

The Legal Services Office does not issue Private Letter Rulings regarding requests for sales tax Exemption Identification "E" Numbers. "E" numbers are issued by the Sales Tax Exemption Section. (This is a GIL.)

April 24, 2006

Dear Xxxxx:

This letter is in response to your letter dated February 10, 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.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:

On behalf of ABC, an Illinois limited liability company ('LLC'), Illinois tax exemption identification number: #, I hereby submit this request for a private ruling the Property Tax Code that, on the basis of this submission, the proposed activities described herein will not adversely affect the exemption from the Retailers Occupation Tax granted to the LLC on August 8, 2002 with the issuance of # or the determination by the Illinois Department Revenue (the 'Department') on March 16, 2004 that the property owned by the LLC identified as Property Index Number # is entitled to a Non-homestead Property Tax Exemption Certificate (Illinois Department of Revenue Docket #) (the 'Property Exemption') and that the proposed activities will not constitute a change of ownership or use of the property that must be stated in the annual certificate required to be filed by the LLC pursuant to Section 15-10 of the Property Tax Code (35 ILCS 200/15-10). An executed Form IL-2848 (Power of Attorney) is enclosed herewith.

Requested Ruling

The LLC owns and operates a student housing complex for full-time students who attend COLLEGE (the 'College'). The complex is located on the main campus of the College in CITY, Illinois and is the sole asset of the LLC. Because of the financial challenges facing COMPLEX the LLC would like to expand the educational use of

COMPLEX to include a limited number of part-time students who attend the College, high school and college youth attending summer sport camps and similar programs and adults attending special educational programs during the summer months.

Since the start of its operations in the fall of 2002 the occupancy of COMPLEX has been erratic, reaching levels below 50 percent occupancy during the regular school year and below as much as 14 percent during the summer months of June, July and August. The LLC would like to expand the educational use of COMPLEX so that it achieves a greater level of occupancy throughout the year, especially during the summer months. The LLC would like to offer COMPLEX to a limited number of part-time college students and to those who are enrolled in short-term courses or participating in sports camps at the College during the summer months, provided such activities are organized by the College or nonprofit educational organizations in cooperation with the College. Samples of such programs available at other colleges and universities are included as Exhibit A herewith. The LLC is requesting that the Department issue a ruling determining that these proposed expanded uses of COMPLEX, as more particularly described hereafter, will not adversely affect tax exemptions granted by # or the Property Exemption¹.

General Information

This matter concerns foremost the continued operation of COMPLEX for students attending the College. The expanded educational use of COMPLEX is needed because the financial condition of COMPLEX is desperate and additional revenues are necessary to keep COMPLEX open for students attending the College during the regular school year from September to May. Today the College serves more than 10,000 students in credit classes and 21,000 students in noncredit courses². The LLC owns and operates COMPLEX. FOUNDATION (the 'Foundation') is the sole member of the LLC. The Foundation, formed in 1973, is a 501(c)(3) organization under the Internal Revenue Code of 1986, as amended, and generally raises funds for grants, scholarships and endowments for the College, its educators and its students.

As set forth in the Original Ruling Request, the development and construction of COMPLEX was financed by the issuance of two series of County Student Housing Revenue Bonds (Junior College Project), a Series 2002A in an aggregate principal amount of \$ (the 'Series 2002A Bonds') and a Taxable Series 2002B in an aggregate principal amount of \$ (the Series 2002B Bonds' and collectively with the Series 2002A Bonds, the 'Bonds'). The documentation the LLC entered into in connection with the issuance of the Bonds limits the occupancy of COMPLEX to full-time college students who attend at least one class at the College, faculty members at the college, visiting lecturers or other educator who has been engaged to present or assist in the presentation of an educational program by the College and needed management or maintenance personnel³.

Retailers Occupation Tax Exemption

On August 9 the Department determined that the LLC is organized and operated exclusively for educational purposes and issued the LLC # on the basis of information furnished in an Amended Application for Request for Retailers' Occupation Tax Exemption Identification Number for ABC and Request for a Private Ruling for Tax Exemption under Retailers' Occupation Tax Act on behalf of ABC, dated July 8, 2002 (the 'Original Ruling Request'). There has been no material change in the information

furnished in the Original Ruling Request and, except as noted in Appendix I, no changes in the original documentation submitted with in [sic] the Original Ruling Request⁴. A copy of # is enclosed herewith as Exhibit C.

