

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of materials that will be incorporated, by remodeling, rehabilitation, or new construction, into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act. (See 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951(e).) (This is a PLR.)

April 12, 2022

Dear NAME:

This letter is in response to your letter dated February 15, 2022, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to PLANT for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

To whom it may concern,

I am writing to you today regarding the tax-exempt status of a large fabric structure at the north end of the PLANT factory in CITY STATE. The Economic Development Council of CITY-CITY1 has indicated that per the code, the project must [be a] permanent fixture to be considered tax exempt. The Tax Revenue department has directed us to submit a written request to their Legal Department to receive a determination. COMPANY believes that the STRUCTURE is by building code, a permanent structure and should be allowed to receive the same tax-exempt status as it's other projects. Please consider the following:

1. Per the CITY'S requirements, this expansion is being constructed as to conform with the 2015 International Building Code (2015 IBC)
2. The expansion at the Northwest of the plant is to be constructed as a membrane structure. Per Section 3103 Temporary Structures of the 2015 IBC, "Tents and other membrane structures erected for a period of less than 180 days shall comply with the International Fire Code. Those erected for a longer period of time shall comply with the applicable sections of this code"
3. The Membrane structure is forecasted to be in place until the end of 2024, in which at that time it will be removed and relocated. Per building code this dictates that it does not qualify as a temporary structure for it is to be erected greater than 180 days. It will be constructed as a permanent structure.
4. The membrane structure is steel frame truss with a membrane fabric exterior finish, insulation, and vapor barrier interior finish. The steel truss is anchored into a reinforced poured concrete ballast foundation wall. (attached pdf of drawings of structure from COMPANY1)
5. It will be outfitted with heating, cooling, lighting, fire alarms, fire sprinklers, and all other life safety elements that the rest of the plant employs.
6. The expansion will be attached to the plant.
7. The expansion is being constructed by COMPANY2, following the plans that were submitted and approved for a building permit. The actual membrane structure was erected on the ballast wall foundation by COMPANY1.

We respectfully ask that the Illinois Department of Revenue Legal Services team consider allowing this project to receive the same tax exempt as other onsite projects.

By email dated DATE, COMPANY provided additional information regarding the project.

COMPANY has requested a tax certification for a structure being built in the enterprise zone at ADDRESS. Unfortunately, there was a delay in receiving the tax certificate due to understanding that the structure is temporary, however, the structure is in fact designed to be a permanent structure. I believe the misunderstanding comes from the fact that it is often called a "tent" when the correct terminology is membrane structure. The building is 660' long by 100' wide and is 34' tall at the center and is constructed of steel arches, R40 insulation, and a rubber membrane similar to a rubberized membrane on a typical roof and the entire structure is placed on a permanent concrete foundation. The building is/will be fully

equipped with a fire suppression and detection system, a medium voltage electrical room, restrooms, break areas, and utilities such as power, water, electrical, natural gas, and compressed air. The infrastructure is distributed throughout the structure the same as you would find throughout the rest of our production facility, it just happens to be made from an alternative materials.

The intent of the structure is to remain as a permanent structure and the CITY has permitted this structure as a permanent building and has required all building and life safety items are installed as such, but the confusion is that the structure can be disassemble and relocated elsewhere on the property if needed. Building, installation, and infrastructure for this project is nearing a total of \$\$\$\$ USD which has been a significant capital expense, and not one that COMPANY plans to remove or discard. In the event the business case is made that the building does need to be relocated on the property, it would be done so, only to make way for a larger expansion of the plant in that area as the membrane structure does have limitations as to the overall size that can be accommodated.

DEPARTMENT'S RESPONSE:

An exemption from Illinois Retailers' Occupation Tax liability exists for gross receipts from qualified sales of building materials that will be incorporated into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. 35 ILCS 120/5k; 86 Ill. Adm. Code 130.1951(a). "Qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption (Exemption Certificate) has been issued by the administrator of the enterprise zone in which the building project is located. In order to qualify for the building materials exemption under this Section, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate. See 86 Ill. Adm. Code 130.1951(e).

The Department has provided guidance on the requirement that the building materials be incorporated into real estate. In ST-21-0007-PLR (Sept. 13, 2021), the Department stated:

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.

The Department has invoked the intention test in the context of letter rulings concerning construction contractors. ST 08-0003-PLR (April 1, 2008) identifies a number of letters invoking the test. ST 00-0156 sets forth the intention test as follows:

“In determining whether an item is permanently affixed to real estate, a very fact-specific inquiry must be made regarding whether the item is intended to remain with the realty. In order to make a finding that the item is permanently affixed, at least three factors must generally be examined. First, the item must be affixed to the realty. The item must also be applied to the use or purpose to which the realty is put. Finally, the intent of the person affixing the item must be examined. Another factor often examined is whether the item is essential to the use to which the real estate has been put.”

COMPANY has stated that the structure is intended to be, and will be constructed as, a permanent structure. The steel trusses will be affixed to the real estate by anchoring them into a “reinforced poured concrete ballast foundation wall.” The STRUCTURE will be attached to the production facility, or plant. “The building is/will be fully equipped with a fire suppression and detection system, a medium voltage electrical room, restrooms, break areas, and utilities such as power, water, electrical, natural gas, and compressed air.

In ST-21-0007-PLR, the Department concluded:

The Department has reviewed each of the items identified in the request and more fully described in Exhibit A. Exhibit A states that each of the items will be permanently affixed to concrete foundations via anchor bolts, to walls, the roof, or the building’s structural steel. Many of the items will have natural gas connections, compressed air connections, intake air ducts, exhaust air ducts, and 480-volt electrical connections. The Department has reviewed its regulations at 86 Ill. Adm. Code 130.1951, the factors contained in the intention test, and its prior letters issued within the last 10 years. Based on its review, it is the Department’s determination that the items would qualify for the building materials exemption in Section 5k of the Retailers’ Occupation Tax Act.

The Department believes the membrane structure is permanently affixed to the real estate and qualifies for the building materials exemption in Section 5k of the Retailers’ Occupation Tax Act. The fire suppression and detection system, the medium voltage electrical room, restrooms, break areas, and utilities such as power, water,

electrical, natural gas, and compressed air also will qualify for the exemption if permanently affixed to the walls, roof, or the buildings structural steel.

A construction contractor or other entity cannot make tax-free purchases unless it has an active Exemption Certificate issued by the Department at the time of purchase. 35 ILCS 120/5k(a); 86 Ill. Adm. Code 130.1951(c).

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,

Samuel J. Moore
Chairman, Private Letter Ruling Committee

SJM:RSW:rkn