

Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property purchased on or after July 1, 2019. See 86 Ill. Adm. Code 130.330. (This is a PLR).

January 28, 2020

Dear Xxxx:

This letter is in response to your letter dated September 12, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This letter is sent on behalf of COMPANY to the Office of Legal Services at the Illinois Department of Revenue (“IDOR”) seeking a Private Letter Ruling pertaining to the Retailers’ Occupation Tax, 36 ILCS 120. Specifically, and as outlined in greater detail below, we believe that COMPANY will qualify for the newly extended research and development (“R&D”) tax exemption enacted earlier this year by the Illinois legislature and signed into law by Governor J.B. Pritzker, Senate Bill 689 / P.A. 101-9. As the Vice President of Public Policy for COMPANY, I have the authority to request this Private Letter Ruling on behalf of the Company.

Founded in 20XX, COMPANY is an U.S. manufacturer of on and off-highway capable, all electric adventure vehicles. COMPANY operates from several locations in the Midwest, including a Vehicle Design and Engineering facility in CITY, STATE and a manufacturing facility in CITY1, STATE1. COMPANY also has additional R&D facilities in STATE2. The Company’s first vehicle line will include an all electric pick-up truck NAME and an all electric sport utility vehicle (“SUV”) NAME1. Utilizing lithium ion cell technology built into a proprietary battery pack system and incorporating a quad motor design, COMPANY’s all electric vehicles will have up to 400 miles of range and class leading towing, payload and operational capabilities. The Company plans to start

production of the NAME and NAME1 late next year from its CITY1, STATE1 production facility.

As a company conduction business in the state of Illinois, COMPANY is subject to Illinois tax obligations, including the Retailers' Occupation Tax. As noted above, during the 2019 legislation session, the Illinois legislature enacted and the Governor signed into state law an amendment to the Retailers' Occupation Tax Act to extend and expand the Manufacturing and Assembly exemption. Specifically, under the exemption, certain types of "production related tangible personal property" purchased on or after July 1, 2019 are now exempt from taxation under the Retailers' Occupation Tax Act. Production related tangible personal property is expressly defined in the legislation as follows:

...all tangible personal property that is used or consumed by the purchaser in a manufacturing facility in which a manufacturing process takes place and includes, without limitation, tangible personal property that is purchased for incorporation into real estate within a manufacturing facility, supplies and consumables used in a manufacturing facility including fuels, coolants, solvents, oils, lubricants, and adhesives, hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility, and tangible personal property that is used or consumed in activities such as research and development, preproduction material handling, receiving, quality control, inventory control storage, staging and packaging for shipping and transportation purposes. (emphasis added).

Senate Bill 689 / P.A. 101-9 at 303, amending 35 ILCS [sic] 120/2-45(5). The exemption language was expressly expanded to apply to purchases made after July 1, 2019. See Id. at 304. For the following reasons, we believe that this exemption will apply to our pre-production vehicles scheduled for production in the second half of 2019 and used for various exemption qualified purposes.

COMPANY will be producing a significant quantity of pre-production vehicles that are not intended for sale to consumers, but will be of production level quality and design. The types of uses for these vehicles will include (but are not limited to) the following activities:

- Validation of production processes, including ensuring manufacturing and assembly equipment operate properly to allow ramp up to serial production of consumer-saleable vehicles;
- Quality control of vehicle manufacturing systems and processes to ensure appropriate build tolerances;
- In-house quality control, assurance and review of pre-production vehicles;
- Crash testing or pre-production vehicles in order to ensure compliance with crashworthiness standards under federal law, including potential adjustments or modification required prior to full production;
- On and off-road testing of pre-production vehicles to ensure consumer-level (or higher) durability and quality (this may entail both in-house testing, as well as

showing vehicles at various public forums and exposing the vehicles to consumer test audiences to ensure the vehicles withstand high consumer traffic and use);

- Other research and development activities that COMPANY undertake in order to ensure robust production processes and the highest quality and compliant vehicles for distribution and sale.

COMPANY believes that all of these uses are accurately characterized as R&D or quality control activities – precisely the types of activities the Illinois legislature intended to be covered under the definition of tangible personal property covered by the R&D exemption to the Retailers' Occupation Tax Act. Because all of the uses noted above fit within the exemption, COMPANY believes these vehicles are excused from the Retailers' Occupation Tax.

