

ST 16-0014-PLR 11/23/2016 MANUFACTURING

The preparation of food and beverages by restaurants, food service establishments, and other retailers is not manufacturing. 86 Ill. Adm. Code 130.330(b)(7). (This is a PLR.)

November 23, 2016

Dear Xxxxx:

This letter is in response to your letter dated August 25, 2016, in which you requested 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 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:

We are submitting this Private Letter Ruling Request pursuant to 2 Ill. Admin code 1200.110. We are submitting this request regarding a specific transaction with one of our vendors that refuses to accept an ST-587 Equipment Exemption certificate for purchase that qualifies for Exemption.

Statement of Facts:

Taxpayer Information:

1. This Private Letter Ruling (“PLR”) is not requested for hypothetical or alternative proposed transactions, but rather to determine the taxability for ROT/UT purposes of actual transactions engaged in by COMPANY as described below. This ruling is sought for all tax periods during which the related purchases will occur.

2. COMPANY is not currently under audit by or engaged in litigation with the Department with regard to this or any other tax matter.
3. The Department has not previously ruled regarding this matter for COMPANY.
4. COMPANY has not submitted the same or similar issue to the Department and withdrew it before the Department issued its ruling.
5. We are aware of no authority contrary to the authorities referred to and cited below.
6. COMPANY requests certain information be deleted from the PLR prior to dissemination to others. COMPANY requests that their respective names, addresses, locations of the facility and the name of its representative be deleted.

Material Facts Relating to Transaction:

COMPANY is a retail supermarket company, with our corporate office in STATE. We operate 12 locations in the State of Illinois under the name of COMPANY 1 and COMPANY 2. COMPANY purchased a PRODUCT and accompanying accessories for the Deli in our CITY location from COMPANY 3, ADDRESS., CITY 1, IL ZIPCODE. I am attaching invoice ##### dated 12/2/XX that was paid on 02/28/XX. We were charged sales tax on the purchase. Upon audit we determined that the PRODUCT equipment would qualify for an exemption as it is used in the production of food for resale. I have requested a credit from the vendor, but they are denying the exemption because the end product is a cooked item. We do not have dining facilities in this location and sell the chickens after cooked to our retail customers. This PRODUCT is used 100% of the time to take fresh chicken and slow cook to rotisserie style. It roasts up to 60 chickens at a time. The PRODUCT 1 is part of the oven's cooking system, the baskets are to hold the chicken inside the oven while it cooks. The oven also has a built in cleaning system to maintain the standards of cleanliness for equipment used to prepare food. The grease disposal bags and the PRODUCT cleaner are an integrated component and the system will not operate if these parts are not in place.

Other Equipment for our bakery was purchased on the same invoice, and COMPANY 3 has agreed to issue credit for the tax charged on those items. The same invoice has a dishwashing unit that we all agree is a taxable purchase. The Purchase amount of the PRODUCT component is \$\$\$\$ and tax was paid in the amount \$\$\$\$\$. See page 9 of invoice #####.

Ruling Requested:

COMPANY respectfully requests that the Department issue a Private Letter Ruling that:

1. The PRODUCT and equipment defined above qualifies for exemption from the Retailers [sic] Occupation and Use Tax.
2. The PRODUCT Cleaner and Grease disposal bags qualify for exemption as an independent device or tool separate from machinery but essential to an integrated manufacturing or assembly process. Also, based on the requirements of the industry – (the need to prevent contamination of the food product). This a periodic maintenance item that is used on the same equipment in other locations we operate.

Statement of Law:

The Illinois Retailers' Occupation Tax ("ROT") and Use Tax ("UT") (collectively, "ROT/UT") impose a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2; 35 ILCS 105/1a. The ROT/UT provides, however, that the sales or use of certain tangible personal property may be exempt if that property is manufacturing or assembling machinery and equipment used primarily in the process of manufacturing or assembling process ("MM&E exemption"). 35 ILCS 120/2-5(14); 35 ILCS 105/3-5(18); 86 Ill. Adm. Code 130.330; 86 Ill. Adm. Code 150.910 ("In general, the provisions of [86 Ill. Adm. Code 130] shall apply to returns under the Use Tax Act.").

For purposes of the MM&E exemption, "machinery" means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. 35 ILCS 120/2-45(3); 35 ILCS 105/3-50(3); 86 Ill. Adm. Code 130.330(c)(2). "Equipment" includes an independent device or tool separate from machinery but essential to an integrated manufacturing or assembly process. 35 ILCS 120/2-45(4); 35 ILCS 105/3-50(4); 86 Ill. Adm. Code 130.330(c)(3).

The MM&E 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(d). 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. 35 ILCS 120/2-45(1); 35 ILCS 105/3-50(1); 86 Ill. Adm. Code 130.330 (b)(2).

The production or processing of food is generally considered to constitute an exempt use for purposes of the MM&E exemption. 86 Ill. Adm. Code 130.330(d)(3)(F).

In *Illinois Private Letter Ruling No. ST 88-0136*, the Department established its position that equipment used in food processing qualifies for the MM&E exemption.

In *Illinois Private Letter Ruling No. ST 09-0003*, the Department established its position that Quality control functions in food processing creates a special situation for the MM&E exemption.

In *Illinois General Information Letter No. ST-99-0139*, the Department extended the regulation in cases due to the requirements of the industry (the need to prevent contamination of the product) for the MM&E exemption.

Taxpayers Position:

It is the position of COMPANY that each component used in the PRODUCT unit will be treated as exempt from Illinois Retailer's [sic] Occupation Tax because each of the items is a required component to operate this machine. The equipment is automated to create and maintain appropriate conditions, including sanitation and contamination prevention of the food. We do not have dining facilities in this location and sell the chickens after processed to our retail customers.

Signature:

Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and do to the best of my knowledge and belief the facts presented in support of the requested ruling are true, correct and complete.

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 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). The preparation of food and beverages by restaurants, food service establishments, and other retailers is not manufacturing. See Section 130.330(b)(7).

The PRODUCT, the PRODUCT Cleaner and Grease disposal bags and the equipment described in your letter are used in the preparation of food by retailers for retail sale and do not qualify for manufacturing machinery and equipment exemption.

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

RSW:bkl