

This letter discusses the enterprise zone building materials exemption. 35 ILCS 120/5k; 86 Ill. Adm. Code 130.1951. (This is a GIL.)

February 16, 2024

NAME  
ENTITY  
ADDRESS

Dear NAME:

This letter is in response to your email dated February 5, 2024, 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](http://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 emails you have stated and made inquiry as follows:

February 5, 2024 Hello Legal

Team,

I trust this email finds you well. I am reaching out regarding the tax-exempt certificates for the properties located at ADDRESS2 and ADDRESS3.

In my conversation with NAME2, the revenue tax specialist, he suggested reaching out to you for a letter of ruling concerning the gates that are affixed to the real property and are not detachable. They are securely poured into the ground with concrete and set as posts.

I kindly request your assistance in providing the letter of ruling for the mentioned properties to ensure our exemption from taxes.

Your prompt attention to this matter is highly appreciated.

January 31, 2024 Hello,

I trust this email finds you well.

ENTITY

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February 16, 2024

I am reaching out regarding the tax-exempt certificates for the properties located at ADDRESS2 and ADDRESS3.

For these properties, it is essential to note that the gates are anticipated to remain in place for a duration of 2 years. This serves a dual purpose—compliance with city code requirements and securing the lots, particularly during the construction phase of the property. Once construction progresses to include the completion of the roof, windows, all concrete sidewalks, and the garage, the plan is to replace the current fencing with new iron fencing.

Could you kindly confirm whether these properties fall within the eligibility criteria of the state's program? This information is crucial for NAME3 to proceed with the process of securing the tax-exempt certificates.

Please go through the previous email in case you require more information. Your prompt response on this matter is greatly appreciated.

#### **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. 35 ILCS 120/2; 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Each retailer who makes a qualified sale of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction, may deduct receipts from such sales when calculating the tax imposed by the Retailers' Occupation Tax Act. 35 ILCS 120/5k(a).

A "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which an Enterprise Zone Building Materials Exemption Certificate has been issued to the purchaser by the Department. A construction contractor or other entity shall not make tax-free purchases unless it has an active Enterprise Zone Building Materials Exemption Certificate issued by the Department at the time of the purchase. 35 ILCS 120/5k(a); 86 Ill. Adm. Code 130.1951(c)(1).

The Department's regulation at 86 Ill. Adm. Code 130.1951(e) provides examples of qualifying building materials. The enterprise zone exemption includes component parts of building materials that are permanently affixed to realty. While the examples in the Department's regulation reflect more conventional buildings, the fundamental concept of the building materials exemption is that, to qualify, provided that the other requirements of the regulation are met, the materials at issue must also be physically incorporated into real estate.

The Department has invoked the intention test in the context of letter rulings concerning construction contractors. ST 08-0003-PLR (April 1, 2008) identifies a number of letters invoking the test. General Information Letter ST 00-0156 sets forth the intention test as follows:

In determining whether an item is permanently affixed to real estate, a very fact-specific inquiry must be made regarding whether the item is intended to remain with the realty. In order to make a finding that the item is permanently affixed, at least three factors must generally be examined. First, the item must be affixed to the realty. The item must also be applied to the use or purpose to which the realty is put. Finally, the intent of the person affixing the item must be examined. Another factor often examined is whether the item is essential to the use to which the real estate has been put.

Generally, the determination of whether an item qualifies for the exemption must be made on an item-by-item basis. ST 08-0003-PLR (April 1, 2008). The Department has held in ST-00-0034-PLR that “[g]enerally, items that become permanently incorporated into realty when conducting sitework development qualify as building materials. Items, such as asphalt and fencing materials that become permanently installed improvements to realty when conducting roadway paving and site security fencing qualify as building materials.” It appears that the items at issue in your request may qualify if they are permanently affixed to the real estate. However, the Department cannot make a binding ruling in a General Information Letter.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Katarzyna Kowalska  
Associate Counsel

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