

ST 09-0161-GIL 12/21/2009 HOTEL OPERATORS' TAX

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

December 21, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 5, 2009, 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](http://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:

Our ORGANIZATION a national nonprofit 501(C)(3) organization with tax exemption identification number: # hosted our Competition at the HOTEL on DATE. Prior to hosting our event at the HOTEL, the hotel agreed to accept our exempt status, and we send [sic] them a copy of our tax exempt letter from the state.

After receiving our final bill from the HOTEL for this event, I noticed that we were charged for the retail sales tax on the food we purchased for our officials from the hotel restaurant and also for the sales tax on the competition and meeting rooms that we rented. To verify that our chapter should not be charged with these taxes, I contacted your IL Dept. of Revenue Regulations office. I was informed that under Title 86: Revenue, Part 480 Hotel Operators' Occupation Tax Act, Section 480.101, b) 6) Scope of the Tax-Examples of Taxability and Exemption, we were exempt from the above sales tax.

Therefore, I contacted the Controller at the HOTEL to request a refund on my credit card for these charges for sales tax of food of \$73.99 and sales tax on conference room rental of \$275 for a total of \$348.99. CONTROLLER has since checked with the hotel legal staff and has informed me that the hotel must collect these taxes. They would not be refunding our sales tax that was collected.

Our chapter requests that your department investigate this situation and send us a Letter of Private Ruling.

Your immediate attention to this matter is greatly appreciated.

## **DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Based upon the information provided in your request, the Department is unable to provide the ruling that you request and has decided to respond with this GIL. We believe that this matter will be best handled by the Department's Audit Division, and we are referring this matter to them for their investigation.

We hope that you find the following general information regarding the taxability of transactions involving entities that have been issued tax exemption identification numbers by the Department helpful.

### Hotel Operators' Occupation Tax

For your information, you may want to visit the Department's regulation at 86 Ill. Adm. Code 480.101, which explains the nature, rate and scope of the Hotel Operators' Occupation Tax Act ("HOOT") and can be found on the Department's website. 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.

Receipts subject to the tax do not include those which are not in any way reasonably connected with or attributable to the renting, leasing or letting of rooms for use as living quarters or for sleeping or housekeeping accommodations. Examples of receipts not subject to the Hotel Operators' Occupation Tax include those from the selling of food (although food sales are subject to sales tax in Illinois) and the rental of meeting or conference rooms. Please refer to Section 480.101(b)(6).

### Sales Of Food

Sales of food by hotels, whether in restaurants, coffee shops, or catered functions, are subject to Retailers' Occupation Tax. When individual members of exclusively charitable, religious or educational organizations, or individual employees of governments or their agencies, purchase meals or other tangible personal property from hotels, the hotels incur Retailers' Occupation Tax liabilities. However, if governments, churches, schools, or charities that have been issued exemption identification numbers by the Department directly purchase meals in performance of some organizational function, such as lunches for attendees of seminars conducted at hotels, then such purchases made directly by the exempt entity may be made tax free upon so long as the retailer maintains in his books and records a copy of the letter issued from the Department, containing the exempt organization's active E-number. It is important to note, however, that the purchase has to be made directly by the exempt entity and not by a personal affiliated with the exempt entity and then subsequently reimbursed by the exempt entity.

### Claim For Credit

The Department's regulation at 86 Ill. Adm. Code 130.1501 describes the procedures used to obtain a credit for sales tax that is erroneously paid. Please note that only persons who have actually paid tax to the Department can file a claim for credit. Since retailers usually pay the tax to the Department, usually only retailers can file a claim for credit.

In order to submit claims for credit, taxpayers must first establish that they have either borne the burden of the tax or that they have unconditionally repaid the amount of tax to the vendees from whom they have collected the tax. The taxpayers must apply for the credit in the manner described in the rule. Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

If sellers agree to file a claim for credit, purchasers must provide documentation that the purchases of the tangible personal property were exempt as the purchasers were exempt organizations with active "E" numbers.

I hope this information is helpful. If you require additional information, 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,

Debra M. Boggess  
Associate Counsel

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