

This letter provides reference regarding "reward points" programs and refunds pursuant to the Hotel Operator's Occupation Tax Act. See 86 Ill. Adm. Code 480.125. (This is a GIL.)

June 8, 2007

Dear Sir or Madam:

This letter is in response to your letter dated June 7, 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 1200.120. 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:

ABC is a national franchisor of hotels. Franchised hotels contribute funds to various advertising campaigns to promote the ABC hotel brands. One such campaign is a guest rewards program, the Award Night Program (**'the Program'**), whereby guests, after applying for free membership, earn points with each stay at a franchised hotel (**'ABC hotel'**).

Each time a Program member stays at a ABC hotel, the hotel contributes a percentage (currently, 5%) of the member's fully-taxed room revenue to the Program fund. The Program maintains the fund in a separate, non-operating, bank account. A member's accumulated points are redeemable for a free room at any franchised hotel. When sufficient points are earned, the guest makes a free room reservation via the Program line. The hotel is notified of the award; and the member pays nothing for the free room(s). Subsequently, the Program returns to the hotel an amount for the cost of the free room(s) from the hotel's prior contributions (**'the redemption'**) ? plus state and local occupancy taxes (**'the HOOT'**); and the hotel remits the taxes to the appropriate authorities.

Since the Program redemption is provided, in effect, from the hotel's previously taxed, room revenue contributions, it should be a non-taxable payment. Therefore, ABC requests confirmation and legal advice that the HOOT is not due on Program redemptions. If you agree, and, since the Fund has added state and local tax to prior

redemptions, please advise the appropriate procedures to enable it to obtain a refund of such taxes so paid to the hotels in error.

Since all of the data is maintained by ABC, we hope that the authorities could pay the HOOT refunds directly to the Program Fund. This would save a great deal of time and expense for all parties (the State, local authorities, ABC, and the 107 IL hotels) - in lieu of having the hotels refund the Program and applying for separate refunds from the State and local authorities.

Your consideration of our request for legal advice and a possible PLR is very much appreciated. If you have any questions, please call.

DEPARTMENT'S RESPONSE:

We can not give you a binding opinion on the ABC Award Night Program in the context of a General Information Letter. However, we hope that the following general information is helpful.

A tax is imposed upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 5% of 94% of the gross rental receipts from such renting, leasing or letting, excluding, however, from gross rental receipts, the proceeds of such renting, leasing or letting to permanent residents of that hotel and proceeds from the tax imposed under subsection (c) of Section 13 of the Metropolitan Pier and Exposition Authority Act. 35 ILCS 145/3(a).

In some situations the redemption of points for complimentary lodging under a "guest rewards program" would not be subject to tax liability under the Hotel Operators' Occupation Tax Act, 35 ILCS 145/3. This determination assumes that reimbursement of the hotel fees for lodging at a franchised hotel, when a person uses his or her reward points, comes directly from an account held and owned entirely by the national franchisor, and not as reimbursement from a third party.

In regard to hotel rewards points programs, it is our understanding that Hotel Operators' Occupation Tax is remitted by the operator upon the initial stay, with a percentage of that amount put into the separate fund, wholly owned by the hotel's national franchisor, for reimbursement of those fees by persons utilizing the rewards points program. Under these circumstances, the franchised hotels would not generally incur Hotel Operators' Occupation Tax liability on the redemption of the reward points by the customer. This determination is subject to change should a third party pay any reimbursement of the lodging fees to the franchised hotels or if the operator upon the initial stay or stays did not remit Hotel Operators' Occupation Tax.

However, Retailers' Occupation Tax or Use Tax liability may be incurred on tangible personal property transferred incident to a person's stay under the rewards program. Tangible personal property, such as food, drinks, and condiments, would be subject to Retailers' Occupation Tax liability if sold to the occupant. If the tangible personal property were provided to the occupant free-of-charge, then the hotel would incur Use Tax liability as a donor in a gift situation. See 86 Ill. Adm. Code 150.305(c).

The Department's regulations state that where a hotel operator pays Hotel Operators' Occupation Tax to the Department in error, either as a result of a mistake of fact or an error of law, the operator may file a claim with the Department. Therefore, it is the individual hotel operators that may claim a credit or refund, and not the program fund as a collective group. See 86 Ill. Adm. Code 480.125(a).

We assume that the local hotel tax that your letter refers to is one imposed under Section 8-3-14 of the Illinois Municipal Code. 65 ILCS 5/8-3-14. We cannot provide you with an answer because the Department has no jurisdiction to provide you with an interpretation of a municipal tax that is not collected or administered by the Department.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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