

This letter concerns electricity and gas services to manufacturers. See 86 Ill. Adm. Code Parts 130.330. (This is a GIL.)

March 09, 2021

Dear NAME:

This letter is in response to your letter dated April 15, 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 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 trust you; your family and your team stay safe and healthy during this COVID 19 pandemic.

In accordance with our client’s attached letter, COMPANY1 respectfully submits these facts on COMPANY2’s manufacturing processes to obtain an exemption per IPA 101-0009 from state taxes COMPANY2 has paid and will continue to pay on natural gas and electric power consumed in these processes.

COMPANY2’s CITY plant has gas-fired boilers that are required to produce a heated chemical medium used to clean metal parts prior to being zinc plated by the following manufacturing processes.

COMPANY2’s manufacturing processes consist of two major forms of the electrolytic process of zinc plating and represent a primary tier in the chain of metals manufacturing. The two forms of zinc plating COMPANY2 performs are rack plating and barrel plating. These forms are self-explanatory.

These forms of zinc plating require a large amount of electric power to electrically charge zinc material in chemical solutions. As metal parts are submerged in zinc filled chemical solutions, zinc becomes an integral element of the part by electrolytic process forming a finished metal product.

COMPANY2's CITY plant has about 200 Alternating Current (AC) to Direct Current (DC) rectifiers that transform high voltage medium amperage AC current to high amperage low voltage DC current to electrically charge zinc material in chemical solutions in numerous zinc plating tanks of various sizes throughout COMPANY2's above plant. Most of the electric power ELECTRICITY SUPPLIER delivers to COMPANY2's above plant and COMPANY2 pays state tax on is consumed in the above processes.

Besides electric pumps required to transport the above solutions to the above tanks, there support processes required for these above processes that also consume a fair amount of electric power.

Zinc plating must always occur at temperatures below ambient temperature. Consequently, as heat builds up in the plating tank as the zinc chemical solution is electrically charged, that heat must be removed by a cooling medium. COMPANY2's plant has several electric chillers that produce cooling medium used to remove heat from the above solutions in the above tanks.

The zinc plating tanks are open to atmosphere and chemically laden fumes rise from these tanks during the zinc plating process. The EPA requires that COMPANY2's plant remove these fumes with air handling equipment and replace these fumes with fresh outside air. The above air handling equipment consumes a fair amount of electric power to support the above processes.

We believe all of the electric power consumed in the above manufacturing process is exempt from state tax on the premise that fuel, which is now considered tangible property under IPA 101-0009, is required to produce electric power, whether that fuel be gas, coal or nuclear fuel. We also believe natural gas consumed in the above manufacturing process is exempt from state tax under the same premise.

COMPANY1 respectfully requests the State of IL provide COMPANY2 and COMPANY1 a ruling on the exemption from state tax for electric power and natural gas consumed in COMPANY2's manufacturing processes. Please direct your replies to COMPANY1 at the address on our letterhead or if more convenient by e-mail to E-MAIL.

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If the State of IL needs additional information to make the appropriate ruling, please e-mail me at [E-MAIL](#) or contact me by phone at PHONE.

We thank you for your cooperation and look forward to your favorable ruling on the above matter.

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. Cod 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 a purchase qualifies for an exemption under Illinois tax law.

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.

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. Supplies and consumables used in a manufacturing process in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants and adhesives are examples of uses of tangible personal property by manufacturers that are considered production related. 86 Ill. Adm. Code 130.330(h).

However, electricity is not taxed under the Retailers' Occupation Tax Act or Use Tax Act; therefore, the manufacturing machinery and equipment exemption would not

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be applicable. In Illinois, the Electricity Excise Tax Law imposes a State tax on the privilege of using in this State electricity purchased for use or consumption. See 86 Ill. Adm. Code 511.110. The incidence of this tax is on the consumers of electricity and is collected by the consumers delivering supplier. There are limited exemptions from tax in this law. Persons using electricity to manufacture products for resale are not exempt from paying the tax to their delivering suppliers. However, please note that businesses that qualify as high impact businesses under Section 9-222.1A of the Public Utilities Act or certified business enterprises under Section 9-222.1 of the Public Utilities Act are exempt from Electricity Excise Tax to the extent of such exemption and during the period in which the exemption is in effect. See 86 Ill. Adm. Code 511.150.

Similarly, the sale of gas services in Illinois is not taxed under the Retailers' Occupation Tax Act or Use Tax Act but is subject to taxation under the Gas Revenue Tax Act. See 35 ILCS 615/1 et seq.; 86 Ill. Adm. 470.110. The Gas Revenue Tax Act does not provide any type of general exemption for manufacturing use. There is, however, an exemption from these taxes for sales made to business enterprises located within an area designated by a county or municipality as an enterprise zone pursuant to the Illinois Enterprise Zone Act. See 86 Ill. Adm. 470.131.

For purchases of out-of-State gas not subject to Gas Revenue Tax, Gas Use Tax is imposed upon the privilege of using in this State gas obtained in a purchase of out-of-State gas at the rate or rates set forth in the Act. See 86 Ill. Adm. Code 471.105. The Gas Use Tax Act does not provide any type of general exemption for manufacturing use. However, unlike the Gas Revenue Tax Act, the Gas Use Tax Law does provide several exemptions, which are listed in 86 Ill. Adm. Code 471.125.

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,

Alexis K. Overstreet
Associate Counsel

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