

ST 14-0002-PLR 6/26/14 MANUFACTURING MACHINERY & EQUIPMENT

Post-production storage facilities do not generally qualify for the manufacturing machinery and equipment exemption. However, a refrigeration or freezer facility maintained at a specific temperature which is required in order to preserve a manufactured product, can qualify for the exemption. See 86 Ill. Adm. Code 130.330. (This is a PLR.)

June 26, 2014

Dear Xxxxx:

This letter is in response to your letter dated February 12, 2014, in which you request information, and in response to the additional information that you provided on March 6, 2014 and March 28, 2014. 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 COMPANY A, an affiliate of COMPANY B 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 COMPANY A, an affiliate of COMPANY B 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:

On behalf of our client, COMPANY A, an affiliate of COMPANY B (collectively, the “Company”), we respectfully request the Illinois Department of Revenue to issue a Private Letter Ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the factual situation set forth below. If the Department has any questions relating to the matters described herein, please contact the undersigned.

A. Statement of Facts

1. Taxpayer Information

- a. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing COMPANY C to represent the Company before the Illinois Department of Revenue (the “Department”).
- b. This Private Letter Ruling (“PLR”) is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the Retailers’ Occupation Tax and Use Tax consequences of actual business practices of the Company.

- c. Neither the Company nor any member of the Company is currently engaged in litigation with the Department in regard to this or any other tax matter.
- d. The Company is not currently under audit by the Department in regard to this or any other tax matter.
- e. The Department has not previously ruled regarding this matter for the Company. In addition, the Company has not submitted the same or similar issue to the Department.
- f. The Company requests certain information be deleted from the PLR prior to disseminating to others. The Company requests that their respective names, addresses, location of the facility, the description of the facility, and the name of its representative be deleted.
- g. The Company is not aware of any authority contrary to the authorities referred to and cited below.

2. Description of Taxpayer's Business Operations

The Company is a cold storage provider operating from its corporate offices located in STATE 1. The Company is ranked XX among North American refrigerated warehouse firms and in the top-XX worldwide. The Company operates more than XX million cubic feet of warehouse space, a majority of which is freeze or temperature controlled. Currently, the Company has operations in seven states: STATE 1; STATE 2; STATE 3; STATE 4; STATE 5, STATE 6 AND STATE 7. The Company is contemplating the development of a cold storage facility in CITY, Illinois.

The Company's services vary from warehouse to warehouse, and include, among others: basic freezer, cooler and dry storage; blast and room freezing; product tempering, import/export services; cross docking; custom fabrication and packing; and a portfolio of documentation services for both domestic and export operations. The Company's warehouses typically feature specialized racking, specified primarily in relation to its intended use. Customer inventory arrives at the Company's plant in a variety of ways: by truck, usually palletized; and by rail car and container, usually floor-loaded, or on slip sheets. Product originating in adjacent production facilities is transferred by forklift, normally palletized as well.

3. Material Facts Relating to Transaction

The Company is contemplating the construction of a cold storage facility within an Illinois Enterprise Zone in Illinois. The Company would construct the facility on previously undeveloped real property located in CITY, Illinois. The facility would include refrigeration machinery and equipment ("Freezer Machinery and Equipment") and racking equipment ("Racking Equipment") in four zones of the facility, as follows:

- a. The industrial freezer, in which the Company will room freeze and blast freeze products, and store such products until shipped for further production.

- b. The deep chill, where the Company will cool processed meats and hold them at about twenty-six degrees Fahrenheit.
- c. The cooler, where the Company will chill and hold processed and unprocessed meats at approximately thirty-four degrees Fahrenheit; and
- d. The loading docks, which will be maintained at approximately forty-five degrees Fahrenheit to maintain the wholesomeness of food products transiting the docks.

The common characteristic of each stage of the Company's process is the reduction of product temperature that results in either a change of state of the product from fresh to frozen or a significant reduction in temperature to a "deep chilled" or refrigerated state that is necessary to achieve and maintain the wholesomeness of products being processed through the facility. The Freezer Machinery and Equipment and Racking Equipment is essential to this manufacturing process of the underlying products processed at the facility. In addition, the Freezer Machinery and Equipment prevent spoilage and preserve the products achieving a frozen or deep chilled state.

