

This letter discusses the machinery and equipment exemption. 35 ILCS 120/2-5(14); 86 Ill. Adm. Code 130.330(a). (This is a PLR.)

September 3, 2020

RE: COMPANY  
Request for Private Letter Ruling

Dear Xxxx:

This letter is in response to your letter dated April 24, 2020, 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.

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:

We respectfully request a private letter ruling (“PLR”), pursuant to Illinois Administrative Code §1200.110, as to whether our client, COMPANY (the “Company”), qualifies for exemption from the Illinois Retailers’ Occupation Tax and Use Tax (collectively, “ROT/UT”) with respect to the facts set forth in this letter.

General Information Relating to PLR Request

1. Enclosed in an executed Form IL-2848, Power of Attorney, authorizing the designated individuals at our firm to submit this request on behalf of the Company and represent the Company before the Department.

2. This request for a PLR is not for hypothetical or alternative proposed transactions, but rather to determine whether actual purchases of machinery, equipment and other tangible personal property to be made by the Company qualify for an exemption to ROT/UT.
3. This ruling is sought for all tax periods during which the purchases of machinery, equipment and tangible personal property will occur.
4. No issue in the request is being examined as part of a Department audit, or is pending in litigation involving the Company or a related taxpayer in which the Department is named as a plaintiff or defendant.
5. To the best of the knowledge of both the Company and our firm, the Department has not previously ruled on the same or a similar issue for the Company or a predecessor. Neither the Company nor any of its representatives previously submitted a request on the same or a similar issue to the Department and withdrew it before the Department issued a ruling.
6. If the Department decides to issue a PLR, the Company requests certain information be deleted from the PLR prior to public dissemination. The Company requests that its name, address, description of the facility and names of its representatives be redacted or referred to in a non-identifying manner.

The Company provides temperature controlled facilities for the processing, packaging and storage of perishable food products and temperature-sensitive items to the frozen and refrigerated food industries. The Company manages more than 288 million cubic feet of temperature controlled space in 45 facilities located across the U.S. Its facilities handle a broad range of foods such as meats, seafood, fruits, vegetables, dairy products and raw food materials. The Company is one of the largest providers of refrigerated and frozen food processing, packaging and storage facilities in the U.S. and has more than XXXX employees.

The Company is considering an expansion and renovation of its existing food processing facility located ADDRESS. The existing building is approximately XXX,XXX square feet. The expansion space will be approximately an additional 121,000 square feet. The newly expanded and renovated facility will provide efficient and cost-effective processing of perishable food products for the Company's customers.

The Company will purchase the following items of machinery, equipment and other tangible personal property for use in the facility. Each of the following items is part of the Company's integrated food processing operation. Each component is necessary to facilitate quick processing of food products, prevent bacteria growth, spoilage and contamination, minimize the risk of food recalls, and to ensure that food products processed at the facility are fit for sale and human consumption.

1. Refrigeration System. The refrigeration system will be comprised of various components including air compressors, evaporators, pumps, heat exchangers, condensers, and associated electrical and mechanical components. The system is powered through electrical power wiring which is necessary to power the

refrigeration equipment. The system is controlled through control wiring which is necessary to facilitate control of the system and associated components. The refrigeration system also includes consumables, such as refrigerant, that are necessary to its operation.

