

This letter discusses the enterprise building materials exemption. 86 Ill. Adm. Code 130.1951.
(This is a GIL.)

June 24, 2020

Dear Xxxx:

This letter is in response to your letter dated July 26, 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:

As a member of the ENTERPRISE ZONE, the Village of XXXXX is investigating Enterprise eligibility for two private solar farm projects. The project, which is scheduled for construction in August, is currently outside the ENTERPRISE ZONE boundary. Before going through the time and expense to expand the zone to cover the project, we would like to determine in such a project is eligible for Enterprise Zone benefits, specifically, the retail sales tax benefit.

COMPANY, is preparing to construct two privately owned and operated solar farms in the Village of XXXXX. These will be freestanding solar arrays, not a rooftop system. Project 1 will directly serve the Village of XXXXX Sewer Treatment Plant. Project 2 will be a community-based program serving any number of users indirectly in the Village and surrounding region.

Project 1 has a total estimated cost of \$\$\$, with \$\$\$ estimated for construction of the solar array. Project 2 has total estimated cost of \$\$\$\$. The solar array construction is estimated \$\$\$ for Project 2.

The common construction components in a solar farm include:

- Modules (harnesses sunlight)
- Inverters (converts A/C to D/C)
- Racking (holds the solar panels)
- Electrical (conduit, wire, combiner boxes, etc.)
- Switchgear/transformers (for utility interconnection)

- Fencing (security)
- Access Road (typically gravel)
- Storage Shed

If purchased in Illinois, would these items be generally eligible for the Illinois Enterprise Zone sales tax benefit?

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.

A "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which an Enterprise Zone Building Materials Exemption Certificate has been issued to the purchaser by the Department. A construction contractor or other entity shall not make tax-free purchases unless it has an active Enterprise Zone Building Materials Exemption Certificate issued by the Department at the time of the purchase. 86 Ill. Adm. Code 130.1951(c)(1).

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."

Although the Department has not issued a letter regarding solar projects, the specific question of whether the materials used in constructing an electric generating facility qualify for the building materials exemption under 35 ILCS 120/5k of the Retailers' Occupation Tax has been addressed in numerous private letter rulings issued by the Department in recent years. These letters may prove helpful. In Private Letter Ruling ST 99-0009 (March 9, 1999) the Department ruled that pipe racks, pipe, supports, and piping tie-ins installed at a natural gas fired power plant qualified for the exemption because they were permanently affixed to real estate. In Private Letter Ruling ST 00-0013 (July 7, 2000) the Department found that certain materials incorporated into realty within an electricity

generating facility qualified for the exemption. The Department found that turbine generators, electrical transformers, electrical cabling, piping and other materials that are permanently affixed to real estate qualified for the exemption in 35 ILCS 120/5k and 86 Ill. Adm. Code Sec. 1951(a)(1). Thereafter, the Department has consistently ruled that these materials qualified for the exemption if it was demonstrated that they were permanently affixed to the real estate (see, for example, Private Letter Rulings ST 00-0025 (October 19, 2000); ST 00-0026 (November 3, 2000); ST 00-0033 (December 11, 2000); ST 00-0034 (December 11, 2000); ST 01-0001 (January 9, 2001); ST 01-0012 (April 5, 2001); ST 01-0014 (April 9, 2001); ST 01-0040 (September 24, 2001), ST 01-0045 (October 26, 2001), ST 02-0012 (June 10, 2002), ST 05-0020 (November 18, 2005); ST 08-0003 (April 1, 2008); and ST-19-0002 (July 8, 2019). Generally, the determination of whether an item qualifies for the exemption must be made on an item-by-item basis.”

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

It appears that some of the items may qualify if they are permanently affixed to the real estate. The Department has held in the past that fencing permanently affixed to the real estate and gravel used on roads qualify for the enterprise zone building materials exemption. However, the Department cannot make a binding ruling in a General Information Letter. Moreover, the Department would require a more thorough explanation of each of the components.

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:bkl