The Freezer Machinery and Equipment is an industrial ammonia refrigeration system comprised of various refrigeration components including compressors, evaporators, vessels, pumps, heat exchangers, condensers, and associated piping, controls and valves. The Racking Equipment is comprised of specially designed racks that are essential to the manufacturing process because they facilitate the airflow through and around boxed products. It would not be possible to reduce the temperature of product were it pile stacked without the Racking Equipment. Both the Freezer Machinery and Equipment and Racking Equipment are essential to the manufacturing process.

B. Ruling Requested

The Company respectfully requests that the Department rule that the Freezer Machinery and Equipment and Racking Equipment defined above qualifies for exemption from the Illinois Retailers' Occupation Tax and Use Tax.

C. Statement of Law

The Illinois Retailers' Occupation Tax ("ROT") and Use Tax ("UT") (collectively, "ROT/UT") impose a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2; 35 ILCS 105/1a. The ROT/UT provides, however, that the sales or use of certain tangible personal property may be exempt if that property is manufacturing or assembling machinery and equipment used primarily in the process of manufacturing or assembling process ("MM&E exemption"). 35 ILCS 120/2-5(14); 35 ILCS 105/3-5(18); 86 Ill. Adm. Code 130.330; 86 Ill. Adm. Code 150.910 ("In general, the provisions of [86 Ill. Adm. Code 130] shall apply to returns under the Use Tax Act.").

For purposes of the MM&E exemption, “machinery” means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. 35 ILCS 120/2-45(3); 35 ILCS 105/3-50(3); 86 Ill. Adm. Code 130.330(c)(2). “Equipment” includes an independent device or tool separate from machinery but essential to an integrated manufacturing or assembly process. 35 ILCS 120/2-45(4); 35 ILCS 105/3-50(4); 86 Ill. Adm. Code 130.330(c)(3). Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. 86 Ill. Adm. Code 130-330(c)(5).

The MM&E exemption applies 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. 86 Ill. Adm. Code 130.330(d). 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. 35 ILCS 120/2-45(1); 35 ILCS 105/3-50(1); 86 Ill. Adm. Code 130.330(b)(2).

The production or processing of food is generally considered to constitute an exempt use for purposes of the MM&E exemption. 86 Ill. Adm. Code 130.330(d)(3)(F). On the other hand, machinery used to store finished products after completion of the production cycle will generally not be considered to be manufacturing. 86 Ill. Adm. Code 130.330(d)(4)(D). The use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process will generally not be considered to be used in the manufacturing process. 86 Ill. Adm. Code 130.330(d)(4)(H).

The manufacturing machinery and equipment exemption does not apply to machinery or equipment used primarily for pre-production activities. Machinery and equipment used primarily to store, convey, handle, or transport materials or parts of sub-assemblies prior to their entrance into the production cycle do not qualify for the manufacturing machinery and equipment exemption. 86 Ill. Adm. Code 130.330(d)(4)(c).

The “manufacturing process” means the “production of an article of tangible personal property, whether the 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 a procedure 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.” 35 ILCS 120/2-45(1); 35 ILCS 150/3-50(1); 86 Ill. Adm. Code 130.330(b)(2). The changes must result from the process in question and be substantial and significant. 86 Ill. Adm. Code 130.330(b)(2). The manufacturing process “commences with the first operation or state of production in the series and does not end until the completion of the final product in the last operation or state of production in the series.” 35 ILCS 120/2-45(1); 35 ILCS 150/3-50(1).

In *Illinois Private Letter Ruling No. ST 88-0136*, the Department established its position that equipment used in food processing qualifies for the MM&E exemption. See also *Illinois General Information Letter No. ST-94-0116*. In *Illinois General Information Letter*

