

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. (This is a PLR).

March 31, 2009

Dear Xxxxx:

This letter is in response to your letter Private Letter Ruling request dated October 13, 2008. 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:

I. Scope

The purpose of this letter is to secure a Private Letter Ruling ('PLR') to confirm that COMPANY purchase of a Separator/Sorter machine ('Separator/Sorter') qualifies for the Manufacturing, Machinery and Equipment exemption ('MM&E'), and as such is exempt from sales and use tax in the State of Illinois. Due to the sensitivity of certain information contained herein (i.e. names, social security numbers, etc.) we respectfully request that this information be held confidential and not disclosed in the PLR for publication purposes. Accordingly, any fact-sensitive information should be referred to in a fictional sense using generic terms (i.e., XXX, etc.).

The taxpayer purchased the Separator/Sorter in approximately the 2007 tax year. To the best of the taxpayer's knowledge, no audit or litigation is pending with the Department for the tax issue addressed in this PLR for the approximate time period. Furthermore, to the best of the knowledge of both the taxpayer and the taxpayer's representative, the

Department has not previously ruled on the same or similar issue for the taxpayer or a predecessor, nor did the taxpayer or any representative previously submit the same or similar issue to the Department but withdrew it before a letter ruling was issued.

II. Facts

Taxpayer is a leading manufacturer of pork rinds and pork cracklings. The company also provides private-label production and packing, and supplies pork pellets in bulk to companies wishing to pop and package their own pork rinds and pork cracklings. The company maintains operations in STATES. It also has a plant location in COUNTRY.

As part of the manufacturing process of pork pellets, taxpayer uses a Separator/Sorter to separate the pork pellets from waste materials (e.g., twine, bone, plastic, cutting blades, and plastic strapping, etc.). The Separator/Sorter machine is situated between the cookers and the sizing machine in the manufacturing process.¹

The manufacturing process begins where by [sic] taxpayer sends raw pork skin it purchases from vendors that generally spans the size of a full pig by a conveyor belt through a cutting machine. The cutting machine cuts the skin into small squares. The pork skin squares are then rendered in a steam cooker that creates pork rind pellets. The cookers are emptied and the pellets are transferred from the cookers, via conveyor belt, to the Separator/Sorter machine. The pork rind pellets are then processed through the Separator/Sorter in order to separate and discard the waste from the pellets. The Separator/Sorter machine uses a laser eye to separate undesirable items from the finished pellets. The removed waste is dropped into a bin. The Separator/Sorter is used solely for this purpose and serves no other functional use for the taxpayer.

The waste-free pellets continue along the conveyor belt to the sizing machine in order to be sorted by size. Once the pellets are sorted by size, the pork rind pellets are either packaged and stored for shipment to the taxpayer's customers or fried at the taxpayer's packaging plant for ultimate customer consumption. Roughly 50% of the pellets are fried by taxpayer's packaging plant and 10% are sold directly to outside customers for frying and popping (the pellets are fried and 'pop' into a finished pork rind). The remaining pellets are sold to the taxpayer's company in COUNTRY and then sold to outside customers for frying and popping.

Taxpayer's food must meet rigid USDA standards relative to facility operations and maintenance. This requires that the facility and product maintain a high level of safety and cleanliness. The Separator/Sorter aides in the quality control process over the final pork pellets to be sold. The Separator/Sorter is used solely in the manufacturing process.

III. Issue

Whether the purchase of a Separator/Sorter that is used in the integral part of the manufacturing process is exempt from Illinois Sales and Use tax under the MM&E exemption.

IV. Legal & Administrative Authority:

Illinois generally imposes a retailer's use tax ('RUT') for the privilege of using tangible personal property within Illinois purchased at retail from a retailer...² However, Illinois

statutes provide an exemption from RUT for certain purchases of machinery and equipment ('MM&E') as follows:

use of the following tangible personal property is exempt:
...manufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for whole sale [sic] or retail sale or lease.³

Illinois law 'exempts only the purchase and use of *machinery and equipment* used in manufacturing or assembling.'⁴ As such, the Illinois statutes define the 'manufacturing process' as:

