

An exclusively charitable retirement home dining facility is not considered to be open to the public if the facility is restricted to residents and their visitors, retirement home employees and volunteer workers. See 86 Ill. Adm. Code Section 130.2005. (This is a PLR.)

July 19, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 29, 2006, 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 1200.1120. You may access our website at [www.tax.illinois.gov](http://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 CHARITY 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 CHARITY 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:

The purpose of this request is to seek a ruling determining whether the transactions described below are subject to the Retailers' Occupation Tax. A duly executed form IL-2848, Power of Attorney, is attached as Exhibit A.

**Background.**

CHARITY is a STATE corporation organized under STATE's Non Profit Corporation Act. The Charity has previously qualified to do business in Illinois.

The Charity operates independent living facilities for senior citizens, as described in more detail below. The Charity has been recognized as exempt from federal income tax by the Internal Revenue Service in accordance with the provisions of Internal Revenue Code Section 501(c)(3) (a copy of the IRS exemption determination letter is attached as Exhibit B). The Charity is likewise exempt from Illinois income taxes as a charitable organization. The Charity has received an exemption from the Retailers' Occupation

Tax for purchases it makes by exemption number #E (a copy of the Illinois Department of Revenue exemption letter is attached as Exhibit C). As a non-profit corporation, the Charity does not have shareholders per se, but the members of the Charity are the MEMBER1 and the MEMBER2 (which owns its interest in the Charity through its ownership of the ABC Health System).

The Charity operates several senior independent living facilities on one campus in CITY, Illinois. There is a main facility, the 'CHARITY Center' facility, with # units. The Charity also owns and operates # units as detached, stand-alone townhouses, called the 'XYZs.' An additional sixty-five of the units provide assisted care.

Consistent with its charitable mission, the Charity only provides housing to senior citizens. All of the residents must be above the age of 55; in fact, in the assisted living facility, the average age of the residents is 88 years of age, and in the independent living facility, the average age of the residents is 77 (women) and 78 (men). Independent living residents pay a refundable admission fee for their use of their personal unit<sup>1</sup> plus a monthly fee which includes associated services that are common to the senior living industry. The associated services include utilities, garbage removal, housekeeping and cleaning services, access to the extensive common and exercise areas, and related services. For example, residents in the CHARITY Center facility pay monthly fees which range from \$ to \$ (depending on the size of their personal units). A copy of the typical housing contract is attached as Exhibit D.

In addition to various light housekeeping and common areas, the Charity provides meals to its residents, and at issue is the application of the Retailers' Occupation Tax to those meals. Residents who reside in the CHARITY Center receive \$ 'dining dollars' per quarter included as part of their monthly fees. This amount is calculated to include 90 meals per quarter, or 30 meals per month ( although there is no requirement that the residents spread out their meals according to any schedule). The residents can use these dining dollars in the Charity's casual bistro restaurant or in the formal dining room. While the Charity expects that the vast majority of the meals will be consumed directly by the residents using their dining dollars, residents may bring guests to join them for meals. Residents pay \$ dining dollars per meal for themselves and pay \$ dining dollars per meal for guests. Residents who live in the detached CHARITY's townhouses do not automatically receive dining dollars as part of their monthly fees, but those XYZs residents may purchase dining dollars by simply paying money into a dining dollar account the Charity will establish for them. For CHARITY Center residents, dining dollars that are not used at the end of each quarter are forfeited. If residents spend more than their allotment of dining dollars in a given quarter, the residents will be billed on the first day of the succeeding quarter. In this regard, the dining dollars are treated as an included 'perk' of being a resident of the Charity, but the perks are capped in the interest of fairness-hence the charge if a resident uses the meals more than a set amount. Also by way of background, the Charity sets out a free continental breakfast every morning that the residents are free to partake of, without use of dining dollars.

In addition to the residents and their guests, the staff at the Charity may use the bistro and the main dining facility as a matter of convenience while the staff is working, but otherwise the dining facilities are not open to the public. Also, the Charity accepts cash purchases at the bistro or the main dining facility, for example, if a resident's family wishes to take the resident to a meal (which frequently occurs on the residents' birthdays or holidays).

## **Rulings Requested.**

The Charity seeks a ruling that:

1. The meal purchases by the residents using their dining dollars to purchase meals for themselves and their guests are not subject to the Retailers' Occupation Tax;
2. The meal purchases by the residents and/or their guests, using cash and not using the dining dollars are not subject to the Retailers' Occupation Tax.
3. The meals purchased by the Charity's staff members while working at the facility are not subject to the Retailers' Occupation Tax.

