

This ruling concerns sales of building materials to construction contractors that are incorporating tangible personal property into real estate owned by a governmental body. See 86 Ill. Adm. Code Sections 130.2075(d)(1) and 130.2075(d)(4). (This is a PLR.)

August 26, 2011

Dear Xxxxx:

This letter is in response to your letter dated March 22, 2011, supplemental letters and subsequent emails in which you request a private letter ruling and provide information to the Department. 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 ORGANIZATION 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 ORGANIZATION 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:

This is a request for a Private Letter Ruling pursuant to 86 Ill. Adm. Code Sec. 1200.110, on behalf of ORGANIZATION, an Illinois not-for-profit corporation. Specifically, this request seeks a determination that the sales tax exemption provided for in 86 Ill. Admin. Code Section 130.2075(d) would apply to purchases of materials which will be incorporated into an early childhood education center which SCHOOL DISTRICT has authorized ORGANIZATION to construct on land owned by SCHOOL DISTRICT, pursuant to the Lease Purchase Agreement enclosed with this request and discussed in the Statement of Facts below.

As groundbreaking for the early childhood center is scheduled for later this spring, your earliest possible consideration of this request will be greatly appreciated.

The following representations address the requirements of 86 Ill. Adm. Code 1200.110:

- The Department has not ruled on the above issue for ORGANIZATION, nor has ORGANIZATION previously submitted this issue to the Department. However, ORGANIZATION in asked the Department to determine that it is exempt from the Illinois sales tax as a nonprofit entity organized and operating for charitable and educational purposes. By letter, the Department's Office of Local Government Services notified ORGANIZATION that its request for an exemption number had been denied. ORGANIZATION has written to the Department this week requesting a second review of its exemption request and submitting additional documentation in support thereof.¹
- ORGANIZATION does not have an audit or pending litigation with the Department.
- ORGANIZATION requests a response for the current tax period and all future tax periods, subject to time limits applicable to exemption determinations under 86 Ill. Adm. Code 130.2075(d).
- We have found support for our requested ruling in the Department's Regulation, 86 Ill. Adm. Code 130.2075(d), in GIL ST 08-0002, and in PLR ST 05-0025. We have found no contrary authority.
- The taxpayer is not claiming that any information being provided to the Department is trade secret information which should be deleted from the publicly disseminated version of the requested Private Letter Ruling.

A Power of Attorney is attached, and a copy of the Lease Agreement with the School District is enclosed.

Kindly have the enclosed extra copy of these materials and of our letter, file-stamped, and return the file-stamped copies to our office in the enclosed pre-addressed envelope, on which postage has been prepaid.

Statement of Facts

SCHOOL DISTRICT owns certain real property, located within the CITY on the east side of LOCATION and comprised of vacant land identified as Parcel No. #. The School District took title to the property, which it purchased from the City. It acquired the property for the specific purpose of enabling ORGANIZATION to build on the site a early childhood education facility (the 'ORGANIZATION Center') to serve children from birth to age five, pursuant to the enclosed Lease Agreement between the SCHOOL DISTRICT Board of Education and ORGANIZATION.

Per the Lease Agreement, the School District has leased the real property to ORGANIZATION for rent of \$ for a 25-year term. (Lease Agreement, Arts. III and IV.) ORGANIZATION is to construct the ORGANIZATION Center facility on that site, paying

¹ A courtesy copy of ORGANIZATION's March 22, 2011 correspondence to the Department asking for a second review of its exemption request is also enclosed with this letter, along with the accompanying supporting Affidavit of CHAIR of ORGANIZATION's Board of Directors and referenced exhibits submitted to the Department in connection with the second review request. We have likewise provided the Office of Local Government Services with a courtesy copy of this correspondence requesting a Private Letter Ruling.

or financing the full cost of constructing the facility. All title to and interest in the facility will vest in SCHOOL DISTRICT as of the later of the date on which the facility is substantially complete and has been accepted in writing by the School District, or the date on which any loans procured by ORGANIZATION to finance the cost of constructing the facility have been repaid. (Lease Agreement Art. II, Sec. 2.2)

