**Section 130.1958 Sales of Building Materials to be Incorporated into Real Estate in a Qualified Facility under the Manufacturing Illinois Chips for Real Opportunity (MICRO) Act**

a) *Each retailer who makes a sale of building materials that will be incorporated into real estate in a qualified facility for which a certificate of exemption has been issued by the Department of Commerce and Economic Opportunity* ("DCEO") *under Section 110-105 of the Manufacturing Illinois Chips for Real Opportunity (MICRO) Act* ("MICRO Act")(35 ILCS 45/110-105)*, may deduct receipts from such sales when calculating any State or local use and occupation taxes.* [35 ILCS 120/5n]

b) *No retailer who is eligible for the deduction or credit under Section 5k of* theRetailers' Occupation TaxAct("ROTA") *related to enterprise zones or Section 5l of* the ROTA *related to High Impact Businesses for a given sale shall be eligible for the deduction or credit authorized under* Section5n ofthe ROTA *for that same sale.* [35 ILCS 120/5n]

c) Building materials that are physically incorporated into the real estate in a qualified facility and thus qualify for the exemption include, but are not limited to:

1) Common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials, and sheet metal;

2) Plumbing systems and components such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners, and water pipes;

3) Heating systems and components such as furnaces, ductwork, vents, stokers, boilers, heating pipes, and radiators;

4) Electrical systems and components such as wiring, outlets, and light fixtures that are physically incorporated into the real estate;

5) Central air conditioning systems, ventilation systems, and components that are physically incorporated into the real estate;

6) Built-in cabinets and other woodwork that are physically incorporated into the real estate;

7) Built-in appliances such as refrigerators, stoves, ovens, and trash compactors that are physically incorporated into the real estate; and

8) 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 also known as tacking strips or tack-down strips.

d) Building materials that are not physically incorporated into the real estate in a qualified facility and thus do not qualify for the exemption include, but are not limited to:

1) Tools, machinery, equipment, fuel, forms, and other items that may be used by a construction contractor at a qualified facility, but that are not physically incorporated into the real estate;

2) Free-standing appliances such as stoves, ovens, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors, and dishwashers that may be connected to and operate from a building's electrical or plumbing system but that do not become a component of those systems; and

3) Floor coverings that are area rugs or that are attached to the structure using only two-sided tape.

e) Certification of Exemption from DCEO

1) DCEO *may certify a taxpayer with a project that meets the qualifications under paragraphs (1), (2), or (4) of subsection (c) of Section 110-20* of the MICRO Act (35 ILCS 45/110-20)*, subject to an agreement under* the MICROAct*, for an exemption from any State or local use tax or retailers' occupation tax on building materials for the construction of its project facilities. The taxpayer must meet any criteria for certification set by* DCEO *under* theMICRO Act*.* [35 ILCS 45/110-105(a)]

2) *Upon certification by* DCEO *under* Section 110-105 of the MICRO Act*,* DCEO *will notify the Department of Revenue of the certification.* [35 ILCS 45/110-105(a)]

f) MICRO Illinois Building Materials Exemption Certificate from the Department of Revenue

1) *Upon request from a person that has been certified by* DCEO *under the* MICRO Act*, the Department shall issue a MICRO Illinois Building Materials Exemption Certificate for each construction contractor or other entity identified by the person so certified.* *The Department shall make the MICRO Illinois Building Materials Exemption Certificates available to each construction contractor or other entity as well as the person certified under the MICRO Act.* [35 ILCS 120/5n]

2) Request for exemption certificates shall be submitted electronically and must contain the following information:

A) *The name and address of the construction contractor or other entity;*

B) *The name and location or address of the building project site;*

C) *The estimated amount of the exemption for each construction contractor or other entity for which a request for an exemption certificate is made, based on a stated estimated average tax rate and the percentage of the contract that consists of materials;*

D) *The period of time over which supplies for the project are expected to be purchased; and*

