

This letter concerns the Manufacturing Machinery and Equipment Exemption and Manufacturer's Purchase Credit. See 86 Ill. Adm. Code 130.330 and 130.331. (This is a PLR.)

August 11, 2011

Dear Xxxxx:

This letter is in response to your letters dated January 19, 2011 and May 16, 2011, in which you requested a Private Letter Ruling. 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

In conformity with the requirements of 2 Ill. Adm. Code 1200.110, I respectfully request a Private Letter Ruling ('PLR') on behalf of COMPANY and BUSINESS. Copies of a Power of Attorney authorizing my representation of COMPANY and BUSINESS are attached.

COMPANY and BUSINESS seek confirmation, in the form of a private letter ruling, that the purchase of certain items of machinery and equipment that comprise a 'priller' qualify as exempt from the Illinois Retailers' Occupation Tax (the 'ROT') and Use Tax (the 'UT') as 'manufacturing machinery and equipment' as that term has been defined by Section 35 ILCS 120/2-45 of the ROT and 86 Ill. Adm. Code 130.330 of the rules of the Illinois Department of Revenue (the 'Department'). COMPANY and BUSINESS also seek confirmation that the purchase of the priller will result in earning Manufacturers' [sic] Purchase Credit ('MPC') as authorized by Section 3-85 of the UT. (35 ILCS 105/3-85 and 86 Ill. Adm. Code 130.331.)

Neither COMPANY and BUSINESS nor any related taxpayer is currently under audit by the Illinois Department of Revenue (the 'Department' or 'IDOR'), or involved in litigation with IDOR concerning the issues that are the subject of this ruling request. To the best of the knowledge of COMPANY and BUSINESS and COMPANY's and BUSINESS's representative, the Department has not previously ruled on the same or a similar issue for COMPANY or BUSINESS or a predecessor to either taxpayer. Neither COMPANY and BUSINESS, nor any related taxpayer, or any representatives of COMPANY and BUSINESS have previously submitted the same or a similar issue to the Department, but withdrew it before a private letter ruling was issued. COMPANY previously sought, and obtained, a non-binding general information letter on this subject. (Please see ST-09-0112-GIL.) This private letter ruling request applies to purchases to be made in 2011. All interested parties are identified, as are the business reasons for the transaction. An analysis of the relation of the material facts to the issues is set forth below. A complete statement of the facts and other information pertinent to the request for ruling is set forth below.

STATEMENT OF FACTS

COMPANY has started the process (permitting, initial engineering, etc.) for building a solid sulphur forming facility on real property owned by another unrelated entity at LOCATION in partnership (owned effectively 50% by COMPANY and 50% by XYZ). BUSINESS was formed in June 2002 to acquire the sulphur handling, storage, and transportation assets previously owned by the ABC in STATES. No assets purchased at that time were located in Illinois. COMPANY (or its related entity) was engaged to be the operator of the partnership and the acquired sulphur storage, handling, and transportation assets.

The location of the proposed facility is within a[n] Enterprise Zone. Actual construction of the facility has not yet begun. COMPANY (as partner and operating manager of BUSINESS) has reached a tentative agreement (term sheet) with its customers and with ABC to allow BUSINESS to be the owner of this solid sulphur forming facility. BUSINESS will enter into the purchase agreement for the equipment to be located and installed at the CITY location with the manufacturer. Subsequent to construction, COMPANY will operate these facilities for BUSINESS.

The customers of the facility are generally crude oil petroleum refineries who have extracted the sulphur from crude petroleum. The customers provide molten sulphur for COMPANY to manufacture into solid sulphur pellets known as 'prills'.

The facility provides COMPANY's and BUSINESS's customers a means for solidifying (prilling) molten sulphur, to allow them to sell the sulphur into other markets (specifically foreign markets) where solid sulphur is the form in which the sulphur is typically handled.

This facility is intended to receive molten sulphur by truck and manufacture solid sulphur pellets (prills) that can be stored at the site until they are shipped out by barge or by rail. COMPANY, as operator of the facility, takes custody of the molten sulphur as it enters the facility and relinquishes custody when the prilled sulphur leaves the facility.

RULINGS REQUESTED

1. When molten sulphur is converted into solid sulphur pellets (prills), 'manufacturing' occurs as that term is defined by Section 2-45 of the Retailers'

Occupation Tax Act and Section 130.330 of the Department's regulations. (35 ILCS 120/2-45 and 86 Ill. Adm. Code 130.330.)

2. The machinery and equipment used in converting molten sulphur into solid prills is manufacturing machinery and equipment and is exempt from Illinois Retailers' Occupation Tax and any corresponding Use Tax pursuant to Section 2-45 of the ROT. (35 ILCS 120/2-45)
3. When the exempt machinery and equipment is acquired by purchase, MPC is earned pursuant to Section 3-85 of the UT (35 ILCS 105/3-85) and, the MPC may be utilized by COMPANY and BUSINESS to offset Illinois sales and use tax otherwise due on purchases of production-related tangible personal property.

