

ST 10-0119-GIL 12/21/2010 MANUFACTURING MACHINERY & EQUIPMENT

This letter describes the Manufacturing Machinery and Equipment Exemption and the Manufacturer's Purchase Credit. See 86 Ill. Adm. Code 130.330 and 130.331. (This is a GIL.)

December 21, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 23, 2010, in which you requested information. We apologize for the delay in our responding to your inquiry. 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:

In conjunction with a request I submitted online, I was given your address to receive a legal opinion regarding the following question:

When propane (liquefied petroleum gas) is being used to power an industrial or commercial forklift in a warehouse, docking station or location where it is used to move items, is the propane that is being used taxable under the sales & use tax regulations. If yes or no, where does it state the answer to this matter in the sales & use tax regulations? The reason this question has been raised, there is a customer that is stating that their company is tax exempt from the sales & use tax on the propane that is being used for their company. This company is not a church or not-for-profit organization, this company is a for-profit organization.

In an online request the answer I received from INDIVIDUAL was:

'By looking at regulation 150.340, <http://tax.illinois.gov/LegalInformation/regs/paret150-340.fdf>, I would believe that propane would qualify if it is used in 100% in the manufacturing process. The problem is the propane is for the forklift which also has to be 100% in the manufacturing process, <http://tax.illinois.gov/LegalInformation/letter/rulings/st/2003/sq030117.PDF> I would say it only qualifies if it is used in the 100% in the manufacturing process. This is only an opinion.'

The propane is being used to power the forklift. The forklift is used to move items within a warehouse or to load items onto a truck or semi-trailer. I am not sure this would be considered as part of the manufacturing process.

Would you please review my question and let me know the legal opinion of the Illinois Department of Revenue. If further information is needed to assist in answering this question, I may be reached at #.

DEPARTMENT'S RESPONSE:

MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

The Retailers' Occupation Tax does not apply to sales of machinery and equipment 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. The manufacturing process is the production of articles of tangible personal property or assembling different articles 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. See Section 130.330(b)(2). The exemption does *not* apply to "hand tools, supplies (such as rags, sweeping or cleaning compounds), coolants, lubricants, adhesives, or solvents, items of personal apparel (such as gloves, shoes, glasses, goggles, coveralls, aprons, masks, mask air filters, belts, harnesses, or holsters), coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigerants or water." (emphasis added) See Section 130.330(c)(3).

MANUFACTURER'S PURCHASE CREDIT

The State of Illinois provides a Manufacturer's Purchase Credit (MPC) in addition to the exemption for manufacturing machinery and equipment. See 86 Ill. Adm. Code 130.331. A purchaser of manufacturing machinery and equipment that is exempt under the manufacturing machinery and equipment exemption also earns 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 MPC 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%). MPC cannot be used to satisfy any local taxes incurred on the purchase of production related tangible personal property.

"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 6.25% 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 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.

EXPANDED MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

The Illinois legislature expanded the Manufacturing Machinery and Equipment Exemption from July 1, 2007 through June 30, 2008 to include purchases of production related tangible personal property. This change essentially expanded the exemption to include the same items (production related tangible personal property) for which MPC could have been used for that period. Please note that the provisions of the Illinois Administrative Code that you referenced in your letter, 86 Ill. Adm. Code 150.340, specifically concerned this expansion which has since expired.

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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TDC:msk