

The Farm Machinery and Equipment exemption is not available to sales of ordinary building materials. See 86 Ill. Adm. Code 130.305. (This is a GIL.)

October 23, 2008

Dear Xxxxx:

This letter is in response to your letter dated December 1, 2007, 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.

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:

I represent a client domiciled in another state which manufactures and installs concrete slats in hog finishing confinement facilities and raised walkways used as flooring and crate supports in hog farrowing confinement facilities. They are considering making sales into the state of Illinois. The hog confinement facilities are considered to be a single purpose building under the Internal Revenue Code.

The slats used in the finishing facilities are removable from the superstructure of the building and need to be replaced approximately every 15-20 years. When they are removed they are likely to be damaged but the structure itself is not damaged.

The slats are of a design such that the manure generated by the hogs falls thru openings in the slats into a manure pit which serves as a waste disposal system.

The raised walkways used in the farrowing facilities are self standing units of varying dimensions but generally measure about 6 feet wide, 12 feet long and 2 feet high. The walkways are made of concrete, their design is similar to the letter U and when placed in usage they resemble a desk. The raised walkways can last up to the life of the building. Raised walkways are placed on a concrete floor. The walkway units are installed by use of a crane to move the walkways into place. Rubber coded steel slats and crates are placed on top of notches in the walkway which act as the support for the crates. The walkways are designed such that the hog manure can fall thru the slats

(crates) into a 2 foot deep manure pit. The raised walkway is an integral part of the manure management and disposal system of the hog confinement facility.

The slats and walkways are removable units and neither is part of the super structure or the envelope of the building and bears no weight of the super structure. They only hold the weight of the removable rubber coded slats and hog crates which are placed on top of them.

Issue

Illinois Administrative Code 130.305 states in part 'Even though sales may be at retail, the Illinois Retailer's Occupation Tax does not apply to sales of machinery or any equipment used primarily in production agriculture or in state or federal agricultural program...

Farm machinery does not include improvements to real estate such as fences, barns, grain bins, silos and confinement buildings. Similarly, equipment does not include ordinary building materials to be permanently affixed to real estate. However, certain machines and equipment may qualify even though they are installed as realty improvements. Some examples are augers, grain dryers, automated livestock feeder bunks (but not ordinary building materials), specialty heating and lighting equipment specifically required for the production process. i.e. ultraviolet lights and specialty heaters for incubation, farrowing crates, and portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery.'

Request

We are seeking guidance and an opinion on whether either the slats or raised walkways installed in the hog confinement facilities are subject to Illinois Retailers Occupation Tax.

Other surrounding states have statutes which exempt such devices as qualifying agricultural equipment or as part of the waste treatment facilities.

Wisconsin

Publication 221 issued by the Wisconsin Department of Revenue on March 1, 2002 states in part:

'Purchases of concrete used to construct a manure pit are exempt from tax because manure pits are waste treatment facilities. Farmers may purchase animal waste containers, or the component parts of animal waste containers, exempt from tax.'

Conclusion

Machinery and equipment does not include ordinary building materials to be permanently affixed to real estate. However, Wisconsin does specifically provide an exemption for certain items purchased for the construction of waste treatment facilities. Therefore, sales of concrete slats made directly to farmers or contractors in connection with new construction, reconstruction or remodeling of a building structure would be exempt from sales tax.

Missouri

Pursuant to section 144.045.1, farm machinery or equipment that would otherwise qualify as exempt farm machinery and equipment will not lose its exempt status merely because the machinery or equipment is attached to a vehicle or real property. Such

equipment includes, but is not limited to, a grinder mixer mounted on a vehicle or special livestock flooring. When exempt farm machinery or equipment attached to a motor vehicle is sold with the motor vehicle, the part of the total sales price attributable to the farm machinery or equipment is exempt from tax if the farm machinery or equipment is separately invoiced.

Schedule A is a list of items of farm machinery and equipment which will usually be exempt if used exclusively for agricultural purposes on land owned or leased for the purpose of producing farm products and used directly in producing farm products or livestock to be sold ultimately at retail.

Schedule A
Usually Exempt Items

Flooring Slats

Conclusion

Machinery and equipment does not include ordinary building materials to be permanently affixed to real estate. However, Missouri does specifically provide exemption for certain items such as flooring slats. Therefore, sales of concrete slats made directly to farmers or contractors in connection with new construction, reconstruction or remodeling of a building structure would be exempt from sales tax.

Illinois

We have contacted the Illinois Department of Revenue but were advised to seek an interpretation from your department as to the exemption outlined in Illinois Administration Code 130.305.

