

This letter describes the documentation required to document the Enterprise Zone building materials exemption. 35 ILCS 120/5k and 86 Ill. Adm. Code 130.1951(e). (This is a GIL.)

February 5, 2013

Dear:

This letter is in response to your letter dated December 11, 2012, 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:

We would like to verify if our customer COMPANY1 could use the letter from VILLAGE to be exempt from Illinois sales tax. We billed COMPANY1 but the end user is COMPANY2.

Attached are copies [sic] our invoice and letter COMPANY1 had provided to us.

We appreciate your written advise [sic] in this regard.

DEPARTMENT’S RESPONSE:

A deduction from Illinois Retailers’ Occupation Tax liability is allowed for gross receipts from retail sales of building materials that will be incorporated, by remodeling, rehabilitation or new construction, into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act. 35 ILCS 120/5k.

The Department’s regulation governing various enterprise zone exemptions is found at 86 Ill. Adm. Code 130.1951. Subsection (d) of this regulation explains the current requirements for persons claiming the enterprise zone building materials exemption. This exemption applies to qualified sales of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. A “qualified sale” means a sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the administrator of the enterprise zone in which the building project is located.

Retailers claiming the deduction must obtain two specific documents from the purchaser in order to properly claim the exemption:

1. Prior to making a purchase of qualifying building materials, a purchaser must obtain a Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated. The Certificate of Eligibility for Sales Tax Exemption must contain a statement that the building project identified in the Certificate meets all of the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located; the location or street address of the building project that is the subject of the Certificate; and the signature of the administrator of the enterprise zone in which the building project is located.
2. In addition to the Certificate of Eligibility for Sales Tax Exemption, a purchaser must prepare a certification that contains the following items:
 - a. a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone;
 - b. the location or address of that real estate;
 - c. the name of the enterprise zone in which that real estate is located;
 - d. a description of the building materials being purchased for incorporation into that real estate;
 - e. the date of the purchase; and
 - f. the purchaser's signature.

A retailer claiming the deduction must have both the Certificate of Eligibility for Sales Tax Exemption *and* the purchaser's certificate among its books and records in order to document the exemption. Provided that the retailer has properly documented the exemption (and absent any fraud or collusion), if the Department should discover that the purchaser has improperly claimed the exemption, it will look to the purchaser for payment of tax.

The enterprise zone building materials exemption from sales tax applies to both state and local sales taxes on qualifying building materials. In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate. For example, gross receipts from sales of floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips") can qualify for the deduction. Section 130.1951(e)(8). Items that are not physically incorporated into the real estate cannot qualify for the deduction. For example, gross receipts from sales of floor coverings that are area rugs or that are attached to the structure using only two-sided tape do not qualify for the deduction. Section 130.1951(f)(3).

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,

Richard S. Wolters
Associate Counsel