

This letter explains the application of the Hotel Operators' Occupation Tax when rentals are made to persons holding "E" numbers. (This is a GIL.)

October 27, 2008

Dear Xxxxx:

This letter is in response to your letter dated April 9, 2008, 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.ILTAX.com 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:

I am writing to you on behalf of CORPORATION to obtain clarity on our Corporation's tax liability in the State of Illinois, including without limitation the Hotel Operator's [sic] Occupation Tax and the CITY Hotel Accommodations Tax.

The Corporation was created in 1978 as a nonprofit public corporation by an Act of Congress, 42 U.S.C. § 8101 et seq. Congress, in enacting our statute, provided that:

The Corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.
42 U.S.C. § 8102(d) (emphasis added).

In addition, we have also received a determination from the Internal Revenue Service that we are exempt as a Section 501(c) (3) organization. The Corporation is also registered as a Charitable Organization in the State of Illinois. I have included a copy of the Corporation's enabling legislation and IRS determination letter for your review. For your convenience, I have also enclosed a copy of our Illinois Sales and Use Tax Exemption Certificate # and copies of previous correspondence from the State of Illinois and the CITY, acknowledging the Corporation as a tax-exempt organization.

In light of this statutory provision, the Corporation requests an updated ruling acknowledging that the Corporation is exempt from Illinois' and CITY's taxation, particularly the **IL DOR Hotel Operator's [sic] Occupation Tax (35 ILCS 145/1 to 145/10), and the Municipal Hotel Tax (CITY) (65 ILCS 5/8-3-13)**, as mentioned above. Such ruling would greatly facilitate the Corporation's transactions throughout the State of Illinois and the City of CITY, and enhance the Corporation's ability to carry out its congressional mandate.

We believe that Congress explicitly intended the exemption to include **the room occupancy excise** as well as any other tax of the State of Illinois, county, municipality, or local taxing authority, other than real property tax. Based primarily on the clear language of our authorization statute, we believe that we should be exempt from all taxation, including any taxes imposed by any State, county, municipality, or local taxing authority, other than real property taxes. Given that we will most likely continue to encounter difficulties with hotels, motels and other lodging accommodations with respect to our tax liability in the State of Illinois, we respectfully request that you provide the Corporation with a letter ruling or similar statement indicating that the Corporation is exempt from tax liability with respect to any and all State of Illinois taxes as well as those of any county, municipality, or local taxing authority within the State of Illinois other than a tax on the value of its real property, including without limitation the room occupancy tax. **The Corporation will be holding a Training Event in CITY. Our Meeting Planners have already encountered difficulties from the hotels regarding the IL DOR Hotel Operator's Occupation Tax (35 ILCS 145/1 to 145/10) and the Municipal Hotel Tax (CITY) (65 ILCS 5/8-3-13). (See attached documentation)**

If you have any questions or require additional information concerning this matter, please do not hesitate to contact me.

Thank you in advance for your attention to this matter.

DEPARTMENT'S RESPONSE:

We are unable to provide the ruling that you request. For your information, we have enclosed a copy of 86 Ill. Adm. Code 480.101, which explains the nature, rate and scope of the Hotel Operators' Occupation Tax Act ("HOOT"). As you can see from Section 480.101 (b)(3), a hotel operator incurs this tax on room rentals to entities that would otherwise be exempt from sales taxes (i.e., entities such as exclusively charitable, religious, or educational groups or government entities that possess exemption identification numbers issued by the Department).

The HOOT operates very differently from what is commonly referred to as "sales taxes" in Illinois. In an Illinois sales tax context, there are two separate but complementary taxes involved. The Retailers' Occupation Tax is imposed on the retailer and the Use Tax is imposed on the purchaser. Since the Use Tax is imposed on the purchaser, there is a tax to which an exempt purchaser's exempt status can attach and, because these taxes are complementary, if the purchaser is exempt from paying Use Tax then the retailer is generally exempt from the Retailers' Occupation Tax. As a result, when an exempt entity purchases tangible personal property and presents its exemption identification number ("E" number) to a retailer, its purchases are exempt from Use Tax and the retailer is exempt from Retailers' Occupation Tax.

However, that is not the result with the HOOT. Under the HOOT, tax is imposed only upon the hotel operator. There is no complementary tax imposed upon the room occupant. Since there is no tax liability imposed upon the room occupant, there is nothing to which an occupant's exempt status can attach. In addition, the HOOT does not exempt a hotel operator from tax when a room is rented to an exempt entity holding an "E" number issued by the Department.

The HOOT authorizes hotel operators to collect an amount from their customers that represents reimbursement for the hotel operator's tax liability. The fact that room occupants hold an exemption identification number issued by the Department does not exempt them from paying this reimbursement charge, if imposed by the hotel operator.

I hope this information has been helpful. You may access our website at <http://tax.illinois.gov/LegalInformation/regs/part480/> to learn more about the Hotel Operators' Occupation Tax. I hope this information has been helpful.

Very truly yours,

Jerilynn T. Gorden
Deputy General Counsel – Sales and Excise Taxes

JTG:msk