

Corrugated plastic pipe and other water management products used in production agriculture for drainage are not considered equipment under the farm machinery and equipment exemption. See 86 Ill. Adm. Code 130.305 (This is a GIL.)

March 11, 2021

Dear NAME.:

This letter is in response to your letter dated November 25, 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:

COMPANY1 requests a ruling on the proper treatment of corrugated plastic pipe and related apparatus used primarily in production agriculture as qualifying farm equipment exempt from the Retailers' Occupation Tax under Section 130.305.

1. STATEMENT OF FACTS AND OTHER PERTINENT INFORMATION

a. ***Identification of All Interested Parties***

The interested parties include the taxpayer, NAME. as the single member of COMPANY1 and the customers of COMPANY1, one of which is the affiliated entity COMPANY2., a Limited Liability Company organized in the State of Illinois.

b. ***Business Reasons for the Transaction***

The business reason for the transaction is to accept exemption certificates from customers so that they can avoid paying the Retailers' Occupation Tax on corrugated plastic pipe primarily used in, and in most cases, essential for production agriculture.

c. ***Detailed Description of the Transaction***

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The transactions involve the sale of corrugated plastic pipe and many related accessories (e.g. couplers, guards, water control structures, etc.) to customers who are using these products in water management systems installed for use primarily in, and most often, exclusively in, production agriculture.

d. ***Analysis of the Relation of the Material Facts to the Issues***

The issue is that COMPANY1 and its customers have been led to believe, via issuance of various General Information Letters (see Item #6 below) and a general consensus in the industry (likely the result of such and similar letters) that corrugated plastic pipe (or "drain/age tile") [sic] used in production agriculture settings are not exempt from the Retailers' Occupation Tax as qualifying farm machinery and equipment. COMPANY1 believes that this view doesn't align with Section 130.305 as written, and that it limits COMPANY1's level of comfort in accepting Forms ST-587 from customers claiming this exemption, thereby limiting the end-user's ability to properly take advantage of the incentive.

2. CONTRACTS, LICENSES, AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS RELEVANT TO THE REQUEST

To the taxpayer's knowledge, and exclusive of contracts, licenses, agreements, instruments or other documents that may be identified elsewhere in this request, no contracts, licenses, agreements, instruments or other documents are relevant to this request.

3. IDENTIFICATION OF THE TAX PERIOD AT ISSUE AND DISCLOSURE OF AUDIT OR LITIGATION

The tax period at issue is the calendar year ending DATE and all future tax years.

At the time of this request, the identical issue is not involved in the taxpayer's return for an earlier period, nor is the issue being examined as a part of a Department audit, nor is the issue pending in litigation in a case involving the taxpayer or a related taxpayer in which the Department is named as plaintiff or defendant.

4. STATEMENT REGARDING PREVIOUS SUBMISSIONS OR RULINGS

To the best of the knowledge of both the taxpayer and the taxpayer's representative the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, nor has the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

5. STATEMENT OF AUTHORITIES SUPPORTING THE TAXPAYER'S VIEWS

a. Statement of authorities supporting the taxpayer's views, explanation of the grounds for that conclusion, and relevant authorities to support that conclusion

The primary authority supporting inclusion of corrugated plastic pipe and other water management products used primarily in production agriculture as exempt farm machinery and equipment is Section 130.305. Specifically:

1. Section 130.305b: "Production Agriculture is the raising of or propagation of: Livestock, crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or, for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product."
 - a. The water management products purchased from COMPANY1 and used by its Agriculture market customers are most often, if not always, used in production agriculture as defined above.
2. Section 130.305f: "Production Agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide or fertilizer, harvesting and drying of crops."
 - a. The water management products purchased from COMPANY1 and used by its Agriculture market customers are most often, if not always, used in production agriculture activities as defined above. More importantly, these products, in many cases, make production agriculture activities possible by creating better conditions for these activities. On some properties, production agriculture simply isn't possible without the implementation of such apparatus into operations.
3. Section 130.305h: "The exemption applies only to items of farm machinery and equipment, either new or used, certified by the purchaser to be used primarily for production agriculture or State or Federal agricultural programs, and including machinery and equipment purchased for lease."

