

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. (This is a PLR.)

August 16, 2017

RE: COMPANY requests a private letter ruling

Dear Xxxxx:

This letter is in response to your letter dated March 3, 2017 and email dated June 1, 2017 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:

FACTS

COMPANY (not to be published) owns pipeline and tank assets (LOCATION), with sole revenue being tariffs from third parties for using COMPANY's assets to move and store refined petroleum products.

There are no current or pending sales tax audits or issues involving COMPANY.

The Department has not ruled on the same or similar issue for COMPANY, nor has COMPANY previously submitted the same or similar request but withdrawn it before a letter ruling was issued.

COMPANY has contracted with a COMPANY 1 (not to be published) (Contractor) to design and construct a butane blending system for the purpose of blending butane and

gasoline to increase the butane content of the gasoline in order to create a final product meeting state and federal volatility requirements for motor fuel.

Once complete, the blending system will be owned by COMPANY. The system will be located adjacent to and just prior to the truck loading rack. Butane and gasoline (each owned by third parties) will be drawn from storage tanks and pumped to the blending system to create the final product just prior to going through the truck rack and being loaded in tanker trucks. Title to the gasoline and butane never passes to COMPANY.

The resulting blended product is not for use by the owners, but rather resold to wholesalers and retailers.

Please find attached presentation describing the process and the location, pictures and function of the equipment. (Confidential and not to be published)

RULING REQUESTED

Does the blending system equipment qualify for the manufacturing machinery and equipment exemption for sales tax?

Can COMPANY submit a machinery and equipment exemption to Contractor in order for Contractor to provide their vendors and purchase the system equipment sales tax exempt?

In your email you stated:

Butane Blending Process Narrative

Gasoline is typically delivered from refineries to tank farms via distribution systems consisting primarily of pipelines. Gasoline is stored at these tank farms in large atmospheric storage tanks capable of holding tens of thousands of barrels of product. Gasoline is then dispensed from the storage tank to tanker trucks, which then deliver the gasoline to local retail gasoline stations to be sold to the consumer.

An important physical property of gasoline is its volatility, or its ability to combust. There are three methods for assessing the volatility of gasoline 1) measuring vapor pressure, 2) measuring vapor liquid ratio, and 3) measuring the distillation profile. Volatility indicates the combustibility of gasoline, and its impact on the ease with which an automobile engine is started, especially during the colder seasons when the cooler ambient temperature can depress volatility. Butane is commonly added as a volatility modifying agent during the colder months because of its high volatility and because it is less expensive than gasoline.

Butane is first introduced at the refinery during the gasoline blending process. Refineries add butane in response to seasonal volatility demands and costs. This method is imprecise, however, because the gasoline produced serves multiple regions and cannot exceed the volatility limits of any one region or pipeline system. Thus the gasoline received at the tank farm does not typically meet the volatility limit of the region

it will be distributed. This creates an opportunity to add butane to gasoline at the tank farm to create a final product that meets regional volatility requirements. By using the butane blending equipment, volatility can be precisely measured and butane can be automatically added to the gasoline stream as it is loading into tanker trucks to create a final blended product that meets regional moto [sic] fuel requirements.

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).

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, machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. See Section 130.330(c)(5). Generally, items such as the framing for a building and its walls, ceilings, floors, and doors would not qualify for the exemption.

The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling. See Section 130.330(d)(2). In addition, machinery or equipment that is used for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process would not qualify for the manufacturing machinery and equipment exemption. See Section 130.330(d)(4)(H). Generally, items such as sprinkler systems and employee facilities such as lunchrooms, restrooms, and locker rooms would not qualify for the exemption. Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. See Section 130.330(c)(5).

The following activities will generally be considered to constitute an exempt use:

- A) The use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;

- B) 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;
- C) 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;
- D) 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;
- E) 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. See Section 130.330(d)(3).

The manufacturing machinery and equipment exemption does not apply to the use of machinery or equipment to store, convey, handle or transport finished articles at the end of the production cycle. This would also apply to equipment which stores, handles, conveys or transports materials prior to their entrance into the production cycle. See Section 130.330(d)(4)(C) and (D).

Butane Offload Station

It is the Department's understanding that the butane offload station handles, conveys or transports materials prior to their entrance into the production cycle. It is the Department's decision based on Section 130.330(d)(4)(C) that the equipment located at the butane offload station does not qualify for the manufacturing machinery and equipment exemption.

Butane Storage Vessels

It is the Department understanding that the butane storage vessels are used to handle or store butane prior to their entrance into the production cycle. It is the Department's decision based on Section 130.330(d)(4)(C) that the two 60,000 gallon bullet tanks and related accessories, connections, instruments and valves used to store butane prior to injection into the gasoline stream do not qualify for the manufacturing machinery and equipment exemption.

Gasoline Sample Point

It is the Department's decision based on Section 130.330(d)(3) that the sampling equipment, pumps and related tubing used to take samples of gasoline in the gasoline stream qualify for the manufacturing machinery and equipment exemption.

Analyzer

It is the Department's decision based on Section 130.330(d)(3)(C) that the inline analyzer and related enclosure, compressor, piping, separator, valves, tubing and fittings used to test gasoline in the gasoline stream for volatility qualify for the manufacturing machinery and equipment exemption.

Sample Recovery Tank

It is the Department's decision based on Section 130.330(d)(3)(D) that the sample recovery tank used to handle the tested gasoline prior to reinserting the tested gasoline back into the gasoline stream qualifies for the manufacturing machinery and equipment exemption.

Programmable Logic Controller

It is the Department's decision based on Section 130.330(c)(3) that the programmable logic controller that automatically calculates the amount of butane that can be added to the gasoline stream based on the selected volatility limits qualifies for the manufacturing machinery and equipment exemption. The Department does not have sufficient information to determine if the office server, printer, modem, drivers and software and programming qualify for the manufacturing machinery and equipment exemption. The office server, printer, modem, drivers and software and programming must be used primarily, over 50% of the time, in the process of manufacturing to qualify for the exemption.

Supply Pump

It is the Department's decision based on Section 130.330(d)(3)(D) that the supply pump and related valves, piping, panel, detector and strainer used to control the injection rate of butane into the gasoline stream qualify for the manufacturing machinery and equipment exemption.

Butane Injection Skid

It is the Department's decision based on Section 130.330(d)(3)(D) that the butane auto-sampler, compressor, detector, meters, valves strainers and transmitters used to enable the injection of butane into the gasoline stream qualify for the manufacturing machinery and equipment exemption.

Buildings, Foundations and Grading

The costs for buildings to house any of the equipment, for foundation work, foundations, grading and stone aprons do not qualify for the manufacturing machinery and equipment exemption.

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

ST 17-0007-PLR

Page 6

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