2. Automated Storage and Retrieval System (AS/RS). The new facility will be highly automated through the use of an integrated and automated storage and retrieval system (“AS/RS”). The AS/RS is an integrated management and processing system for handling food products throughout the temperature controlled areas at the facility. The AS/RS is particularly important in cold food processing operations, as it facilitates quick and accurate processing and avoids the need for manual handling, reducing the risk of contamination and spoilage, and mitigates the possibility of food recall resulting from improper temperature control. The AS/RS includes the following integrated components:
  - a. Racking Equipment. These are specially designed racks and spacers to store and process pallets of food products. The racking equipment is essential to the reduction and maintenance of food product temperatures by creating space around the sides of the food product. This protects the stacked food product from destruction, and facilitates the organization of the food products in a manner that provides proper air flow around and between the stored food products. Without the racking equipment, airflow between the products would be restricted, and the reduced temperature created by the refrigeration system would not be conducted in a uniform, timely and balanced manner, resulting in spoilage and contamination.
  - b. Cranes. The racking equipment is served by automated cranes, which operate on a floor mounted mono-rail with guide rail affixed to the top of the pallet racking, and use guidance systems that ensure precise placement of the pallets in racking locations to facilitate consistent airflow. The use of the cranes ensures that food products will be quickly conveyed to their intended location in lower temperature areas of the facility. The crane is then tasked with logically storing, rearranging and retrieving pallets to fulfill customer orders as part of the integrated process. Once the pallets are needed for picking, the crane delivers the pallets to the layer picking area or back to the conveyor as a final product per a customer order.
  - c. Conveyors. The integrated AS/RS includes conveyors that move food products within the temperature controlled areas. For this facility, the conveyors will be electro-mechanical with some including hydraulic and pneumatic assist (fluid pressure and air pressure). The conveyors eliminate excessive product dwell time in the warmer (but still temperature controlled) dock area. Once a pallet is received onto the conveyor system, it is quickly transported into a lower temperature area in the facility. This swift transport mitigates opportunity for food spoilage and bacterial growth that can cause contamination and lead to food borne illness upon human consumption. The conveyors transport pallets from the dock area in a logical manner to the cranes for storage. The conveyors also transport product pallets to the layer

pick area facilitating the re-assembly and combination of product per customer order requirements.

- d. Layer Picker. The layer picker, which is also integrated with the AS/RS system, is a machine that utilizes an overhead style crane, or gantry system. It is responsible for accepting whole pallets and disassembling them one layer of cases at a time. It is capable of removing entire layers of boxes from multiple “parent pallets” and combining them onto new “child pallets”. These child pallets can have layers from multiple parent pallets. The end-product is a newly assembled final product ready for shipment per customer order. All of this is accomplished swiftly and accurately in the temperature controlled environment. The use of the layer picker eliminates human contact with the food product and the opportunity for contamination by human handling.
- e. Control System. The “brain” of the AS/RS system is the warehouse control system (WCS). The WCS is an integrated system comprised of programmable logic controllers (PLCs), motor control centers (MCCs) and control panels. PLCs intelligently manage the operation of the conveyor and crane components to work in unison. MCCs can house dozens of PLCs that are responsible for the orderly processing of product pallets. The racking equipment and associated cranes, conveyors and other components cannot function without direction from the WCS.
- f. Product Pallets and System Pallets. Product pallets are the structures on which the food products are secured from transportation, processing and storage. System pallets provide support for product pallets as they traverse all parts of the AS/RS system. As a product pallet enters the facility, it is placed on top of the system pallet and remains there during processing in the refrigerated areas. The system pallets are critical to ensuring a clean operating environment throughout the facility, by ensuring that sawdust and debris do not contaminate product pallets. System pallets also protect the conveyor, rack, and crane equipment from potential damage.
- g. RF Readers. These are hand-held radio frequency (RF) computers that are integrated into the AS/RS, and used to convey information to Company personnel regarding pallets, such as inventory paths and expiration dates, and to log product information for inventory control and tracking. The RF readers serve as an interface between Company personnel and the WCS.
- h. Forklifts. Forklifts are used to handle and transport food product pallets in the temperature controlled areas of the facility. Specially designed forklifts are also used to “case pick” when fulfilling highly customized customer orders of less than layer case pick quantities. Case pick involves separating a pallet into its base cases and then combining different product cases into one pallet thus building a new pallet that is completely customized. The AS/RS system returns completed case pick pallets of finished goods for secure storage until outbound shipment, and replenishes the case pick area as needed. The case pick forklifts are specially made for this so that the Company can reduce the

“runs” necessary to build a customized pallet, thus adding efficiency to the process and reducing the risk of contamination and spoilage.