No. ST 11-0069 (“GIL ST-11-0069”), the Department specifically noted that machinery or equipment that is required for meat processing, such as cooling equipment that maintains a precise temperature as part of the processing, could qualify for the exemption if used primarily for that purpose. The position has been consistently applied in a series of other general information letters issued by the Department. See *Illinois General Information Letter No. ST 99-0139* (The Department noted that, as a general rule, pre-production and post-production storage facilities do not qualify for the MM&E exemption. However, the Department noted that refrigeration or freezer facilities maintained at a specific temperature which is required to preserve a post-production manufactured product can qualify for MM&E exemption.) See also *Illinois General Information Letter No. ST 99-0139*; *Illinois General Information Letter No. ST 98-0193*; *Illinois General Information Letter No. ST 01-0192*; *Illinois General Information Letter No. ST 01-0162*; *Illinois General Information Letter No. ST. 93-0121*. In *GIL ST-11-0069*, the Department noted that the fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, itself, mean that machinery or equipment is used primarily in manufacturing or assembling. In addition, the Department highlighted the fact that machinery or equipment that is used for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process would not qualify for the MM&E exemption. The Department distinguished items that would not qualify for exemption such as sprinkler systems and employee facilities such as lunchrooms, restrooms, and locker rooms from items that could qualify for the MM&E exemption like machinery or equipment that is required and used primarily for the purpose of meat processing, such as cooling equipment that maintains a precise temperature as part of the processing.

D. Analysis

The ROT/UT does not apply to sales of (i) machinery and equipment (ii) used primarily (iii) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See Ill. Adm. Code 130.330.

1. *The Freezer Machinery and Equipment and Racking Equipment meet the definition of machinery and equipment for purposes of the MM&E exemption.*

The Freezer Machinery and Equipment and Racking Equipment meet the definition of machinery and equipment for purposes of the MM&E exemption. The MM&E exemption applies to the purchase and use of machinery and equipment. 86 Ill. Adm. Code 130.330(c)(1). For purposes of the MM&E exemption, “machinery” means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. 86 Ill. Adm. Code 130.330(c)(2). “Equipment” includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process. 86 Ill. Adm. Code 130.330(c)(3). Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. 86 Ill. Adm. Code 130-330(c)(5).

The Freezer Machinery and Equipment is an industrial ammonia refrigeration system and is comprised of various refrigeration components including compressors, evaporators, vessels, pumps, heat exchangers condensers, and associated piping,

controls and valves. It is a system that will be custom designed to the owner's specifications, purchased through multiple vendors and assembled on-site. The Freezer Machinery and Equipment does not include the foundation or support for the facility. The Freezer Machinery and Equipment contribute to and are essential to the manufacturing process by (1) reducing temperature from fresh to chilled or frozen state and (2) enabling the product to be maintained at standards and requirements necessary to prevent microbial [sic] growth and spoilage.

The Racking Equipment is specifically designed and necessary and essential for freezing and maintaining the temperatures of products as part of the manufacturing process. The Racking Equipment contributes to the manufacturing process by creating and promoting sufficient air flow to allow for temperature reduction within and between products. Without the Racking Equipment, the product processed in the facility could not be sufficiently stacked, resulting in ineffective freezing of the products. Further, the Racking Equipment prevents spoilage by providing essential airflow in the facility which prevents heat from biological processes to build within the products.

The Freezer Machinery and Equipment and Racking Equipment include major mechanical machines, components, and tools that are essential to the manufacturing process. Thus, the Freezer Machinery and Equipment and Racking Equipment meet the definition of machinery and equipment for purposes of the MM&E exemption.

2. *The Freezer Machinery and Equipment and Racking Equipment are "used primarily" in the manufacturing process.*

The Freezer Machinery and Equipment and Racking Equipment are "used primarily" in the manufacturing process. To qualify for the MM&E exemption, machinery and equipment must be used primarily, i.e., over 50%, in the manufacturing or assembling of tangible personal property. 86 Ill. Adm. Code 130.330(d)(1). The MM&E exemption does not apply to machinery or equipment used primarily in pre-production or post-production activities. See 86 Ill. Adm. Code 130.330(d)(4)(C).

In the case of the Freezer Machinery and Equipment and Racking Equipment, the sole use of the equipment is in relation to the manufacturing of the products that processed at the facility. The Freezer Machinery and Equipment and Racking Equipment will not be used for general ventilation, heating, cooling, climate control, or general illumination not required as part of the manufacturing process.

