

The building materials exemption conferred at 35 ILCS 120/5k is explained in Department regulations found at 86 Ill. Adm. Code 130.1951. (This is a GIL.)

August 22, 2006

Dear Xxxxx:

This letter is in response to your letter received in the Legal Services Office on August 7, 2006, 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.ILTAX.com 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, in part, and made inquiry as follows:

Thank you for your prompt response, last week, to my call on this important matter. Please issue your clarifying letter to us, as soon as possible, so that our monthly billing cycle is not disrupted As you're aware, we need to establish credibility with the contractors as to the sales tax exemption due to the state's enterprise zone program. For the purposes of your letter, I identify below the pertinent facts that are relevant.

1. Project Name-
2. Project Address-
3. Project Owner-
4. Project Owner address-
5. Project General Contractor-
6. Enterprise Zone Project Reference Number-

Contact the writer if you require any additional information concerning this matter.

DEPARTMENT'S RESPONSE:

You indicated in our recent telephone conversation that the project identified above is located in an enterprise zone. You sought information regarding the manner in which the enterprise zone

building materials exemption is documented, and indicated that several retailers have requested that you provide an “exemption number.”

Enclosed you will find a copy of the Department’s regulation governing various enterprise zones exemptions. Subsection (d) of this regulation explains the current requirements for persons claiming the enterprise zone building materials exemption. This exemption applies to qualified sales of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. A “qualified sale” means a sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the administrator of the enterprise zone in which the building project is located. As you can see from this information, retailers claiming the deduction must obtain two specific documents from the purchaser in order to properly claim the exemption:

1. Prior to making a purchase of qualifying building materials, a purchaser must obtain a Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated. The Certificate of Eligibility for Sales Tax Exemption must contain a statement that the building project identified in the Certificate meets all of the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located; the location or street address of the building project that is the subject of the Certificate; and the signature of the administrator of the enterprise zone in which the building project is located.
2. In addition to the Certificate of Eligibility for Sales Tax Exemption, a purchaser must prepare a certification that contains the following items:
 - i) a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone;
 - ii) the location or address of that real estate;
 - iii) the name of the enterprise zone in which that real estate is located;
 - iv) a description of the building materials being purchased for incorporation into that real estate;
 - v) the date of the purchase; and
 - vi) the purchaser's signature.

A retailer claiming the deduction must have both the Certificate of Eligibility for Sales Tax Exemption and the purchaser’s certificate among its books and records in order to document the exemption. Provided that the retailer has properly documented the exemption (and absent any fraud or collusion), if the Department should discover that the purchaser has improperly claimed the exemption, it will look to the purchaser for payment of tax.

The enclosed regulation provides additional information about the types of building materials that qualify for the exemption.

Your letter indicates that retailers have asked for an “exemption number.” The enterprise zone building materials exemption is not documented by an “exemption number.” These retailers may have the enterprise zone building materials exemption confused with another exemption, which is available for contractors making purchases of building materials that will be incorporated into real estate owned by entities to whom the Department has issued an exemption identification number (an “E” number). When contractors make purchases of this nature, they may receive a flow-through” of

the exemption the entity would have been able to claim had that entity purchased the building materials itself. The manner in which this exemption is documented can be found at 86 Ill. Adm. Code 130.2075 (d), enclosed.

I hope that 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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Jerilynn T. Gorden
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JTG:msk
Enc.