ST-23-0003-PLR 06/02/2023 MANUFACTURING MACHINERY & EQUIPMENT

A cold storage process required to maintain a manufactured product at a specific temperature, can qualify for the exemption. See 86 Ill. Adm. Code 130.330. (This is a PLR.)

June 2, 2023

NAME1 and NAME2
ADDRESS1 and ADDRESS2

Dear NAME1 and NAME2:

This letter is in response to your letter dated September 2, 2022, 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:

Facts

COMPANY ("COMPANY" or the "Company") operates seven facilities (LOCATION1, LOCATION2, LOCATION3, LOCATION4, LOCATION5, LOCATION6, and LOCATION7) in the state of Illinois as [sic] integrated part of their customer's manufacturing operations. Before perishable foods, such as chicken, beef, fish, and produce, reach these COMPANY locations in Illinois, the Company's customers ("Producers") begin the manufacturing process at their manufacturing plants. Once the Producers have completed their part of the manufacturing process, perishable foods are then transported to COMPANY's locations for further processing.

COMPANY then engages in processes discussed below to transform the perishable products into a marketable state, frozen food.

Receiving (All locations) - Perishable food is received by truck or rail at the Company location. Producers generally deliver goods in bulk to COMPANY's manufacturing facilities. Once received, the food is unloaded onto a temperature-controlled dock. From there, food is transferred from pallet A to pallet B. During this transfer process, plastic slats that look similar to egg crates are inserted between layers in order to promote airflow through the product.

Product is then transported to either Blast Freezing, Slow Freezing, Cooling, or Cold Storage via forklift or automated storage and retrieval system (LOCATION6).

Option 1 - Blast Freezing, Deslatting, and Cold Storage

Locations (LOCATION4 and LOCATION5) - Blasting [sic] freezing is a process used to quickly freeze perishable food. In order to freeze the food, equipment and supplies including compressors, vessels, evaporators, racking, condensers, and ammonia are utilized. The racking and evaporators are located in blast cells where freezing takes place and the compressors, vessels and condensers are in the engine room. Compressors are used to compress ammonia gas. During compression, the temperature of ammonia increases. Coils in the condenser release the heat from the ammonia that occurred during the compression process. As heat is released, the highly pressurized ammonia cools and is liquified and drains back into the high-pressure vessel. The high-pressure ammonia is transferred to a low-pressure vessel where it is then pumped out to an evaporator in each blast cell. The evaporator fan, part of the evaporator, circulates cold air over the fresh product and returns warmer air to the heat exchanger within the evaporator. While completing this process in the blast cell, the liquified ammonia begins to boil and vaporize as it is circulated back to the low-pressure vessels and compressor in the engine room for recompression. The product quickly freezes as part of this circular process.

Blast freezing reduces cellular damage that takes place when food is slowly frozen, resulting in a higher quality product. Additionally, blast freezing dramatically slows molecular and microbial activity in perishable food, preventing spoilage and contamination, and extending the useful and marketable life of food.

After blast freezing is complete, product is transported to a staging area to remove slats. Slats are removed from the pallet through use of a pallet

inverter. Pallets are titled horizontally, slats are removed, and repositioned on the ground. After repositioning the pallet, the product on the pallet is shrink-wrapped and transported to cold storage

Product previously blast frozen by COMPANY, is transported to cold storage where product temperatures are maintained at zero (0) to -5 degrees. Product will remain in cold storage until Producer's [sic] schedule shipment to third parties.

Option 2 - Slow Freezing

Locations (LOCATION2, LOCATION4, LOCATION5, and LOCATION6) - Slow freezing is similar to the blast freezing process. The same equipment used to blast freeze fresh food is also used to slow freeze fresh food. The primary difference between slow and blast freezing pertains to the time required to freeze product and the location freezing takes place. When fresh product goes through the slow freezing process, additional time is needed, and product is frozen in a large room rather than a blast cell.

