ST 02-0071-GIL 03/29/2002 ENTERPRISE ZONES

Effective January 1, 2002, a retailer is no longer required to be located in the municipality or county that created the enterprise zone into which the building materials are to be incorporated in order to take the enterprise zone deduction. 35 ILCS 120/5k. (This is a GIL).

March 29, 2002

Dear Xxxxx:

This is in response to your letter dated January 16, 2002. 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/Laws/regs/part1200.

In your letter you stated and made inquiry as follows:

I would like a letter ruling in regard to a law change effective 1/1/02. I need clarification regarding the Enterprise Zone as mentioned in FY-2002-01 Information Bulletin.

Prior to 1/1/02, when I sold material in an Enterprise Zone, I was unable to take tax exemption for R.O.T.. The explanation was that COMPANY is located in CITY, and not in CITY2 Enterprise Zone.

Effective 1/1/02, the law has changed and now it seems that the type of sale mentioned above would qualify under the Enterprise Zone Act.

My questions are as follows:

1. Based on the above facts, would the sales effective 1/1/02 be exempt as qualifying for the Enterprise Zone Exemption?

2. Does it make a difference if the contractor is located inside or outside the CITY2 Enterprise Zone?

3. With regards to Bulletin FY-2002-01, 'Are There Any Limitations on These Sales?', I find it difficult to understand the example as stated, and I would like further explanation on this matter.

In summary, CITY does not have an Enterprise Zone. I am an electrical supply house in CITY. The contractor and the job are in Zone 4. Am I obligated or not to collect tax according to FY-2002-01?

Public Act 91-954, which became effective January 1, 2002, amended the Retailers' Occupation Tax to remove the requirement that retailers must be located within a jurisdiction establishing an enterprise zone in order to deduct sales receipts from the sale of building materials to be incorporated into real estate in such enterprise zone. The Department of Revenue will soon be adopting changes to its regulations governing enterprise zones to include and further explain the amendment made by Public Act 91-954. Please find enclosed, for your reference, a copy of 86 Ill. Adm. Code 130.1951, Enterprise Zones, as it will appear in its adopted form.

Effective January 1, 2002, a retailer is no longer required to be located in the municipality or county that created the enterprise zone into which the building materials are to be incorporated in order to take the deduction. However, this expansion of the deduction is not without some restrictions. If a retailer is located in a jurisdiction that has an enterprise zone ordinance restricting the scope of the enterprise zone exemption, then such ordinance restrictions will apply to and control the taxability of all sales of building materials being purchased in that jurisdiction. See 86 Ill. Adm. Code 130.1951(a) and (c).

Therefore, restrictions or the absence of restrictions in effect for the enterprise zone into which the building materials will be incorporated are of no consequence to the taxability of the sale. One must instead look to whether the jurisdiction *in which the retailer is located* has an enterprise zone ordinance that restricts the scope of the enterprise zone exemption. If the retailer's jurisdiction has an enterprise zone ordinance in effect, the sale can be made tax-free, subject to any restrictions in that ordinance. If the retailer's jurisdiction does not have an enterprise zone ordinance, or does have an enterprise zone ordinance but one that has no restrictions, then the sale can be made tax-free. See Section 130.1951(c)(1) through (3). In either event, the purchased materials must be incorporated into an Illinois enterprise zone and the purchaser must certify as such in writing to the retailer in order for the deduction to be claimed. The signed written statement from the purchaser must be kept with the retailer's books and records. See Section 130.1951(c)(6).

Qualification for the deduction will also depend upon the materials sold by the retailer. The materials must be building materials purchased for physical incorporation into real estate in an Illinois enterprise zone. See Section 130.1951(d). Your letter states that COMPANY is a plumbing supply house located in CITY. If COMPANY is located in a jurisdiction that has not created an enterprise zone and is making sales of qualified building materials (see Section 130.1951(d)), then its gross receipts from such sales would qualify for the exemption. If, however, CITY has an enterprise zone ordinance in effect that restricts the availability of the exemption, only those sales of qualified building materials that meet the terms of those restrictions will be exempt from tax.

I hope this information has been 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 Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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