...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...⁵

The Illinois Supreme Court further addressed the issue of defining 'process of manufacturing' in *Dolese & Shepard Co. v. O'Connell*.⁶ In that case, the Court determined that 'whenever labor is bestowed upon an article which results in its assuming a new form, possession [sic] new qualities or new combinations, the process of manufacturing has taken place.'⁷ Stated differently, the term 'processing of manufacturing' has been more practically articulated as comprising one or all of three factors: (a) takes a different form; (b) serves a different purpose from the original materials; and/or (c) adopts a different name.⁸ It has been generally recognized that labor can be bestowed by machine or human efforts.⁹

This definition was most notably applied in *Van's Material Company, Inc. v. The Department of Revenue*, where the *Dolese* Court held that equipment and machinery which constitutes an inseparable and single piece of equipment fit for only one purpose should qualify for the MM&E exemption.¹⁰ At issue in *Van's* was whether taxpayer's purchase of two new ready-mix concrete trucks ('Trucks') qualified for the MM&E exemption.¹¹ The Trucks were used for receiving loads of sand, limestone, water and cement, and then continuously turned until poured at the cementing location.¹² In reaching its holding, the Court determined that the Trucks were used primarily in the manufacturing process of tangible personal property and declined to limit the exemption to a fixed facility location.¹³

Based on the aforementioned statute, regulations and case law, the IDOR has extended the MM&E exemption to (a) machines which serve a quality control function, (b) Separators/Sorters that are used in the manufacturing process, and (c) food processing machinery. For instance, in *Illinois Private Letter Ruling ST 04-0003*, the IDOR ruled that a feeder breaker machine which was used to sort coal into the correct sizes to further the

manufacturing process qualified for the MM&E exemption.¹⁴ In that ruling, ABC Company operated a coal mine.¹⁵ The coal extracted was large and was required to be broken down further into more useful sizes.¹⁶ The coal was then transported via transport system out of the mine and to the next processing unit.¹⁷

GIL ST 00-0255, citing Illinois regulations, provides that machinery and equipment may qualify for the exemption where it is used to inspect, test, or measure the tangible personal property to be sold where such function is an integral part of the production flow.¹⁸ In *PLR ST 04-0003*, the wash plant machinery that served a quality assurance purpose was exempted from sales and use tax.¹⁹ In that ruling, the taxpayer was in the business of mining coal and washing the coal was a vital process in keeping taxpayer's quality competitive with Western low-sulfur coal as utilities seek fuel sources to help them comply with the Clean Air Act.²⁰ In reaching its ruling the IDOR reasoned that the wash plant machinery prepared the coal to meet the specification of the individual customers and as such qualified for the MM&E exemption.²¹

Moreover, in *Illinois Private Letter Ruling No. ST 92-0515-PLR*, the IDOR ruled that screening equipment constitute exempt equipment under the MM&E exemption.²² Specifically, the screening (size sorting) process separated degraded material from windrows through a system of screens for the purpose of removing any large and non-biodegradable material.²³ The screening process produced uniform compost that was marketable as soil amendment.²⁴

Furthermore, *PLR ST 88-0136*, established the IDOR's administrative position for the first time that equipment used in food processing qualifies for the MM&E exemption.²⁵ As a general rule, equipment used in the manufacture of food products qualifies for the MM&E exemption because food processing is the manufacturing or assembling of tangible personal property.²⁶ For example in *GIL ST 94-0116*, the slaughter and processing of livestock is considered a manufacturing process for purposes of the MM&E exemption.²⁷

V. Analysis:

The taxpayer's purchase of the Separator/Sorter qualifies for the MM&E exemption on various cumulative and alternative grounds.

1. Taxpayer Satisfies Statutory Requirement Per Se

First, taxpayer satisfies the statutory and case law requirement per se as it solely uses the Separator/Sorter for the process of manufacturing or assembling of pork rind pellets for wholesale or retail. The machinery is a major component to the manufacturing process. The manufacturing of the pork rind pellets commences when the raw pork is sent to the cutting machine. After the cutting machine cuts the skin into small squares, the pork skin squares are rendered in a steam cooker that creates pork rind pellets. The cookers are emptied and the pellets are transferred from the cookers, via conveyor belt, to the Separator/Sorter machine. The Separator/Sorter with laser eye technology separates the pellets from the waste. The waste-free pellets then move along the manufacturing process to the sizing machine in order to be sorted by size. Finally, the pellets are either packaged and shipped to the customer for frying and subsequent shipment to consumer; or fried at taxpayer's plant and shipped directly to end user consumer.

