

ST 15-0004-GIL 01/09/2015 MANUFACTURING MACHINERY & EQUIPMENT

This letter discusses the manufacturing machinery & equipment exemption. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

January 9, 2015

Dear Xxxx:

This letter is in response to your letter dated July 28, 2014, 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:

As counsel for and on behalf of COMPANY ("COMPANY"), we hereby formally request a Private Letter Ruling, pursuant to 2 Ill. Admin. Code §1200.110, from the Illinois Department of Revenue ("Department"), confirming that the sale of a chemical compound, which is applied as a dry film photo resist, is exempt from sales tax under the manufacturing and equipment exemption. COMPANY is not currently under audit by the Department regarding this issue. In addition, COMPANY is unaware of any authority contrary to its views expressed in this request. Furthermore, we ask that our client's name, address, and any contract or exhibits attached be kept confidential and deleted from the publicly disseminated version of the private letter ruling.

FACTS

COMPANY solicits sales of an aqueous processible dry film etch/plating resist used in the manufacture of printed circuit boards. The resist covers the copper surface in the production of circuit boards. The resist is applied to the surface of the raw circuit board, and then is polymerized in some areas to create the desired pattern on the copper surface. Next, the unpolymerized resist is removed, leaving a pattern on the copper surface exposed. The resist thus protects the covered portion of the copper and leaves the balance exposed for the process to create the desired pattern on the circuit board. The copper is processed (i.e. exposed to acid or caustic), and the exposed copper is

etched to create the circuitry. Without the resist, the acid operation would etch the entire copper surface and the manufacture of circuit boards would not be possible. Once the desired pattern is etched into the copper, the dry film is removed.

ILLINOIS LAW

Illinois law exempts the purchase and use of "machinery" and "equipment" used in manufacturing or assembling. 86 Ill. Admin. Code 130.330(c)(1). This exemption includes chemicals or chemicals acting as catalysts if those chemicals effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. The Department's regulations provide the following example to illustrate this "chemical exemption":

Example 1: A chemical acid is used to etch copper off the surface of a printed circuit board during the manufacturing process. The acid causes a direct and immediate change upon the product. The acid qualifies for the exemption.

86 Ill. Admin. Code 130.330(c)(6)(A). Example 1 thus expressly provides that the acid that is used in the same process as the dry film photo resist is exempt from Illinois sales and use tax under the manufacturing machinery and equipment exemption.

Illinois Department of Revenue General Information Letter ST 02-0186-GIL (8/26/2002) addresses almost identical facts as those presented by COMPANY. Specifically, the taxpayer in that general information letter ("GIL") requested guidance as to whether "'Dry Film Resist' as used in the printed circuit board industry" is exempt from tax. However, the Department declined to directly address the question, and indicated that the taxpayer should request a Private Letter Ruling.

In this case, the dry film and the acid are used as part of the same process to etch a desired pattern onto a copper plate in order to manufacture a circuit board. As Example 1 demonstrates, the acid is undoubtedly exempt from sales tax. Without the dry film resist, the acid would corrode the entire plate, and the production of a circuit board would not be possible. Thus, the film is necessary to effect any useful direct and immediate change on the copper in the circuit board manufacturing process.

On behalf of COMPANY, I contacted [NAME], TITLE at the Illinois Department of Revenue, for further guidance. [NAME] stated that he does not have authority to bind the Department, but acknowledged that this is a gray area ripe for a Private Letter Ruling.

REQUEST FOR RULING

Pursuant to 2 Ill. Admin. Code Section 1200.110, COMPANY respectfully requests that the Department of Revenue issue a private letter ruling declaring that COMPANY's sales of the dry film resist are exempt from Illinois sales tax under the manufacturing machinery and equipment exemption. COMPANY would also like to confirm that by concluding that the sale of the dry film resist is exempt from tax under the manufacturing machinery and equipment exemption, the Department agrees that COMPANY's customers are not subject to tax on the sale or use of the dry film resist so long as the resist is purchased for the purposes outlined above.

If you concur, please issue your favorable ruling to the undersigned. If you do not concur, please advise so that we may discuss your reasoning before an adverse ruling is issued. A Power of Attorney authorizing our representation of COMPANY is enclosed.

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). Your question relates to the application of the manufacturing machinery and equipment exemption, which can be found at 86 Ill. Adm. Code 130.330. The rule provides that Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. Because this exemption is use based, determinations regarding whether an item qualifies for the exemption depend on how the product is used.

The Department cannot issue letter rulings as to whether a supplier's sales of machinery and equipment are exempt because suppliers are not the users of such items. Therefore, the Department declines to issue a Private Letter Ruling in response to your request. However, if any of your client's customers have questions about the taxability of this product, they can submit a request to the Department for a Private Letter Ruling accompanied by a complete description of how they use the product.

I hope 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.

Very truly yours,

Cara Bishop

Associate Counsel

CB:ikm