ST 18-0040-GIL 12/06/2018 FARM MACHINERY & EQUIPMENT

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) and 86 Ill. Adm. Code 130.305. (This is a GIL.)

December 6, 2018

Dear Xxx

This letter is in response to your letter received October 10, 2018, 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.

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 am writing to request an opinion on the manufactured items below and whether they would qualify for the agricultural tax exemption from sales tax.
>
> Company Information:
>
> COMPANY
>
> Federal ID:XX-XXXXXXX
>
> Illinois Tax Identification Number:XXXX-XXXX
>
> We are a manufacture[sic] in CITY, STATE and I am inquiring about whether two of our products, that we produce and sell, qualify for the agriculture exemption for farmers.
>
> The items we are selling are a Livestock shade system. One system is a permanent shade system and the other shade system is a mobile unit. If you look at our web site link you can see the details of each product. I have also included our product flyers to refer to.
>
> Both products are used for livestock to help keep them cool in the hot days of summer. I do not see any clear clarification for this type of product to determine whether I can accept the agriculture exemption for these products which is directly used in the raising and care of livestock.
>
> Thank you for your time.

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. 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.

Under 86 Ill. Adm. Code 130.305, "Farm Machinery and Equipment", 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 livestock shade systems, fences, barns, roads, grain bins, silos and confinement buildings are not considered exempt farm machinery. Although one of the the livestock shade systems is capable of being moved, both are very similar to real estate improvements, in that they are made of ordinary building materials. Structures of this type (both the portable and the permanent) do not qualify for the 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,

Debra M. Boggess
Associate Counsel

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