Non-homestead Property Tax Exemption

On March 16, 2004 the Department issued the Property Exemption as a part of the settlement of Illinois Department of Revenue v. Joliet Junior College Foundation. There has been no change in the ownership or use of COMPLEX since the issuance of the Property Exemption. A copy of the Property Exemption is enclosed herewith as Exhibit D.

The Need for this Ruling Request

The continued operation of COMPLEX for students attending the College faces substantial economic and financial challenges. In order to increase the potential for revenues to meet the costs of operation and maintenance and the payment of debt service on the outstanding Bonds the LLC seeks to expand the definition of 'Eligible Tenant' in the documentation⁵ entered into at the time of the issuance of the Bonds to include certain part-time students and adults attending short-term educational programs offered at the college. The LLC is submitting this ruling request at the request of the current holders of the outstanding Bonds to assure a successful restructuring of the debt incurred to finance the construction of COMPLEX. Before the LLC seeks the necessary amendments to the Bond documentation it would like assurance the modification will not adversely affect the exemptions granted by the Department under # and the Property Exemption. Otherwise whatever economic and financial benefit would be derived from the proposed expanded educational use of COMPLEX would be offset or even made worse by the loss of # and the Property Exemption.

If the Department issues a favorable ruling the LLC will still need to obtain approvals from the College and the COUNTY before expanding the educational use of COMPLEX as proposed herein. The Foundation will also undertake steps to assure itself that its status as a 505(c)(3) organization is not jeopardized by the revenues derived from the proposed expanded educational use of COMPLEX.

Proposed Expanded Educational Use of COMPLEX

1. Part-time Students: Currently the College considers students taking courses for 12 credit hours each semester to be full-time students. Therefore, only students taking 12 courses at an accredited college with a total of 12 credit hours are eligible to reside at COMPLEX as long as one of their courses is at the College. The LLC proposes expanding the educational use of COMPLEX by allowing 20 percent⁶ of the beds at COMPLEX to be occupied by part-time students at accredited colleges as long as such students are taking at least one course at the College and the total of their credited hours is at least 9 hours during the semester when they reside at COMPLEX. The LLC further proposes expanding this educational use for part-time students to 40 percent of the beds during the summer semester months of June, July and August.

2. Summer Camp Programs at the College: The Manager also advises the LLC that COMPLEX are ideal for high school and college students who attend summer camp programs at the College that are designed to improve athletic skills, such as field and

track, football, baseball, tennis and basketball, as well as such students who are attending technical training programs, such as teaching skills in working with computers and electronic equipment. Therefore, the LLC would like a ruling that making COMPLEX available for sports camps and technical training programs organized by the College or nonprofit organizations and administered at the College facilities during the summer months would not adversely affect the tax exemptions granted by the Department.

3. Adult Educational Programs at the College: MANAGER, the current Manager of COMPLEX renting the unoccupied beds at COMPLEX, advises the LLC that there is a market for renting the beds to adults attending special adult educational courses that last for a few days to several weeks. The LLC therefore is requesting a ruling that would allow renting the beds to adults attending such courses and to the lecturers involved with such programs. The LLC would limit such expanded use only to those programs that are approved by the College and held at the College and organized by the College or a nonprofit organization experienced in administering such programs. The LLC would charge rentals for the beds that are reasonable and comparable to the rates charged to students attending the College, taking into consideration the short duration of the occupancy and the increase in maintenance costs such occupancy would generate.

Background

The history of COMPLEX' development and construction and its early operations can be found in the documentation and proceedings involved in # and the Property Exemption already on file with the Department. However, there are certain events that have occurred since the proceedings before the Department that are relevant to this request.

COMPLEX opened for students attending the College for the 2002 fall semester. For the first three years it operated at a loss, depleting all reserves, including the debt service reserve fund for the Bonds. In 2004 the LLC went into technical default under the Bond documents for failing to meet certain financial covenants and in 2005 the Bonds were in monetary default. Beginning in August 2003 until spring 2005 the ratings on the Bonds were downgraded from the investment grade they originally possessed to the lowest rating of 'D' and finally withdrawn⁷. By the spring of 2005 COMPLEX was essentially broke. During this period a new group of investors purchased all but \$ of the outstanding \$ principal amount of the Bonds were sold in the secondary market at half or less than half of their face amount.

