

Machinery and equipment that is used primarily (over 50% of the time) 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. (This is a PLR.)

April 16, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 8, 2008, 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](http://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:

We are writing on behalf of our client, COMPANY, to request a Private Letter Ruling regarding (1) the applicability of Illinois Sales/Use/Occupation Tax to its purchase of a new barge to replace an existing barge that has been in operation for over forty (40) years, and (2) if the tax is inapplicable, then for the procedure, if any, required to certify the exemption. Please find a Form IL- 2848, Illinois Power of Attorney, enclosed.

#### STATEMENTS REQUIRED BY 2 ILL. ADM. CODE 1200.110

The tax period at issue is 2008-2009. No audit or litigation is currently pending with the Department relating COMPANY. To the best of the knowledge of COMPANY and to the undersigned, the Department has not previously ruled on the same or similar issue for COMPANY or any predecessor. COMPANY has not previously submitted the same or similar issue to the Department. COMPANY and the undersigned request that the company name, location, and company specific information concerning its distribution

and/or use of the aggregate materials be redacted from the publicly disseminated version of the private letter ruling.

## FACTS

COMPANY is a STATE corporation registered to do business in Illinois. The company possesses a sales tax permit to collect Illinois sales tax for goods sold. COMPANY's home port is in CITY, Illinois. COMPANY is in the business of dredging concrete and asphalt sand from the river bottom as aggregate materials for use in the production of concrete and asphalt. The company utilizes approximately PERCENTAGE of the material for production of concrete and asphalt at its affiliated companies in STATES. The remaining PERCENTAGE of the aggregate materials are sold at retail to other companies involved in the manufacture or production of concrete and asphalt. Depending on the demand for such products, COMPANY may also dredge masonry sand or coarse aggregate for use as gravel.

COMPANY owns dredging, screening, sorting and classification equipment that is currently housed on a barge owned by the company, which barge is YEARS old. It is anticipated that the new barge will replace the old barge in acting as a platform for the dredging, screening, and classification processes for the sand and gravel slurry dredged from the river bottom. Once the slurry is taken from the river bottom and brought onto the barge by conveyors, it is screened to sort out the sand and gravel sizes. Pieces of gravel that are too large are returned to the river by conveyors while the remaining sand or gravel is placed into a classifying tank to be washed. Once the sand and gravel is sorted and washed, the sand and gravel is loaded onto separate transportation barges by conveyors for transport to COMPANY in CITY, Illinois. The barge on which the dredging equipment is located is movable with the use of a tugboat. The barge will be an integral part of the dredging and aggregate material processing operation for COMPANY.

COMPANY anticipates that the new barge will be housed in its CITY, Illinois home port during the winter months when the river is frozen. From approximately March through November each year, the barge will be located on the STATE side of the river and working under federal permits from the Army Corps. of Engineers and state permits from the STATE Department of Natural Resources. COMPANY also holds a permit from the STATE Department of Natural Resources for dredging, but has dredged predominantly on the STATE side of the river for over YEARS.

COMPANY has contracted with an Illinois company for the construction and delivery of a new barge for delivery in CITY, Illinois on or before DATE. Following delivery, COMPANY will remove its dredging, screening, sorting, and other equipment from its old barge and place it on the new barge for use beginning approximately DATE2.

## LEGAL ARGUMENT

86 Ill. Adm. Code § 130.330 provides that the Illinois Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembly of tangible personal property for wholesale or retail sale. The new barge being acquired by COMPANY is a piece of equipment that will be utilized in the manufacturing process for the aggregate materials that COMPANY sells, both to its affiliated companies as well as unaffiliated consumers. 86 Ill. Adm. Code § 130.330(b)(4) specifically excludes "extractive industrial activities" from the exemption

for manufacturing equipment. However, the subsection further provides that, while “quarrying” does not qualify as manufacturing, “activities subsequent to quarrying such as crushing, washing, sizing, and blending will constitute manufacturing, and machinery and equipment used primarily therefor will qualify for the exemption...” COMPANY’s position that the dredging, screening, sorting, and classification process taking place upon the barge is a manufacturing process and that the sand and gravel produced are tangible personal property are supported by the Illinois Appeals Court decision in Nokomis Quarry Company v. Department of Revenue, 618 N.E.2d 855 (Ill. App. Ct. 1998). The barge will be an integral part of the slurry extraction, sand and gravel sorting, classifying, and delivery processes for the aggregate material. Without the barge, the dredging operation would not exist.

