

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for 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.

July 7, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated DATE, 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.

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 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:

On behalf of COMPANY, I respectfully request a Private Letter Ruling (PLR) regarding the exemption under 35 ILCS 120/2-5 (14) and 86 Ill. Adm. Code 130.330, for machinery and equipment used primarily in the manufacturing or assembly of tangible personal property for wholesale or retail sale or lease.

The following information is provided pursuant to 2 Ill. Adm. Code 1200.110(b):

- 1) A complete statement of the facts and other information pertinent to the request.

The taxpayer requesting this ruling is COMPANY, EIN: XX-XXXXXX, ADDRESS. There are no other interested parties with respect to this ruling.

A PLR is being requested to confirm that the machinery and equipment used in the taxpayer's manufacturing and assembly process is exempt from the Retailers' Occupation Tax (sales tax) under 35 ILCS 120/2-5 and 86 Ill. Adm. Code 130.330.

Taxpayer has started a new business venture and is in process of purchasing machinery and equipment necessary to manufacture and assemble its product for sale. The nature of the business is to manufacture and assemble simplified dose-organized packs of prescription medications and supplements for customers as tangible personal property to be sold. The Company will leverage the improved accuracy of automated pill packaging technology to reduce medication errors.

Medications are provided to customers in “adherence packs.” In its business, The Company purchases medicines (pills) in bulk form, assembles the medications with other medications and supplements into conjoined adherence packs manufactured by the Company. The adherence packs contain 14-day supplies of medications and supplements for the consumers. The manufacturing process involves cutting pills into reduced dosage in some instances, but the Company does not manufacture the uncut pills.

Adherence packs are manufactured from plastic purchased from a supplier in roll form without any divisions for packs. The medications are normally purchased in bottles. The adherence pack assembly is subject to various Food and Drug Administration (FDA) safety regulations pertaining to the handling and repacking of drugs.

The dose-organized packs are assembled into the manufactured adherence packs in the following steps:

The Company removes any stuffing from the bottles and empties the pills from the bottles in accordance with FDA safety standards. The pills are then placed into assembly equipment. The adherence pack manufacturing equipment heats the plastic, forms depressions in the plastic via a metal tool creating the perforated divisions, places the multiple different pills into the packs, and then seals the individual adherence packs, while maintaining a small perforated connection to keep them in the correct order for use. A scannable bar code identifying the patient, type of medication, dosage time, dosage and expiration date is printed on the plastic material. Each pack is inspected by an automated high-speed digital camera and supporting image recognition software, verifying the contents with regards to customer and contents. The adherence packs are then separated in the production line into single customer specific 14-day products. The process transforms the raw rolls of plastic material into 14-day rolls of adherence packs. As a first step in the process, some pills are cut by the assembly equipment to transform them into the correct dosage forms. Pharmacists and pharmacy personnel operate the machines through integrated computer workstations similar to CAM machines. The manufacturing and assembly occurs entirely within one facility located in Illinois.

The machinery is a key component to an integrated manufacturing process that requires several steps to allow for the production of adherence packs. The lack of any of these integrated manufacturing processes does not allow The Company to produce adherence packs. The product cannot be purchased without this process being applied to the raw materials. Applicable sales tax will be collected and remitted to the state on the end product that is sold to the consumer.

- 2) All contracts, licenses, agreements, instruments or other documents relevant to the request.

Attached is a vendor equipment list for machinery and equipment to be purchased and used in the manufacturing process and, is the subject of this request for a PLR as to the application of the exemption under 86 Ill [sic] Adm. Code 130.330. There are no other contracts, licenses, agreements, instruments or other documents relating to the subject matter of this PLR request.

- 3) An identification of the tax period at issue, and disclosure of whether an audit or litigation is pending with the Department.

The tax period involved, as it relates to quarterly sales tax returns that may be filed by the vendor, is the quarter ending DATE. There is no audit or litigation pending with the Department with respect to this matter.

- 4) A statement that to the best of the knowledge of the taxpayer that the Department has not previously ruled on the same or similar issue.

To the best of my knowledge, the Department has not previously ruled on the same or similar issue. A search of previously issued PLRs was conducted, and no previous ruling was discovered

- 5) A statement of authorities supporting the taxpayer's views, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.

35 ILCS 120-2-5 provides an exemption from the Retailers Occupation Tax for machinery and equipment that will be used primarily in the process of manufacturing or assembling of tangible personal property for wholesale or retail sale. 86 Ill. Adm. Code 130.330 a) provides: "General. Notwithstanding the fact that the sales may be at retail, the 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."

86 Ill. Adm. Code 130.330, d) 3) provides a list of examples and illustrations of activities that will generally be considered to constitute an exempt use.