While the Illinois Administrative Code provides generally that pre- and post-production storage typically does not qualify as used in the manufacturing process, the Department has consistently and aptly recognized that machinery and equipment that maintains a precise temperature in order to preserve a manufactured product can qualify for the MM&E exemption. See *Illinois GIL ST 99-0139*. In this case, the Company's Freezer Machinery and Equipment and Racking Equipment is used in connection with the product manufacturing process, and facilitates the process from the time the product arrives at the facility through the time the product leaves the facility by preventing spoilage, and ensuring the product is maintained at required temperatures. This process necessarily includes pre- and post-production storage. The Freezer Machinery and Equipment and Racking Equipment are essential to the manufacturing process, and

the pre- and post-production storage of the products at specific temperatures is a critical component of the manufacturing process. Thus, the Freezer Machinery and Equipment and Racking Equipment are used primarily in the manufacturing process for purposes of the MM&E exemption.

3. *The Freezer Machinery and Equipment and Racking Equipment are used in a production that qualifies as a manufacturing process for purposes of the MM&E exemption.*

The MM&E exemption applies only to machinery and equipment used in manufacturing of assembling tangible personal property. See 86 Ill. Adm. Code 130.330(b)(1). The manufacturing process is the production of any article of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating or refining that substantially and significantly changes some existing material or materials into a material with a different form, use or name. 86 Ill. Adm. Code 130.330(b)(2). The production or processing of food is generally considered to constitute an exempt use for purposes of the MM&E exemption. 86 Ill. Adm. Code 130.330(d)(3)(F). In this case, food products arrive at the facility and are processed in a temperature-controlled environment that includes pre- and post-production storage of the products. Thus, the Freezer Machinery and Equipment and Racking Equipment are used in a production that qualifies as a manufacturing process for purposes of the MM&E exemption.

E. Conclusion

The Freezer Machinery and Equipment and Racking Equipment are machinery and equipment used primarily in a manufacturing process for purposes of the MM&E exemption. Thus, ROT/UT does not apply to the sale of the Freezer Machinery and Equipment and Racking Equipment.

F. Signature

Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief the facts presented in support of the requested ruling are true, correct, and complete.

In your letter dated March 6, 2014, in which you provided additional information, you have stated and made inquiry as follows:

On behalf of our client, COMPANY A, an affiliate of COMPANY B (collectively, the "Company"), we are providing additional support for the Company's position described in our letter dated February 12, 2014. The Company has reviewed the Department's email dated February 26, 2014, requesting additional information to determine whether the Freezer Machinery and Equipment and Racking Equipment qualifies for an exemption from the ROT/UT, and the Company's responses, along with additional information, are included herein.

A. The Freezer Machinery and Equipment

The Freezer Machinery and Equipment is an industrial ammonia refrigeration system and is comprised of various refrigeration components including compressors, evaporators, vessels, pumps, heat exchangers, condensers, and associated piping, controls and valves. The Freezer Machinery and Equipment will not be used to provide temperature control to the entire cold storage facility. Rather, the Freezer Machinery and Equipment will only provide temperature control to four segregated zones within the CITY, Illinois cold storage facility: (1) the industrial freezer (“Freezer Zone”); (2) the deep chill (“Deep Chill Zone”); (3) the cooler (“Cooler Zone”); and (4) the loading docks (“Loading Docks Zone”) (collectively, the “Freezer and Cooler Zones”).

The Freezer Machinery and Equipment includes evaporative coils, or blower units, in the Freezer and Cooler Zones. In addition, vessels, compressors, compressor motors, pumps and accessories reside in the facility’s engine room. Numerous pipes and valves throughout the building, and on the roof, along with controls and control wiring connect the Freezer Machinery and Equipment from the engine room to the Freezer and Cooler Zones. The level of refrigeration in the Freezer and Cooler Zones is measured in tons of refrigeration (“TR”) and horsepower (“hp”).

Freezer and Cooler Zone	Expected TR and hp
Freezer Zone	240 TR/720 hp (blast freezer) 330 TR/825 hp (room freezer)
Deep Chill Zone	90 TR/135 hp
Cooler Zone	100 TR/150 hp
Loading Docks Zone	200 TR/300 hp

The Freezer and Cooler Zone will be in continuous use as there will be a constant flow of products through the facility so that the Freezer and Cooler Zones will not be idle. As such, the Freezer and Cooler Zones must maintain temperature controlled settings at all times to prevent product spoilage and contamination.