## **Applicable Law.**

There are several provisions in the Retailers' Occupation Tax Act<sup>2</sup> that apply to the meal sales by the Charity.

The general explanation of the application of the Act to exempt organizations is contained in 86 Ill. Admin. Code Sec. 130.2005, entitled 'Persons Engaged in Nonprofit Service Enterprises.' That Section explains that there are limited exceptions from the tax imposed by the Act for exclusively charitable organizations (such as the Charity). The three exceptions from the tax are for sales by exempt Charity are:

- (i) Sales to members and patients, including sales of uniforms (such as scouting uniforms by a national scouting organization including the Boy Scouts);
- (ii) Sales that are 'Noncompetitive Sales,' which requires that the sales be occasional in nature and not ongoing (See, 103.2005(a)(3)(iii) of the Administrative Code); and
- (iii) Occasional dinners.

Other than these three exceptions, exempt and not for profit organizations are subject to the tax imposed by the Act on their sales.

This structure is reiterated in the definitional provisions of 35 ILCS 105/2, which provides that a 'Retailer' under the Act includes:

A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) is a retailer with respect to such transactions, except that only a person organized and operated exclusively for charitable, religious or educational [sic] purposes either (1) to the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person, or (2) to the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit.

Thus, there is an exception for charitable organizations for certain sales.

However, other provisions are in conflict with the above statutory and regulatory scheme. For example, 86 Ill. Admin. Code Sec. 130.2008 provides that the Retailers' Occupation Tax does not apply to some sales by 'service organizations'; service organizations are nonprofit organizations 'whose main purpose is to benefit persons who are 65 years of age or older,' and the types of services that a service organization can provide include 'nutritional services.' However, I note that (d) of that Administrative Code Section provides that the exempt service organization must collect Retailers' Occupation Tax if the organization purchased the sold items under a sales tax exemption.

### **Analysis.**

As stated above, the Charity is formed for charitable purpose of providing affordable housing and associated amenities for senior citizens. There are a mix of independent living facilities and assisted care facilities, but in all instances, the Charity only provides housing to senior citizens above the age of 55, consistent with the Charity's exempt mission, and in fact, the average age of the residents is significantly older.

As a housing community for senior citizens, the Charity must provide all basic living needs of its residents. Thus, the Charity must provide basic food as well as housing services for its residents, or else the Charity will not be serving its charitable purpose of providing care for the elderly. In this regard, the Charity has structured its operations in a manner similar to a hospital or nursing home, which are specifically exempt from the tax imposed by the Act on the meals they serve to their residents, in accordance with the provisions of 86 Ill. Admin. Code Section 130.2005(b)(1). Given that nursing homes are similar to hospitals in this regard, Subsection (C) of that Administrative Code Section extends the exemption from the Act for sales by nursing homes and sanitariums. Since the Charity's activities are in similar vein to non-profit hospitals and nursing homes, its meal sales should be likewise exempt. For example, this is consistent with the Department's guidance in PIO-37, dated 1/1/02, stating that hospital dining facilities that aren't open to the public are exempt from the Retailers' Occupation Tax.

With regard to the less frequent sales by the Charity to its staff members, there is a similar exemption contained in the Act for sales to staff members of educational organizations, 86 Ill. Admin. Code Sec. 130.2005(b)(4)(A) specifically provides that schools may sell meals to the schools' staff and employees without being subject to the tax imposed by the Act. While the Administrative Code does not contain an explanation of the rationale behind the exemption for staff sales, presumably the exemption is based on the 'convenience of the employer' doctrine, that it benefits the school to allow its staff access to the dining facilities. This doctrine applies with equal force to the Charity's sales to its staff members for several reasons. First, the number of sales to staff members is a small fraction of the sales to residents, and thus the scope of the sales mitigate in favor of extending the existing exemption. Second, allowing the Charity's staff to eat at the Charity's dining facilities under the exemption will encourage the staff to do so, which in turn keeps the staff in close proximity to the residents, should emergency issues arise (keeping in mind that with a senior population, it is reasonably foreseeable that the staff may have to address emergency situations). Finally, the senior staff members intend to use the dining facilities as well as the junior staff, and thus the residents will have access to senior staff members during meal times. Access to senior staff tends to be a selling point to the senior population, and thus enhances the Charity's ability to serve its population of residents.