86 Ill. Adm. Code 130.330 d) 3) A) provides the example: "The use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;"

This portion of the rule describes the function of the MODEL 1 machine. This item of equipment heats the plastic, forms depressions in the plastic via a metal tool creating the perforated divisions, places the multiple different pills into the packs, and then seals the plastic packs individually, while maintaining a small perforated connection to keep them in the correct order for use. A scannable bar code identifying the patient, type of medication, dosage time, dosage and expiration date is printed on the plastic material.

The process transforms the raw plastic material, purchased by a supplier in roll form without any divisions for packs, into 14-day rolls of adherence packs.

This section of the regulation also describes the function of the MODEL 2 machine which splits raw physical pills into the correct size and dosage in an automated fashion enacting a physical change upon the tangible personal property to be sold. The machine uses technology to both guide and measure each split to ensure accuracy.

86 Ill. Adm. Code 130.330, d), 3), E) provides: “The use of machinery or equipment to place the tangible personal property to be sold into the container, package, or wrapping in which this property is normally sold when the machinery or equipment is used as a part of an integrated manufacturing process;”

This portion of the rule describes the function of the MODEL 1 machine and it’s [sic] associated components MODEL 3, MODEL 4, and MODEL 5. This machine and its associated parts print individual adherence packs with the date, time and individual varying contents of each adherence pack. The machinery is a key component to an integrated manufacturing process that requires several steps to allow for the production of adherence pack. The lack of any of these integrated manufacturing processes does not allow The Company to produce the product.

86 Ill. Adm. Code 130.330 d), 3), C) states “The use of machinery or equipment to inspect, test or measure the tangible personal property to be sold where the function is an integral part of the production flow;”

This portion of the rule describes the function of MODEL 6 which uses high-speed cameras and image recognition software to inspect every adherence pack and test its contents against known parameters for each pill including but not limited to size, shape and color. This data is then measured against the intended contents to decrease errors by 3x the standard process. This subparagraph of the rule also describes the MODEL 7 machine. MODEL 7 uses an automated conveyor belt and barcode readers to recognize individual adherence packs and an individual string of 14-day packs, no matter the difference in the number of the packs, made for a specific customer. MODEL 7 then splits each customer’s string of packs separating it from the packs of the customer before and the customer after in the production string. The machine then rolls each of these strings, tapes them and dispenses them ready for further placement into a dispenser by a human before ready for sale.

86 Ill. Adm. Code 130.330, d), 3), B) states “The use of machinery or equipment to guide or measure a direct and immediate physical change upon the tangible personal property to be sold provided this function is an integral and essential part of tuning, verifying, or aligning the component parts of such property;”

This portion of the rule describes the function of MODEL 2 which splits raw physical pills into the correct size and dosage in an automated fashion enacting a physical change upon the tangible personal property to be sold. The machine uses technology to both guide and measure each split to ensure accuracy.

86 Ill. Adm. Code 130.330 d), 3), D) states “The use of machinery and equipment to convey, handle, or transport the tangible personal property to be sold within production stations on the production line or directly between the production stations or buildings within the same plant;”

This portion of the rule describes the function of MODEL 8 and MODEL 9. Both of these machines are used to convey, handle and transport tangible personal property in the form of rolls of packs between the production stations containing the MODEL 1, MODEL 6 and MODEL 7.

86 Ill. Adm. Code 130.330, c), 3) states “Equipment includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process: including computers used primarily in operating exempt machinery and equipment in a computer-assisted design, computer-assisted manufacturing (CAD/CAM) system...”

This portion of the rule describes the function of MODEL 10 and MODEL 11 which both are computer-assisted manufacturing systems to allow the user to control the other machinery or equipment that is used as part of the integrated manufacturing process of adherence packs.

- 6) A statement of authorities contrary to taxpayer’s views.

To the best of my knowledge, there are no authorities contrary to the taxpayer’s views.

- 7) An identification of any specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.

The taxpayer requests the following specific trade secret information be deleted from the PLR:

- Vendor quote for machinery and equipment
- 8) The signature of the taxpayer or the taxpayer’s representative.

Thank you for your attention to this matter. Please contact me at the address in this letter, or by phone at NUMBER with any questions in this regard.

DEPARTMENT’S RESPONSE:

The Retailers’ Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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.

Retailers' Occupation Tax, however, 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. 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 Section 130.330(b)(2).

Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process, including machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. See Section 130.330(c)(2).

Based on your descriptions of the equipment and associated components, and your representations with respect to how the equipment is primarily used in the manufacturing and assembly process, the Department is of the opinion that the equipment you identified in your letter qualifies for the manufacturing machinery and equipment exemption pursuant to the Department's regulation found at 86 Ill. Adm. Code 130.330.

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 further 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,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

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