

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.)

February 27, 2019

Dear Xxxxx:

This letter is in response to your letter received February 6, 2019, 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:

We recently signed a lease with BUSINESS in the Enterprise Zone located at ADDRESS. BUSINESS was awarded a Building Materials Exemption Certificate (certificate number ###). I was referred to NAME with BUSINESS 1, who suggested to contact you for our Material Handling Equipment falling under this exemption. Below please find list of what we'd like consideration for along with descriptions and quotes attached.

- Pallet Racking for storage and picking shelves.
- Conveyor Sortation System
- Quantity 40 – Picking Carts
- Quantity 1 – Floor Scrubber
- Quantity 5 – Cherry Pickers
- Quantity 2 – Reach Trucks

I'm also attaching separate Equipment sheets for each of these items with the estimates provided by our vendors. I can be reached via email at – [E-MAIL](mailto:) or via cell at ### for any questions you may have.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property 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. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

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 Enterprise Zone Building Materials Exemption Certificate for sales tax exemption has been issued by the Department. 86 Ill. Adm. Code 130.1951(c)(1). 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 materials must be affixed to real property located within an enterprise zone and the purchaser must possess an Exemption Certificate at the time the building materials are purchased.

Based on the limited information provided in your letter, the Department is unable to determine whether the pallet racking and conveyor are permanently affixed to the realty and would qualify for the exemption. The picking carts, floor scrubber, cherry pickers and equipment reach trucks would not qualify for the exemption.

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,

Richard S Wolters
Associate Counsel

RSW:rkn