

Nursery stock is not considered equipment under the farm machinery and equipment exemption. *See* 86 Ill. Adm. Code 130.305 (This is a GIL.)

April 4, 2014

Dear Xxxx:

This letter is in response to your letter dated December 13, 2013, 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:

The ORGANIZATION is an Illinois non-profit corporation that works to facilitate the development of woody, perennial agriculture in the Midwestern U.S., especially tree crops such as fruit and nut trees. One significant issue that we have come across in our work is the lack of specificity in the state regulations regarding sales tax on nursery stock sold to farmers for agricultural production.

Regulations already exist that describe the exemption of farm machinery and equipment from sales and occupation tax as long as the farm machinery or equipment is explicitly used for agricultural production (*Title 86 Part 130 Section 130.305*). Our central question is: Does the definition of “equipment”, as used in *Title 86 Part 130 Section 130.305* encompass nursery stock (seedlings) of perennial plants such as fruit and nut trees, shrubs, and vines if these plants are to be explicitly and solely used for agricultural production on a farm?

To a farmer growing perennial plants, the purchase of young nursery stock is a significant capital investment, just as a tractor might be. Almost all other states in the Midwest specifically include perennial plants and other nursery stock under a similar “equipment” sales tax exemption for farmers. Similarly, the IRS allows farmers to treat fruit and nut trees as capital that can be depreciated over their lifetime.

All precedent seems to signify that nursery stock of perennial plants sold to farmers in Illinois for agricultural production should be exempt of sales tax at the time of purchase. However, *Title 86 Part 130 Section 130.305* does not explicitly state nursery stock of perennial plants as included under this exemption. Therefore, the ORGANIZATION requests a written ruling on whether sales of nursery stock of perennial plants to farmers for agricultural production are exempt from sales tax in Illinois. Furthermore, if

the sales are exempt from sales tax, what steps must a nursery or nursery dealer (reseller) take to ensure proper documentation of the tax-exempt sales?

**DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax (ROT) Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for the ROT liability incurred on those sales.

Under 86 Ill. Adm. Code 130.305 "Farm Machinery and Equipment", Illinois Retailers' Occupation 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. Nursery stock or seedlings are not considered farm machinery or equipment used in production agriculture. Please see 86 Ill. Adm. Code 130.305(k) for examples of items that qualify as "Equipment" under the regulation. Please see 86 Ill. Adm. Code 130.2110 for specific regulations concerning the sale of seeds.

However, if you are making sales of nursery stock for resale, these sales would not be taxable. See 86 Ill. Adm. Code 130.1405. When sales for resale are made, sellers must obtain a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale (Section 2c of the Act). In addition to the statement, a Certificate of Resale must contain:

- 1) the seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certificate of Resale to Out-of-State

purchaser:

- a) purchaser's registration number with the Illinois Department of Revenue; or
- b) purchaser's resale number issued by the Department of Revenue; or
- c) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

Please note that the Department assigns an automatic resale number to agricultural producers who will resell products like seeds and fertilizer but who are not registered with the Department as retailers. Please see 86 Ill. Adm. Code 130.1415(f)-(g).

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,

Cara Bishop  
Associate Counsel