I would note that in at least some circumstances, these pre-production validation vehicles may be utilized in public forums and for activities that could be characterized as marketing/sales. I further note that there is an exclusion for tangible personal property that are used in sales or marketing (i.e., not eligible for tax relief) including in the definition of "Production related tangible personal property." See *Id.* Despite this provision, COMPANY does not believe that the additional use of these vehicles in public forums will fall into the exception to the exemption in that the primary purpose of the vehicles will be for engineering focused research and development, as well as consumer testing. Specifically, as the NAME and NAME1 are new vehicles based on new technology by a brand new manufacturer without an established market for this technology, the dual use of these vehicles at sales and marketing events is intended to conduct research and development into consumer preferences for this new technology, as well as to ensure the pre-production vehicles with production-level features are able to meet the demands of high consumer use and interaction (i.e., quality control). Such information and data simply cannot be obtained within the confines of in-house programs alone. This contrasts with established technology such as the use of internal combustion engines in motor vehicles, which have over a 100 years of public exposure and market acceptance. Fully electric powered, long-range, highway capable vehicles, on the other hand, are a relatively new phenomenon with less than ten years of consumer exposure and in numbers that comprise less than 1% of all vehicles nationwide. Introduction of COMPANY vehicles will be the first ever market introduction of all electric pick-up trucks and SUV's intended for a range of on and off-road uses. These vehicles will be the first all-electric adventure vehicles ever offered to the consuming public. As a result, public exposure as part of valid research and development and quality control is vital to ensuring the success of this new transportation technology in this segment. Based on these facts, COMPANY believes that such activities still fall within the R&D exemption of the Retailers' Occupation Tax Act.

Given the foregoing, COMPANY believes that the pre-production validation vehicles will meet the requirements of tangible personal property that are to be used or consumed in activities such as research and development and quality control, and thus exempt from the Retailer's Occupation Tax under the newly enacted legislation. COMPANY respectfully requests IDOR's confirmation of this interpretation.

As required by Title 2, section 1200.110(b)(4), concerning requests for Private Letter Rulings, in my capacity as Vice President of Public Policy for COMPANY, I hereby state that to the best of my knowledge and the knowledge of the Company, the IDOR has not previously ruled on the same or a similar issue for COMPANY or any predecessor, and that the Company has not previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

Thank you for your time and consideration. If you have any questions or concerns regarding this request, please feel free to contact me.

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. Purchases of tangible personal property are subject to Illinois sales tax unless it qualifies for an exemption under Illinois tax law.

Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property. Production related tangible personal property means all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process takes place or by a graphic arts producer in graphic arts production. Production related tangible personal property also means all tangible personal property that is used or consumed in research and development regardless of use within or without a manufacturing or graphic arts production facility. 86 Ill. Adm. Code 130.330(h).

The Department recently filed emergency regulations that incorporate production related tangible personal property into the manufacturing and assembling machinery and equipment exemption which can be found on the Department's website and became effective upon filing. The Department included examples of items that the Department considered to be production related. For example, the Department provided that the following tangible personal property would be considered production related: (1) tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process; or tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process; (2) supplies and consumables used in a manufacturing process in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, and adhesives; (3) hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility; and (4) tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging, and packing for shipping or transportation.

Notably, the use of trucks, trailers and motor vehicles that are required to be titled or registered pursuant to the Illinois Motor Vehicle Code (625 ILCS 5/), will not be considered production related and would not qualify for the manufacturing and assembling machinery and equipment exemption. See 86 Ill. Adm. Code 130.330(h)(3)(A). In a follow-up email to your request for a private letter ruling,

you indicated that the NAME and NAME1 vehicles will not be titled and registered. In fact, you indicated that as preproduction vehicles, they are ineligible to be titled and registered.

It is the Department's understanding the preproduction vehicles will not be resold at retail. It is also the Department's understanding that all preproduction vehicles will be produced in its CITY1, STATE1 production facilities. Based on the descriptions of the manner in which the tangible personal property will be used in the production of the NAME and NAME1, the Department agrees the tangible personal property purchased to produce the preproduction vehicles is used or consumed in activities such as research and development and preproduction quality control, and the purchase of the tangible personal property qualifies for the manufacturing and assembling machinery and equipment exemption. When purchasing tangible personal property to produce the vehicles from an in-state supplier, the Company should provide the supplier with an exemption certificate. See Emergency Rule at 86 Ill. Adm. Code 130.330(j); 43 Ill. Reg. 13190 (November 18, 2019). If the Company purchases tangible personal property at retail from a supplier who is not registered to collect Illinois Use Tax, the Company must prepare an exemption certificate and retain it in its records. Section 130.330(j)(3).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

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