- i. Automated Wrap Machine. This is an automated machine that plastic-wraps pallets in the temperature controlled areas. The wrap machine is integrated into the AS/RS and controlled through the WCS, and is specially designed to perform in -20 degree temperatures in the freezer environment. Utilizing an automated machine results in quick and efficient wrapping, and limits human handling of food product that could cause contamination and spoilage.
  - j. Freezer Grade Labels and Wrap. The Company utilizes freezer grade product plastic wrap and labels for processing food products. Each must be capable of application in temperatures down to -20 degrees F. The wrap is applied by the automated wrap machines and prevents contamination of food product. As a system pallet enters the AS/RS system, two labels with matching custom bar codes are affixed to each side which enables it to interface with the WCS for inventory control and processing as it moves through the AS/RS system.
3. Temperature Controlled Area Thermal Envelope. As part of the renovation and expansion of the facility, several components will be purchased and added that compromise a “thermal envelope” for the temperature controlled areas. The thermal envelope is necessary to maintain proper temperature for the food products. Each item included below is specialty rated and is separate from the structural foundation, walls and roofing of the facility. Without these components, the system will not be able to maintain temperature or prevent thermal and moisture transmission, which would result in food spoilage and contamination.
- a. Specialty Insulated Interior Cold Storage Doors. These are large (18 feet or higher) doors that go from the dock area to the freezer space. These are bi-part doors with insulated cores and 24 gauge, heavy duty galvanized steel skins. The freezer doors prevent thermal and moisture transfer or intrusion between the freezer and refrigerated environment. These doors have full perimeter gaskets that contain heat cables which are switch or thermostat controlled to keep the doors operational in the freezer environment and prevent ice and frost buildup that can cause damage and contaminate food product passing through the doorway. Freezer rated controls and power wiring are necessary to operate the doors.
  - b. Specialty Insulated Exterior Dock Doors and Seals. The dock area of the facility is where products are received for processing in the facility and where customer orders are moved by the AS/RS for fulfillment. The dock area will be temperature controlled and typically maintained around 35 degrees F. Thermal and moisture mitigation is critical in the dock area during transfer of food products from delivery trucks into the facility. The dock doors will be insulated and will be airtight when closed. The dock doors are also surrounded by dock seals, which are projection shelters, constructed of 40 oz. high density vinyl with Durathon pleats and C-4 head curtains, and have corner “draft pads” and dual bumper “filler pads” to ensure a tight perimeter seal for liftgate and standard trailers. The dock seals enable an airtight seal to be maintained between a

delivery truck and the dock doors even when the dock doors are open for unloading and loading products. Freezer rated controls and power wiring are necessary to operate the dock doors and seals.

- c. Composite Wall Panels/Insulated Metal Panels. These panels meet ASHRAE 90.1-2007 energy standards and are comprised of a core of continuous polyurethane foam that is factory foamed-in-place between two (2) sheets of twenty-six (26) gauge roll formed metal sheets of a specified thickness. The panels do not provide structural support for the facility. Foam cores are fully expanded into and bonded to the panel skin profile, free of foaming voids. All panels will be tongue and groove type that use specialty caulk to retard vapor. The interlocking system and accessory components, including vapor flashing, foam in place installation, sealants, and trim, provide a system with positive thermal/vapor barrier integrity.
  - d. Additional Roofing Insulation. Additional insulation will be installed into the roof of the facility in staggered layers with a minimum sheet size of 48"x96" with a minimum R-value of 5 ft<sup>2</sup>\*h\*°F/Btu per inch. The insulation is made up of isocyanate or polyisocyanurate, composed of 2-3 layers, with a minimum thickness of 8 inches, compressive strength of 20 psi or greater, and a long-term thermal resistance value of 50 or higher. The insulation meets ASHRAE 90.1-2007 energy standards and is tested in accordance with CAN/ULC S770.
  - e. Thermal Blocking. The building columns at the facility will be made of steel. Steel is a good conductor of thermal energy and therefore building columns must incorporate a "thermal break" to maintain temperature in the refrigerated area. This thermal blocking consists of a non-conductive thermal item placed under the steel columns. The Company is not claiming the MM&E exemption as to any steel columns or other aspects of the structural shell of the facility that may be added or modified as part of the renovation and expansion.
4. Hand Tools. This includes various hand tools, some of which are highly specialized for automated cold storage operations, for use in the facility as needed for maintenance and repairs of various components of the refrigeration system, the AS/RS system and the thermal envelope.
  5. Replacement Parts. These are replacement parts that make up the various components of the refrigeration system, the AS/RS system and the thermal envelope. If there is a failure of any component, it is essential to have replacement parts available to facilitate uninterrupted processing.