E) *FEIN numbers* of the contractor and entity, *to determine if* *the contractor or other entity, or any partner, or a corporate officer, and in the case of a limited liability company, any manager or member, of the construction contractor or other entity, is or has been the owner, a partner, a corporate officer, and in the case of a limited liability company, a manager or member, of a person that is in default for moneys due to the Department under* theROTA *or any other tax or fee Act administered by the Department.* [35 ILCS 120/5n]

3) The Department shall issue the exemption certificates electronically and the certificates shall contain the following information:

A) *Unique* identifying *number*;

B) *Name of entity to whom the exemption certificate is issued*;

C) *Expiration date which shall be no more than 5 years after the issuance date;* and

D) *Language that, if the construction contractor or other entity who is issued the exemption certificate makes a tax-exempt purchase, as described in* Section5n ofthe ROTA*, that is not eligible for exemption under* Section5nofthe ROTA *or allows another person to make a tax-exempt purchase, as described in* Section5n ofthe ROTA*, that is not eligible for exemption under* Section5n ofthe ROTA*, then, in addition to any tax or other penalty imposed, the construction contractor or other entity is subject to a penalty equal to the tax that would have been paid by the retailer under* the ROTA *as well as any applicable local retailers' occupation tax on the purchase that is not eligible for the exemption.* [35 ILCS 120/5n]

4) *The Department shall issue the exemption certificate within 3 business days after receipt of request. This requirement does not apply in circumstances where the Department, for reasonable cause, is unable to issue the exemption certificate within 3 business days.* [35 ILCS 120/5n] Examples of "reasonable cause" include, but are not limited to, receipt of a request lacking all the information required by 35 ILCS 120/5n, the receipt of a large number of requests for exemption certificates, or lack of sufficient staff to process the number of existing requests.

5) *The exemption status shall take effect within 3 months after certification of the taxpayer and notice to the Department of Revenue by* DCEO. [35 ILCS 45/110-105(a)]

6) The exemption period shall not exceed 5 years. [35 ILCS 120/5n; 35 ILCS 45/110-105(a)]

7) *The Department may refuse to issue an exemption certificate under* Section5n ofthe ROTA *if the owner, any partner, or a corporate officer, and in the case of a limited liability company, any manager or member, of the construction contractor or other entity is or has been the owner, a partner, a corporate officer, and in the case of a limited liability company, a manager or member, of a person that is in default for moneys due to the Department under* the ROTA *or any other tax or fee Act administered by the Department.* [35 ILCS 120/5n]

8) *At the request of the entity to whom the exemption certificate is issued, the Department may renew an exemption certificate issued under* Section5n ofthe ROTA*.* [35 ILCS 120/5n]

9) *After the Department issues exemption certificates under* Section 5n ofthe ROTA, *the certified entity may notify the Department of additional construction contractors or other entities eligible for an exemption certificate under* Section5n ofthe ROTA*. Upon such a notification and subject to the other provisions of* Section5n ofthe ROTA*, the Department shall issue an exemption certificate to each additional qualified construction contractor or other entity so identified.* [35 ILCS 120/5n]

10) *A certified entity may notify the Department to rescind an exemption certificate previously issued by the Department that has not yet expired. Upon such a notification and subject to the other provisions of* Section5n ofthe ROTA*, the Department shall rescind the exemption certificate.* [35 ILCS 120/5n]

11) The request to issue, renew, or rescind an exemption certificate, or the request to add additional construction contractors or other entities, must be submitted to the Department by an employee, corporate officer, partner, limited liability company manager or member, or designated agent who cannot be a contractor or subcontractor, of the person or entity certified by DCEO under the MICRO Act. The designation of agent must be made in writing to the Department by the corporate officer, partner, limited liability company manager or member of the person or entity certified by DCEO under the MICRO Act.

g) Required Documentation of Sale

1) *A construction contractor or other entity shall not make tax-free purchases unless it has an active exemption certificate issued by the Department at the time of purchase.* [35 ILCS 120/5n]

2) *In addition to any other requirements to document the exemption allowed under* Section5n ofthe ROTA*, the retailer must obtain the purchaser's exemption certificate number issued by the Department.* [35 ILCS 120/5n]

3) The retailer must also obtain a certification from the purchaser that contains:

A) A statement that the building materials are being purchased for incorporation into real estate in a qualified facility;

B) The location or address of the real estate into which the building materials will be incorporated;

C) The name and address of the construction contractor or other entity;

D) A description of the building materials being purchased;

E) The purchaser's MICRO Illinois Building Materials Exemption Certificate number issued by the Department of Revenue; and

F) The purchaser's signature and date of purchase.

