

ST 06-00048-GIL 04/13/2006 MANUFACTURING MACHINERY & EQUIPMENT

Baking equipment that falls within the definition of equipment set forth in Section 2-45 of the Retailers' Occupation Tax qualifies for the manufacturing machinery and equipment exemption if it is used primarily in an exempt manner. Use in the preparation of food for immediate consumption does not qualify. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

April 13, 2006

Dear Xxxxx:

This letter is in response to your letter dated September 28, 2005, in which you request 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.ILTAX.com 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:

I am seeking clarification of one of the exemptions in the Illinois Sales and Use Tax. One of your regulations allows a tax exemption on the sales of machinery and equipment that will be used primarily in 'Manufacturing or assembling of tangible personal property for wholesale or retail sales or lease.' The regulation further states 'Tangible property does not include real estate, stocks, bonds or other 'paper' assets representing an interest.'

My client is a baker in Illinois. During the normal course of business, my client purchases baking equipment such as mixers, fryers, ovens and proof boxes for the manufacturing of a variety of baked products for wholesale and retail sales. It is my opinion that the aforementioned equipment fall within the definition of tangible personal property. If I am correct, baking equipment meets the requirements for exemptions from Illinois Sales and Use Tax.

Equipment suppliers are charging my client prices that include taxes. If however, the baking equipment falls within the tax exemption, both the supplier and the baker would benefit. It is my understanding that this would fall within the purpose of the statute. I see

nothing within the statute that excludes baking equipment from benefiting from the tax exemptions.

Please verify whether the baking equipment is included or excluded from the tax exemptions within this regulation.

DEPARTMENT'S RESPONSE

For your information, we refer you to 86 Ill. Adm. Code 130.330 which is the regulation for Manufacturing Machinery and Equipment. In some circumstances, bakery equipment can qualify for the Manufacturing Machinery and Equipment exemption from the Retailers' Occupation Tax.

Section 130.330(a) of the Department's rules provides that "...the Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease." Baking, whether done in a wholesale bakery or a grocery store, is the manufacturing or assembling of tangible personal property. Therefore, baking equipment that falls within the definition of equipment set forth in Section 2-45 of the Retailers' Occupation Tax Act (35 ILCS 120/2-45) can qualify for the exemption.

Please note, however, that equipment, including bakery equipment, which is used in a food service establishment to prepare food for immediate consumption, does not qualify for the exemption. (See Sections 130.330(b)(7) and 130.330(d)(4)(I).) Therefore, if your client operates not only a bakery, but also a café, for example, that sells food for immediate consumption, your client must be able to establish through adequate records that the equipment in question is used over 50 percent in an exempt manner, in order to claim the exemption.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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