As of June 15, 2005 the LLC and the holders of the outstanding Bonds (the 'Bondholders') entered into a Forbearance Agreement, a copy of which is enclosed as Exhibit F. The Forbearance Agreement required a change in management and the LLC engaged MANAGER at the suggestion of the Bondholders to replace the original Manager. The Bondholders agreed not to take any steps to foreclose on COMPLEX for the next three years, subject to an annual performance review, even if scheduled principal and interest installments cannot be paid in full during that time. They also expressed a willingness to make additional expenditures from their own funds for certain changes that might be needed for a successful turnaround. The LLC also entered into an agreement with the majority of the Bondholders that required the LLC to seek approval of the Bondholders on significant management decisions. After three years the LLC and the Bondholders will re-assess the financial condition of COMPLEX to evaluate the possibility of restructuring the debt in a manner that will allow it to be

repaid from the rentals over the remaining term of the Bonds. The LLC failed to pay the debt service due on the Bonds the scheduled September 1, 2005 due date⁸.

The new Manager was able to increase occupancy for the 2005 fall semester, so that for the months during this period the occupancy rate averaged 96.46%. However, there is no guarantee that the 2005 fall semester rate can be maintained⁹. Additionally, unless the proposed expanded educational use is undertaken the revenues for the summer months are expected to drop precipitously.

Over the next two years the Bondholders will make a decision whether to continue the operation of COMPLEX, possibly with a restructuring of the outstanding debt, or whether to foreclose. If COMPLEX is foreclosed it might not be available to future students attending the College. The Manager believes that the proposed expanded educational use of COMPLEX is necessary and desirable for placing it on sounder economic terms and making the potential for a restructuring of the debt more feasible.

The proposed expanded uses fall within the Illinois statutory and case law on educational purposes cited in the Original Ruling Request and in the administrative law proceedings that resulted in the issuance of the Property Exemption. Allowing a limited number of part-time students taking a substantial number of credit classes per semester does not undermine the primary purpose of student housing. The case law¹⁰ cited in the Original Ruling Request and in the administrative law proceedings do not hold that college dormitories or residence halls are limited to full-time students any more than universities and colleges limit their facilities to full-time students. In this matter the housing facilities are serving a two-year college where there are a substantial number of part-time students enrolled¹¹. The College is a public educational facility offered to students of limited means and many students attending must take on a part-time employment to pay for their costs of higher education. Unreasonably denying such people the same opportunity as those who have the means to pay for their higher education would be patently unfair.

The enclosures abundantly illustrate that colleges and universities routinely undertake the kinds of activities that would lead to greater use of the housing facilities at COMPLEX during the summer months. Whether the activities are sports camps for young people or classes for senior citizens or other adults seeking to further their education during the summer months when attendance at the College is particularly low¹² should not matter in the original determination that the LLC is organized and operating solely for educational purposes or that COMPLEX is entitled to property tax exemption as school property. COMPLEX is on the main campus of the College and isolated from other property in CITY, as was demonstrated in the information supplied in the administrative proceedings. To the extent that such activities require housing for the participants in such activities, the Illinois courts treat the housing as an educational purpose, provided there is no profit being earned by a private entity¹³. The limitations the LLC will impose on such activities will insure that there will be no private profit earned from the expanded educational use of COMPLEX.

Conclusion

For the foregoing reasons, the LLC is requesting a ruling from the Department stating that:

1. The occupancy by part-time students taking at least 9 credit hours of classes during the semester at an accredited college or university with at least one of those classes at the College will not adversely affect the determination of the Department dated August 9, 2002 that the LLC is organized and operating solely for educational purposes or cause the revocation or cancellation of tax exemption identification number # issued to the LLC or cause the Department to revoke or cancel the Non-homestead Property Tax Exemption Certificate (Illinois Department of Revenue Docket no.: #) issued by the Department on March 16, 2004 or constitute a change in use of the property for purposes of the annual certificate filed by the LLC under Section 15-10 of the Property Tax Code (35 ILCS 200/15-10); provided that such occupancy by part-time students does not exceed 20 percent of the beds that would otherwise be available to full-time students attending the College during the fall and spring semesters or 40 percent of the beds that would otherwise be available to full-time students attending the College during the summer semester.