The Freezer Machinery and Equipment will not provide temperature control to the non-Freezer and Cooler Zones of the facility, including offices, restrooms, break rooms, engine and machinery room, and other common areas. Rather, an ancillary commercial heating and cooling system will be constructed in the facility to control temperature in those zones. This ancillary heating and cooling system is not Freezer Machinery and Equipment for purposes of the Company’s Private Letter Ruling request. Thus, the Company does not seek an exemption from the ROT/UT with respect to the ancillary commercial heating and cooling system.

B. The Racking Equipment

The Racking Equipment is specifically designed and necessary and essential for freezing and maintaining the temperatures of products. The Company expects to have approximately 25,000 pallets of Racking Equipment at the facility. Substantially all of the Racking Equipment will be used in the Freezer and Cooler Zones. A de minimus amount of pallet racking may be installed outside the Freezer and Cooler Zones, but it would amount to less than 100 pallet positions (or 0.4% of the Racking Equipment)..[sic]

C. The Production Process

The Company's production process encompasses receiving fresh meat product from customers, reducing the temperature of that product to freezing or near-freezing temperatures, and maintaining those temperatures in order for the product to be shipped from [sic] the facility for further processing or resale without spoilage or contamination. While no cooking, canning or cutting processes will be conducted, the chilling, freezing, and temperature maintenance that occur at the facility constitute an essential aspect of the overall meat production process. The Company's facility will have a grant of inspection from the USDA and will perform services that require USDA oversight such as "off-premises freezing" and "pork certification" (a time and temperature process for controlling trichinae parasites in pork).

Generally, customers will ship unrefrigerated or slightly cooled products to the facility to be refrigerated or frozen and later shipped to another location for further processing or resale. The product is unloaded on the Loading Docks Zone, which is maintained at a reduced temperature to temporarily preserve the product and prevent spoilage until the product is moved to the facility's Freezer Zone, Deep Chill Zone, or Cooler Zone. From the Loading Docks Zone, the product is moved to the Freezer Zone, Deep Chill Zone, or Cooler Zone depending on the underlying specifications.

The great majority of products received at that facility will fall into one of the following categories:

1. "Hot" product from the unrefrigerated kill floor to be blast frozen from live temperature to the hard frozen state prior to spoilage.
2. Product from the cut floor (which is about 45 degrees Fahrenheit) to be hard frozen.
3. Product from the cut floor (which is about 45 degrees Fahrenheit) to be deep chilled in a 10 degree Fahrenheit room to achieve internal 26-28 degree Fahrenheit temperature for extended shelf life. This is a rapid process, and product is to move out of the deep chill within 48 hours.
4. Processed products, such as bacon, received from the cooking operation, along with cut floor fresh meats from 45 degree Fahrenheit production rooms, to be chilled to, and held at, temperatures just above freezing.

In all cases, the air circulation and refrigeration process is vital to reduce temperatures of the product so that it can be shipped to retail, institutional and further processing customers in a wholesome, edible state. Even when temperature requirements are satisfied, cooling processes must be continued to remove the heat energy generated by ongoing microbial processes. In the absence of these temperature reduction processes, the product would not be able to be transported out of state to distant

markets. Indeed, it was the introduction of mechanical refrigeration processes in the last century that led to the remarkable restructuring of the livestock slaughter and processing industry and the concomitant end of major-city stockyards and meatpacking districts.

D. Additional Exhibits

The following photographic exhibits have been enclosed to provide a further understanding of the nature of the Freezer Machinery and Equipment and Racking Equipment.

- Exhibit "A" is a photograph of a cold storage engine room and details how the compressors are paired with a motor and mounted on large oil separators. The photograph also includes an ammonia vessel with pumps. The large green object in the central background is water treatment for the condenser water.
- Exhibit "B" is a photograph of the ammonia condensers at a cold storage facility. The ammonia condensers are where compressed gaseous ammonia is condensed into liquid ammonia through an interaction with air and water. The particular condensers included in the photograph are mounted on the ground. In the CITY facility, these will be constructed above the engine room.
- Exhibit "C" is a photograph of inside a freezer zone of a cold storage facility. In the Freezer and Cooler Zones, the evaporator units lower temperatures to appropriate levels by removing heat energy by blowing large volumes of air across a coil adjacent to the fans that are filled with recirculating ammonia that is approximately -25 degrees Fahrenheit. The photograph also includes an example of the Racking Equipment that will be included in the CITY facility. The Racking Equipment allows for air circulation around each product pallet. Also visible in the exhibit are dividers between every layer of boxes on each pallet that allows for air circulation within the pallets.

