

This letter discusses the enterprise zone building materials exemption. 35 ILCS 120/5k; 86 Ill. Adm. Code 130.1951. (This is a GIL.)

August 1, 2023

NAME

CITY

Enterprise Zone Advisor

ADDRESS

Dear NAME:

This letter is in response to your letter dated May 4, 2023, 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:

RE: Solar Panels

We have been approached by a company to place a solar farm within our Enterprise Zone (COUNTY #####). The code does not specifically mention solar panels so I am inquiring if they are a covered material for the Sales Tax Exemption.

If they incorporate the solar panels in the ground using concrete, would the panels themselves and the wiring be sales tax exempt? Would the panels and wiring be considered physically incorporated?

If you could please review and give me a ruling, I would appreciate it.

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. 35 ILCS 120/2; 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Each retailer who makes a qualified sale of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction, may deduct receipts from such sales when calculating the tax imposed by Retailers' Occupation Tax Act. 35 ILCS 120/5k(a).

A "qualified sale" means a sale 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 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 Enterprise Zone Building Materials Exemption Certificate issued by the Department at the time of the purchase. 35 ILCS 120/5k(a); 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.

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. General Information Letter 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.

Although the Department has not issued a letter regarding solar projects, the specific question of whether the materials used in constructing an electric generating facility qualify for the building materials exemption under Section 5k of the Retailers' Occupation Tax Act has been addressed in numerous private letter rulings issued by the Department in recent years. These letters may prove helpful. In Private Letter Ruling ST 99-0009 (March 9, 1999) the Department ruled that pipe racks, pipe, supports, and piping tie-ins installed at a natural gas fired power plant qualified for the exemption because they were permanently affixed to real estate. In Private Letter Ruling ST 00-0013 (July 7, 2000) the Department found that certain materials incorporated into realty within an electricity generating facility qualified for the exemption. The Department found that turbine generators, electrical transformers, electrical cabling, piping and other materials that are permanently affixed to real estate qualified for the exemption in 35 ILCS 120/5k. Thereafter, the Department has consistently ruled that these materials qualified for the exemption if it was demonstrated that they were permanently affixed to the real estate. See e.g., Private Letter Rulings ST 00-0025 (October 19, 2000); ST 00-0026 (November 3, 2000); ST 00-0033 (December 11, 2000); ST 00-0034 (December 11, 2000); ST 01-0001 (January 9, 2001); ST 01-0012 (April 5, 2001); ST 01-0014 (April 9, 2001); ST 01-0040 (September 24, 2001), ST 01-0045 (October 26, 2001), ST 02-0012 (June 10, 2002), ST 05-0020 (November 18, 2005); ST 08-0003 (April 1, 2008); and ST-19-0002 (July 8, 2019). The Department has also held in the past that fencing permanently affixed to the real estate and gravel used on roads qualify for the enterprise zone building materials exemption. Private Letter Ruling ST 00-0034 (December 11, 2000); ST 94-0062 (March 17, 1994).

Generally, the determination of whether an item qualifies for the exemption must be made on an item-by-item basis. ST 08-0003-PLR (April 1, 2008). It appears that the items at issue in your request may qualify if they are permanently affixed to the real estate. However, the Department would require a more thorough explanation of each of the components before a Private Letter Ruling may be issued. The Department cannot make a binding ruling in a General Information Letter.

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,

Katarzyna Kowalska
Associate Counsel

KK:dlb