

This letter discusses the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.330.

June 19, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated March 6, 2015, 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:

COMPANY is a leader in the distribution of high quality electrical, communications and data networking products. Through our network of more than 250 North American distribution facilities including locations in Illinois, we stock and sell products from thousands of manufacturers, helping our customers power, network and secure their facilities. We are registered as a retailer with the Illinois Department of Revenue for sales tax purposes. Accordingly, we do our best to comply with Illinois sales and use tax laws, regulations, and rules.

We are requesting a letter ruling on some questions about Manufacturing Machinery & Equipment exemptions.

Currently we have several different Manufacturing roles happening and need to clarify the Departments interpretation on required documentation to exempt the sale and provide as acceptable for future Audit purposes. We have reviewed the documentation in Title 86 Part 130 Section 130.330 as well as we have had verbal conversations with the Business tax line of the Illinois Department of Revenue and have received conflicting information.

What we are attempting to clarify/verify is if we can accept a general letter from our customer to address the tax status on their orders. In essence the customer doesn’t understand if they are exempt on their purchases why the requirement to complete a letter for each transaction/purchase.

1. A Construction Contractor doing work for Manufacturer where they are under contract to install a new piece of machinery, the Contractor is merely involved in the process of

getting the area equipped for the machine to operate so they install Electrical Conduit, Wiring, and light fixtures, these items are incorporated into real estate.

- a. Title 86 Part 130 Section 130.330 Manufacturing and Machinery and Equipment states, specifically under g) Exemption Certificates, 4) the purchasing contractor should provide the vendor with a certification that the machinery or equipment will be transferred to a manufacturer as manufacturing machinery or equipment in the performance of a construction contract for the manufacturer.

Business Tax Line Response: We could accept a letter from the Contractor stating they are under contract with XYZ Company to install XXX machine with Serial Number 123 (etc.), if we receive this we can utilize as a blanket for all purchases to fulfill the contract to install the particular machine.

Ruling Requested: **Is the response we received from the Business Tax Line acceptable to implement for future Contractor projects, that is a letter per job is acceptable?**

Example tax certificate #1 Attached

2. A Manufacturer purchasing items that are used as components to what they produce, so what they purchase from us is incorporated into their product and then resold.

Title 86 Part 130 Section 130.330 Manufacturing Machinery and Equipment states; 1) The user of such machinery or equipment and tools shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction....

Ruling Requested: **If this is the type of transactions that we repetitively do with this customer is there another way to document the exempt status as opposed to each transaction?**

3. A Manufacturer purchasing items that are used during routine maintenance of their production machines/facility

Title 86 Part 130 Section 130.330 Manufacturing Machinery and Equipment states; 1) The user of such machinery or equipment and tools shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction and submit the certificate to the retailer. Further states: If the user has an active registration or resale number, that number may be given in lieu of the prescribed certificate.

Ruling Requested: **If this is the type of transactions that we repetitively do with this customer can we accept an ST-587 or other form completed with their registration or resale number to exempt all sales not just by transaction?**

Example tax certificate #3 Attached

If you wish to discuss this request, or if you require further information, please do not hesitate to contact me. Your assistance in resolving this issue would be appreciated.

DEPARTMENT'S RESPONSE:

The manufacturing machinery and equipment exemption is extended 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 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). However, the use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process are generally not considered manufacturing. See Section 130.330(d)(4)(H).

The requirements to certify eligibility for the exemption are described in subsection (g) of Section 130.330. A certificate of exemption must be presented to the seller for each transaction where exempt machinery or equipment is purchased stating the facts establishing the exemption for the transaction. See Section 130.330(g). A form "ST-587 - Equipment Exemption Certificate" or other certification containing the information required on that form must be submitted to the seller by the purchaser for each transaction on which the exemption is claimed. If a user has an active registration or resale number, that number may be given in lieu of the form ST-587.

A vendor who provides items to a manufacturer who will incorporate the items into machinery or equipment that will be sold at retail should obtain a Certificate of Resale prepared by the manufacturer. 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. Please note that the certificate must be signed by the individual making the purchase. The registration number on the certificate must also be that of the purchaser. 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. 35 ILCS 120/2c. 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

See 86 Ill. Adm. Code 130.1405.

In the case of a vendor who makes sales of qualifying machinery or equipment to a contractor who will incorporate it into real estate so that he, the contractor, would be the taxable user (see Sections 130.1940 and 130.2075 of this Part), the purchasing contractor should provide the vendor with a certification that the machinery or equipment will be transferred to a manufacturer as manufacturing machinery or equipment in the performance of a construction contract for the manufacturer. The purchasing contractor should include the manufacturer's name and registration number on the certification when claiming the exemption. Section 130.330(g)(4). A construction contractor purchasing qualifying machinery or equipment which he will incorporate into real estate must provide the seller a certificate of exemption for each transaction where exempt machinery or equipment is purchased stating the facts establishing the exemption for the transaction.

An item that is exempt from the Retailers' Occupation Tax as exempt manufacturing machinery and equipment as provided in 35 ILCS 120/2-5(14) and 86 Ill. Adm. Code 130.330, is also exempt from the Use Tax, as provided by the corollary exemption provisions in the Use Tax Act (35 ILCS 105/3-5(18). See 86 Ill. Adm. Code 150.301(b). Therefore, neither Retailers' Occupation Tax nor Use Tax is incurred on exempt manufacturing machinery and equipment.

In response to your first inquiry, if a vendor obtains a form ST-587 from a contractor that identifies with sufficient specificity the machinery and equipment subject to the construction contract between the construction contractor and the manufacturer, the contractor may make multiple purchases to fulfill the contract using the same form ST-587. One of the form ST-587s you provided identifies the type of equipment subject to the exemption as "electrical materials/supplies." This form does not provide a sufficient description of the machinery and equipment being purchased to determine whether the items qualify for the exemption. I would also note that supplies generally do qualify for the exemption. See 130.330(c)(3).

In response to your second inquiry, you may accept a resale certificate from a manufacturer purchasing items that will be incorporated into machinery and equipment that will later be sold by the manufacturer at retail. The resale certificate must contain a description of the items being purchased for resale.

In response to your third inquiry, you may accept a form ST-587. You may also accept an active registration number or resale number. Section 130.330(g)(1). The form ST-587 should identify with sufficient specificity the machinery and equipment the parts are being purchased for. If a vendor obtains a form ST-587 from a manufacturer that identifies with sufficient specificity the machinery and equipment being repaired, the manufacturer may make multiple purchases of repair parts for the machinery and equipment using the same form ST-587.

As a final note, the items you describe in your letter – tools, electrical conduit, wiring and light fixtures – do not necessarily qualify for the exemption. Section 130.330(c)(3) states that the exemption does not include hand tools. Section 130.330(d)(4)(H) states that equipment for general ventilation, heating, cooling, climate control or general illumination not required for the manufacturing process will not qualify for the exemption.

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.

Richard S. Wolters
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