The construction of the facility is to be prosecuted in accordance with provisions of the Sections 12, 13, 14 and 15 of the 'Agreement To Establish and Operate ORGANIZATION Center, As Amended And Restated' (the 'ORGANIZATION Agreement', comprising Exhibit B to the Lease Agreement), which was entered into as of DATE by SCHOOL DISTRICT, ORGANIZATION, the non-profit corporation CORPORATIONS. See Lease Agreement, Art. II, Sec. 2.3 and Exhibit C. Cited Section 14 of the ORGANIZATION Agreement provides that the ORGANIZATION Center's construction must comply with Illinois State Board of Education life/safety code standards, and that SCHOOL DISTRICT representatives (along with representatives of the CORPORATION are to have final approval of construction and site plans.

The primary and central purpose of ORGANIZATION's constructing the facility is to establish the ORGANIZATION Center, at no capital cost to SCHOOL DISTRICT taxpayers, so as to foster the academic and social readiness for school of pre-kindergarten children from low-income families in the School District, and thereby to equip these children to achieve academic success in grades K-8 and thereafter. (Lease Agreement Art. II, Sec. 2.3.) Once the facility has been constructed, ORGANIZATION will use the Leased Premises to operate the Center, as described in detail in the ORGANIZATION Agreement, and for no other purpose unless approved in advance by SCHOOL DISTRICT. (Lease Agreement, Art. VI, Sec. 6.1)

Title to the improved property will at all times remain in the School District. ORGANIZATION as Lessee must obtain SCHOOL DISTRICT's prior written consent to make any additions or alterations (other than decorative or cosmetic alterations) to the Leased Premises. When completed, any such additions or alterations will become part of the property and will be owned by SCHOOL DISTRICT. (Lease Agreement, Art. VIII.)

Consistent with these provisions, ORGANIZATION has entered into an Owner/Contractor Agreement with COMPANY, pursuant to which COMPANY as Contractor and its subcontractors will perform the work necessary to construct the ORGANIZATION Center on the School District's property leased by ORGANIZATION. COMPANY and these subcontractors will, pursuant to the Owner/Contractor Agreement, purchase building materials which will be incorporated into the ORGANIZATION Center facility in the performance of the Owner/Contractor Agreement.²

Regulation and Authority

The Department's Regulation at 86 Ill. Adm. Code 130.2075(d)(1) provides in pertinent part that:

² A copy of the Owner/Contractor Agreement is included as Exhibit 4 to the Affidavit of CHAIR submitted to the Department as described note 1 above, in support of ORGANIZATION's August 16, 2010 exemption request for which a second review has been sought. The architect's depictions of the exterior design of and floor plan for the ORGANIZATION Center appear at pages 9-10 of ORGANIZATION's brochure submitted to the Department as part of the August 16, 2010 exemption request (*see* Exhibit 1 to the CHAIR Affidavit).

Sales of materials to construction contractors... for incorporation into real estate owned by governmental bodies, are exempt from Retailers' Occupation Tax and Use Tax. The intent of the Legislature was to relieve the above designated kinds of purchasers from the burden of tax on their purchases whether the purchases are made directly or indirectly by these organizations. Therefore, the exemption applies to their indirect purchase of building materials.

In December 2005, the Department issued letter ruling ST 05-0025-PLR confirming that under the above Regulation, the requesting entity ('ABC') and its construction contractors could purchase materials to be incorporated into real property owned by the CITY and leased to ABC (the 'Area'), exempt from the Illinois Retailers' Occupation Tax and Use Tax.

In that matter, the City had developed the Area as a municipal enterprise. Under the subject Concession and Lease Agreement (CLA) between the City and ABC, ABC would lease the Area from the City for a 99-year term, and would operate the Area. Legal title to the property remained at all times in the City. The CLA did not transfer title of the Area or the real estate upon which it was built to ABC. During the term of the lease, ABC was required to complete enumerated capital improvements to the Area, with plans for such construction work to be submitted to the City for review and approval, [sic] As part of those activities, ABC would engage construction contractors to perform those works on the leased properties owned by the City. As part of their contracts to construct these improvements, the contractors would purchase building materials which would be incorporated into the Area. On termination of the Agreement, the Area and all improvements and assets would revert to the City.