Slow freezing slows molecular and microbial activity, preventing spoilage and contamination, and extending the useful and marketable life of the product.

Option 3 - Cooling

Locations (LOCATION1, LOCATION4, and LOCATION5) - Cooling differs from both the slow and blast freezing process as the goal of placing product in coolers is not to freeze product, but to maintain temperatures above freezing. Cooling occurs in a large room where evaporators are used to maintain product temperatures slight [sic] above freezing.

Cooling slows molecular and microbial activity, preventing spoilage and contamination, and extending the useful and marketable life of the product.

Option 4 - Cold Storage

Locations (LOCATION2, LOCATION3, LOCATION4, LOCATION5, LOCATION6, and LOCATION7) - Product previously blast frozen by COMPANY and/or frozen by third parties, is transported to cold storage where product temperatures are maintained at zero (0) to -5 degrees. Product will remain in cold storage until Producer's [sic] schedule shipment to third parties.

Shipping (All locations) - After product has been frozen, cooled, or stored, the product is then sequenced and staged for outbound transportation at a refrigerated dock. Outbound transportation occurs via truck or rail to third party retailers.

Evidentiary Documentation

The Company's process and facility locations are described within the webpage provided below:

- Blast freezing locations and process: ADDRESS3.

Taxpayer's Position

Blast freezing, slow freezing, cooling, and cold storage qualifies as a "manufacturing process".

Law

Illinois does not define the term "manufacturer".

"Manufacturing process" means the production of an article of tangible personal property, whether the 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 a procedure commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material into a material with a different form, use, or name. In relation to a recognized integrated business composed of a series of operations that collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process commences with the first operation or stage of production in the series and does not end until the completion of the final product in the last operation or stage of production in the series.[1]

The Department of Revenue has released several private letter rulings over the years discussing how processes performed by other taxpayers, similar to COMPANY, such as, blast freezing, slow freezing, cooling, and cold storage qualify as a "manufacturing process".

In an Illinois private letter ruling that was issued in 2014, No. ST 14-0002-PLR, 06/26/2014, the private letter ruling committee concluded that a taxpayer performing activities, such as, blast freezing (referred to as the "industrial freezer"), slow freezing (referred to as the "industrial freezer"),

[1] 35 ILCS 105/3-50(1)

cooling (referred to as the "cooler"), and cold storage (referred to as the "deep chill") in Illinois performed a "manufacturing process". Therefore, machinery and equipment primarily used in these manufacturing processes qualified for the exemption provided through Ill. Admin. Code 130.330(a). Specific conclusions reached in the ruling are referenced below.

> *"The Freezer Machinery and Equipment and Racking Equipment are machinery and equipment used primarily in a manufacturing process for purposes of the manufacturing machinery and equipment exemption. Thus, the retailer's occupation tax and use tax does not apply to the sale of the Freezer Machinery and Equipment and Racking Equipment."*

The taxpayer defined the Freezer Machinery and Equipment and Racking Equipment as follows:

> *The Freezer Machinery and Equipment is an industrial ammonia refrigeration system comprised of various refrigeration components including compressors, evaporators, vessels, pumps, heat exchangers, condensers, and associated piping, controls and valves. The Racking Equipment is comprised of specially designed racks that are essential to the manufacturing process because they facilitate the airflow through and around boxed products. It would not be possible to reduce the temperature of product were it pile stacked without the Racking Equipment. Both the Freezer Machinery and Equipment and Racking Equipment are essential to the manufacturing process.*

Similar to the private letter ruling referenced above, the private letter ruling committee also concluded in Illinois Private Letter Ruling No. ST 16-0004-PLR, 07/08/2016 that a "Refrigeration System" and "Racking Equipment" was used in a manufacturing process and therefore qualified for the exemption provided through Ill. Admin. Code 130.330(a). Specific conclusions reached in the ruling are referenced below.