#### Statement of Law and Authorities

Illinois Retailers' Occupation Tax and Use Tax are generally assessed on the purchase or use by Illinois residents of tangible personal property in the state. 35 ILCS 120/2; 35 ILCS 105/1a. Prior to July 1, 2019, the ROT and UT statutes provided an exemption from ROT/UT for conventional machinery and equipment that will be used by the purchaser primarily (over 50% of the time) in the process manufacturing or assembling

tangible personal property. 35 ILCS 120/2-5(14); 35 ILCS 105/3-5(18). See also 86 Ill. Adm. Code 130.330; 86 Ill Adm. Code 150.910.

Effective July 1, 2019, this exemption was expanded beyond conventional “machinery and equipment” to include “production” related tangible personal property” (as expanded, the “MM&E exemption”). As amended, the ROT and UT statutes define “production related tangible personal property” as all tangible personal property used or consumed in a production related process in a manufacturing facility. 35 ILCS 120/2-45; 35 ILCS 105/3-50. This broadens the MM&E exemption to include items previously qualified for the tax credit under the Illinois Manufacturer’s Purchase Credit (“MPC”), which previously expired.

Because of the significance of legislation expanding the MM&E exemption, and to encourage manufacturing investment and expansion in Illinois, the Department amended the regulations on the MM&E exemption to incorporate production related tangible personal property into the MM&E exemption. 86 Ill. Admin. Code § 133.330, effective March 16, 2020 (the “Regulations”).

In the Regulations, the Department has clarified that: 1) tangible personal property that is production related will qualify for the exemption even if it does not meet the definition of conventional “machinery and equipment”; and 2) all references to “machinery and equipment” in the regulations include qualifying tangible personal property. See 86 Ill Admin. Code § 130.330(a).

The expanded MM&E exemption applies to qualifying items purchased for use in an existing manufacturing facility, as well as items purchased for use in an expanded or new manufacturing facility 35 ILCS 120/2-45. 86 Ill Adm. Code §130.330(a).

Subsection (c) of the Regulations address [sic] “conventional” machinery and equipment that qualify for the MM&E exemption. “Machinery” means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. 35 ILCS 120/2-45(3); 35 ILCS 105/3-50(3). “Equipment” includes an independent device or tool separate from machinery but essential to an integrated manufacturing or assembly process. 35 ILCS 120/2-45(4); 35 ILCS 105/3-50(4). Equipment also includes any parts that require periodic replacement in the normal course of operation. Id.

To provide guidance to taxpayers, the Regulations include examples of machinery and equipment used primarily in the following activities will generally be considered exempt for purposes of the MM&E exemption, including:

- machinery and equipment used to effect a direct and immediate physical change upon the tangible personal property to be sold;
- machinery and equipment used to inspect, test or measure the tangible personal property to be sold, when the function is an integral part of the production flow;

- machinery and equipment used to convey, handle or transport the tangible personal property within production stations or between the production stations within a facility; and
- machinery and equipment used in the production or processing of food.

86 Ill. Adm. Code § 130.330(c)(3)(A), (C), (D) and (F).

Machinery and equipment used in the following activities will generally not be considered to be exempt:

- machinery and equipment used to transport work in process, or semifinished goods, between plants;
- machinery or equipment used in managerial, sales or other nonproduction or, nonoperational activities (e.g., accounting, sales, marketing, or personnel recruitment, selection or training);
- machinery and equipment used in the preparation of food and beverages by a retailer for retail sale, i.e., restaurants, vending machines, food service establishments;
- machinery and equipment used in the last step of the retail sale.

86 Ill. Adm. Code § 130.330(c)(4)(A)-(D)

The Regulations also include examples of items that the Department considers to be production related. By way of illustration and not limitation, the following uses of tangible personal property by manufacturers will be considered production related and thus qualify for the expanded MM&E exemption:

- Property purchased for incorporation into real estate within a manufacturing facility for use in a production related process; or property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process;
- Supplies and consumables primarily used in a manufacturing process, 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
- 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.

