

The Manufacturing Machinery and Equipment exemption (“MM&E”), beginning July 1, 2019, includes production related tangible personal property. Consumables used in a manufacturing process in a manufacturing facility are considered production related tangible personal property. Oxygen is often used as a consumable supply in a production-related manufacturing process. If this is the case, it would qualify for the expanded manufacturing and assembling machinery and equipment exemption. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

December 9, 2019

Dear XXX:

This letter is in response to your letter dated October 23, 2019, 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:

RE: Illinois Public Act (P.A.) 101-0009-IL Manufacturer’s Sales Tax Exemption

To Whom It May Concern:

We are a production brewery located in CITY and are currently reviewing the Illinois Department of Revenue Bulletin from June 2019 regarding expanded exemptions for production related tangible personal property within the Manufacturing Machinery and Equipment Exemption.

One of the items we are unsure whether or not applies for sales tax exemption is oxygen, which we use in the brewing process. The third

bullet point within the bulletin mentions “consumables primarily used in a manufacturing process in a manufacturing facility”, which we would interpret as including something like oxygen. However, the rest of the bulletin specifies “tangible” personal property, and oxygen is technically not “tangible”.

Can you please provide some guidance on how we should treat the purchase of oxygen as it relates to sales tax exemption?

Thank you for your time and consideration.

DEPARTMENT’S RESPONSE:

Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property. Production related tangible personal property means all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process takes place or by a graphic arts producer in graphic arts production. Production related tangible personal property also means all tangible personal property that is used or consumed in research and development regardless of use within or without a manufacturing or graphic arts production facility. 86 Ill. Adm. Code 130.330(h).

The Department recently filed emergency regulations that incorporate production related tangible personal property into the manufacturing and assembling machinery and equipment exemption which can be found on the Department’s website and became effective upon filing. The Department included examples of items that the Department considered to be production related. For example, the Department provided that the following tangible personal property would be considered production related: (1) tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process; or tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process; (2) supplies and consumables used in a manufacturing process in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, and adhesives; (3) hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility; and (4) tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging, and packing for shipping or transportation.

We cannot determine from the limited information you have provided how the oxygen is used in the manufacturing process. It is often used as a consumable supply

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in a production-related manufacturing process. If this is the case, it would qualify for the expanded manufacturing and assembling machinery and equipment 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.

Very truly yours,

Debra M. Boggess
Associate Counsel

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