

ST 10-0029-GIL 03/31/2010 MACHINERY & EQUIPMENT EXEMPTION

This letter concerns applicability of the machinery and equipment exemption to a sublessee-manufacturer situation. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

March 31, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 21, 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](http://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:

Pursuant to regulation Title 2, Part 1200, Section 1200.100, we request a private letter ruling on the below described issues. The parties involved are identified as follows – COMPANY as Lessor; BUSINESS as Lessee and CORPORATION as Sub-Lessee.

Issues

Is the Lessor (COMPANY) of machinery/equipment (‘equipment’) in a multi-step transaction (lease with known intent of Lessee (BUSINESS) to sublease the equipment) required to pay IL use tax on equipment that is used by the Sub-Lessee (CORPORATION) in an exempt manner under 35 ILCS 105/3-50?

If the Lessor (COMPANY) does not have to pay use tax because the equipment is used in manufacturing, will the attached exemption certificate provided by the Sub-Lessee (CORPORATION) be sufficient to document the exemption?

Alternatively, if the Lessor (COMPANY) is required to pay use tax on the equipment may the Lessor reduce the tax by the Manufacturer’s Purchase Credit (MPC) since the MPC had not yet expired when the lease/sublease commenced?

Statement of Facts

1. COMPANY is an equipment financing and leasing company.
2. COMPANY's IL account number is #.
3. COMPANY has a Master Lease Agreement in place with BUSINESS and certain U.S. subsidiaries, including BUSINESS, dated April 23, 2008 (Exhibit A)
4. COMPANY entered into a sixty month (60) operating lease of food processing equipment with BUSINESS. The Order placed for equipment (Schedule) is dated December 26, 2008. (Exhibit B)
5. BUSINESS leased the equipment in contemplation of a sublease with CORPORATION). The equipment is used by CORPORATION at its manufacturing plant in Illinois. (Exhibit C)
6. The lease (COMPANY/BUSINESS) and the sublease (BUSINESS/CORPORATION) are true (operating) leases.
7. CORPORATION's IL account number is #.
8. CORPORATION uses the equipment primarily in the process of manufacturing tangible personal property for sale. CORPORATION is engaged in the business of producing, packaging and selling beverages and foods for human consumption.
9. CORPORATION executed its own sales/use tax exemption certificate in lieu of the department's form ST-587. (Exhibit D).
10. A wholly-owned subsidiary of BUSINESS supplies CORPORATION with aluminum beverage containers (cans). This supply arrangement was the key factor in BUSINESS's participation in the lease/sublease situation. The arrangement enabled the subsidiary's customer (CORPORATION) to obtain the needed aluminum can retort equipment. The cans become a component part of the final product CORPORATION sells.

#### Applicable Illinois Statutes and Regulations

- 35 ILCS 105/3-5(18)
- 35 ILCS 105/3-50
- 35 ILCS 120/2-5(14)
- 35 ILCS 120/2-45
- 86 Ill. Adm. Code 130.120(q)
- 86 Ill. Adm. Code 130.330

#### Conclusion

Based on the above statutes and regulations, the use of the equipment in Illinois determines the taxability for use tax purposes. This equipment is used to manufacture tangible personal property for sale and thus no use tax is due. The exemption certificate prepared by CORPORATION is acceptable and required to substantiate the exempt use of the equipment in the state. MPC has been generated on this qualifying equipment and the credit may be utilized by COMPANY.

The above issues are not the subject of an audit or being litigated by COMPANY with the Department. To the best of our knowledge, the Department has not previously ruled on the same or similar issues for COMPANY or a predecessor nor has COMPANY previously submitted the same or similar issues to the Department but withdrew it before a letter ruling was issued.

Please consider all exhibits as *trade secret information* and/or *confidential* material.

We respectfully request a private letter ruling on our issues. Should you have questions or require additional information, please contact me as shown below. Thank you for your time.

#### **DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department declines to issue a Private Letter Ruling since its regulations are dispositive of the subject of your request. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

Under the Retailers' Occupation Tax Act and Use Tax Act, machinery and equipment that will be used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax and Use Tax. 35 ILCS 120/2-10(14); 105 ILCS 3-5(1). For this exemption to apply, the purchaser need not itself employ the exempt machinery or equipment in manufacturing. If the purchaser leases that machinery or equipment to a lessee-manufacturer who uses it in an exempt manner, the sale to the purchaser-lessee will be exempt from tax. A supplier may exclude these sales from its taxable gross receipts provided the purchaser-lessee provides to the supplier a properly completed exemption certificate. For the requirements of an exemption certificate, see 86 Ill. Adm. Code 130.330(g) and Department Form ST-587. An exemption certificate is sufficient as long as it contains all the information required by the rule. Should the purchaser-lessee lease the machinery or equipment to a lessee who does not use it in a manner that would qualify directly for the exemption, the purchaser-lessee will become liable for the tax from which he was previously exempted. 86 Ill. Adm. Code 130.330(f).

The rule does not preclude a lessor from claiming the exemption where the lessee subleases the machinery and equipment. If a lessee subleases machinery and equipment to a sublessee-manufacturer that uses the equipment in an exempt manner, the sale to the purchaser-lessee will be exempt from tax. However, should the sublessee-manufacturer fail to use the machinery and

equipment it in a manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax on the machinery and equipment.

If tangible personal property does not qualify for the Machinery and Equipment Exemption, it may still qualify as production-related tangible personal property; and, if the purchaser has any accumulated MPC, he or she can use it to satisfy his or her State Use Tax or Service Use Tax liability on the purchase of the production-related tangible personal property. See 86 Ill. Adm. Code 130.331.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
Associate Counsel

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