86 Ill. Adm. Code § 130.330(c)(4) states that the occupation tax will be applied to “foundations” and “special purpose buildings to house or support machinery and equipment.” COMPANY’s barge is certainly more than a mere “foundation” for the machinery and equipment used in the dredging operation. The barge houses all of the machinery, equipment, computers, conveyors, fuel tanks, and other items necessary for the dredging operation. In addition, without the barge, the dredge would not be able to adjust its location in order to generate additional slurry from the riverbed for sorting, cleaning and transport; thus halting the dredging operation. The qualification of the barge for the tax exemption granted by this section is supported by the Illinois Appeals Court decision in Van’ s Materials Company, Inc. v. Department of Revenue, 545 N.E.2d 695 (Ill App. Ct. 1989), which held that ready-mix concrete cement trucks qualified as tax exempt as a machine used in the manufacturing process. The barge is a necessary part of COMPANY’s floating manufacturing plant, just as a ready-mix concrete cement truck is in the cement manufacturing business.

Through numerous phone calls with the Illinois Department of Revenue’s business taxpayer assistance hotline, representatives of the Illinois Department of Revenue have also stated that they believe this purchase to be sales use/occupation tax exempt because of the interstate character of its use. The representatives have cited 86 Ill. Adm. Code § 130.340 and 86 Ill. Adm. Code § 130.605 for support of this position. The undersigned has been unable to locate any substantial statutory or common law authority for or against the position taken by the representatives. The term “Rolling Stock,” as defined by section 130.340(b) does not particularly address the particular use of a barge being utilized a floating manufacturing plant and which is used to produce materials outside of the State of Illinois from approximately March through November each calendar year. In any event, COMPANY requests that the Department consider the application of this portion of the Illinois Administrative Code as well as the others discussed herein.

## REQUEST

Wherefore, COMPANY respectfully requests that the Department of Revenue render a private letter ruling pursuant to the authority granted to it under 2 Ill. Adm., Code § 1200.110 relating to the situation described herein. If the Department has any questions relating to the matters described herein, please contact the undersigned. Thank you in advance for your consideration.

## DEPARTMENT’S RESPONSE:

The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily (over 50%) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. When determining whether a piece of equipment qualifies for the manufacturing machinery and equipment exemption, the requirements of 86 Ill. Adm. Code 130.330 must be met.

"Manufacturing", as defined in this regulation, is the production of articles of tangible personal property, whether such articles are finished products or articles for use in the process of manufacturing 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 86 Ill. Adm. Code 130.330(b)(2).

The Illinois Supreme Court has determined that "whenever labor is bestowed upon an article which results in its assuming a new form, possessing new qualities or new combinations, the process of manufacturing has taken place." Van's Material Co. v. Department of Revenue, 131 Ill. 2d 196, 207-208 (1989), citing Dolese & Shepard Co. v. O'Connell, 257 Ill. 43, 45, 100 N.E. 235 (1912). From the facts in your letter, the barge itself does not produce changes in some existing material or materials into a material with a different form, use or name. Rather, the barge merely provides a foundation upon which the machinery involved in the process of manufacturing or assembling different articles of tangible personal property sits and/or are attached thereto.

The Department's regulation at 86 Ill. Adm. Code 130.330(c)(5) states "Machinery and equipment does not include **foundations** for buildings to **house or support**, machinery and equipment." (Emphasis added.) Accordingly, the Department believes that the barge referred to in your letter would not qualify for the manufacturing machinery and equipment exemption.

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 questions concerning this Private Letter Ruling, you may contact me at 782-2844. If you have other questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton  
Chairman, Private Letter Ruling Committee

TDC/DMB:msk