The manufacturing process ends only after the pellets are sorted by the sizing machine and the pellets are either fried into pork rinds and packaged for shipment or packaged and shipped as pellets. As such, the Separator/Sorter is used *during* the manufacturing process. The Separator/Sorter alters the form of the pellets sellable to customers as it excludes waste items and also changes the use as now the pellets can either be resold directly or manufactured into pork rinds for retail sale.

2. Machine Serves Quality Control Purpose

Second, the alteration of form and use is consistent with the Separator/Sorter's vital quality assurance purpose; that is, but for this separation process, the pork pellets would be dangerous and a potential liability to taxpayer as a result of commingling of pork pellets and waste material. As such, the Separator/Sorter serves an important quality control function in the manufacturing of quality pork rind pellets and/or pork rinds. Furthermore, the Separator/Sorter is positioned directly in the middle of the manufacturing process and is not used in any other capacity by the taxpayer. Like the Trucks in *Vans Material Company, Inc.*, the Separator/Sorter here is an inseparable and single piece of equipment fit for only one purpose as it is used solely to separate the potentially harmful waste from the food product before selling it to its customer that will ultimately manufacture the pork rind pellet into a marketable food product.

3. IDOR Has Historically Exempted Separators/Sorters from Tax

Third, the IDOR has historically provided that Separators/Sorters qualify for the MM&E exemption. For example, in *Illinois Private Letter Ruling ST 04-0003-PLR*, the IDOR determined that a feeder breaker machine primarily used to sort coal qualifies for the MM&E exemption, as it furthers the manufacturing process.²⁸ Additionally, the IDOR in *Illinois Private Letter Ruling No. ST 92-0515-PLR* held that a screen machine used to sort compost into a more useable size qualifies for the MM&E exemption, so long as, the screen separator machine is used primarily for the purpose of sorting the compost.²⁹ As such, it logically follows that the Separator/Sorter in the instant case should qualify for the MM&E exemption as it furthers the manufacturing process of pork rind pellets evidenced by the fact that it is primarily used for the purpose of separating the pellets from potentially hazardous waste; thus, providing the taxpayer with a safe and marketable product for its customers.

4. Machine Operates as Food Processing

Finally, the Taxpayer's purchase of the Separator/Sorter qualifies for the MM&E exemption because the Separator/Sorter is primarily used in the manufacturing process as a food processor. It was in *Illinois Private Letter Ruling ST 88-0136* that the IDOR first applied Illinois regulations to extend the MM&E exemption to include machinery purchased for and primarily used in food processing.³⁰ Specifically, the IDOR determined that "[t]he production of food products has been determined to be a manufacturing process required for exemption...purchasers of equipment to be used primarily in the manufacture of food products for sale can claim the exemption because food processing constitutes the manufacturing or assembling of tangible personal property."³¹

Moreover, in *Ill. Dept. of Rev. GIL No. ST 95-0084-GIL*, the IDOR applied the aforementioned regulation to hold that baking machinery purchased by a retail establishment and primarily used in the on-site manufacturing of bakery items, dairy

items and cream cheese products qualifies for the MM&E exemption since food processing constitutes the manufacturing or assembling of tangible personal property.³²

In applying the aforementioned law and the administrative guidance provide by the IDOR to the taxpayer in the instant case, it is clear that the Separator/Sorter qualifies for the MM&E exemption as it is primarily used in the on-site manufacturing of food products (i.e. pork grind [sic] pellets) and because the production of such food products constitute exempt tangible personal property .³³

For all the aforementioned reasons individually and in the aggregate, the Separator/Sorter qualifies for the MM&E exemption on purely statutory grounds.

V. Requested Ruling

Based on the above, COMPANY respectfully requests a ruling that the Separator/Sorter described herein be exempt from sales and use tax under the ME&E [sic] exemption. Accordingly, please contact the authorized representative, with any concerns and inquiries regarding this matter at the following address:

NAME/ADDRESS

VI. Signature

Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief, (1) the facts presented in support of the requested ruling are true, correct, complete and (2) the issue in question is not being litigated or challenged in an informal hearing of the Department or any other tribunal or court in Illinois.

DEPARTMENT'S RESPONSE:

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 30.330(b)(2). The exemption does *not* apply to "hand tools, supplies (such as rags, sweeping or cleaning compounds), coolants, lubricants, adhesives, or solvents, items of personal apparel (such as gloves, shoes, glasses, goggles, coveralls, aprons, masks, mask air filters, belts, harnesses, or holsters), coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigerants or water." See Section 130.330(c)(3).

