

Sales of tangible personal property to be used or consumed in the operation of pollution control facilities located in an enterprise zone and certified by the Department of Commerce and Economic Opportunity are exempt from the tax imposed by the Retailers' Occupation Tax Act. See 35 ILCS 120/1e. and 1f. (This is a GIL.)

October 2, 2020

Dear Xxxx:

This letter is in response to your letter dated April 1, 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 are requesting that the Department of Revenue issue COMPANY (CITY Plant) a Sales Tax Exemption in connection with the purchase of tangible personal property that will be used in a pollution control facility. We believe that COMPANY (CITY Plant) qualifies as a recognized "Pollution Control Facility" as defined under the Department of Revenue Act, 35 ILCS 120/1a (from Ch. 120, par. 440a, Section 1a).

COMPANY located at ADDRESS, CITY, IL, is a leading contract manufacturer in the consumer [sic] packaged goods industry. The company strives to meet the environmental and conservatory obligations set forth by the state at all times. We employ both biological and chemical means to dispose of pollutant byproducts in our manufacturing process before safely releasing treated water back into the sewage systems. Using bacteria, we are able to reduce overall Chemical Oxygen Demand (COD) and Total Suspended Solids (TSS) in wastewater to levels deemed appropriate by the CITY Sanitary District. Attached with this letter is our company's Wastewater Treatment Agreement with the CITY Sanitary District, our wastewater permit, and in-depth diagram of our wastewater plant and explanation of the treatment process, for the State's consideration.

Our CITY facility meets the requirements in Section 1f of the Retailers' Occupation Tax Act. It is located within an Enterprise Zone as defined under Title 86 Part 130.1948 Tangible Personal Property Use or Consumed in the Operation of Pollution Control Facilities Located Within Enterprise Zones and creates a minimum of 200 full-time jobs in Illinois.

Please contact NAME at NUMBER if you require additional information.

DEPARTMENT'S RESPONSE:

Effective July 1, 2003, the Pollution Control Exemption for sales tax was repealed by Public Act 93-24. This repealed exemption is described at 86 Ill. Adm. Code 130.335. However, the expanded Pollution Control Exemption related to enterprise zones was not repealed.

Section 1e of the Retailers' Occupation Tax Act provides that all tangible personal property to be used or consumed in the operation of a pollution control facility that is certified, as required under Section 1f of the Retailers' Occupation Tax Act by the Department of Commerce and Economic Opportunity both as meeting certain investment and job creation or retention criteria and as being located within an enterprise zone, shall be exempt from Retailers' Occupation Tax. See 35 ILCS 120/1e. Section 1f of the Retailer's Occupation Tax Act provides, in relevant part, that the exemption stated in Section 1e shall only apply to business enterprises which (among other things) "are certified by the Department of Commerce and Economic Opportunity." See 35 ILCS 120/1f. The administrative rules adopted by the Illinois Department of Revenue to implement this exemption provide that if a business enterprise is so certified by the Department of Commerce and Economic Opportunity, all tangible personal property used or consumed by it in the operation of pollution control facilities within an enterprise zone are exempt from Retailers' Occupation Tax. An item that is exempt from Retailers' Occupation Tax is also exempt from Use Tax. See 35 ILCS 105/3-65.

It is unclear from your letter whether COMPANY has been certified by the Department of Commerce and Economic Opportunity under Section 1e of the Retailers' Occupation Tax Act. Business enterprises must be certified by the Department of Commerce and Economic Opportunity before they are eligible to receive an Exemption Certificate, which is issued by the Department of Commerce and Economic Opportunity, not the Illinois Department of Revenue.

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,

Debra M. Boggess
Associate Counsel

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