

This letter discusses the manufacturing machinery and equipment exemption and production related tangible personal property. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

October 14, 2020

Dear Xxxx:

This letter is in response to your letter received February 6, 2020, 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:

NAME with the Illinois Department of Revenue directed me to contact the legal division regarding a question related to sales tax.

I have a client that is an electrical contractor in the state of Illinois. A vendor that they purchase supplies from has told them that, according to the June 2019 IDOR Bulletin (2019-28), they do not have to pay sales tax on small tools that are being purchased for a project that has the Machinery & Equipment Exemption for a manufacturing facility. To be clear, the small tools that are being purchased are not being installed in the facility, but are instead being used by the contractor for installation on the project. Please provide clarification as to whether or not this is the correct interpretation of the June 2019 bulletin.

If you should need to reach out to me, please contact me at NUMBER or EMAIL. If you would prefer to respond in a letter format, please address the letter to my attention and send to COMPANY, ADDRESS.

DEPARTMENT’S RESPONSE:

Machinery and equipment that is used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers’ Occupation Tax. See 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 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. The Department recently updated its regulations to reflect recent changes to the exemption. 44 Ill. Reg. 5392.

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 included examples of items that are 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.

In the case of a vendor who makes sales of qualifying machinery and equipment to a contractor who will incorporate it into real estate so that the contractor, itself, would be the taxable user (see Sections 130.1940 and 130.2075), the purchasing contractor should provide the vendor with a certification that the machinery and equipment will be transferred to a manufacturer as manufacturing machinery and 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. 86 Ill. Adm. Code 330(j)(4).

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. Contractors only receive an exemption for production related tangible personal property purchased for incorporation into real estate within a manufacturing facility for use in a production related process. Hand tools qualify as production related tangible personal property only if they are used or consumed by a manufacturer within a manufacturing facility. The rule does not allow contractors to buy tools tax free simply because the contractor provides services to a manufacturer at a manufacturing facility.

We urge you to review this regulation to determine its applicability to the items you sell or install for your customers.

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

DMB:bkl