

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.)

August 31, 2009

Dear Xxxx:

This letter is in response to your letter dated July 27, 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:

Please see the attached description of a proposed transaction. COMPANY is requesting an opinion as to the questions posed.

Your timely response will be appreciated.

Your attachment reads as follows:

COMPANY is submitting a proposal to a customer of COMPANY where COMPANY would be a "contract manufacturer".

COMPANY would build a solid sulphur forming facility in Illinois. The facility is intended to receive molten sulphur by various modes of transportation and manufacture solid sulphur pellets (prills) that can be stored at the site until they are to be shipped out. COMPANY would take custody of the molten sulphur as it enters the facility and relinquishes custody when the prilled sulphur leaves the facility. COMPANY does not buy or sell the sulphur. The sulphur still always belongs to the customer.

COMPANY's customers are generally crude oil petroleum refineries who have extracted the sulphur from crude petroleum and now are providing molten sulphur for COMPANY to further manufacture into solid sulphur pellets (prills).

The facility provides COMPANY's customers a means for solidifying (prilling) molten sulphur, to allow them to sell the sulphur into other markets (specifically foreign markets) where solid sulphur is the form in which the sulphur is typically handled.

COMPANY is requesting the department of taxation to clarify whether a 'contract manufacturer' would be able to purchase machinery and equipment that would be used in its manufacturing process sales tax exempt and provide its equipment vendors Form ST-587 where appropriate. If so, would the machinery and equipment used to receive and handle the molten sulphur and used to handle or store the solid sulphur pellets qualify as production related tangible personal property under 86 Ill. Adm. Code 150.340 and an appropriate amount of Manufacturer's Purchase credit under 86 Ill. Adm. Code 130.331?

## **DEPARTMENT'S RESPONSE:**

### Manufacturing Machinery and Equipment

Under the Retailers' Occupation Tax Act and Use Tax Act, machinery and equipment that will be used by the purchaser primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether the sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, is exempt from Retailers' Occupation Tax and Use Tax. 35 ILCS 120/2-10(14); 105 ILCS 3-5(1). The exemption is also available if the machinery and equipment that will be used by the purchaser primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease is made apart from or as an incident to the seller engaging in a service occupation. See 86 Ill. Adm. Code 140.125(o). When a person manufacturing or assembling tangible personal property for wholesale or retail sale or lease is manufacturing or assembling materials owned by some other person, the manufacturer or assembler should obtain a certificate from the owner of the materials that certifies that the manufactured or assembled tangible personal property will be sold or leased, and not used or consumed, by the owner.

The manufacturing machinery and equipment exemption is extended 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 the Department's regulation at 86 Ill. Adm. Code 130.330, which can be found on the Department's website. 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 that 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. See Section 130.330(b)(2). A certificate of exemption must be presented to the seller for each transaction where exempt machinery or equipment is purchased. See Section 130.330(g).

Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. Machinery includes machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for

in-house manufacture of exempt machinery and equipment. See Section 130.330(c)(2). Further, repair and replacement parts for exempt machinery or equipment are exempt when purchased by the owner of the exempt machinery and equipment, as long as the parts are incorporated into the exempt machinery and equipment. See Section 130.330(c)(2). Servicemen making repairs are governed by the Service Occupation Tax Act which provides an exemption for repair and replacement parts when such parts are incorporated into the exempt machinery and equipment by the servicemen. See 35 ILCS 115/2 and P.A. 87-876 eff. January 1, 1993. The exemption is also available where manufacturers build their own production machinery. Any machine parts purchased to be incorporated into a machine which qualifies for the Manufacturing Machinery and Equipment Exemption will also qualify for the exemption. See Section 130.330(c)(2) and (c)(4).

The manufacturing machinery and equipment exemption does not apply to machinery or equipment used primarily in pre-production activities. Machinery or equipment used primarily to store, convey, handle, or transport materials or parts or sub-assemblies prior to their entrance into the production cycle do not qualify for the manufacturing machinery and equipment exemption. See part (4)(C) of subsection (d) of Section 130.330.