The final component of the meal sales are the Charity's sales to the residents' guests, and there are compelling reasons to extend the exemption to these sales. First, the reason the Charity established a dining facility open to the residents' guests was to enhance the residents' living experience, to allow the residents the ability to have family members join them for a meal. Thus, operating the bistro restaurant is part of the Charity's overall mission of serving its senior population. Also, as a practical matter, given the residents' advanced ages and medical condition, it may be significantly more difficult for guests to take the residents outside the facility for meals—there may be wheelchair and walker issues, etc. Finally, the Charity anticipates that the amount of guest meals served will be the smallest amount of sales, and thus the administrative burden on the Charity to monitor guest versus non-guest meals does not merit the small, potential amount of tax.

### **Conclusion.**

Based on the foregoing analysis, the Charity seeks a ruling that the meals it sells to its residents by way of the dining dollar program or direct cash sales, and the meals the Charity sells to the residents' guests and the Charity's staff, are exempt from the Retailers' Occupation Tax.

### **Taxpayer Statement.**

The following statement is provided in compliance with 2 Illinois Administrative Code Section 1200.100:

The Charity certifies that:

1. A duly executed power of attorney is attached.
2. This issue is not involved in the Charity's tax return for an earlier period and is not under examination by the Department of Revenue, nor is the issue in litigation for the Charity or a related party.
3. To the best of the Charity's and counsel's knowledge, the Department of Revenue has not previously ruled on the same or a similar issue for the Charity or a predecessor, and neither the Charity nor a predecessor has previously submitted this or a similar ruling request but withdrawn that request before a ruling was issued.
4. The Charity seeks that, upon publication of the ruling, the following information be redacted:
  - The Charity's name, address and sales tax exemption certificate number;
  - The names of the Charity's members
  - All references to pricing, including the amount of dining dollars included in the monthly fees.

Thank you for your consideration of this matter. If you have any questions, please feel free to contact the undersigned.

## DEPARTMENT'S RESPONSE

The Department's regulation on "Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons" at 86 Ill. Adm. Code 130.2005(b)(1) provides that:

1) Hospital sales

A) Nonprofit hospitals which qualify as exclusively charitable institutions are not taxable when selling food or medicine to their patients in connection with the furnishing of hospital service to them, nor on the operation of restaurant facilities which are conducted primarily for the benefit of the hospital's employees, and which are not open to the public. However, sales made in a hospital cafeteria which is open to the public will be taxable sales...

B) In the case of hospitals which qualify as charitable institutions, such hospitals are not taxable when selling drugs to anyone because this is for the relief of the sick (which is the hospital's primary purpose) and so is "primarily for the purpose of" such hospitals, thus qualifying such transactions for tax exemption. However, a hospital or hospital auxiliary incurs Retailers' Occupation Tax liability when selling candy, chewing gum, tobacco products, razor blades and the like at retail even when such items are sold only to patients because (unlike food and medicine) these items are not necessary to the furnishing of hospital service, and they are competitive.

C) The same distinctions apply to nonprofit sanitarium and nonprofit nursing homes when they qualify as exclusively charitable institutions.

The Department's General Information Letter ST 97-0413-GIL explains that under Subpart (b)(1)(A) of 86 Ill. Adm. Code 130.2005, nonprofit hospitals that qualify as exclusively charitable institutions and that have obtained an exemption identification "E" number from the Department are not taxable on the operation of restaurant facilities which are conducted primarily for the benefit of the hospital's employees, and which are not open to the public. The Department has determined that a nonprofit hospital dining facility is not considered to be open to the public if the facility is restricted to patients and their visitors, hospital employees (including staff doctors), volunteer workers in the hospital and doctors attending patients in the hospital. Section 130.2005(b)(1)(C) allows the same distinctions to apply to nonprofit sanitarium and nonprofit nursing homes when they qualify as exclusively charitable institutions. This supports your requested ruling. As a result, the meals that the CHARITY sells to its residents by way of the dining dollar program or direct cash sales, and the meals the Charity sells to the residents' guests and the Charity's staff, are exempt from the Retailers' Occupation Tax.

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 further 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](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk

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<sup>1</sup> The admission fee is refundable at 90% once a resident leaves his or her personal unit, and once the Charity has successfully filled the unit.

<sup>2</sup> Hereinafter, the 'Act.'