

The manufacturing machinery and equipment exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(c)(6). (This is a PLR).

May 8, 2008

Dear Xxxxx:

This letter is in response to your letter dated June 20, 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.

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 COMPANY 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:

ABC, Division of COMPANY would like to request a binding private letter ruling regarding a sales tax exemption for its use of sulfuric acid in the manufacturing industry. I understand that we need to follow items 1-8 of Section 1200.110 (b). They read as follows:

1. ABC purchases concentrated sulfuric acid in bulk form to remove oxides (rust) from the surface of steel rod prior to wiredrawing and again prior to hot dip galvanizing of nails.
 - i. The primary raw material in the nail making process is hot-drawn steel rod which is delivered in approx. # lb. banded bundles. These bundles are stored outdoors at the steel mill prior to delivery and again outdoors at our plant.

- ii. Steel rusts when in contact with air and moisture. While it is not intuitive, controlled oxidation (rusting) is an intentional step in the rod-rolling process at the steel mill to insure the correct chemical form of surface scale is allowed to form. By 'correct', we mean the right ratio of iron/oxygen which makes up the scale compound. Certain scales are extremely adherent to the steel rod and are extremely difficult to remove in the pickling process. Recognizing this, it is wise to include in the rod order a note that it will be sulfuric acid pickled.
 - iii. The removal of all scale...whatever the form...is critical to the subsequent wire-drawing process, as its presence will explode or rapidly wear out the tungsten-carbide drawing die and destroy the surface quality of the wire. Pickling chemically converts the iron oxide to iron sulfate in solution form...leaving behind a scale-free steel surface.
 - iv. Immediately after the pickling step is complete (approx. # minutes in the heated bath) the bundle is removed, rinsed, rinsed again and dipped in a solution. The bath acts as a buffer to neutralize any residual acid and seals the surface from further corrosion for short-term storage. It also acts to pick up dry lubricant used in the wire-drawing process.
 - v. I have enclosed pictures for your review.
2. ABC has no contracts relating to the request.
 3. ABC is not currently under an audit or litigation with the Department, nor is one pending. The tax period in question would be 2007 and any previous years the law allows eligibility.
 4. ABC, to the best of my knowledge, has not previously submitted a request for a private ruling.
 5. According to Illinois Administrative Code, CH. 1, See. 130.330; Paragraph 6 dictates 'If the sulfuric acid is acting as a chemical or a catalyst and it effects a direct or immediate change, then it will be tax exempt.' The acid we use causes a 'direct and immediate change' upon the steel.
 6. To the best of my knowledge, there are no authorities contrary to this request.
 7. ABC would prefer our process and information and photographs regarding the process not be publicly disseminated.
 8. INDIVIDUAL is Controller and Vice President, Finance of COMPANY.

We would like to take this opportunity for your assistance in assigning COMPANY a private ruling on sales tax exemption for the purchase of acid used in our process. Please feel free to contact me if any questions arise or if I may be of any service.

DEPARTMENT'S RESPONSE:

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. See 86 Ill. Adm. Code 130.330(a). The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling of a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining which changes some existing material or materials into a material with a different form, use or name. The changes must result from the process in question and be substantial and significant. See 86 Ill. Adm. Code 130.330(b)(2).

The exemption includes chemicals or chemicals acting as catalysts, but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(b)(6).

After review of the materials submitted with your request, it is the Department's position, providing all other requirements for the exemption set out in Section 130.330 are met, that the sulfuric acid used in COMPANY's manufacturing process qualifies for the Manufacturing Machinery and Equipment Exemption based upon the acid effecting a direct and immediate change upon the steel rods by removing rust and scale from them.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC:msk