In addition, the manufacturing machinery and equipment exemption does not apply to machinery or equipment used primarily in post-production activities. Machinery and equipment used primarily to store, convey, handle, or transport finished articles of tangible personal property to be sold or leased after the production cycle do not qualify for the manufacturing machinery and equipment exemption. Machinery and equipment, such as loaders, conveyors, and transport vehicles used primarily to move finished a product do not qualify for the manufacturing machinery and equipment exemption.

Generally, hand tools do not qualify for the exemption afforded manufacturing machinery and equipment. Hand tools include, but are not limited to, wrenches, pliers, hammers, chisels, sanding blocks, and screwdrivers. See 86 Ill. Adm. Code 130.330(c)(3). However, pneumatic hand tools or electric powered hand tools used primarily in manufacturing or assembling may qualify for the exemption. Router bits, drill bits, sand paper, and screw tips can also qualify as long as they are incorporated into manufacturing machinery and equipment that is exempt under the regulation.

Consumable materials, in general, do not qualify for the manufacturing machinery and equipment exemption. See Section 130.330(c)(3). These items, such as maintenance oils, grease, adhesives, cleaning solutions or compounds, and antifreeze, are considered consumable items and would be subject to Retailers' Occupation Tax and Use Tax. The rules specifically exclude items of personal apparel such as goggles, aprons, and masks from the exemption. Items used to protect employees, such as protective face masks or helmets, gloves, coveralls, and protective goggles are excluded from the exemption even if they are required by law. See Section 130.330(d)(4)(G). Please note that the rules also specifically exempt gases that are consumed in a manufacturing process. See Section 130.330(c)(3). Consumable supplies used in a welding process are subject to tax. For example, flux is generally considered to be a consumable manufacturing supply and is fully taxable. However, to the extent that an item, such as solder or welding wire, physically becomes a part of the product being manufactured for sale, it can be purchased for resale.

### Manufacturer's Purchase Credit

The State of Illinois provides a manufacturer's purchase credit in addition to the exemption for manufacturing machinery and equipment. See 86 Ill. Adm. Code 130.331. Purchasers of manufacturing machinery and equipment that qualifies for the manufacturing machinery and equipment exemption earn a credit in an amount equal to a fixed percentage of the tax which would have been incurred under the Use Tax or Service Use Tax. 35 ILCS 105/3-85; 35 ILCS 110/3-70.

The credit may be used to satisfy Use Tax or Service Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. Please note that the amount of manufacturer's purchase credit that can be applied to a purchase of production related tangible personal property is limited to the State rate of tax incurred on that property (6.25%). Any local taxes incurred on the purchase of production related tangible personal property remain the responsibility of the purchaser.

"Production related tangible personal property" includes all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act takes place, and all tangible personal property used or consumed by a manufacturer or graphic arts producer in research and development regardless of use within or without a manufacturing or graphic arts production facility. See 35 ILCS 105/3-85. The Department's regulation for the credit provides examples of tangible personal property that will be considered production related: supplies and consumables used in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, cleaners, adhesives, and hand tools, protective apparel, and fire and safety equipment used or consumed in a manufacturing facility. See 86 Ill. Adm. Code 130.331(b)(4). This means that the credit may be applied to the State tax due for purchases of these items. See 86 Ill. Adm. Code 130.331(b)(1).

A manufacturer or graphic arts producer must provide a Manufacturer's Purchase Credit Certificate (ST-16-C or purchaser's own form) when using Manufacturer's Purchase Credit (MPC) on a purchase of production related tangible personal property, unless the same information is included in the manufacturer's or graphic arts producer's purchase order. See subsection (f) of 86 Ill. Adm. Code 130.331.

It is the responsibility of the retailer or serviceman making the sale of production related tangible personal property to properly document the receipt of MPC on that sale through the use of MPC certificates. Retailers and servicemen are required to keep those certificates in their books and records. See subsection (f)(1) of Section 130.331. Retailers and serviceman may require that separate MPC certificates be provided for each invoice or purchase in order to properly document those sales.

The MPC was recently extended by P.A. 96-0116, through August 30, 2014.

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,

Richard S. Wolters  
Associate Counsel

RSW:mks