

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of materials that will be incorporated, by remodeling, rehabilitation, or new construction, into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act. (See 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951(e).) (This is a PLR.)

September 13, 2021

Dear NAME:

This letter is in response to your letter dated August 26, 2021, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

To Illinois Department of Revenue Legal Services:

COMPANY respectfully requests a Private Letter Ruling pursuant to 2 Ill. Admin Code Section 1200.10, regarding the eligibility of certain capital equipment items for the Building Materials and Sales Tax Exemption. The expansion project materials in question are to be incorporated into the realty at the company's facility located in the COUNTY Enterprise Zone.

General Information:

The PLR request is not based on alternative plans of proposed transactions or a hypothetical situation but is based on COMPANY'S actual planned expansion at its current facility. The company is not currently under audit, and the issue that is the subject of this PLR Request is not currently being considered or examined by the Illinois Department of Revenue. The company is not currently involved in any litigation which the Department is party.

COMPANY requests that all identifying information included in this request concerning the location of its property; the company's permits, financing and communications with other governmental entities; and the detailed materials (Exhibit A) and facility diagram (exhibit B); be deleted by the Department from any publicly disseminated version of the PLR.

Statement of Facts:

COMPANY is planning a \$\$\$\$ expansion to its current facility located at ADDRESS. The company has acquired all the necessary permits to initiate project, including a building permit from the city of CITY. The Company is in the final stage of securing the financing to commence construction. The project will include an expansion to the current building, along with numerous capital equipment additions that will be incorporated permanently into the realty, will remain with the realty, and are essential to the use to which the real estate has been put, commercial laundry and linen leasing service.

A complete list of the capital equipment to be installed at the facility is as follows:

- A. TEA Wastewater Equipment
- B. Steam Boiler 250 HP
- C. Air Compressor (2)
- D. Upgrade to all LED lighting
- E. Futurail Rail Systems (soil sort and clean rail)
- F. P73-13 Tunnel Washer (with water extraction press)
- G. Dryer System (dryer loading shuttles (2), transfer drying tumbler (4), & unloading conveyors

H. High Speed Large Piece Ironer Line #2

Each of the above items have been set forth in further detail in Exhibit A and are critical to the Facility's purpose and land operations. Each item is intended to be permanently affixed to the real estate, and specifically placed for the exclusive, permanent, and physical incorporation into the facility for the purpose of providing a commercial laundry and linen leasing service.

Additionally, a diagram of the Facility is included in this request as Exhibit B.

COMPANY is currently negotiating agreements for the purchase of the items listed in Exhibit A and will delay purchase until after the Department has responded to this letter.

The Company has been collaborating with the Administrator for the COUNTY Enterprise Zone and hopes to apply for Exemption Certificates from the Department for the company and all contractors making purchases in connection with the aforementioned expansion project at the facility.

Ruling Requested:

COMPANY requests a ruling by the Department that the materials, including all listed components listed in paragraphs above, and as described in detail in Exhibit A, are building materials to be incorporated into real estate within the meaning of the exemption set forth in 35 ILCS 120/5k (the EZ Exemption).

The company notes and understands that for the EZ exemption to apply, these items must be purchased in a "qualified sale" by a purchaser who has been issued an Enterprise Zone Building Materials Exemption Certificate by the Department, as provided by 35 ILCS 120/5k(a) and (b), and whose exemption certificate is "active" at the time of the sale.

Thank you for your time and consideration. I look forward to hearing from you.

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. See 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. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

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. 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. 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."

The Department has reviewed each of the items identified in the request and more fully described in Exhibit A. Exhibit A states that each of the items will be permanently affixed to concrete foundations via anchor bolts, to walls, the roof, or the building's structural steel. Many of the items will have natural gas connections, compressed air connections, intake air ducts, exhaust air ducts, and 480-volt electrical connections. The Department has reviewed its regulations at 86 Ill. Adm. Code 130.1951, the factors contained in the intention test, and its prior letters issued within the last 10 years. Based on its review, it is the Department's determination that the items would qualify for the building materials exemption in Section 5k of the Retailers' Occupation Tax Act.

Item (D) is an upgrade to make all the lighting in the facility LED. Lighting fixtures permanently affixed to the building qualify for the exemption. If the actual LED bulbs are installed in the fixture at the time of purchase, the purchase of the fixtures qualifies for the exemption. However, LED bulbs purchased separately and subsequently installed in the fixtures do not qualify for the exemption.

To qualify for the exemption the property must be located within an enterprise zone and the purchaser must possess an Exemption Certificate at the time the building materials are purchased.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

RSW:rkn