> *The Refrigeration System and Racking Equipment contribute to and are essential to the Taxpayer's integrated manufacturing process, which includes the reduction and maintenance of product temperatures during post-production storage to prevent spoilage and contamination of the Taxpayer's products prior to shipment. In particular, the Refrigeration System reduces and maintains product temperatures and enables the Taxpayer's perishable bakery, meat, and dairy products to be maintained at standards and requirements necessary to prevent product spoilage and contamination so that*

the Taxpayer's products may be subsequently sold for human consumption. The Racking Equipment is specifically designed and essential to the reduction and maintenance of product temperatures by creating space around the sides of the product, which protects the stacked product from destruction, and facilitates the organization of the products in a manner that provides proper air flow around and between the stored products. Without the Racking Equipment, airflow between the products would be restricted, and the reduced temperature created by the Refrigeration System would not be conducted in a uniform, timely and balanced manner, resulting in spoilage and contamination.

Without proper temperature reduction and temperature maintenance, the Taxpayer's manufacturing process would be ineffective as its perishable bakery, meat and dairy products would spoil and could not be subsequently sold for human consumption. While no cooking, canning, or cutting processes will be conducted at the cold storage facility, the continuous temperature reduction and temperature maintenance of the Taxpayer's products occurring at the facility constitutes an essential aspect of the Taxpayer's overall integrated manufacturing process.

Because both the Refrigeration System and Racking Equipment and their components are "machinery" and "equipment" and contribute and are essential to the Taxpayer's manufacturing process, the Refrigeration System and Racking Equipment is machinery and equipment for purposes of the Manufacturing Machinery and Equipment exemption.

The taxpayer defined the Refrigeration Equipment and Racking Equipment as follows:

The main components of the Refrigeration System will be constructed and located within the engine room of the Taxpayer's cold storage facility. In addition, numerous pipes, valves, controls, and control wiring will connect through the engine room but be located throughout the facility building and roof in order to facilitate the temperature reduction and maintenance to the appropriate areas of the facility. The Refrigeration System is custom-designed to the Taxpayer's specifications, purchased from multiple vendors, and assembled on-site at the facility. The Refrigeration System will be used exclusively to reduce and maintain temperatures in the cold storage areas of the facility that will contain the Taxpayer's perishable bakery, meat, and dairy products. The Refrigeration System will not be used for general ventilation, cooling, or climate

control, or in any other manner that is not required by the Taxpayer's manufacturing process. The Taxpayer will install an ancillary commercial heating and cooling system to provide temperature control to non-cold storage areas of the facility, including offices, restrooms, break rooms, engine rooms and other common areas. The machinery and equipment related to the ancillary commercial heating and cooling are not included in the Taxpayer's Freezer Machinery and Equipment for purposes of this PLR. Likewise, any components that form the foundation or support of the facility are not considered part of the Taxpayer's Freezer Machinery and Equipment. The Refrigeration System will be in continuous use as there will be a constant flow of perishable products through the cold storage facility so that the Refrigeration System will not be idle.

The Racking Equipment will be located within the cold storage areas of the Taxpayer's cold storage facility. The Racking Equipment is specially designed to create space around the sides of the pallets of product to ensure proper air flow and temperature reduction between products. Without the Racking Equipment, airflow between the products would be restricted, the cold air created by the Refrigeration System would not effectively cool the products and heat from biological processes would spoil and contaminate the product. Thus, the Racking Equipment protects the product from destruction. In addition, the Racking Equipment facilitates efficient storage of the Taxpayer's perishable bakery, meat and dairy products when they undergo temperature reduction and temperature maintenance.

Analysis

35 ILCS 105/3-50(1) states a "manufacturing process" means the production of an article of tangible personal property, whether the 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 a procedure commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material into a material with a different form, use, or name. In relation to a recognized integrated business composed of a series of operations that collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process commences with the first operation or stage of production in the series and does not end until the completion of the final product in the last operation or stage of production in the series.

