

Equipment purchased to clear land does not qualify for the farm machinery and equipment exemption. See 86 Ill. Adm. Code 130.305(f). (This is a GIL.)

June 25, 2008

Dear Xxxxx:

This letter is in response to your letter dated April 23, 2008, 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 purchased 2 dozer/crawlers at Auction, February 19, 2008. I have over 100 acres, I need to clear out the trees. I purchased these machines for agriculture use. I was told by our accountant that all we would have to do is show form ST-587 when we purchased at auction, fill out form to be tax exempt on purchase. Auction service said we would have to file form with you.

Therefore, I have paid sales tax at time of purchase. I am requesting sales tax, in the amount of \$4,240.00 be paid back to me, from you, following the form ST-587 I have filled out.

If you have any question’s, [sic] please feel free to call me.

DEPARTMENT’S RESPONSE:

For your information, we suggest you review the Department’s regulation for Farm Machinery and Equipment. See 86 Ill. Adm. Code 130.305. The Retailers’ Occupation Tax (sales tax) does not apply to sales of machinery and equipment used primarily in production agriculture or for use in State or Federal agricultural programs. No transaction is exempt on the basis of the farm machinery and equipment exemption unless a certification is provided by the purchaser containing the information required by Section 130.305(m) of the Department’s rules.

Production agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide or fertilizer, harvesting and drying crops. Activities such as clearing of land, mowing of fence rows, creation of ponds or drainage facilities are not included, nor are the operations involved in the storing or transporting of crops and produce. See Section 130.305(f). Accordingly, equipment purchased to clear land would not qualify for the exemption.

If a retailer reasonably believes that the purchaser will not use machinery or equipment in production agriculture or in State or Federal agricultural programs the retailer is not required to accept the exemption certificate. Whether or not a retailer chooses to accept an exemption certificate and refund the tax to the purchaser is the retailer's decision.

If you do choose to accept an exemption certificate, you may want to review the Department's rule at 86 Ill. Adm. Code 130.1501 concerning claims for credit. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation. The repayment of the tax to the customer will satisfy the requirement of Section 130.1501(a)(2). Please note that the Department has no authority to compel the seller to file a claim for credit. Whether or not the seller files a claim for credit with the Department is a private business matter.

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,

Richard S. Wolters
Associate Counsel

RSW:msk