

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption extends to machinery and equipment that is 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. (This is a GIL.)

October 16, 2009

Dear Xxxxx:

This letter is in response to your letter dated February 5, 2009, 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.

In your letter you have stated and made inquiry as follows:

We are requesting a private letter ruling concerning machinery that COMPANY may purchase for use prior to stocking food items to sell at retail grocery stores located in Illinois. We are inquiring about the manufacturing and assembly tax exemption that can be applied on the purchase of certain items.

The piece of machinery in question is the EQUIPMENT that is manufactured by BUSINESS. We have enclosed specific literature and information from BUSINESS with this request.

The machine takes two raw materials; water and salt. They are combined in the equipment in which an electrical charge is then applied to change the form of the raw materials into a new product – Hypochlorus acid sanitizing solution. This new product can then perform a function that neither of the raw materials can perform independently. By changing the inputs and electrical charge, different products can be manufactured by the same piece of equipment for different uses such as sterilizing food or sterilizing and treatment of wounds. COMPANY will be using the newly manufactured sanitizing solution to rinse and spray on raw produce before selling to its customers. The application of the manufactured solution will provide a longer shelf life, crisper, safer product items.

The definition of the IL Manufacturing and assembly exemption is shown here (from ILCS, CHAPTER 35 REVENUE, USE AND OCCUPATION TAXES, ACT 105 USE TAX ACT):

[35 ILCS 105/3-50] Manufacturing and assembly exemption. 3-50 The manufacturing and assembling machinery and equipment exemption includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility as well as machinery and equipment that are for use in an expanded or new manufacturing facility. The machinery and equipment exemption also includes machinery and equipment used in the general maintenance or repair of exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. For the purposes of this exemption, terms have the following meanings:

3-50(1) 'Manufacturing process' means the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by a procedure commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material into a material with a different form, use, or name. In relation to a recognized integrated business composed of a series of operations that collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process commences with the first operation or stage of production in the series, and does not end until the completion of the final product in the last operation or stage of production in the series. For purposes of this exemption, photoprocessing is a manufacturing process of tangible personal property for wholesale or retail sale.

3-50(2) 'Assembling process' means the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling that results in an article or material of a different form, use, or name.

3-50(3) 'Machinery' means major mechanical machines or major components of those machines contributing to a manufacturing or assembling process.

3-50(4) 'Equipment' includes an independent device or tool separate from machinery but essential to an integrated manufacturing or assembly process; including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of

machinery, such as tools, dies, jigs, fixtures, patterns, and molds; and any parts that require periodic replacement in the course of normal operation; but does not include hand tools. Equipment 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 wholesale or retail sale or lease.

The manufacturing and assembling machinery and equipment exemption includes the sale of materials to a purchaser who produces exempted types of machinery, equipment, or tools and who rents or leases that machinery, equipment, or tools to a manufacturer of tangible personal property. This exemption also includes the sale of materials to a purchaser who manufacture those materials into an exempted type of machinery, equipment, or tools that the purchaser uses himself or herself in the manufacturing of tangible personal property. This exemption includes the sale of exempted types of machinery or equipment to a purchaser who is not the manufacturer, but who rents or leases the use of the property to a manufacturer. The purchaser of the machinery and equipment who has an active resale registration number shall furnish that number to the seller at the time of purchase. A user of the machinery, equipment, or tools without an active resale registration number shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction, and that certificate shall be available to the Department for inspection or audit. The Department shall prescribe the form of the certificate. Informal rulings, opinions, or letters issued by the Department in response to an inquiry or request for an opinion from any person regarding the coverage and applicability of this exemption to specific devices shall be published, maintained as a public record, and made available for public inspection and copying. If the informal ruling, opinion, or letter contains trade secrets or other confidential information, where possible, the Department shall delete that information before publication. Whenever informal rulings, opinions, or letters contain a policy of general applicability, the Department shall formulate and adopt that policy as a rule in accordance with the Illinois Administrative Procedure Act.

After reviewing the specifics regarding the machinery and the IL statutes we believe that a purchase by COMPANY does qualify for the IL manufacturing and assembly exemption for the following reasons:

- Tangible personal property (Hypochlorus acid) is manufactured using the machinery. This same property is then applied to produce items, resulting in a combined product sold to retail customers.
- The manufactured Hypochlorus acid sanitizing solution will affect a direct and immediate change on the products being prepared and assembled for retail sale.
- The final tangible personal property that is sold will have been refined and enhanced by proceeding through a production line provided by the use of the machine and technology that manufactures the sanitizing solution.

COMPANY operates under IBT number #. ABC is the parent company of COMPANY.

Currently, there is a sales tax audit being conducted by the Illinois Department of Revenue for the tax period July 2003 through June 2006.

There are no contracts, agreements, instruments or other documents relevant to this request.

To the best of our knowledge the department has not ruled upon on these issues and we have not submitted these issues before.

There are no trade secrets to delete from the publicly disseminated version of this letter.

We look forward to receiving your response to our request.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following will be helpful in addressing your question.

The manufacturing machinery and equipment exemption exempts from tax only machinery and equipment used primarily (over 50% of the time) in manufacturing or assembling tangible personal property for sale or lease. Thus, the use of machinery and equipment in any industrial, commercial or business activity which may be distinguished from manufacturing or assembling will not be an exempt use and such machinery and equipment will be subject to tax. See 86 Ill. Adm. Code 130.330 and 35 ILCS 120/2-45.

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 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. These changes must result from the process in question and be substantial and significant.

The law requires that machinery and equipment be used primarily (over 50% of the time) in manufacturing or assembling of an article of tangible personal property for wholesale or retail sale or lease. The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling of tangible personal property because its use is required by law or practical necessity does not, by itself, mean that machinery or equipment is used primarily in manufacturing or assembling.

As you can see from the above, the statute and the Department's regulations require that in order to qualify for the manufacturing machinery and equipment exemption, the machine must be used primarily in a manufacturing or assembling process. The equipment described in your letter does not appear to be used primarily in a manufacturing or assembling process.

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,

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Associate Counsel

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