

ST 14-0045-GIL 08/18/14 HOTEL OPERATORS' TAX

This letter discusses the Hotel Operators' Tax Act. See 86 Ill. Adm. Code 480.101(b)(3). (This is a GIL.)

August 18, 2014

Dear Xxxx:

This letter is in response to your letter dated June 18, 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.

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:

As a follow-up to our phone call earlier in May with NAME, I am enclosing a listing of establishments that we had discussed that are, in our opinion, in violation of the Hotel Operators' Occupation Tax. On February 25<sup>th</sup>, 2013, the COUNTY County Board passed a Local Accommodations Tax Ordinance to be collected by all lodging establishments within the County of COUNTY, with 100% of the funds to be used for tourism related projects in COUNTY County. The local tax was set at 4%, which is to be collected from rooms let, beginning with the second quarter of 2013. At the August 2013 County Board Meeting, an amendment to the ordinance was approved, moving the first filing period to the fourth quarter of 2013 (October 1-December 31). The first return filing was due on or before January 30<sup>th</sup>, 2014, payable in the COUNTY County Treasurer's Office. All entities were asked to file a return, regardless if any rooms are let during that quarter to assure compliance at all levels. It was indicated that there would be no exemption letters given for this ordinance, and there is a section that allows business owners to note if they no longer own the property or there is only land and no lodging accommodations on the property.

The local tax is in addition to the already required 6% state tax that lodging establishments are required to collect, per the Illinois Department of Revenue (35 ILCS 145) Hotel Operators' Occupation Tax Act. We have researched the various entities within the county's jurisdiction for the local Accommodations Tax Ordinance and have sent out multiple letters, requesting compliance and explaining the penalties and fines that entities are subject to should they fail to comply with the law as written. We have several entities that have ignored the multiple requests and continue to do business in violation of both the state and local statutes. We have documented websites of known businesses that provide lodging and are not adhering to the state statute as indicated. We have notified each business that appears to be doing business as a "hotel" as

defined by state statute of the penalties and fees on both the state and local level; however, we still have businesses that we feel are not complying. As found through a FOIA request, there are currently 16 registered lodging establishments within COUNTY County that have filed with the State of Illinois and received a certificate of registration. During the first reporting period of our local ordinance, 41 businesses replied and during the second reporting period, nineteen businesses replied.

We are requesting the Illinois Department of Revenue to make a ruling on the following entities as to which need to comply with the ordinance and state statute and which do not. There are sixteen (16) entities which we deem as a priority list of potential violators that are outfitters, which advertise as such and list lodging on their websites as services offered. We have also included an additional listing of entities which are a secondary group that we would like the Department to make a ruling on.

There are 50 other entities, which includes 14 outfitters that are licensed through the DNR for Outfitting but do not indicate whether they provide lodging or not and 36 other entities that are not registered with DNR or IDOR but are listed on various other sites as providing lodging or hunting services. We have included a master list of all of the entities in question for your reference.

The following entities are a priority list of potential violators that we ask the Department of Revenue to rule on:

### CHART

The following entities are a secondary list of potential violators that we ask the Department of Revenue to rule on:

### CHART

Our concern with this list is that these entities have an unfair advantage to competitors and poor business management in this area, which directly affects those who are following regulations and complying with state and local laws. Not only is the integrity of the State Law in jeopardy, but the local ordinance is also affected by this mismanagement of various entities.

We thank you in advance for your help on this matter. If there are any additional questions, please do not hesitate to contact me at XXX-XXX-XXXX or XXX-XXX-XXXX.

### **DEPARTMENT'S RESPONSE:**

You indicated in your letter that you believe that a number of establishments are in violation of the State's Hotel Operators' Occupation Tax Act and the Local Accommodations Tax Ordinance that the Pike County Board passed on February 25, 2013. The Department does not administer the local tax to which you refer. Thus, questions concerning the imposition and collection of taxes imposed by local ordinances that are not administered by the Illinois Department of Revenue are outside the jurisdiction of the Department. As a result, the Department cannot render any guidance or opinion regarding your request concerning the tax imposed by that Ordinance. The Department does,

however, administer the tax imposed by the Hotel Operators' Occupation Tax Act ("HOOT") (35 ILCS 145) and can provide you with general information regarding that tax.

Pursuant to HOOT, Illinois imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 6% 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). With respect to your claim that certain establishments are not collecting HOOT, a Department auditor would be in the best position to determine the validity of that claim. As a result, a copy of your letter is being forwarded to the Department's Audit Bureau.

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,

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Associate Counsel

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