86 Ill. Adm. Code § 130.330(h)(2)(A)-(D)



The Regulations also provide examples of uses of tangible personal property by manufacturers that will not be considered production related, including:

- The use of trucks, trailers and motor vehicles that are required to be titled or registered pursuant to the Illinois Motor Vehicle Code;
- the use of office supplies, computers, desks, copiers and equipment for sales, purchasing, accounting, fiscal management, marketing, and personnel recruitment or selection activities, even if the use takes place within a manufacturing facility; and
- The use or consumption of tangible personal property for aesthetic or decorative purposes, including landscaping and artwork.

86 Ill. Adm. Code § 130.330(h)(3).

The production or processing of food is generally considered to constitute an exempt use for purposes of the MM&E exemption. 86 Ill. Adm. Code §130.330(c)(3)(F). The Department has also issued a series of private letter rulings and general information letters regarding the application of the MM&E exemption to cold food storage and processing which are relevant to this request.

- In *Private Letter Ruling ST 88-0136*, the Department established its position that machinery and equipment used in food processing qualifies for the MM&E exemption.
- In *Private Letter Ruling ST-09-0003*, the Department established its position that machines which serve a quality control function in food processing qualify for the MM&E exemption.
- In *General Information Letter ST-99-0139*, the Department determined that although pre-production and post-production storage facilities generally do not qualify for the MM&E exemption, refrigeration and freezer facilities maintained at a specific temperature that is required to preserve a post-production food product will qualify for the MM&E exemption. The Department extended the regulation and determined that the MM&E exemption will apply due to the requirements of the industry in preventing contamination and spoilage of food products. See *also* GIL ST-98-0193; GIL ST-01-0192; GIL ST-93-0121.
- In *General Information Letter ST-01-0192*, the Department provided a similar ruling as in *ST-99-0139-GIL*, adding that “[I]ndependent devices, separate from machinery but essential to the manufacturing or assemble process can qualify [for the MM&E exemption], including parts which require periodic replacement in the normal course of operation.”
- In *General Information Letter ST-11-0069*, the Department specifically noted that machinery or equipment that is required for meat processing, such as cooling equipment that maintains a precise temperature as part of the

processing, could qualify for the exemption if used primarily for that purpose. In *GIL ST-11-0069*, the taxpayer requested a ruling that certain components of a meat processing facility are exempt from ROT/UT, including: 1) stainless steel insulated walls, 2) interior insulated doors located within the production processing areas, 3) exterior insulated doors located within the production processing areas, and 4) silicone-coated ceiling, among other items such as the sprinkler system, lighting system, employee locker room, employee lunchroom and restrooms.

- In *ST-11-0069-GIL*, the Department indicated that even if an item of personal property included in the taxpayer's request (e.g., insulated walls and doors) did not qualify for the MM&E exemption, those components could be purchased using the MPC (in effect at the time of the GIL) if the components qualify as "production related tangible personal property." As noted above, the MM&E exemption has now been expanded to include "production related to tangible personal property" that was previously covered by the MPC, in addition to conventional machinery and equipment.
- In *Private Letter Ruling ST 14-0002*, the Department determined that certain machinery and equipment in a cold storage facility, including a refrigeration system and associated cooling equipment that maintains a temperature in order to preserve food product and (ii) racking equipment that facilitates adequate fair flow to maintain a temperature, each contributed to and were essential to the manufacturing process, and thus qualified for the MM&E exemption.
- In *Private Letter Ruling 16-0004*, the Department provided a similar ruling as in *PLR ST 14-0002*. The Department determined that freezer machinery and equipment used to reduce and maintain temperatures in the cold food storage areas of the facility qualify for the MM&E exemption if used primarily for that purpose. Similarly, racking equipment also qualified for the exemption because without it, the products would not receive proper air flow and the system would not effectively cool the products and heat from biological processes would spoil and contaminate the products. As such, the racking equipment was considered essential to an integrated food manufacturing process.