Based on the definition above, blast freezing, slow freezing, cooling, and cold storage qualify as a "manufacturing process". The services provided by COMPANY through these phases are required to "protect the integrity of the product". Additionally, blast freezing, slow freezing, cooling, and cold storage qualify as manufacturing activities as they support the actual production or assembly of the finished product.

Blast Freezing, Deslatting, Cold Storage and Slow Freezing

The Company's blast freezing and slow freezing of food products on behalf of manufacturers serves a critical role in the integrated food manufacturing process. Below is a summary of the relationship between the Producers and COMPANY and why the food received by COMPANY is not "ready for sale" until the Company's manufacturing activities have been completed.

When perishable products marketed as a "frozen good" are transported from the Producer's manufacturing facilities to COMPANY, this product is stored in a manner that keeps the product "fresh". In order to sell this "fresh" product in its intended marketable state of a "frozen good", the "fresh" product must be converted to a "frozen" state. COMPANY's blast and slow freezing processes at its facilities in Illinois are part of the manufacturer's integrated manufacturing process in the same way that blast and slow freezing would be part of manufacturing if performed by the manufacturer at its own facility. Here, manufacturers that do not have blast and slow freezing machinery or expertise with this process contract with COMPANY to integrate the Company's blast and slow freezing process into the Producer's manufacturing process.

The blast and slow freezing processes at the Illinois facilities discussed above are essential to convert the product to a frozen state for end-use consumers for at least two important reasons. First, USDA regulations primarily set forth in 9 CFR § 381 (related to poultry and poultry products), provide mandatory requirements that must be met by producers and manufacturers to sell poultry as a "frozen" product. Second, the blast and slow freezing process is a recognized method of preservation for disease control (as an alternative to curing, smoking, cooking, or canning) of food items for sale to consumers. Blast and slow freezing processes are essential to extend the shelf-life the frozen food may be ultimately sold to end-use consumers.

Based on COMPANY's critical role in the manufacturer's integrated manufacturing process the Company's blast freezing, deslatting, cold storage and slow freezing activities that convert fresh products by physical

means into a frozen state fit squarely with the definition of a "manufacturing process" in 35 ILCS 105/3-50(1).

Favorable Rulings from Illinois and Other Jurisdictions

Arkansas - Blast Freezing Operations Opinion 20140508-S, 04/04/2016

Arkansas- Blast Freezing Operations Opinion 20151008-S, 04/04/2016

Indiana - Merchandise Warehouse Co., *Inc., Petitioner, v. Indiana Department of State Revenue Respondent.,* 87 *NE3d 12, 12/13/2017* (copy enclosed)

Illinois Private Letter Ruling, No. ST 16-0004-PLR, 07/08/2016

Illinois Private Letter Ruling No. ST 14-0002-PLR, 06/26/2014

Missouri Private Letter Ruling No. LR 7419, 10/10/2014

New York MIDDLEPORT COLD STORAGE, INC. for Revision of a *Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 1983 through..., 806811, 03/14/199*

Texas Comptroller's Decision, No. 5744, 07/30/1974

Mandatory representations

COMPANY certifies the following representations:

- Company isn't currently under audit by the Department;
- Company has not submitted a claim for refund involving transactions or issues contained in the request;
- The issues contained in the request are not currently the subject of litigation;
- Similar private letter rulings will be issued to other states throughout the U.S; and
- Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete.

Company is contemplating submission of a second sales and use refund claim that would include, in part, transactions relevant to this private letter ruling request. We will notify the Department if a refund claim is submitted prior to receiving a response from the Department on this matter.