2. The occupancy by persons who are not enrolled in the College for the purpose of taking credit classes at any time during the months of June, July and August but who are attending, administering or lecturing at adult or special educational programs at the College will not adversely affect the determination of the Department dated August 9, 2002 that the LLC is organized and operating solely for educational purposes or cause the revocation or cancellation of tax exemption identification number # issued to the LLC or cause the Department to revoke or cancel the Non-homestead Property Tax Exemption Certificate (Illinois Department of Revenue Docket no.: #) issued by the Department on March 16, 2004 or constitute a change in use of the property for purposes of the annual certificate filed by the LLC under Section 15-10 of the Property Tax Code (35 ILCS 200/15-10); provided (a) such programs are offered by the College or by a nonprofit organization whose purpose is to offer adult educational programs, (b) such programs are held in classrooms and other facilities at the College and (c) such occupancy does not exceed 40 percent of the beds that would otherwise be available to students taking credit classes at the College during such months.

3. The occupancy by high school or college students and instructors at any time during the months of June, July and August who are attending, administering or instructing summer sports camps or technical training programs at the College that last from a few days to several weeks will not adversely affect the determination of the Department dated August 9, 2002 that the LLC is organized and operating solely for educational purposes or cause the revocation or cancellation of tax exemption identification number # issued to the LLC or cause the Department to revoke or cancel the Non-homestead Property Tax Exemption Certificate (Illinois Department of Revenue Docket no.: #) issued by the Department on March 16, 2004 or constitute a change in use of the property for purposes of the annual certificate filed by the LLC under Section 15-10 of the Property Tax Code (35 ILCS 200/15-10); provided (a) such programs are offered by the College or by a nonprofit organization in cooperation with the College whose purpose is to offer such summer camps or technical training programs, (b) such summer camps and training programs are held at College facilities or College classrooms and (c) such occupancy does not exceed 40 percent of the beds that would otherwise be available to students taking credit classes at the College during such months.

DEPARTMENT'S RESPONSE

Your letter has been referred to the Sales and Excise Tax division of the Legal Services Office. The Legal Services Office does not issue Private Letter Rulings regarding requests for sales tax Exemption Identification "E" Numbers. "E" numbers are issued by the Sales Tax Exemption Section. It is our understanding that the Sales Tax Exemption Section does not issue pre-emptive rulings regarding "E" numbers; however, we are referring your letter to that Section for any further follow up. We are also referring your letter to the Department's property tax lawyers for response.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk

¹ It should be noted that the COUNTY granted the property tax exemption in response to the first application by the FOUNDATION, which the Department denied, as well as in response to the second application filed jointly by the College, the FOUNDATION and the LLC, which resulted in the settlement and the issuance of the Property Exemption by the Department. If the Department grants the requested ruling, there is no history that suggests the COUNTY would disagree or not approve the amendments to the Bond documentation needed to implement the requested expanded educational use of COMPLEX. Indeed, the fact that the County granted the exemption after the Department had denied the exemption originally strongly suggests that there should be no issue with the County about COMPLEX remaining exempt from *ad valorem* property taxes if the Department issues the requested ruling.

² See the College website. Exhibit B enclosed herewith shows the total head count, full-time enrollment and part-time enrollment of students attending the College.

³ The definition of 'Eligible Tenant' in the Loan Agreement entered into in connection with the issuance of the Bonds is 'any Person who is (i) a full-time student at a Qualified Institution of Higher Education (or, if such Person attends more than one Qualified Institution of Higher Education, is a full-time student based upon all of the classes such Person is enrolled in at such Qualified Institutions of Higher Education) and is enrolled in one or more classes at the College, (ii) a member of the faculty of the College in connection with an established program of the College to provide enhanced educational benefits to persons described in clause (i) hereof, (iii) a visiting lecturer or other educator who has been engaged to present or assist in the presentation of an educational program by the College, or (iv) employed in the management or maintenance of the Series 2002 Project whose availability at the Series 2002 Project during nonworking hours is deemed by the Borrower to be beneficial to its ability to operate and maintain the Series 2002 Project and, in all cases, members of such Person's immediate family occupying the same residential unit.