#### Analysis and the Company's Position

The Company's position is that all of the items listed in the Statement of Facts above qualify for the MM&E exemption. The Company provides cold storage and food processing services for food manufacturers. The Company is not a retailer such as a restaurant and does not prepare food as the last step of the retail sale.

1. The refrigeration system constitutes qualifying conventional machinery or equipment used primarily in the manufacturing process. 35 ILCS 120/2-45(3)-(4); 35 ILCS 105/3-50(3)-(4). Consumables, including ammonia and other substances or chemicals used as refrigerant, specifically qualify as

production related tangible personal property under the expanded MM&E exemption. 86 Ill. Adm. Code § 130-330(h)(2)(B).

2. All components of the AS/RS system, including, racking equipment, cranes, conveyors, layer picker, warehouse control system, product pallets and system pallets, RF readers, forklifts and automated wrap machines constitute qualifying conventional machinery or equipment used primarily in the manufacturing process. 35 ILCS 120/2-45(3)-(4); 35 ILCS 105/3-50(3)-(4). Even if an individual component of the AS/RS system were to not be considered as conventional machinery and equipment, the component would qualify under the expanded MM&E exemption as production related tangible personal property used for purposes of pre-production or post-production material handling, receiving, quality control, inventory control and packing for shipping or transportation. 86 Ill. Adm. Code §130.330(h)(2)(D). Freezer grade wrap and labels also qualify under the expanded exemption under the foregoing section or as consumables used in the production process. Id., 86 Ill. Adm. Code §130.330(h)(2)(B).
3. The components that will comprise the “thermal envelope” for the temperature controlled areas also qualify under the expanded MM&E exemption, either as machinery and equipment or as tangible personal property purchased for incorporation into real estate for use food processing. 86 Ill. Adm. Code §130.330(h)(2)(A). This includes the specialty insulated exterior cold storage doors, specialty insulated exterior dock doors and seals, composite wall panels / insulated metal panels, additional roofing insulation and thermal blocking.
4. Hand tools used in the facility as needed for maintenance and repairs of various components of the refrigeration system, the AS/RS system and the thermal envelope, are considered production related and qualify for the expanded MM&E exemption 86 Ill. Adm. Code §130.330(h)(2)(c).
5. Replacement parts for the various components of the refrigeration system, the AS/RS system and the thermal envelope that require periodic replacement in the normal course of operation, qualify under the expanded MM&E exemption. 35 ILCS 120/2-45(4); 35 ILCS 105/3-50(4).

Each of the foregoing items will be used 100% of the time in the Company’s manufacturing process. Each is as essential part of the Company’s overall integrated manufacturing process for the processing, storage and packaging of food products in a refrigerated or frozen state from the time the product arrives at the facility through the time the product leaves the facility. Each item is necessary to facilitate quick processing of food products, prevent bacteria growth, spoilage and contamination, and to ensure the food products are fit for sale and human consumption.

The Company is not requesting a ruling, and will not claim the MM&E exemption, for any machinery, equipment or tangible personal property that:

- requires a title or registration with a government agency;

- is used for Company functions other than temperature-controlled food processing (e.g., sales, accounting, marketing or HR);
- is used in a general area of the facility that is not required to be temperature-controlled, such as employee break rooms, offices and restrooms;
- is part of the foundation or supporting structure of the facility as renovated and expanded; or
- is used for general ventilation, heating, cooling, climate control or lighting of the facility that is not specifically required for temperature-controlled food processing.

### Ruling Requested

We respectfully request that the Department issue a private letter ruling confirming that the machinery, equipment and other items of tangible personal property to be used in the Company's cold storage food processing facility qualify for the MM&E exemption.

We look forward to the Department's response. If you have any questions, please feel free to contact ATTORNEY at XXX-XXX-XXXX or [EMAIL](#). On behalf of the Company, thank you for your consideration.

