ST 01-0162-GIL 08/15/2001 MANUFACTURING MACHINERY & EQUIPMENT

Generally, purchasers of equipment to be used primarily in the manufacture of food products for sale can claim the manufacturing machinery & equipment exemption from sales tax because food processing constitutes the manufacturing or assembling of tangible personal property. See 86 Ill. Adm. Code 130.330(d)(3)(F). (This is a GIL).

August 15, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 22, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at http://www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

> We are writing to request a private letter ruling regarding sales and use tax on the equipment we purchase for our toll processing and the replacement parts for said machinery.
>
> We provide toll processing services for food and industrial ingredients manufacturers. (starches, sweeteners, flours, phosphates, etc.) We charge a tolling fee (per pound processed) for services and do not take possession or title to the goods, nor do we resell them. Our services include: the blending of several products together to make a different product, the blending of two lots of the same product to make a new lot, the repackaging of a product from one package size to another, (i.e. 2000 pound super sacks into 50 pound bags) and conditioning hardened product to make it free-flowing and then packaging it for shipment. We do not package for shipment to retailers, or distributors who unpack the product before resale to the ultimate consumer. Once we have processed and packaged the product, it is now in a form that is sold to the ultimate consumer. The retailer or distributor does not remove the product from the package before its sale. We feel the equipment we purchase falls under the general exemption from sales and use tax under 86 Illinois Administrative Code 130.330.
>
> We have enclosed along with this request, a power of attorney, so that we may speak directly to you about any questions you have or clarifications that you may require.

We do not have sufficient information to provide you a Private Letter Ruling; we do not know specifically what equipment is involved or the precise nature of the transactions. However, we hope that the following information is helpful.

Enclosed is a copy of 86 Ill. Adm. Code 130.330 concerning the Manufacturing Machinery and Equipment Exemption. The production of food products has been determined to be a manufacturing process required for exemption. 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.

As a general proposition, purchasers of equipment to be used primarily in the manufacture of food products for sale can claim the exemption because food processing constitutes the manufacturing or assembling of tangible personal property. See Section 130.330(d)(3)(F). Independent devices, separate from machinery but essential to the manufacturing or assembling process can qualify, including parts that require periodic replacement in the normal course of operation. However, the exemption does not include hand tools, consumable supplies, fuel and personal apparel items. See Section 130.330(c)(3).

Please also note that Section 130.330(e)(3) provides that "[m]achinery and equipment used in the performance of a service, such as dry cleaning, is not used in the production of tangible personal property for sale and is thus taxable. However, a manufacturer or assembler who uses machinery and equipment to produce goods for sale or lease by himself or another, or to perform assembly or fabricating work for a customer who retains the manufacturer or assembler only for his services, will not be liable for tax on the machinery and equipment he uses as long as the goods produced either for himself or another are destined for sale or lease, rather than for use and consumption."

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.