⁴ The Undertakings Agreement (Ex. F-I in the Original Application) has been modified and the Loan Agreement between the COUNTY and the LLC (Ex. G-I in the Original Application) has been amended in certain respects that do not change the ownership or use of COMPLEX. See Appendix I for details.

⁵ It will be necessary to amend the Management Agreement between the LLC and the Manager of COMPLEX, the Undertakings Agreement between the LLC and the College and the Loan Agreement between the LLC and the COUNTY.

⁶ The enrollment statistics shown of Exhibit B indicates that the enrollment of such students is approximately 20 percent of full-time students during the fall semester.

⁷ See Exhibit E enclosed herewith.

⁸ See Note 10 in the audited financial statements for the year ending August 31, 2005 in Exhibit G.

⁹ During the 2003 fall semester the occupancy rate was 87.96%, but dropped to 77.67%, 45.68% and 45.75%, respectively in the following regular school year semesters. A chart of the occupancy rates is attached as Exhibit H.

¹⁰ See the seminal case of *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 58 N.E.2d 33, 37 (1944). The Court held the use of the properties were for educational purposes entitled to an exemption, stating at pages 371- 372:

In determining whether the use to which certain property is put is for an exempt purpose, the intention of the owners of such property when putting it to use must first be ascertained. State ex rel. Eveland v. Erickson, 44 S.D. 63, 182 N.W. 315, 13 A.L.R. 1189. Residence halls or dormitories, dining rooms, clubhouses and recreational facilities necessary and proper in conducting an educational institution of the character of the University of Illinois are not, as the collector insists, for gain or profit. They are, consequently, exempt from taxation, notwithstanding they may produce some income, since not leased or used with a view to profit within the terms of the applicable statute. Western Theological Seminary v. City of Evanston, 325 Ill. 511, 156 N.E. 778; City of Chicago v. University of Chicago, 228 Ill. 605, 81 N.E. 1138, 10 Ann.Cas. 669; Monticello Female Seminary v. People, 106 Ill. 398, 46 Am.Rep. 702; **38 Elder v. Trustees of Atlanta University, 194 Ga. 716, 22 S.E.2d 515, 143 A.L.R. 268. Grounds and buildings used for baseball, football, or bowling are exempt as a reasonably necessary adjunct of educational and recreational processes. Emerson v. Trustees of Milton Academy, 185 Mass. 414, 70 N.E. 442; Webb Academy v. City of Grand Rapids, 209 Mich. 523, 177 N.W. 290; People ex rel. Missionary Sisters v. Reilly, 85 App.Div. 71, 83 N.Y.S. 39, affirmed 178 N.Y. 609, 70 N.E. 1107. Property used as a playground *372 for students has been exempted. People ex rel. Thompson v. St. Francis Xavier Female Academy, 233 Ill. 26, 84 N.E. 55. Similarly, exemption has been accorded grounds containing a lake used for swimming. People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11, 142 N.E. 520.

See also *Southern Illinois University V. Booker*, 98 Ill. App.3rd 1062, 425 N.E. 2d 465 (5th Dist., 1981) and *Big Ten Conference, Inc. v. Department of Revenue*, 312 Ill App. 88, 726 N.E.2d 114, (1st Dist., 2000).

¹¹ See Exhibit B.

¹² See Exhibits B and H.

¹³ The pertinent provisions of Section 15-35 of the Property Tax Code (35 ILCS 200/15-35) which exempt the property from ad valorem real estate taxation (the 'Exemption Provisions') are as follows:

Sec. 15-35. Schools. * * * all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. (Emphasis supplied.)

Although the exemption applicable to the LLC under the Retailers Occupation Tax Act is applicable to limited liability companies, the LLC is organized and operating solely for educational purposes, which in this case is limited to operating housing for students attending the College and whose sole member is a non-profit organization whose status as a 501(c)(3) status under the Internal Revenue Code would be jeopardized by unrelated income.

See also the decision by the Administrative Law Judge in *North Central Regional Educational Laboratory v. Illinois Department of Revenue*, No. 02-PT-0052, (02-22-0041), P.I.N: 08-06-404-014, decided September 14, 2004.