

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.)

May 26, 2011

Dear Xxxxx:

This letter is in response to your letter dated November 2, 2010, in which you requested a Private Letter Ruling. 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:

COMPANY is requesting a private letter ruling concerning the equipment purchased for use in COMPANY's manufacturing production in relation to the Manufacturer's Purchase Credit under Title 86 Part 130 Section 130.331.

1. *Statement of Facts:*

COMPANY processes pork for wholesale distribution companies and various retailers. The Corporation receives the pork and processes it into various cuts of meat. The Company is requesting an opinion as to the following questions posed.

In order to manufacture and process the pork for sale, the Company is required by health regulations to purchase and use items such as knives, gloves, aprons, and hairnets. These items are an essential and mandatory part of the production process. These items are required under the health laws in the State of Illinois. They must be worn by all employees working on the manufacturing line to process the pork. Knives are used to manually process certain cuts of meat during the manufacturing process and are no different than a blade in a piece of equipment. Also, items such as scales, skinning blades, and sharpening steels are also necessary for the production process. Please find attached three sample invoices of items purchased. We believe these amounts are not subject to tax.

2. *Contracts, Licenses, Agreements, or Other Documents:*
There are no contracts relative to the request.
3. *Tax Period and Litigation/Audit Issues:*
The tax period at issue is October 2008 to date, and there is not an audit or litigation pending with the State.
4. *Previous Rulings:*
To the best of our knowledge, the Department has not ruled on this issue previously.
5. *Supporting Authorities:*
Based on the Retailer's [sic] Occupation Tax Act, the manufacturing machinery and equipment exemption extends to machinery and equipment used primarily in the manufacturing process. The machinery and equipment exemption also includes machinery and equipment used in the general maintenance or repair of exempt machinery.
6. *Contrary Authorities:*
There are no authorities contrary to the taxpayer's view.
7. *Trade Secret Information:*
The taxpayer requests the name of the company be deleted from the publically disseminated version.

COMPANY is requesting that the Department clarify if the Corporation can take the Manufacturer's Purchase Credit and provide to the vendors Form ST-587 when appropriate on purchase [sic] of knives, gloves, aprons, and hairnets. Currently, all of these items have been subject to tax.

Please call with any questions.

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 issues about which you have inquired regarding the items listed in your letter request are addressed in the Department's regulations at 86 Ill. Adm. 130.330(c)(3) and 86 Ill. Adm. Code 130.331(b)(4), which may be found on the Department's website. The Department believes these regulations are sufficiently clear to enable taxpayers to make a determination of their individual tax liabilities. As a result, the Department declines to issue a private letter ruling and has decided to respond with a general information letter.

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

When a manufacturer purchases manufacturing machinery and equipment, 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 MPC 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.

In addition, MPC may also 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 MPC provides examples of tangible personal property (similar to the tangible personal property about which you inquire in your letter) that will be considered production related (e.g., supplies and consumables used in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, cleaners, adhesives, as well as 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 MPC 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 servicemen may require that separate MPC certificates be provided for each invoice or purchase in order to properly document those sales.

In order to validate credit earned as the result of a qualifying purchase of exempt manufacturing machinery and equipment or exempt graphic arts machinery and equipment, however, the manufacturer or graphic arts producer must report credit earned to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Earned (ST-16) for each calendar year no later than the last day of the sixth month following the calendar year in which the Manufacturer's Purchase Credit is earned. See Section 130.331(e)(1). A purchaser that fails to properly file an Annual Report of Manufacturer's Purchase Credit Earned (ST-16) or an Annual Report of Manufacturer's Purchase Credit Used (ST-17) with the Department by the last day of the sixth month following the end of the calendar year forfeits all Manufacturer's Purchase Credit earned or used for that calendar year, unless the purchaser establishes that the purchaser's failure to file was due to reasonable cause. See Section 130.331(e)(6).

Note, MPC was extended by P.A. 96-0016 through August 30, 2014.

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,

Debra M. Boggess
Associate Counsel

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