E. Signature

Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief the facts presented in support of the requested ruling are true, correct, and complete.

If the Department has any further questions relating to the matters described herein, please contact the undersigned.

In your letter dated March 28, 2014, in which you provided additional information, you have stated and made inquiry as follows:

On behalf of our client, COMPANY A, an affiliate of COMPANY B. (collectively, the "Company"), we are providing additional support for the Company's position related to Racking Equipment described in our letters dated February 12, 2014, and March 6, 2014 in response to our telephone conference on March 24, 2014.

A. Essential Nature of the Racking Equipment

In order to maintain the quality of the product, temperature reduction and temperature maintenance must be conducted uniformly and timely. Temperature equilibrium within the product is essential to achieve improved tenderness and flavor and to avoid off-flavors, spoilage or contamination. Uniform, timely, and balanced reduction and maintenance of facility and product temperature is achieved through continuous air circulation. In addition, continuous air circulation removes heat energy generated by ongoing microbial processes within the product. The Racking Equipment is specifically designed to facilitate air circulation and, thus, the Company's production progress, and is essential to the uniform and timely reduction and continuous maintenance of product temperature.

The Racking Equipment creates space around the sides of every pallet and protects stacked product from destruction. The Racking Equipment creates two-inch layers between the product packages and organizes the product in a manner that facilitates air flow around and between the product to accomplish temperature control. Without the Racking Equipment, airflow between the packaged product would be restricted, and the cold air created by the Freezer Machinery and Equipment would not effectively cool the product. Further, heat created by biological processes could not be effectively removed, which would result in product spoilage and contamination.

For these reasons, industry standards consistently recognize the essential quality of Racking Equipment. The International Association of Refrigerated Warehouses ("IARW") Guide to Effective Warehouse Operations (the "IARW Guide") provides information on warehouse operations, safety, sanitation, documents, costs and policies.¹ Section 2.1.1(8) of Chapter 2 of the IARW Guide, enclosed as **Exhibit A**, provides that when warehousing product must be frozen, special care must be taken when determining the product's stacking configuration. Upon arrival, spacers, or dividers, must be placed between each layer of packaged product on the pallet such that two inches of space are allowed on all sides of the product. The IARW Guide further instructs that product cases should not be stacked tightly as this will prevent air flow and prolong the freezing process, which could damage the quality of the product.

The World Food Logistics Organization's ("WFLO") Commodity Storage Manual (the "WFLO Manual") is the cold chain industry's chief resource for scientific information on the storage and handling of perishable goods.² The WFLO Manual, excerpt enclosed as **Exhibit B**, provides that when boxed meat is palletized prior to chilling and/or freezing, that product packages should be placed on clean pallets in a pattern that provides a minimum of two inches of air space around the sides and ends of each carton. Further, the WFLO Manual provides that no more than six layers should be placed on a pallet.

B. Primary Use of the Racking Equipment

¹ The IARW is the leading association in the world promoting and supporting excellence in the controlled-temperature warehouse and logistics industry by increasing the knowledge, effectiveness, and image or association members for the benefit of their customers and society. See <http://www.gcca.org/partners/iarw/>.

² The WFLO is a scientific and educational foundation dedicated to the proper handling and storage of perishable products and the development of systems and best practices for the safe, efficient, and reliable movement of food to the people of the world.

The Racking Equipment serves a dual-purpose: (i) principally, the facilitation of temperature reduction and temperature maintenance of the packaged product at the Company's facility, and (ii) secondarily, storage of the packaged product while it undergoes temperature reduction and temperature maintenance. Because the Racking Equipment continuously contributes to the Company's production process, despite its dual-purpose nature, it is used primarily for the purpose of facilitating the Company's production process.

As discussed above, the Racking Equipment is an integral component of the Company's production process and is specifically designed to facilitate air circulation in the Company's facility, which is essential to the uniform, timely and balanced reduction and continuous maintenance of product temperature.