The Department's response in ST 05-0025-PLR stated in pertinent part:

Purchases of tangible personal property by ABC and its construction contractors for incorporation into the AREA real estate owned by the CITY may be made free of Illinois Retailers' Occupation Tax and Use Tax under the provisions of 86 Ill. Adm. Code 130.2075(d)(1). This is because the tangible personal property will be incorporated into real estate leased to ABC but owned by the CITY, a governmental body. Please note however that Section 130.2075(d)(3) provides that 'sales of tools, fuel, lumber for forms and other end use or consumption items to construction contractors who do not incorporate these items into real estate are taxable sales regardless of who the contractor's customer may be...'

In claiming the exemption from tax, ABC or its contractor must provide its supplier with a certification stating that its purchases are for conversion into real estate under a contract with a governmental body, identifying the governmental body by name and address and stating on what date the contract was entered into. ABC or its contractor must also provide the exemption number issued by the Department to the governmental body for which the purchasing contractor is acting. See 86 Ill. Adm. Code 130.2075(d)(4).

The Department reaffirmed these principles in addressing the provisions of 86 Ill. Adm. Code 130.2075(d) in ST 08-002 FIL [sic], issued on January 3, 2008.

Ruling Requested

ORGANIZATION requests a Private Letter Ruling confirming that ORGANIZATION and its construction contractors may purchase material for incorporation into the ORGANIZATION Center and site owned by the School District, exempt from the Retailers' Occupation and Use Tax under the provisions of 86 Ill. Adm. Code 130.2075(d)(1).

We respectfully submit that the circumstances under which ORGANIZATION and its construction contractors will purchase material to be incorporated into the ORGANIZATION Center being built on SCHOOL DISTRICT's real property, which improvements are to be owned by SCHOOL DISTRICT, parallels the situation addressed by the Department in ST 05-0025-PLR.

ORGANIZATION understands that in order to claim the exemption, ORGANIZATION or its contractors must give vendors of materials a certification that the materials are being purchased for incorporation into real estate owned by the School District pursuant to the terms of the Lease Agreement with ORGANIZATION, the date of the Lease Agreement, and the location where the materials will be used.

If the Department does not reach a favorable conclusion, I would ask that the Department contact me to indicate what further needs to be provided, or to allow the taxpayer to rescind the ruling request.

Please do not hesitate to contact me if you have any questions. We would be pleased to meet with you or representatives of the Department to discuss any aspect of this ruling request.

DEPARTMENT'S RULING:

Generally, contractors are the end users of the materials that they physically incorporate into tangible personal property and owe Use Tax on those materials. 86 Ill. Adm. Code 130.2075. However, Section 130.2075(d)(1) of the Department's regulations state that contractors incorporating tangible personal property into real estate owned by a governmental body are exempt from tax. In claiming this exemption, the contractor must provide its supplier with the documentation described in that regulation. 86 Ill. Adm. Code 130.2075(d).

Purchases of tangible personal property by ORGANIZATION and its construction contractors for incorporation into Parcel No. # owned by the SCHOOL DISTRICT may be made free of Illinois Retailers' Occupation Tax and Use Tax under the provisions of 86 Ill. Adm. Code 130.2075(d)(1). This is because the tangible personal property will be incorporated into real estate leased to ORGANIZATION but owned by SCHOOL DISTRICT, which the Department has given an exemption number as a governmental body. Please note however that Section 130.2075(d)(3) provides that "sales of tools, fuel, lumber for forms and other end use or consumption items to construction contractors who do not incorporate these items into real estate are taxable sales regardless of who the contractor's customer may be...."

In claiming the exemption from tax, ORGANIZATION or its contractor must provide its supplier with a certification stating that its purchases are for conversion into real estate under a contract with that governmental body, identifying the governmental body by name and address and stating on what date the contract was entered into. ORGANIZATION or its contractor must also provide the

exemption number issued by the Department to the governmental body for which the purchasing contractor is acting. See 86 Ill. Adm. Code 130.2075(d)(4).

Based on a telephone conversation with you, it is the Department's understanding that any loans procured by ORGANIZATION to finance the cost of constructing the facility will be repaid shortly after construction is complete.

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
Senior Counsel – Sales and Excise Taxes

TDC:RSW:msk