STATEMENT OF AUTHORITIES

Manufacturing Machinery and Equipment

Under the ROT and UT, machinery and equipment used by a purchaser primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease is exempt from the ROT and UT, whether the sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person. (35 ILCS 120/2-10(14); 35 ILCS 105/3-5(1))

The manufacturing machinery and equipment exemption applies to machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. (86 Ill. Adm. Code 130.330) The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant. (See 86 Ill. Admin. Code Section 130.330(b)(2)) A certificate of exemption must be presented to the seller for each transaction where exempt machinery or equipment is purchased. (86 Ill. Adm. Code 130.330(g)) When a taxpayer engaged in manufacturing or assembling tangible personal property for wholesale or retail sale or lease is manufacturing or assembling materials owned by some other person, the manufacturer or assembler should obtain a certificate from the owner of the materials that certifies that the manufactured or assembled tangible personal property will be sold or leased, and not used or consumed, by the owner. (ST 09-0112-GIL)

Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. Repair and replacement parts for exempt machinery or equipment are exempt when purchased by the owner of the exempt machinery and equipment, as long as the parts are incorporated into the exempt machinery and equipment. (86 Ill. Adm. Code 130.330(c)(2))

The manufacturing machinery and equipment exemption does not apply to machinery or equipment used primarily in pre-production activities. Machinery or equipment used primarily to store, convey, handle, or transport materials or parts or sub-assemblies

prior to their entrance into the production cycle do not qualify for the manufacturing machinery and equipment exemption. (86 Ill. Adm. Code 130.330(d)(4)(c))

Manufacturer's Purchase Credit

Purchasers of manufacturing machinery and equipment that qualifies for the manufacturing machinery and equipment exemption earn a credit in an amount equal to a fixed percentage of the tax which would have been incurred under the Use Tax or Service Use Tax. (35 ILCS 105/3-85; 35 ILCS 110/3-70)

The credit may be used to satisfy Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. The amount of manufacturer's purchase credit that can be applied to a purchase of production related tangible personal property is limited to the State rate of tax incurred on that property (6.25%). (86 Ill. Adm. Code 130.331(b)(2))

'Production related tangible personal property' includes all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act takes place, and all tangible personal property used or consumed by a manufacturer or graphic arts producer in research and development regardless of use within or without a manufacturing or graphic arts production facility. (See 35 ILCS 105/3-85.) As explained in the Department's regulations, the following uses of tangible personal property will be considered production related:

Tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process; or tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process pursuant to a written contract described in subsection (b)(2)(A) of this Section.

86 Ill. Adm. Code 130.331(b)(4)(A)

ANALYSIS

As described above, COMPANY takes sulphur received from its customers in molten form and processes the molten sulphur into solid pellets. As explained above, the pelletized sulphur is then sold by COMPANY's customers and is used as an ingredient in other products, and consistent with the Department requirements, COMPANY will obtain certification from the owner of the materials that the prills will be sold or leased and not consumed by the owner. This processing activity constitutes manufacturing as the term has been defined by Department rules and, in particular, Section 130.330(b)(2) of the Department's rules. Attachment A is a photograph of another priller operated by Taxpayer in STATE. The CITY, Illinois site will look similar to the STATE site, with the addition of a weather enclosure to be constructed around the priller. (Attachments B, C and D are drawings of the new CITY facility.)

As explained above in the statement of facts, COMPANY will oversee the construction of the facility and is arranging for the construction of the priller facility, including incorporating the priller into the real estate, and the purchase of the production related tangible personal property to be incorporated into the real estate. As provided by Section 130.331(b)(2)(A) of the Department's regulations, BUSINESS and COMPANY

will enter into a written contract to authorize COMPANY to utilize the Manufacturers' [sic] Purchase Credit accumulated by BUSINESS for the purchase of tangible personal property to be installed into the real estate within the facility for use in production related processes.

The taxpayers are unable to locate any authority contrary to the views set forth above. In the event that the Department wishes additional information, please contact the undersigned at your convenience. In the event that the Department disagrees with the analysis set forth above, anticipates an adverse ruling or anticipates declining to issue a binding private letter ruling, Taxpayer respectfully requests a meeting to discuss this matter prior to the issuance of any final ruling by the Department.

In your letter of May 16, 2011, you have stated as follows:

This letter is in response to our recent telephone conversation in which you requested certain additional information to supplement the private letter ruling request we filed on behalf of COMPANY and BUSINESS on January 19, 2011.