- a. The water management products purchased from COMPANY1, assuming they are certified by the purchaser to be used primarily for production agriculture or State or Federal agricultural programs (which most of COMPANY1's customers are able to do), would be considered items of farm equipment, or apparatus, used as items essential to production agriculture as defined in the Section.
4. Section 130.305h: "[...] the primary use will determine if they qualify for the exemption."
 - a. In the case of customers using COMPANY1 water management products in production agriculture as defined in the Section, the primary, if not the only use for these products is in production agriculture. COMPANY1 and its Agriculture market customers use these products for virtually no other purpose.
5. Section 130.305k: "Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture."
 - a. COMPANY1 believes that its products are essential to production agriculture. On some farms, its products are physically essential (i.e. production agriculture simply is not possible without proper water management). On many other farms, production agriculture is granted a competitive advantage through the use of water management products like corrugated plastic pipe, in the same way that production agriculture is given a competitive advantage through the application and management of herbicide, insecticide or fertilizer.
6. **STATEMENT OF AUTHORITIES CONTRARY TO THE TAXPAYER'S VIEWS**

The primary authority contrary to inclusion of corrugated plastic pipe and other water management products used primarily in production agriculture as exempt farm machinery and equipment is a collection of General Information Letters obtained by the taxpayer through research on this issue. These General Information Letters, attached to this request as Appendix A, each refer to Section 130.305f in concluding for their respective requesters that water management products are not to be qualified as farm equipment exempt from the Retailers' Occupation Tax.

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Specifically, these letters refer to the following language as justification for that position:

Section 130.305f: "Activities such as the clearing of land, mowing of fence rows, creation of ponds or drainage facilities are not included."

The taxpayer agrees that activities such as the clearing of land or the creation of ponds or drainage facilities are not included in the Section's definition of production agriculture. As such, the taxpayer believes that the Retailers' Occupation Tax, in the context of this Code Section, would be appropriately assessed on machinery or equipment that is not primarily used in production agriculture (tile plows, excavators, and other equipment and machinery used for installation of water management systems for both production agriculture and/or residential and commercial environments).

However, the taxpayer does not agree that the language in Section 130.305f disallows exemption for water management products, as they are:

1. Equipment, or apparatus, used exclusively in production agriculture as defined in the Section, and
2. Essential to production agriculture

As a comparison, the taxpayer acknowledges that any machinery or equipment used by a contractor or farmer to install farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities or flooring used in conjunction with waste disposal machinery would not be exempt from the Retailers' Occupation Tax pursuant to Section 130.305. The installation activities themselves do not constitute production agriculture. The items installed, however, *would be* exempt according to the Section.

To that effect, the taxpayer respectfully requests a ruling that would allow COMPANY1 to place on file exemption claims filed via ST-587 by its customers upon purchase of water management products certified for their essential and primary use in production agriculture.

7. **IDENTIFICATION OF ANY SPECIFIC TRADE SECRET INFORMATION TAXPAYER REQUESTS BE DELETED FROM THE PUBLICLY DISSEMINATED VERSION OF THE PRIVATE LETTER RULING**

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The taxpayer identifies no specific trade secret information be deleted from the publicly disseminated version of the private letter ruling.

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 law.

In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. See 86 Ill. Adm. Code 130.305. The sale of individual replacement parts for such machinery and equipment is also exempt. To obtain the exemption, the purchaser must certify that the equipment or machinery is used primarily in production agriculture. See Section 130.305(a).

Machinery means major mechanical machines or machine components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Machinery would include such things as tractors, combines, balers, irrigation equipment and cattle and poultry feeders. Improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery. See Section 130.305(i).

"Production agriculture" is defined under the Retailers' Occupation Tax Act as "the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. "Production agriculture" also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture." See 35 ILCS 120/2-35. Further, production agriculture, with respect to crops, includes mapping fields, applying farm chemicals, as well as activities necessary in tilling the soil, planning, irrigating, cultivating, applying herbicide, insecticide, or fertilizer, as well as harvesting or drying of crops. Activities such as the clearing of land, mowing of fence rows or ditches, creation of ponds or drainage facilities, scouting crops and tile mapping are not included, nor are the operations

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involved in the storing or transporting of crops and produce. See 86 Ill. Adm. Code 130.305(f); see also ST 16-0060-GIL.

Although the corrugated plastic pipe and related items described in your letter may be commonly used for agriculture purposes, “drainage facilities” are specifically not included in the exemption. One common meaning of “facility” is “something that is built, installed, or established to serve a particular purpose.” See “facility,” *Merriam-Webster.com* (14 January 2021), *available at* <https://www.merriam-webster.com>. The equipment you describe in your letter serve the particular purpose of drainage. Drainage facilities are not exempt under Section 130.305.

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,

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