

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.2075. (This is a GIL.)

October 9, 2020

Dear Xxxx:

This letter is in response to your letter dated November 14, 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](http://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:

To Whom It May Concern:

COMPANY requests a ruling on the proper treatment of cleanroom construction in the state of Illinois.

**STATEMENT OF FACTS**

Our company performs specialty contracting work throughout the United States. We have recently started building cleanrooms that are generally used in manufacturing or scientific research in the life science or microelectronics industries to create a controlled environment that regulates humidity, temperature, particulate matter, and contamination which is vital to the products or research being produced within the cleanroom. We offer the following clean room delivery options:

**Life Science Industry:**

Modular Wall & Ceiling Systems - This includes walk-on ceilings, modular walls, or a combination of modular and stick built construction.

Traditional Wall & Ceiling Systems - These are traditional drywall finishes which can be combined with modular systems.

Specialty Doors - COMPANY installs doors in a variety of configurations such as swing, sliding, and high-speed roll up doors.

Laminar Flow Solutions - COMPANY offers a wide range of laminar flow and air filtration solutions available such as containment hoods, stainless steel plenums and air handling units.

Lighting Systems - COMPANY can install many lighting system options including walk- on, surface mounted and LEDs.

Flooring Solutions - This includes a wide range including resinous floor solutions, various thicknesses, chemistries and finishes comprised of epoxy, vinyl flake or sheet vinyl systems. Vinyl seams are heat-welded, providing an impervious, hard-wearing, homogeneous floor finish. Floor coves are often incorporated into walls for ease of cleaning. In addition, COMPANY offers the accurate configuration of raised access flooring to adhere to under-floor mechanical and electric al component specifications.

Filtration Systems - COMPANY can install filtration systems that are integrated and installed into the cleanroom facility.

Specialties - COMPANY provides a variety of specialty items such as slotted channels, pass throughs, utility boxes, grids and curtains, guard rails, bumper guards and gown room furniture.

Cold room Integration - COMPANY creates the cold room with materials that meet the overall cleanroom specifications.

### **Microelectronics/Semiconductor Industry:**

Modular Wall & Ceiling Systems - This includes walk-on ceilings, modular walls, or a combination of modular and stick built construction.

Air Filtration Systems - From fan-filter units, ducted filter units, plenums, and air handling units, COMPANY delivers customized solutions to maximize the most sensitive and critical area of your manufacturing process.

Specialty Doors - COMPANY installs doors in a variety of configurations such as swing, sliding, and high- speed roll up doors.

Flooring Solutions - This includes a wide range including resinous floor solutions, various thicknesses, chemistries and finishes comprised of epoxy, vinyl flake or sheet vinyl

systems. Vinyl seams are heat-welded, providing an impervious, hard-wearing, homogeneous floor finish. Floor coves are often incorporated into walls for ease of cleaning. In addition, COMPANY offers the accurate configuration of raised access flooring to adhere to under-floor mechanical and electrical component specifications.

Strut Utility Racks - COMPANY can install unistrut slot channel framing to serve a variety of support system applications. These include cable management, pipe and conduit, and HVAC and duct, lighting and equipment supports.

Specialties - COMPANY provides a variety of specialty items such as slotted channels, pass throughs, utility boxes, grids and curtains, guard rails, bumper guards and gown room furniture.

Automated Utility Handling Systems - COMPANY can install cleanroom automation systems for a variety of industries, applications, and automated system types including conveyors, carousels, storage retrieval and guided vehicles.

Tool Installation Services - COMPANY provides a complete, comprehensive solution for tool installation service from system rigging to the final outfitting of technical instruments and machinery.

Protocol, Cleaning and Certification Services - COMPANY provides onsite operations training and staff monitoring throughout the construction process to ensure the cleanroom environment is not comprised. COMPANY also offers postconstruction cleaning and sanitization services to eliminate debris and static buildup through full super cleans and particle testing.

We are generally included on a project as a subcontractor working for the general contractor. However, we do occasionally perform this work directly for the owner of the project.

### **OPINION REQUESTED**

1. What would be the taxability of the product lines listed above? Would sales tax be due on the on the (sic) purchase of the materials used or would sales tax be due on the billings to our customer?
2. Would the taxability answer differ if the project was billed with a separated labor and materials billing or as a lump sum billing? Would the answer differ if we are working as a subcontractor or directly for the project owner?
3. Would any of these product lines qualify to be exempt under the manufacturing exemption?
4. If the exemption does apply, what documentation do we need to receive from our customer to support the exemption? Will the answer differ if our

customer was a general contractor or the owner of the project? What documentation/certificate do we need to provide to our vendors to purchase materials exempt from sales tax?

5. What would be the taxability if we were to provide pre-construction design services? Would the answer differ if this was a stand-alone service or if it was included with the construction of the cleanroom?

If you have any questions, please contact me

## **DEPARTMENT'S RESPONSE:**

### Construction Contractors

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. In Illinois, 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.

A contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure is considered a construction contract. The tax liabilities regarding construction contractors in Illinois may be found at 86 Ill. Adm. Code 130.1940 and 130.2075 on the Department's website. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075.

Therefore, any tangible personal property that a construction contractor purchases that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must register and self-assess their Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the

construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as “sales tax,” but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor’s part.

Section 130.1940(c) addresses situations where tangible personal property is permanently affixed or incorporated into a structure incident to a construction contract. As previously noted, a construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. A construction contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure may separately state the cost of installation and the cost of the tangible personal property and remain a construction contract for sales tax purposes. The fact that the installation costs and the tangible personal property costs are separately stated in the contract or on the billing does not change the tax consequences of the transaction.

If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

### Manufacturing Machinery and Equipment

Machinery and equipment that is used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.330. The manufacturing process is the production of any article of tangible personal property, whether such 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 which 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. The Department recently updated its regulations to reflect recent changes to the exemption. 44 Ill. Reg. 5392.

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 included examples of items that are 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.

We urge you to review this regulation to determine its applicability to the items you sell or install for your customers.

I hope this information is helpful. If you require additional information, 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,

Debra M. Boggess  
Associate Counsel

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