

ST 14-0040-GIL 08/08/14 EXEMPT ORGANIZATIONS

Exclusively charitable hospitals that have an exempt identification "E" number from the Department do not incur Retailers' Occupation Tax on its sales of food and medicine to their patients or on their sales of food from a cafeteria operated for the benefit of its employees, patients' visitors, physicians, volunteer workers and staff and not open to the public. See 86 Ill. Adm. Code 130.2005(b)(1)(A). (This is a GIL.) (This letter is rescinded by letter ruling ST 14-0048-GIL.)

August 8, 2014

Dear Xxxx:

This letter is in response to your letter dated May 9, 2014, 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.

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 COMPANY 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 COMPANY 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:

This is a request for a private letter ruling to be issued to COMPANY, an Illinois not-for-profit corporation, and its affiliate hospital corporations, all of which are Illinois not-for-profit corporations (hereafter collectively referred to as "COMPANY"). COMPANY's main office is located at ADDRESS, CITY, Illinois XXXXX. (See attached list.)

This ruling is requested for all taxable periods from and after its issuance until COMPANY's material facts that are the basis of this ruling change. Such a private letter ruling request is proper under 86 Ill. Admin. Code § 1200.110.

No authority exists that is contrary to the positions expressed in this request for a private letter ruling. Nor are the issues in this request part of a current audit or litigation matter concerning COMPANY or any related company. There are no regulations that are clearly dispositive of the issues in this request.

To the best of the knowledge of both COMPANY and COMPANY's representative (power of attorney, attached), the Department of Revenue ("Department") has not previously ruled on the same or a similar issue for COMPANY or a predecessor, other than the Department providing oral advise [sic] that the same charitable regulations that applied in the past to COMPANY's cafeterias would continue to apply under the new

charitable hospital exemption. Neither COMPANY nor its representative has previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. And, there are no authorities that COMPANY or its representative is [sic] aware of that are contrary to the ruling request made herein by COMPANY.

### **FACTS**

COMPANY and its affiliate hospitals are not-for-profit organizations exempt from federal income taxations under Section 501(c)(3) of the Internal Revenue Code, which qualify for charitable hospital exemption under the Retailer's Occupation Tax ("ROT"), Use Tax, Service Occupation Tax, and Service Use Tax (*i.e.*, 35 ILCS 105/3-8, 110/3-8, and 115/3-8, and 120/2-9). Prior to qualifying for this charitable hospital exemption, COMPANY qualified under the general charitable organization exemption under the ROT, Use Tax, Service Occupation Tax, and Service Tax (*i.e.*, 35 ILCS 105/3-5, 110/2, 115/2, and 120/2-5).

COMPANY operates hospital cafeterias that provide food and beverages to its patients, patient visitors, physicians, volunteer workers and staff. These cafeterias are primarily operated for the benefit of COMPANY's employees, and are not open to the general public. In addition, COMPANY provides food and medicine to its patients as part of its hospital services.

### **OPINION REQUESTED**

The Department's ROT, Use Tax, Service Occupation Tax and Service Use Tax (the "Sales/Use Tax") regulations and rulings on the taxation of charitable hospital cafeteria facilities, and the taxation of food and medicine provided by such hospitals to hospital patients, apply equally to not-for-profit hospitals that qualify under the new charitable hospital exemptions under 35 ILCS 105/3-8, 110/3-8, 115/3-8, and 120/2-9.

### **LAW AND ANALYSIS**

#### **Public Act 97-688.**

In 2012, responding to a dispute over the amount of charity care a hospital must provide to be entitled to tax exemptions, the General Assembly created a new exemption from both property tax and Sales/Use Tax. P.A. 97-688. This new type of charitable exemption, which applied only to non-profit hospitals, was essentially designed to supplant the application of the general charitable exemption to non-profit hospitals. To qualify for an exemption from property and Sales/Use Tax under this new exemption, non-profit hospitals are required to establish that they provide a quantifiable amount of charity care or other health services benefitting low-income and underserved individuals that is greater than the amount of property tax the hospital would have owed on its exempt property. See P.A. 97-688 (*e.g.*, 35 ILCS 105/3-8 & 120/2-9). Importantly, however, like non-profit hospitals that had previously obtained charitable exemptions, those receiving exemptions pursuant to P.A. 97-688 must process the charitable purpose of treating the sick and engage in charitable hospital activities. See *e.g.* 35 ILCS 105/3-8(c) & 120/2-9(c).