DEPARTMENT'S RESPONSE:

Based on the representations in your letter, it is our understanding that COMPANY uses the freezer, cooling, and cold storage machinery and equipment to freeze, cool, and maintain in cold storage certain food products. Perishable foods, such as chicken, beef, fish, and produce, arrive at the facility directly from COMPANY's customers who begin the manufacturing process at their manufacturing plants. The products are then frozen or cooled and placed in cold storage by COMPANY to maintain the perishable products in a marketable state. The blast freezing and slow freezing processes use compressors, vessels, evaporators, racking, condensers, and ammonia. The cooling occurs in a large room where evaporators are used to maintain product temperature slightly above freezing. It is our understanding that the plastic slats are placed between each layer to promote airflow through the product. The described equipment is necessary to maintain the temperature of products in a refrigerated or frozen state to be sold and ultimately consumed. It is our understanding that this equipment will be used primarily (more than 50 percent of the time) to freeze or cool food products for sale and will not be used for general ventilation, cooling, or climate control, or in any other manner that is not required by the manufacturing process and will only be used to provide temperature control for the processes you describe.

Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The manufacturing process is the production of articles of tangible personal property or assembling different articles 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. See Section 130.330(b)(2).

Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process, including machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. See Section 130.330(c)(2). However, machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment. Generally, items such as the framing for a building and its walls, ceilings, floors, and doors would not qualify for the exemption.

The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling. See Section 130.330(a)(5). In addition, machinery or equipment that is used for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process would not qualify for the manufacturing machinery and equipment exemption. Generally, items such as sprinkler systems and employee facilities such as lunchrooms, restrooms, and locker rooms would not qualify for the exemption.

We note that Public Act 101-9 expanded the manufacturing and assembling machinery and equipment ("MM&E") exemption to allow items that had previously been eligible for the now-expired Manufacturer's Purchase Credit ("MPC") (i.e., "production related tangible personal property") to be eligible for the MM&E exemption. See 86 Ill. Adm Code 130.331, Manufacturer's Purchase Credit. Beginning on July 1, 2019, the MM&E exemption includes production related tangible personal property. Production related tangible personal property includes 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. See 86 Ill. Adm. Code 130.330(h). For example, the following uses of tangible personal property by manufacturers in a manufacturing facility are considered production related: tangible personal property used or consumed for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging, and packing for shipping or transportation.

The Department has reviewed the items described in your letter and has determined that they qualify for the MM&E exemption, either because the tangible personal property qualifies as machinery and equipment used by the Company primarily in the process of manufacturing or assembling of tangible personal property for wholesale or retail sale or lease, or because it qualifies as production related tangible personal property. The Department makes no determination regarding tangible personal property that is titled and registered; tangible personal property that is used for Company functions other than temperature-controlled food processing (e.g., sales, accounting, marketing, or HR); tangible personal property that is used in a general area of the facility that is not required to be temperature-controlled, such as employee break rooms, offices, and restrooms; tangible personal property that is part of the foundation or supporting structure of the facility as renovated and expanded; or tangible personal property that is used for general ventilation, heating, cooling, climate control, or lighting of the facility that is not specifically required for temperature-controlled food processing.

Blast Freezing, Slow Freezing, and Cooling Machinery and Equipment

Machinery or equipment that is required for processing, such as freezing and cooling equipment that maintains a precise temperature as part of the processing in

order to preserve a manufactured product, can qualify for the exemption if used primarily for that purpose. The Department has reviewed the information that you have provided. Based on your descriptions of how the equipment is used, the Department is of the opinion that the blast freezing, slow freezing, and cooling machinery and equipment described in your letter qualifies for the Manufacturing Machinery and Equipment exemption from Illinois Retailers' Occupation Tax under 35 ILCS 120/2-45. Without the freezer and cooling machinery and equipment, the product would spoil and could not be subsequently sold for human consumption.

Cold Storage Machinery and Equipment

Similarly, based on your descriptions of how the cold storage equipment is used, the Department is of the opinion that the cold storage machinery and equipment qualifies for the Manufacturing Machinery and Equipment exemption from the Illinois Retailers' Occupation Tax under 35 ILCS 120/2-45 either because the tangible personal property qualifies as machinery and equipment used primarily in the process of manufacturing or assembling of tangible personal property for wholesale or retail sale or lease, or because it qualifies as production related tangible personal property.

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.

If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. 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,

Samuel J. Moore
Chairman, Private Letter Ruling Committee

SJM:rkn