4) The retailer may comply with this subsection (g) certification requirement by securing from the purchaser a completed and signed Form EZ-1.

h) Annual Reports

1) *For applicants issued a certificate of exemption under Section 110-105 of* the MICRO Act*, the report shall be the same as required for a High Impact Business under subsection (a-5) of Section 8.1 of the Illinois Enterprise Zone Act* (20 ILCS 655/8.1(a-5))*.*  [35 ILCS 45/30(f)]

A) Each contractor or other entity that has been issued a MICRO Illinois Building Materials Exemption Certificate under Section 5n of the ROTA shall annually report to the Department of Revenue the total value of the MICRO Illinois building materials exemption from State taxes.

B) Reports shall contain information reasonably required by the Department of Revenue to enable it to verify and calculate the total tax benefits for taxes imposed by the State and shall be broken down by MICRO Illinois Project site.

C) Reports are due no later than May 31 of each year and shall cover the previous calendar year.

2) Suspension of Exemption Certificate for Failure to Report Data. A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (h)(1) shall have the exemption certificate for which it failed to report suspended.

A) First Offense: A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (h)(1) shall have the MICRO Illinois Building Materials Exemption Certificate suspended until the contractor or other entity complies with the reporting requirements.

B) Second Offense: A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (h)(1) for two reporting periods within a five-year period shall have the MICRO Illinois Building Materials Exemption Certificate issued to it suspended until 30 days after the contractor or other entity complies with the reporting requirements.

C) Subsequent Offenses: A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (h)(1) for more than two reporting periods within a five-year period shall have the MICRO Illinois Building Materials Exemption Certificate issued to it suspended until 180 days after the contractor or other entity complies with the reporting requirements.

i) Unlawful Use of Exemption Certificate

1) *If* *the Department of Revenue determines that a construction contractor or other entity that was issued an exemption certificate under* Section5n ofthe ROTA *made a tax-exempt purchase, as described in* Section5n ofthe ROTA*, that was not eligible for exemption under* Section 5n ofthe ROTA *or allowed another person to make a tax-exempt purchase, as described in* Section5n ofthe ROTA*, that was not eligible for exemption under* Section5n ofthe ROTA*, then, in addition to any tax or other penalty imposed, the construction contractor or other entity is subject to a penalty equal to the tax that would have been paid by the retailer under* the ROTA *as well as any applicable local retailers' occupation tax on the purchase that was not eligible for the exemption.* [35 ILCS 120/5n]

2) Suspension or Revocation of Exemption Certificate for Unlawful Use of Exemption Certificate. The Department shall suspend or revoke the exemption certificate of a contractor or other entity found to have used an exemption certificate in violation of 35 ILCS 120/5n as reflected in subsection (i)(1), as follows:

A) First Offense: In addition to all other penalties provided by law, a first offense shall result in the suspension of the MICRO Illinois Building Materials Exemption Certificate issued to a contractor or other entity for one year.

B) Second Offense: In addition to all other penalties provided by law, a second offense shall result in permanent revocation of the MICRO Illinois Building Materials Exemption Certificate issued to the contractor or other entity.

j) Ineligibility and Protest Procedures

1) A contractor or other entity is not eligible to be issued additional exemption certificates under Section 5n during the period that one or more exemption certificates issued to it under Section 5n are subject to suspension or revocation.

2) Any person aggrieved by any decision of the Department under subsections (h) and (i) may, within 20 days after notice of the decision, protest and request a hearing, whereupon the Department shall give notice to that person of the time and place fixed for a hearing, shall hold a hearing and then issue its final administrative decision in the matter to that person. In the absence of a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given. For information about practice and procedure for hearings before the Illinois Department of Revenue see 86 Ill. Adm. Code 200.

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