The General Assembly made it clear that it considered non-profit hospitals that are eligible for property tax exemptions under this Act to be charitable organizations whose property, as required by article IX, section 6 of the Illinois Constitution, is used

exclusively for charitable purposes. See 35 ILCS 200/15-86(a)(5) (“It is the intent of the General Assembly to establish a new category of ownership for charitable property tax exemption to be applied to not-for-profit hospitals in lieu of the existing ownership category of ‘institutions of public charity.’”). Because P.A. 97-688 applies the same exemption criteria to non-profit hospitals’ exemptions from property and Sales/Use Tax, hospitals that receive exemptions from Sales/Use Tax under this Act are also charitable organizations that use their property for charitable purposes.

### **Past Law**

Prior to passage of P.A. 97-688 in June 2012, Illinois hospitals that qualified as non-profit charitable organizations were not subject to Sales/Use Tax on their purchases or uses of tangible personal property. See e.g. 35 ILCS 120/2-5; 105/3-5. The Department implemented this statutory exemption by promulgating regulations providing, among other things, that sales by such non-profit charitable hospitals of food or medicine to their patients, or the operation of restaurant facilities that are conducted primarily for the benefit of the hospital employees and are not open to the public, are likewise exempt from Sales/Use Tax. 86 Ill. Admin. Code § 130.2005(b)(1)(A). This restaurant or cafeteria sales exemption was later clarified to include cafeteria sales to hospital patients, patient visitors, employees, volunteer workers, and doctors. See ST 06-0014 PLR (7/19/06); ST 96-0488 PLR (11/25/96).

The rationale behind the exemption of non-profit hospital cafeteria sales was that the sales were in furtherance of the hospital’s exempt purpose of treating the sick. In addition, cafeteria sales were non-competitive with for-profit businesses, since the exemption was conditioned on the cafeteria not being open to the general public. As a result, the Department’s regulations deemed such cafeteria sales to be exempt from Sales/Use Tax. See 86 Ill. Admin. Code § 130.2005(b)(1)(A).

### **Analysis and Conclusion**

With the above said, it is logical, reasonable, and consistent with the underlying intent of the new charitable hospital exemption for the Department to apply the Sales/Use Tax exemption for the cafeteria sales by charitable hospitals under 86 Ill. Administrative Code Section 130.2005 to hospitals that qualify under the new charitable hospital Sales/Use Tax exemption established by Public Act 97-688 (e.g. 35 ILCS 105/3-8 & 120/2-9). Simply put, under either the old general charitable exemption or the new charitable hospital exemption, a non-profit hospital’s cafeteria sales would be exempt from the Sales/Use Tax since such sales would be primarily for furthering the hospital’s exempt charitable purpose of treating the sick. Moreover, in both cases such cafeterias [sic] sales could not be open to the general public, thus meeting another requirement for a non-taxable sale. Consequently, non-profit charitable hospitals that satisfy the criteria for the new charitable hospital exemption should qualify for the same hospital cafeteria sales tax exemption contained in 86 Illinois Administrative Code Section 130.2005(b)(1)(A) that hospitals received pursuant to the general charitable exemption prior to the passage of Public Act 97-688.

If you have any questions concerning this letter or anticipate a ruling contrary to that requested, please call. COMPANY reserves the right to withdraw this request if a contrary ruling is ultimately expected to be issued by the Department.

## 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). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your question.

While the sale of tangible personal property at retail by exclusively charitable, religious and education organizations is generally subject to Retailers' Occupation Tax, there are some very limited exceptions. See 86 Ill. Adm. Code 130.2005. Specifically, with respect to nonprofit hospitals, please see the Department's regulation at 86 Ill. Adm. Code 130.2005(b)(1)(A). Under this subpart, nonprofit hospitals that qualify as exclusively charitable institutions and that have obtained an exemption identification ("E") number from the Department are exempt from Retailers' Occupation Tax ("ROT") when selling food or medicine to their patients in connection with the furnishing of hospital service to them. They are also exempt from ROT on their operation of restaurant facilities that are conducted primarily for the benefit of the hospitals' employees, volunteers, physicians, patients, and patients' visitors and are not open to the public.

If you have further questions concerning this Private Letter Ruling, you may contact me at 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,

Debra M. Boggess  
Associate Counsel

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