

The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2). (This is a GIL.)

December 16, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 28, 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 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:

It has been my understanding that any capital costs (buildings or improvements to them)—tool sheds, grain bins, etc. and materials required in their improvement or repairs are NOT EXEMPT under the farm exemption provision of the ROT tax law to agriculture producers as they are not used exclusively for the process of crop production itself, as for instance, a planter or combine would be. In other words, that the exemption applies only to the machinery used during the actual process of growing/harvesting. Also, that units used for transportation (even if unlicensed, but used between field and sale/shipping point) and storage are NOT EXEMPT either). Am I correct? I have had a recent query regarding this matter from a customer. Their daughter is a lawyer in Washington, DC so I want a correct, definitive answer and to be provided documentation regarding this topic. I would appreciate you faxing me the pertinent pages of the law where this reference is spelled out as soon as possible.

DEPARTMENT'S RESPONSE:

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. No item qualifies for the exemption in and of itself and no transaction is exempt unless the seller obtains a certification that contains the information required by Section 130.305(m). Machinery or equipment that is used both in qualifying and non-qualifying activities must be used primarily in a qualifying activity in order for the exemption to apply.

Production agriculture is defined under the Retailers' Occupation Tax Act as "the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture." See 35 ILCS 120/2-35.

Further, production agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide, or fertilizer, harvesting and drying of crops. Activities such as the clearing of land, mowing of fence rows or ditches, or creation of ponds or drainage facilities are not included, nor are the operations involved in the storing or transporting of crops and produce, Section 130.305(f).

Under 86 Ill. Adm. Code 130.305 "Farm Machinery and Equipment" (copy enclosed), Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. The sale of individual replacement parts for such machinery and equipment is also exempt. In order to obtain the exemption, the purchaser must certify to the use primarily in production agriculture of the equipment or machinery. See Section 130.305(a).

Machinery means major mechanical machines or machine components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Machinery would include such things as tractors, combines, balers, irrigation equipment and cattle and poultry feeders. Improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery. However, certain machines qualify for the exemption if purchased by farmers directly from retailers even though they are installed as realty improvements. Such machinery includes, but is not limited to, augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials) automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), and water pumps serving production areas, and specialty heating or lighting equipment specifically required for the production process. See Section 130.305(i).

Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Although equipment does not include ordinary building materials affixed permanently to real estate, certain items of equipment can qualify for the exemption even though they are installed as realty improvements. Such items of equipment include, but are not limited to, farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery. Equipment shall include precision farming equipment that is installed or purchased to be installed on farm machinery and equipment including tractors, harvesters, sprayers, planters, seeders and spreaders. The exemption also includes hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks and shovels so long as they are used in production agriculture. Hand tools that are used in maintenance activities, such as wrenches, pliers, wire stretchers, grease guns, hammers and screwdrivers, and not used in production and do not qualify for the exemption. Supplies such as baling wire, baling twine, work

gloves, boots, overshoes and chemicals for effluent systems are also not exempt. See Section 130.305(k).

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,

Debra M. Boggess
Associate Counsel

DMB:msk