You requested confirmation that the purchase of the items of machinery and equipment by BUSINESS that constitute the priller will be made in a transaction that would be subject to taxation under the Retailers' Occupation Tax and/or Use Tax absent the exemption afforded from those taxes for 'manufacturing machinery and equipment.' After speaking with my client, I have been informed that the items of machinery and equipment will be purchased by COMPANY rather than BUSINESS as was originally indicated in our private letter ruling request. In addition, my client advises that the items are being purchased from XYZ, a company unrelated to COMPANY and BUSINESS in a transaction that would be subject to sales and use tax, absent the Illinois exemption.

In our conversation, you also requested confirmation that BUSINESS will be the purchaser of the priller, as well as the production-related tangible personal property for which the Manufacturers' [sic] Purchase Credit ('MPC') will be utilized. I have confirmed with my client that COMPANY will be the purchaser of the priller and the production-related tangible personal property.

You asked for additional information as to what exactly will constitute the priller. Please see the enclosed photograph, which highlights the portion of the facility that contains the priller, along with diagrams that highlight the portion of the facility that contains the priller.

You also asked for additional information about the sulphur that is manufactured into prills. Specifically, you asked about how the sulphur is obtained and whether the sulphur remains in liquid form as it is transported to the priller facility. Sulphur is removed from crude oil during the refining process through the Frasch process. As the sulphur is produced it is maintained at a temperature between 250F and 280F which allows it to be liquid state. Sulphur is then stored at the refinery and then transported to gathering facilities by truck, rail, barge or ship and then transported to sulphur consumers. The Midwest Facility will be a specialized gathering terminal that will support the refineries in the CITY area. During this phase, all sulphur will be received into the terminal by truck and then stored in a heated tank. When sufficient sulphur is accumulated in the storage tank, the sulphur is then pumped to the prilling unit where the sulphur is cooled in a specialized process which produces a low moisture, low dust, highly transportable form known as prill which is the preferred form for sulphur on the

international market. As the solid sulphur prills are formed, they are transported by conveyor to an onsite stockpile area where they are temporarily stored. When sufficient sulphur prills have been stockpiled, the material will then be transloaded to barge or rail hopper cars and shipped to another terminal.

Please contact me at your convenience if you have any additional questions or would like any additional information.

DEPARTMENT'S RULING:

The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The manufacturing process is the production of articles of tangible personal property or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant. See 86 Ill. Adm. Code 130.330(b)(2).

The State of Illinois provides a Manufacturer's Purchase Credit (MPC) in addition to the exemption for manufacturing machinery and equipment. See 86 Ill. Adm. Code 130.331. The MPC was recently extended by P.A. 96-0116, through August 30, 2014. A purchaser of manufacturing machinery and equipment that is exempt under the manufacturing machinery and equipment exemption also earns a credit in an amount equal to a fixed percentage of the tax which would have been incurred under the Use Tax or Service Use Tax. See 86 Ill. Adm. Code 130.331(a).

The credit may be used to satisfy Use Tax or Service Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. Please note that the amount of MPC that can be applied to a purchase of production related tangible personal property is limited to the State rate of tax incurred on that property (6.25%). See 86 Ill. Adm. Code 130.331(b). MPC cannot be used to satisfy any local taxes incurred on the purchase of production related tangible personal property.

"Production related tangible personal property" includes all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act takes place, and all tangible personal property used or consumed by a manufacturer or graphic arts producer in research and development regardless of use within or without a manufacturing or graphic arts production facility. See 35 ILCS 105/3-85. The Department's regulation for the credit provides examples of tangible personal property that will be considered production related: supplies and consumables used in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, cleaners, adhesives, and hand tools, protective apparel, and fire and safety equipment used or consumed in a manufacturing facility. See 86 Ill. Adm. Code 130.331(b)(4). This means that the credit may be applied to the State 6.25% tax due for purchases of these items. See 86 Ill. Adm. Code 130.331(b)(1).

Based upon the descriptions in your letters of how the molten sulfur is converted into solid sulphur pellets or "prills", the Department believes that such a process is considered manufacturing for purposes of the manufacturing machinery and equipment exemption. Therefore, the machinery and equipment (as those terms are defined in subsection (c) of Section 130.330) that are used by

COMPANY primarily for the purpose of creating the sulphur pellets would qualify for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.330.

In addition to the manufacturing machinery and equipment exemption, COMPANY will earn MPC based on the amount of tax that would have been incurred on the purchase of the machinery and equipment from XYZ that qualifies for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.331(a). The earning of the MPC is based on your assertion that the transaction with XYZ (as a retailer or serviceman) would have subjected COMPANY to Use Tax or Service Use Tax liability absent the manufacturing machinery and equipment exemption. The MPC that COMPANY earns may be used to satisfy the Use Tax or Service Use Tax liability it incurs on the purchase of qualifying production related tangible personal property. See 86 Ill. Adm. Code 130.331(b). Please note that for COMPANY to validly earn and use MPC, it will be subject to the proper reporting procedures set out in the Department's rules regarding MPC. See 86 Ill. Adm. Code 130.331(e).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC:msk