

ST 14-0001-PLR 01/02/2014 MANUFACTURING MACHINERY & EQUIPMENT

The manufacturing machinery and equipment exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(c)(6). (This is a PLR.)

January 2, 2014

Dear Xxxxx:

This letter is in response to your letter dated April 29, 2013, 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 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 XYZ COMPANY 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 XYZ COMPANY 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:

ABC COMPANY dba XYZ COMPANY would like to request a binding Private Letter Ruling regarding its Sales Tax exemption for its chemical use in the manufacturing industry. I understand that we need to follow items 1-8 of Section 1200.110(b). They are as follows:

1. A complete statement of all material facts:
XYZ COMPANY manufactures food ingredients for use in all types of dried and wet applications. One of the processes is freeze-drying, which requires the raw material to be completely frozen before processing. Certain concentrated liquid products require cryogenic freezing due to their high levels of sugars, or other hard-to-freeze substances.

Bulk liquid nitrogen is purchased for the sole purpose of freezing these materials. The process involves [] thereby changing the state from a liquid to a solid which can subsequently be freeze-dried.

2. A copy of our contract with OTHER COMPANY is attached.
3. The years in question start with YEAR and forward. We would be filing amended use tax returns if the opportunity exists. XYZ COMPANY is not currently under an audit nor is any litigation pending with the Illinois Department of Revenue.
4. To the best of my knowledge XYZ COMPANY has not previously submitted a request for a private letter ruling.
5. According to 86 Illinois Administrative Code 130.330(c)(6):
'The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease.' The nitrogen used in our process effects a direct and immediate change upon the concentrated liquids by freezing the liquid to a solid state.
6. We are unable to locate any statements of authority contrary to our view since the passage of Public Act 92-0484.
7. Trade secret has been bracketed off in item #1 and should be deleted from the public version.
8. I, NAME, am a stockholder in XYZ COMPANY and I am also the President of the company.

Thank you for your attention to this private letter ruling request for a manufacturing equipment exemption for the chemical nitrogen used in our manufacturing process.

DEPARTMENT'S RESPONSE:

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. See 86 Ill. Adm. Code 130.330(a). 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 of a different article 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. The changes must result from the process in question and be substantial and significant. See 86 Ill. Adm. Code 130.330(b)(2).

The exemption includes chemicals or chemicals acting as catalysts, but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(c)(6). As described in your letter, the liquid nitrogen used to prepare certain of your concentrated liquid products to be freeze-dried for subsequent sale is a chemical that effects a direct and immediate change upon the concentrated liquid products. When used in this manner, the purchase of the liquid nitrogen qualifies for the manufacturing machinery and equipment exemption. This letter is binding with respect to the purchase of liquid nitrogen only and does not address other items listed on the Bulk Product Agreement submitted.

You indicated that you would be filing amended Use Tax returns if the opportunity exists. Please note that only the taxpayer who filed the original return on which the tax was paid may file a

claim for credit. In addition, the claim for credit must be filed within the statute of limitations for filing claims. The general rules regarding claims for credit are as discussed in the following paragraphs.

If taxpayers pay amounts of taxes under the Retailers' Occupation Tax Act that are not due, either as a result of a mistake of fact or an error of law, the taxpayers may file claims for credit with the Department. No credit shall be given the taxpayers unless they show that they have borne the burden of the tax or have unconditionally repaid the amount of the tax to their customers from whom it was collected. See 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b). Taxpayers should not make adjustments on their next return or amend the return for the period in which the overpayment occurred.

Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid to them by their customers and file claims for credit with the Department is a private matter between sellers and purchasers. The statute of limitations for filing claims for credit is described in Section 130.1501(a)(4). The language is somewhat confusing but, boiled down, it means that the statute of limitations is 3 to 3 ½ years and expires in 6 month blocks. For example, on July 1, 2013, the statute of limitations expired for claims to recover taxes that were erroneously paid in the first 6 months of 2010.

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 further questions concerning this Private Letter Ruling, you may contact me at 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,

Richard S. Wolters
Chairman of PLR Committee
Sales and Excise Taxes

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