Our interpretation of the statute is that slats are flooring used in conjunction with waste disposal and are therefore exempt from sales tax. We would like your confirmation of our interpretation. If in the event you deemed this special purpose flooring to be taxable, please provide us with specific illustrations and a listing of what floor items do qualify.

Our interpretation of the raised walkway is that it is special flooring and part of the farrowing crates since it supports the crate and make [sic] them functional.

If either the slat flooring or walkway is deemed to be subject to sales tax, what is the tax base upon which the tax is to be assessed, given the fact that my client produces the product, delivers the product to the job site and installs the slats or raised walkway onto the confinement facility super structure. By way of illustration the invoice to a farmer would be approximately as follows.

768 linear feet	Beams	\$ 3,072
	Freight & Installation	2,995
20,000 sq. feet	Slats	25,000
	Freight & Installation	<u>39,400</u>
Total		<u>\$70,467</u>

The costs of materials (concrete, wire mesh, rebar) to produce the slats in the above example is approximately \$20,000. Additionally, consider that the product is manufactured in another state and transported to Illinois.

We have been advised by the Iowa Department of Revenue which does not have an agricultural exemption for the slats that their interpretation is that nursery flooring slats, curtains, curtain machines, and ventilation controllers were essential to the completion of the building for its intended use and were as a consequence, building materials subject to tax. However, they advise us that our client is considered a manufacturer/contractor and as a result that sales tax (use tax) is due only on the cost of materials, which in my example is \$20,000.

I am enclosing copies of preliminary diagrams which illustrate how the raised walkways are designed and would be installed.

If you need additional information regarding this matter, please feel free to contact me.

I appreciate your prompt attention to this request.

DEPARTMENT'S RESPONSE

As we explained in our telephone conversation with you, we are unable to provide you with the specific response you request in the context of a General Information Letter. Provided below is information that we hope you find helpful.

Farm machinery and Equipment

We direct your attention to 86 Ill. Adm. Code 130.305, the Department's regulation concerning Farm Machinery and Equipment which can be accessed on the Department's Internet website.

The Retailers' Occupation Tax does not apply to farm machinery and equipment that is used or leased for use primarily in production agriculture or for use in State or federal agricultural programs. Whether a specific item qualifies for the exemption depends also on how the item will be used by the purchaser. Consumable supplies generally do not qualify for the exemption. See subsection (k) of 86 Ill. Adm. Code 130.305.

Please note that purchasers that claim the farm machinery and equipment exemption are required to provide the certification or blanket certification described in Section 130.305. Subsection (m) of 86 Ill. Adm. Code 130.305 states as follows:

Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily in production agriculture or in State or Federal agricultural programs.

Retailers may accept blanket certificates but have the responsibility to obtain and must maintain the certificates as a part of their books and records. Retailers are required to exercise good faith in accepting exemption certificates. If, however, a retailer reasonably believes that the purchaser will use farm machinery or equipment in production agriculture or in State or Federal agricultural programs and accepts the certificate in good faith and the purchaser does not, in fact, use the machinery or equipment in production agriculture or in State or Federal agricultural programs, the purchaser (not the retailer) will be liable to the Department for the tax.

The Department does not mandate a form that purchasers are required to use in order to claim the exemption. As long as the certification contains the information required by the regulations, it is

acceptable to the Department. The purchaser may provide the seller with a ST-587 (copy enclosed) rather than creating their own certificate.

Installation

In Illinois, when a seller engages in the business of selling tangible personal property at retail, the proceeds from the sale of the tangible personal property are subject to Retailers' Occupation Tax. When a seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed by the retailer, the receipts from such installation charges must be included in the gross receipts upon which the Retailers' Occupation Tax liability is measured if such installation charges are included in the selling price of the property being sold. If, however, the seller and buyer agree upon the installation charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation charges are not a part of the "selling price" of the tangible personal property which is sold. Instead such charges constitute a service charge, separately contracted for, which need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. See Section 130.450.

If the installation is to permanently affix the tangible personal property to real estate, however, the retailer is acting as a construction contractor and he incurs a Use Tax liability only on his cost price of materials. See the Department's regulations at Section 130.1940 and 130.2075.

Although we cannot give you specific answers, if the items you install remain portable after installation, then you would be considered to be making a retail sale of tangible personal property. For example, if the slats and raised walkways used as flooring and crate supports remain portable and are not converted into real estate, the sale of such would be a sale of tangible personal property subject to tax unless a properly executed exemption certification is provided by the purchaser. Your installation charge would be part of the selling price upon which sales tax would be calculated unless a separate contract for such installation charge existed according to 86 Ill. Adm. Code 130.450. If, on the other hand, the items are permanently affixed, then you would be considered a construction contractor regarding them.

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

DMB:msk