

This letter concerns the use of Manufacturer's Purchase Credit in transactions involving fuel used in ready-mix cement trucks. See 86 Ill. Adm. Code 130.331. (This is a GIL.)

January 4, 2008

Dear Xxxxx:

This letter is in response to your letter dated September 27, 2007, 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.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:

I am writing to request a general information letter regarding the refund or credit of the Retailer's [sic] Occupation Tax paid on diesel fuel used in concrete ready mix trucks to rotate the mixing drum in order to manufacture concrete. I am also requesting a general information letter regarding the Manufacturer's Purchase Credit for this fuel. I am aware that only the amount of fuel used to rotate the drum will qualify.

I am a tax analyst and my client is a concrete company (Company A) in the state of Illinois.

Company A has never filed for the Manufacturer [sic] Purchaser Credit (MPC), but will be doing so in early 2008 for the year 2007. Company A buys bulk diesel from a single fuel vendor. Company A documents all fuel withdrawals from their bulk tank, therefore knowing how much fuel goes into their front-end loaders and also into the mixer trucks.

Company A has spoken with their fuel vendor and the vendor is willing to amend it ST-1 returns going back to July 2004 through current for the recovery of these taxes that were paid on the fuel which was used in the manufacturing process. Does the vendor have until December 31, 2007 to amend these returns?

Will Company A be allowed to take an MPC on the portion of the mixer fuel that qualifies? They cannot purchase that fuel exempt from the sales tax because the qualifying gallons for the MPC credit are not known at the time of the bulk purchases.

A reply by December 1, 2007 would be greatly appreciated. Thank you for your assistance.

DEPARTMENT'S RESPONSE:

The Illinois Supreme Court determined in Van's Material v Department of Revenue, 131 Ill.2d 196 (1989), that cement mixing trucks may qualify as manufacturing machinery and equipment if they are used in a qualifying manner. The cement mixing trucks must be used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330.

Section 3-85 of the Illinois Use Tax Act states that the Manufacturer's Purchase Credit ("MPC") may be used to satisfy use tax liability incurred on the purchase of qualifying production related tangible personal property. The Department's regulation for the MPC provides, in relevant part, that "[b]y way of illustration and not limitation, the following uses of tangible personal property will be considered production related:...[s]upplies and consumables used in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, cleaners and adhesives." See subsection (b)(4) of 86 Ill. Adm. Code 130.331. This means that MPC may be applied to the State tax due for purchases of these items. See subsection (b)(1) of 86 Ill. Adm. Code 130.331.

The Department's administrative rules concerning MPC specifically provide that fuel used in a cement mixing truck to rotate the mixing drum can qualify as production related tangible personal property. Subsection (b)(4)(E) of 86 Ill. Adm. Code 130.331 states:

- "E) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of fuel used or consumed in transportation of the truck will not qualify as production related tangible personal property. The amount of fuel used in a qualifying manner to rotate the drum may be stated as a percentage of the entire amount of fuel used or consumed by the ready-mix truck."

The Department's administrative rules do provide a special reporting method for retailers and servicemen who accept MPC after a sale has taken place. Retailers and servicemen may choose to accept MPC certifications from manufacturers and graphic arts producers after qualifying sales or transfers of production related tangible personal property have taken place and then refund to them the amount of Use Tax or Service Use Tax that was paid by those manufacturers or graphic arts producers. See subsection (h)(1) of 86 Ill. Adm. Code 130.331. Such retailers and servicemen would then normally file amended returns or claims for credit with the Department. However, to avoid the potential of retailers and servicemen filing multiple amended returns and claims for credit, retailers and servicemen may elect to report the acceptance of that MPC on line 16a of the retailers' and servicemen's sales and use tax returns for the period in which those refunds occurred. See subsection (h)(2) of 86 Ill. Adm. Code 130.331. For example, if a retailer or serviceman chose to accept MPC certificates from a person in February of 2008 for purchases that the person made from that retailer or serviceman in different months during calendar year 2007, that retailer or serviceman may report the amounts represented by those certificates on line 16a of the retailer's or serviceman's sales and use tax return for February of 2008.

The retailer's or serviceman's election to report the acceptance of the credit on their current return, in lieu of filing an amended return and claim for credit or refund, does not supersede the applicability of the statute of limitations for the claiming of that credit by the retailer or serviceman. See subsection (a)(4) of 86 Ill. Adm. Code 130.1501 for the statute of limitations for filing a claim for credit or refund. Please note that retailers and servicemen may only refund the 6.25% State Use Tax or Service Use Tax paid by the purchaser.

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. 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,

Terry D. Charlton
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TDC:msk