

The Retailers' Occupation Tax Act does not apply to sales of coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment. The exemption also applies to individual replacement parts for such equipment. See 86 Ill. Adm. Code 130.350. (This is a GIL.)

April 3, 2018

Re: Request for Determination of Applicability of Retailers Occupation Tax (Sales Tax) to sales of gypsum, by CITY, OFFICE OF UTILITIES, to COMPANY and/or applicability of exemption claim from such taxation under Title 86, Chapter 1, Part 130, Subpart C, Section 130.350

Dear Xxxxx:

This letter is in response to your letter dated December 14, 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.

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:

To whom it concerns:

1. Request for Determination: The CITY, OFFICE OF UTILITIES, requests an interpretation of Title 86, Chapter 1, Part 130, Subpart C, Section 130.350 c)1) and d)1) or other relevant sections etc. regarding the retail sales of gypsum by OFFICE OF UTILITES to COMPANY.
2. Type of Items Purchased: COMPANY (a STATE Corporation, doing business at ADDRESS, purchases from the CITY, OFFICE OF UTILITIES, a loose granular course powder like form of synthetic gypsum. The gypsum purchased is a by-product of the scrubber process in the generation of electricity by OFFICE OF UTILITIES.
3. Exemption and Use of Purchased Material: COMPANY has forwarded Illinois Department of Revenue form ST-587 Equipment Exemption Certificate to OFFICE OF UTILITIES, indicating COMPANY considers these purchases of gypsum as equipment which is exempt from sales tax. COMPANY uses the gypsum material to

form a coating for a lining in its coal wash debris ponds. Enclosed is a copy of the form ST-587 submitted by COMPANY for your review. In addition, COMPANY does not claim that it resells the gypsum purchased from OFFICE OF UTILITIES.

In contrast to the above, OFFICE OF UTILITIES believes these sales of gypsum are fully taxable for sales tax purposes and that the usage by COMPANY do not meet the test for the coal and aggregate exemption.

Please provide a written response/determination at your earliest convenience.

In the event that additional information is required I may be contacted.

DEPARTMENT'S RESPONSE:

Generally, Form ST-587, entitled "Equipment Exemption Certificate" is given to a retailer by a purchaser when the purchaser is purchasing equipment that will be used primarily (1) in graphic arts production; (2) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease; (3) in production agriculture; or (4) for coal and aggregate exploration and related mining, off-highway hauling, processing, maintenance, and reclamation, but excluding motor vehicles required to be registered under the Illinois Vehicle Code.

The Department's regulation that explains the exemption from Retailers' Occupation Tax afforded coal mining, exploration, off highway hauling, processing, maintenance and reclamation equipment can be found at 86 Ill. Adm. Code 130.350. In order for items to qualify for this exemption, they must be either machinery or equipment used primarily in coal exploration, mining, off highway hauling, processing, maintenance and reclamation. The regulation specifically excludes supplies from the exemption. Based on the limited amount of information in your letter, it appears that the gypsum is neither machinery nor equipment but, rather, appears to be a consumable supply which does not qualify for the coal exemption.

Retailers should not accept the ST-587 in place of tax on items that do not qualify for the exemption. Whether or not a retailer chooses to accept an exemption certificate is the retailer's decision. A retailer may refuse to accept the certificate and charge the purchaser tax.

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,

Debra M. Boggess
Associate Counsel