### **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.

Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether the sale or lease is made directly by the manufacturer or by some other person. 35 ILCS 120/2-5(14); 86 Ill. Adm. Code 130.330(a). The manufacturing and assembly machinery and equipment exemption includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility, as well as machinery and equipment that are for use in an expanded or new manufacturing facility. 86 Ill. Adm. Code 130.330(a). There may be instances however in which items of tangible personal property that do not meet the definition of conventional "machinery and equipment" will meet the definition of "production related tangible personal property" and qualify for the exemption.

The manufacturing process is the production of any article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining that changes some existing material or materials

into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant. 86 Ill. Adm. Code 130.330(b)(1). The assembling process is the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling that results in an article or material of a different form, use or name. 86 Ill. Adm. Code 130.330(b)(2). The process or activity must be commonly regarded as manufacturing. To be so regarded, it must be thought of as manufacturing by the general public. Generally, the scale, scope and character of a process or operation will be considered to determine if the process or operation is commonly regarded as manufacturing. Manufacturing includes such activities as processing, fabricating and refining. 86 Ill. Adm. Code 130.330(b)(3).

The exemption applies to machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. The manufacturing and assembly machinery and equipment exemption also includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility as well as machinery and equipment that are for use in an expanded or new manufacturing facility. The machinery and equipment exemption also includes machinery and equipment used in the general maintenance or repair of exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. 86 Ill. Adm. Code 130.330(c)(1).

Equipment includes an independent device or tool separate from any machinery but essential to an integrated manufacturing or assembly process, including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns, and molds; and any parts that require periodic replacement in the course of normal operation. 86 Ill. Adm. Code 130.330(c)(2).

Machinery and equipment used primarily in the following activities will generally be considered exempt:

- A) To affect a direct and immediate physical change upon the tangible personal property to be sold;
- B) To guide or measure a direct and immediate physical change upon the tangible personal property to be sold, provided this function is an integral and essential part of tuning, verifying or aligning the component parts of that property;
- C) To inspect, test or measure the tangible personal property to be sold, when the function is an integral part of the production flow;
- D) To convey, handle or transport the tangible personal property to be sold within production stations on the production line or directly between the production stations or buildings within the same plant;
- E) To place the tangible personal property to be sold into the container, package or wrapping in which this property is normally sold, when the machinery and equipment is used as a part of an integrated manufacturing process;

- F) The production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store;
- G) The use of machinery and equipment such as buffers, builders or vulcanizing equipment to retread tires, whether or not the tire casing is provided by the purchaser.

The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. The exemption includes computer software used to operate exempt machinery and equipment used in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. 86 Ill. Adm. Code 130.330(d) & (e).

P.A. 101-9 permanently expanded the MM&E exemption to allow items that had previously been eligible for the expired Manufacturer's Purchase Credit ("MPC") (*i.e.*, "production related tangible personal property") to be eligible for the MM&E exemption. (86 Ill. Adm Code 130.331, Manufacturer's Purchase Credit). 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)

For example, the following uses of tangible personal property by manufacturers, including graphic arts producers, will be considered production related:

- A) 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.
- B) Supplies and consumables used in a manufacturing process in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants and adhesives.
- C) Hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility.
- D) 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.
- E) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of fuel used or consumed in transportation of the truck will not qualify as production related tangible personal property. The amount of fuel used in

a qualifying manner to rotate the drum may be stated as a percentage of the entire amount of fuel used or consumed by the ready-mix truck.

The Department has reviewed each of the items described in your letter and has determined all of the items you have requested a ruling qualify for the machinery and equipment exemption, either because the tangible personal property qualifies as machinery and equipment used by the Company primarily in the process of manufacturing or assembling of tangible personal property for wholesale or retail sale or lease, or because it qualifies as production related tangible personal property. The Department, at the Company's request, makes no determination regarding tangible personal property that is titled and registered; tangible personal property that is used for Company functions other than temperature-controlled food processing (e.g., sales, accounting, marketing or HR); tangible personal property that is used in a general area of the facility that is not required to be temperature-controlled, such as employee break rooms, offices and restrooms; tangible personal property that is part of the foundation or supporting structure of the facility as renovated and expanded; or tangible personal property that is used for general ventilation, heating, cooling, climate control or lighting of the facility that is not specifically required for temperature-controlled food processing.

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](http://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

RSW:ld