

This letter concerns sales of tangible personal property for resale. (This is a GIL.)

May 28, 2009

Dear Xxxxx:

This letter is in response to your letter dated March 3, 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](http://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:

COMPANY is requesting a Letter Ruling on the sawdust appeal. The letter attached is approved by the Informal Conference Board that the sawdust is not taxable.

The attached letter of January 13, 2009, states as follows:

COMPANY uses sawdust as an essential ingredient in the preparation of our smoked meat products. This isn't just any sawdust, but a product specially designed to be used to impart a unique flavor in meat products. This item is a consumable and required by law (USDA-FSIS) when labeled on the package. For example, we manufacture and sell a product called Smoked Ham. This product must not only look and taste like it has been smoked, but also absorbed the various compounds emitted during the smoking and cooking process. In many products, the type of wood used is specified and further regulated, i.e., Hickory Smoked or Applewood Smoked.

At COMPANY product is cooked and smoked in a specially design smoke house. These smoke houses are gas fired for cooking the meat to the proper internal temperature. The application of smoke is in the early phase of the cooking process before meat protein denaturation. The smoke is generated by a separate unit designed to deliver the pyrolyzed compounds to the product in the cooking vessel. The smoking period varies with intensity desired but commonly is less than  $\frac{1}{4}$  of the total cooking time.

In conclusion, the process of smoking imports a unique flavor and color to the product being smoked. These compounds are absorbed by the product as if they were added directly to the product.

**DEPARTMENT'S RESPONSE:**

We direct your attention to the Department's regulation at 86 Ill. Adm. Code 130.330 concerning the Manufacturing Machinery and Equipment Exemption which can be found on the Department's website. The production of food products has been determined to be a manufacturing process required for the exemption. 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.

As a general proposition, purchasers of equipment to be used primarily in the manufacture of food products for sale, such as cheese, bread or frozen dinners, can claim the exemption because the food processing constitutes the manufacturing or assembling of tangible personal property. Independent devices, separate from machinery but essential to the manufacturing or assembling process can qualify, including parts which require periodic replacement in the normal course of operation.

The information contained in your letter contains a statement that "the process of smoking imports a unique flavor and color to the product being smoked. These compounds are absorbed by the product as if they were added directly to the product." We do not have sufficient information to determine what percentage of the sawdust adheres to and remains a part of the product being smoked. Generally, though, the percentage of sawdust that is converted to smoke for flavoring and becomes part of the product can be purchased for resale. The percentage of sawdust that is converted to smoke but does not become part of the product (e.g., escapes out the smoker) and is simply consumed in the process, cannot be purchased for resale. See 86 Ill. Adm. Code 130.210, which can be found on the Department's website.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess  
Associate Counsel

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