

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales 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 (Exemption Certificate) has been issued to the purchaser by the Department. 35 ILCS 120/5k(a) (This is a GIL)

October 21, 2021

Dear NAME:

This letter is in response to your letter dated June 5, 2021, 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:

To Whom It May Concern,

We are requesting a letter ruling on the following:

RE: To see if racking qualifies for a sales tax exemption as a permanently fixed building material on a project that was built in an Enterprise Zone

BUSINESS1 built the COMPANY, and we had to provide the racking as part of the building. The 50' tall building was designed around the permanent racking. This racking was made specifically to go around posts, support beams, etc. and is permanently anchored to the floor. We would have a damaged floor if the stud anchors were taken out. If this building would be sold, we would sell the racking with the building.

BUSINESS1

Page 2

October 21, 2021

The racking was purchased from CORPORATION and was installed by BUSINESS2

Here is BUSINESS1 address:
ADDRESS1

Here is the address of the COMPANY where the racking was installed:
ADDRESS2

My contact information is below. Please let me know if you have any questions on this or if you need any additional information.

Thank you! We look forward to your reply.

DEPARTMENT'S RESPONSE:

Your question concerns whether the racking system described in your letter would qualify for the Enterprise Zone building materials exemption.

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. 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.

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. The construction contractor, as the end user, incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales 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 (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 Exemption Certificate issued by the Department at the time of

BUSINESS1

Page 3

October 21, 2021

the purchase. 35 ILCS 120/5k(a). All “qualified sales” of building materials sold for incorporation into any Illinois enterprise zone are eligible for the deduction. 86 Ill. Adm. Code 130.1951(d)(1). A “qualified sale” means a sale of building materials: a) for incorporation into real estate in an Illinois enterprise zone, b) as part of a building project, c) for which a Enterprise Zone Building Materials Exemption Certificate for sales tax exemption has been issued by the Department. 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.

For purposes of the Illinois sales tax laws, the Department uses a fact specific intention test to determine whether items remain tangible personal property after installation or become part of realty. Pursuant to this test the Department will consider whether the tangible personal property: 1) has been affixed to the realty, 2) is applied to the use or purpose to which the realty is put, and 3) the intent of the person affixing the tangible personal property to the realty. See Department PLR ST 17-0009 (September 14, 2017).

In your letter you state that the racking is permanently anchored to the floor and the floor would be damaged if the stud anchors were taken out. I have included a PLR which may be helpful to you in determining whether the racking in your case would qualify as building material incorporated into real estate. PLR ST 13-0002 (July 31, 2013).

The facts in PLR 13-0002 involved a racking system that was bolted to the floor via an anchor installed in the floor that had a threaded shaft emerging from the floor. The racking system was placed on top of the threaded shaft and had a bolt securing it to the building floor. The Department found that the taxpayer acted as a construction contractor when it sold and installed the racking system.

Finally, it is important to note that to qualify for the Enterprise Zone building materials exemption the purchaser must possess an active Exemption Certificate issued by the Department at the time of purchase. 86 Ill. Adm. Code 130.1951(d)(1). 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,

Tom Grudichak
Associate Counsel