

Gross receipts from the rentals of rooms to "permanent residents" are not subject to Hotel Operators' Occupation Tax liability. A "permanent resident" is any person who has occupied or has the right to occupy any room or rooms in a hotel for at least 30 consecutive days. See 86 Ill. Adm. Code 480.101. (This is a GIL.)

January 6, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 13, 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.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:

I need to get clarification on how your hotel room tax is applied. I recently completed a 6 week stay at the MOTEL. At the time I checked in, I was unsure how long I would be staying and my cash flow was a little tight so the motel billed me weekly and included the tax in each bill. Now at I have checked out 6 weeks later, with no breaks in my stay and no changing of rooms or anything else, I would like to know if I qualify for the 'Permanent Resident' exclusion which states that 'A permanent resident is a person who occupies or has the right to occupy a room for at least 30 consecutive days'.

The motel is saying that their computers require them to specify at the beginning of the stay that I will be there for more than one month and then they omit the tax. However, I see nothing in the regulations that says I have to specify at the beginning of my stay that I will be there for more than 30 days.

I understand that it may be 'inconvenient' for their computer systems to adjust out the tax after 30 days, but I'm interested in what the 'law specifically states'. Unless you can show me something in the code that 'requires' me to state at the beginning of my stay that I'll be there for more than 30 days, I'd appreciate it if you could send me a letter that I can send to the motel instructing them to refund the tax they are unnecessarily withholding from me. Thank you for your assistance.

DEPARTMENT'S RESPONSE:

The Hotel Operators' Occupation Tax Act (35 ILCS 145/1 et seq.) imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. The tax is imposed at a rate of 5% of 94% of the gross rental receipts from the renting, leasing or letting of such rooms. An additional tax is also imposed at a rate of 1% of 94% of such gross rental receipts. The gross proceeds from rental receipts for rentals to "permanent residents" are excluded from Hotel Operator's Occupation Tax liability.

A permanent resident is any person who occupied or has the right to occupy any room or rooms, regardless of whether it is the same room or rooms, in a hotel for at least 30 consecutive days. See 86 Ill. Adm. Code 480.101 and 480.105. Regardless of whether the customer contracted with the hotel operator to stay 30 consecutive days at check-in, if an individual qualifies as a permanent resident (stays at least 30 consecutive days at the hotel), the gross receipts received by the hotel operator would not be subject to tax for that period.

If the hotel operator had charged the permanent resident the hotel tax for that period, the permanent resident shall have a legal right to claim a refund of such amount from such operator. However, if such amount is not refunded to the customer for any reason, the hotel operator is liable to pay such amount to the Department. 35 ILCS 145.3(f). Upon an unconditional refund of the tax to the permanent resident, the hotel operator may file a claim for credit for any hotel tax paid by the operator. 86 Ill. Adm. Code 480.125.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336

Very truly yours,

Richard S. Wolters
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