

This letter concerns the community water supply exemption. See 35 ILCS 105/3-5(34) and 35 ILCS 120/2-5(39). (This is a GIL.)

October 18, 2013

Dear Xxxxx:

This letter is in response to your letter dated October 11, 2013, in which you request 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:

I represent a rural water cooperative formed as an Illinois Not for Profit Corporation in 2007 for the purpose of designing and constructing a community water supply, as defined in 86 Ill. Adm. Code Sec. 130.1934(b). The cooperative has been recognized by the Internal Revenue Service as a tax exempt entity pursuant to Internal Revenue Code Section 501(c)(12). The purpose of this letter is to request a formal ruling concerning the definition of the phrase “hold a valid water supply permit issued under Title IV of the Environmental Protection Act” (See Section 130.1934(a)).

Statute/Regulation

35 ILCS 120/2-5(39) provides that the following is exempt from the Illinois sales and use tax:

Beginning January 1, 2008, tangible personal property used in the construction or maintenance of a community water supply, as defined under Section 3.145 of the Environmental Protection Act, that is operated by a not-for-profit corporation that holds a valid water supply permit issued under Title IV of the Environmental Protection Act. This paragraph is exempt from the provisions of Section 2-70.

Background

After several years of planning, gathering easements to install water mains, and signing customers, the cooperative was able to bid the project and closed on construction grants and loans through the U.S. Department of Agriculture Rural Development Office and the U.S. Environmental Protection Agency (\$500,000 STAG Grant secured by Congressman John Shimkus). The project is budgeted at \$4.4 million. A notice to proceed was issued to the contactors on October 7, 2013 to install water mains and construct a water tower and booster pump station. The water supply is being purchased from a village organized under the Illinois Municipal code at a wholesale rate pursuant to a Water Purchase Agreement entered into between cooperative and the Village.

This is the first construction project for this cooperative and is designed to supply potable drinking water to 203 rural customers who currently do not have an adequate supply of water for household purposes. The Illinois Environmental Protection Agency has issued a construction permit, attached with redactions, but has not issued a water supply permit as water, obviously, is not available to customers when the system has yet to be built.

Based upon our work with several other similar rural water cooperatives since the aforementioned regulation was issued preliminarily in IDOR information Bulletin FY 2008-07 (December 2007), contactors have been able to utilize the IEPA construction permit to obtain the sales and use tax exemption afforded under the regulation and its enabling statute, 35 ILCS 120/2-5(39). This cooperative is the first to be informed that the IEPA construction permit is not sufficient.

At this time, the contractors are ready to proceed with purchasing materials and begin construction as the notice to proceed has been issued. Therefore, time is of the essence in obtaining a ruling from the Department.

Issue

Whether a new community water supply system in its first phase of construction qualifies for sales and use tax exemption pursuant to 35 ILCS 120/2-5(39) since a not-yet constructed system has only a construction permit issued under the Illinois Environmental Protection Act, and not a water supply permit issued under the same statute.

Position of the Cooperative

As a new not-for-profit corporation that is constructing its first water system to provide potable water to 203 households and farmsteads, the Cooperative would not be in a position to obtain a water supply permit as such permits are not available until the construction is complete, the necessary testing is complete, and the system is operational. The taxing burden on a new organization trying to

service rural residents would be extraordinary when supplies for construction will be well in excess of one million dollars. Such a burden would increase water rates and require the organization to seek additional loans from the USDA Rural Development program.

If the statutory exemption related to sales and use tax only exempts existing water systems and not new systems, this would create a chilling effect on the ability of new systems to become operational and provide water service to rural residents who have no other options available to obtain potable water.

Therefore, we ask that the Department of Revenue issue a ruling clarifying that a construction permit issued by the Illinois Environment Protection Agency satisfies the statutory requirements for a permit when the community water supply is constructing its first water distribution system.

If you need any additional information, please do not hesitate to contact me. Thank you for your prompt attention to this request.

DEPARTMENT'S RESPONSE:

Beginning January 1, 2008, sales of tangible personal property used in the construction or maintenance of a community water supply, as defined under 415 ILCS 5/3.145, that is operated by a not-for-profit corporation that holds a valid water supply permit under Title IV of the Environmental Protection Act are exempt from Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act and Retailers' Occupation Tax Act. 35 ICLS 105/3-5(34), 35 ILCS 110/3-5(26), 35 ILCS 115/3-5(27); 35 ILCS 120/2-5(39) and 86 Ill. Adm. Code 130.1934. To document the exemption, qualifying not-for-profit corporations purchasing tangible personal property to be used in the construction or maintenance of a community water supply should give their suppliers a certificate that certifies that 1) it is a not-for-profit corporation; 2) it operates a community water supply as defined under Section 3.145 of the Environmental Protection Act; 3) it holds a valid water supply permit issued to it under Title IV of the Environmental Protection Act; and 4) the tangible personal property being purchased will be used in the construction or maintenance of the community water supply operated by the not-for-profit corporation.

In order for the construction contractor to obtain the benefit of the exemption on purchases of tangible personal property purchased from suppliers on behalf of a not-for-profit corporation that qualifies for the exemption, the construction contractor should certify to the supplier that the tangible personal property being purchased will be used in the construction or maintenance of the community water supply operated by the not-for-profit corporation and provide the supplier with a copy of the certificate obtained from the not-for-profit corporation to document the exemption. The supplier should maintain these certifications in its books and records.

The copy of the Public Water Supply Construction Permit you provided was issued by the Illinois Environmental Protection Agency "for the construction and/or installation of the

public water supply improvements . . . in accordance with the provisions of the ‘Environmental Protection Act’, Title IV, Sections 14 through 17, and Title X, Sections 39 and 40 . . . “ A public water supply that possesses a Public Water Supply Construction Permit issued pursuant to Title IV holds a valid water supply permit under Title IV of the Environmental Protection Act for purposes of the community water supply 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,

Richard S Wolters
Associate Counsel

RSW:lkmm