egistered vehicles other than motor vehicles may qualify for the exemption if they are used primarily in production agriculture rather than in transportation or other nonexempt activities. Examples of this include implements of husbandry used primarily to supply and apply farm chemicals; trailers and nurse tanks used primarily to supply spreaders in the fields...."

We do not have enough information about how the fuel trailers you asked about in your letter are going to be used. If they are going to be used primarily in production agriculture, they would qualify for the exemption. If, however, the trailers are going to be used in transportation or other nonexempt activities, they would not qualify for the exemption.

With respect to your second question regarding GPS subscriptions, the Illinois Retailers' Occupation Tax and Use Tax are conditioned upon the retail sale of tangible personal property. If the GPS subscriptions involve no transfer of tangible personal property, the subscriptions are not subject to Retailers' Occupation Tax/Use Tax liabilities.

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

Very truly yours,

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