Your letter states that the Separator/Sorter machine is used to process pork rind pellets. Those pork rind pellets are transported to the Separator/Sorter machine by conveyor belt from a steam cooker as an integral part of the production line. Once the pork rind pellets enter the Separator/Sorter machine, the pork rind pellets are sorted by the machine in order to separate and discard waste materials, such as twine, bone, plastic, cutting blades and plastic strapping, from the pork rind pellets. The Separator/Sorter machine uses a laser eye to separate those waste materials from the pellets and deposit that waste material into a bin. The Separator/Sorter machine is used solely for this purpose. The pork rind pellets are then sorted and either packaged for sale or are fried

at the taxpayer's packaging plant for sale. Based upon this information, the Separator/Sorter machine used by COMPANY in the manner described herein qualifies 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 (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,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC:msk

¹ See picture attached.

² See 35 ILCS 105/1, 105/3. Taxpayer is not aware of any authority contrary to its views and analysis provided herein.

³ See 35 ILCS 105/3-5(18); 86 Ill. Admin. Code §130.330(a). This is commonly referred to as the Manufacturing Machinery & equipment Exemption.

⁴ See Ill. Admin. Code §130.330(c)(2), (3) providing in relevant part that machinery is defined to include major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. Equipment includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process...Given these regulatory definitions, it is clear that the Sorter/Separator machine also constitutes 'machinery' and 'equipment.'

⁵ See 35 ILCS 105/3-50(1); See also Ill. Admin. Code §130.330(b)(2).

⁶ See *Van's Material Company v. The Department of Revenue* 131 Ill. 2d 196 (1989) quoting *Dolese & Shepahard [sic] Co. v. O'Connell*, 257 Ill. 43, 45 (1912).

⁷ *Id.*

⁸ *TideWater Oil Co. v. United States*, 171 U.S. 210 (1898).

⁹ *Id.*

¹⁰ See *Van's Material Company v. The Department of Revenue* 131 Ill. 2d 196 (1989) quoting *Dolese & Shepahard [sic] Co. v. O'Connell*, 257 Ill. 43, 45 (1912).

¹¹ *Id.*

¹² *Id.*

¹³ See 35 ILCS 105/3-50. See also *The Department of Revenue of the State of Illinois v. ABC Concrete, Inc.* ST 01-34 (November 05, 2001).

¹⁴ See PLR ST 04-0003 (January 23, 2004).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *GIL ST 00-0255* (November 21, 2001) citing, 86 Ill. Admin. Code §130.330(d)(3)(C)

¹⁹ See PLR ST 04-0003 (January 23, 2004).

²⁰ *Id.*

²¹ *Id.*

²² See *PLR ST 92-0515* (October 02, 1992).

²³ *Id.*

²⁴ *Id.*; See also *PLR ST 05-0021* (November 29, 2005) (ruling indirectly that scalper machine that is used to process corn in order to remove rocks and debris constitutes part of manufacturing process and thus would be exempt in accordance with regulatory guidelines.)

²⁵ See 86 Ill. Adm. Code §130.330(d)(3)(F); *PLR ST 88-0136* (February 2 1988); *GIL ST 01-0162* (August 18, 2001); *GIL ST 95-0084* (February 27, 1995).

²⁶ *Id.*

²⁷ See *GIL ST 94-0116* (May 5, 1994).

²⁸ See Ill. *PLR ST 04-003-PLR* (January 23, 2004).

²⁹ See Ill. *PLR ST 92-0515-PLR* (October 02, 1992).

³⁰ See Ill. *PLR ST 88-0136-PLR* (February 26, 1988); See also 86 Ill. Adm. Code §130.330(d)(3)(F)

³¹ See Illinois Private Letter Ruling No. *ST 88-0136-PLR*, (February 26, 1998) quoting 86 Ill. Adm. Code 130.330(d)(3)(F).

³² See Illinois Dept. of Rev. *GIL No. ST 01-0162-GIL*, (August 15, 2001) citing 130.330(d)(3)(F); See also, Illinois *PLR ST 88-0136* (February 26, 1988).

³³ See 86 Ill. Adm. Code §130.330; See also Illinois Dept. of Rev. *GIL No. ST 02-0223-GIL* (October 22, 2002).