

The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2). (This is a GIL.)

March 31, 2010

Dear Xxxxx:

This letter is in response to your letter received in this office on October 15, 2009, 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:

We are wanting to update our records and are asking for your assistance. We manufacture livestock handling equipment. We are being questioned by our customers as to what should be taxed and what is considered tax exempt. We manufacture continuous fence panels and gates, which are attached to real property by hanging them on posts. We also manufacture portable catch panels, crowding tubs, alleys, portable bale feeders, portable corrals and squeeze chutes. Of the mentioned equipment, can you please tell us what is considered taxable and what is considered tax exempt in your state. Our website shows these products if seeing a picture would be helpful. We are hoping you will be able to specifically address these issues, in writing by either, fax, e-mail or mail, so we can show our customers. Thank you so much for your time, we really appreciate your help!

DEPARTMENT'S RESPONSE:

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. Production agriculture is defined under the Retailers' Occupation Tax Act as "the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture." See 35 ILCS 120/2-35.

Under 86 Ill. Adm. Code 130.305 "Farm Machinery and Equipment", Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. The sale of individual replacement parts for such machinery and equipment is also exempt. In order to obtain the exemption, the purchaser must certify to the use primarily in production agriculture of the equipment or machinery. See Section 130.305(a).

Machinery means major mechanical machines or machine components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Machinery would include such things as tractors, combines, balers, irrigation equipment and cattle and poultry feeders. Improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery.

Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Although equipment does not include ordinary building materials affixed permanently to real estate, certain items of equipment can qualify for the exemption even though they are installed as realty improvements. Such items of equipment include, but are not limited to, farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery. In addition, note that other items such as cattle chutes and crowding tubs may be exempt sales so long as these items are **portable and not sold to be affixed to real estate**, inside or outside of farm structures.

I hope this information is helpful. If you require additional information, or want to view any of the administrative rules mentioned in this letter or other General Information Letters relating to the subject about which you inquire, 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

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