With respect to the Racking Equipment's storage function, due to the continuous nature of the Company's production process, in particular, the necessity for continued air circulation between product packages to maintain reduced temperatures, the Racking Equipment does not store finished product after the completion of the production cycle. Further, to the extent the product is organized using the Racking Equipment it is in connection with ensuring uniform and timely temperature reduction and maintenance. As such, the product is organized in a manner that results in the most efficient facilitation of the Company's production process, rather than to economize space, which would be indicative of standard storage equipment.

C. Additional Exhibits

The following photographic exhibits have been enclosed to provide a further understanding of the nature of the Racking Equipment. **Exhibit C**, **Exhibit D**, and **Exhibit E** are photographs detailing spacers, or dividers, which are a component of the Racking Equipment, which were not evident in the photographs previously provided to the Department. The spacers facilitate continuous air circulation around the packaged product which is required to uniformly and timely reduce the product temperature and maintain the product's reduced temperature. In addition, the spacers provide protection to the product to prevent destruction and damage.

D. Conclusion

The Racking Equipment is equipment used primarily in the Company's production process for purposes of the MM&E exemption. Thus, ROT/UT does not apply to the sale of Racking Equipment.

E. Signature

Under penalties of perjury, I declare I have examined this request, including the accompanying documents, and to the best of my knowledge and belief the facts presented in support of the requested ruling are true, correct and complete.

If the Department has any further questions relating to the matter described herein, please contact the undersigned.

DEPARTMENT'S RESPONSE:

Based on the representations in your letters, it is our understanding that the Company will use the freezer machinery and equipment to freeze or deep chill food products. Such fresh meat products arrive at the facility directly from meat processors. The products are then frozen or deeply chilled in order to be shipped for further processing or resale without spoiling or becoming contaminated. The freezer machinery and equipment is an industrial ammonia refrigeration system made up of several components including compressors, evaporators, vessels, pumps, heat exchangers, condensers, and piping controls and valves. This equipment is necessary to maintain the temperature of products in a refrigerated or frozen state to be sold and ultimately consumed. It is our understanding that this equipment will be used primarily (more than 50 percent of the time) to deep chill or freeze food products for sale and will not be used for general ventilation, cooling, or climate control, or in any other manner that is not required by the manufacturing process and will only be used to provide temperature control to the four segregated zones within the cold storage facility which you mentioned in your letter.

It is our understanding that the racking equipment is a system consisting of specially designed racks as well as dividers or spacers which must be placed between each pallet to ensure proper air flow and temperature reduction between products. As we understand your claims, the dividers and racks ensure that there is two inches of air space on all sides so that the cold air can effectively cool the product, preventing its damage or destruction.

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. 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).

Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process, including 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). However, machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. See Section 130.330(c)(5). Generally, items such as the framing for a building and its walls, ceilings, floors, and doors would not qualify for the exemption.

The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling. See Section 130.330(d)(2). In addition, machinery or equipment that is used for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process would not qualify for the manufacturing machinery and equipment exemption. See Section 130.330(d)(4)(H). Generally, items such as sprinkler systems and employee facilities such as lunchrooms, restrooms, and locker rooms would not qualify for the exemption.

Freezer Machinery and Equipment

Machinery or equipment that is required for meat processing, such as cooling equipment that maintains a precise temperature as part of the processing in order to preserve a manufactured

product, can qualify for the exemption if used primarily for that purpose. The Department has reviewed the information that you have provided. Based on your descriptions of how the equipment is used, the Department is of the opinion that the freezer machinery and equipment described in your letter, qualifies for the Manufacturing Machinery and Equipment exemption from Illinois Retailers' Occupation Tax under 35 ILCS 120/2-45. Without the freezer machinery and equipment, the product would spoil and could not be subsequently sold for human consumption.

Racking Equipment

Manufacturing equipment that is independent from machinery but is nonetheless essential to an integrated manufacturing process qualifies for the Manufacturing Machinery and Equipment exemption. See 86 Ill. Adm. Code 130.330(c)(3). It seems, based on your descriptions of the equipment, that without the racking equipment, the products would not receive adequate air flow between packages, causing the destruction of the product. For this reason, we believe the racking equipment is essential to an integrated manufacturing process, and therefore also qualifies for the Manufacturing Machinery and Equipment exemption from Retailers' Occupation Tax under 35 ILCS 120/2-45.

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, Private Letter Ruling Committee

RSW:CB:lkm