IT 19-0001-GIL 01/14/2019 CREDIT – HOSPITAL CREDIT

Credit Equals Lesser of Real Property Taxes Paid or Cost of Free or Discounted Services

January 14, 2019

Re: Illinois income tax

Dear Xxxxx:

This is in response to your letter dated December 7, 2018 in which you requested a letter ruling. The nature of your request and the information provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code § 1200.120(b) and (c), which may be accessed from the Department's web site at www.ILtax.com.

Your letter states as follows:

> We are counsel to COMPANY, d/b/a COMPANY 1. COMPANY 1, an Illinois corporation, owns and operates COMPANY 1, a ## bed general acute care hospital licensed by the Illinois Department of Public Health pursuant to the Illinois Hospital Licensing Act, 210 ILCS 85/1, et seq. COMPANY 1 is **not** exempt from federal income taxes under the Internal Revenue Code.
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> On September 28, 2018, COMPANY 1 remitted $$$ to the Cook County Treasurer's Office for the payment of real estate property taxes (the "Property Taxes"). The Property Taxes covered assessment years 2017, 2016 (which was an omitted assessment year) and 2015 (which was an omitted assessment year). All of these taxes for all three years were due and payable in 2018. More specifically, the 2015 property tax bills/assessments were issued in the Spring of 2018 and stated as follows in the middle of the bill: "This is an Omitted Tax Bill for 2015 entered as a warrant in Tax Year 2017 (payable in 2018)." At the top of each bill the following was stated "2017 Omitted Assessment Property Tax Bill" for "Tax Year 2015" and "Payable in 2018." The same is true for the 2016 assessments. More specifically, the 2016 property tax bills/assessments were issued in the Spring of 2018 and stated as follows in the middle of the bill: "This is an Omitted Tax Bill for 2016 entered as a warrant in Tax Year 2017 (payable in 2018)." At the top of each bill the following was stated "2017 Omitted Assessment Property Tax Bill" for "Tax Year 2016" and "Payable in 2018."
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> The real property associated with the Property Taxes was used for hospital purposes during 2015, 2016, 2017, and continues to be used for hospital purposes in 2018.
> Pursuant to Section (a) of the Illinois Hospital Credit Act, 35 ILCS 5/223 ("the "Illinois Hospital Tax Credit Act"), a hospital such as COMPANY 1 is entitled to an Illinois income tax credit equal to the lesser of: (i) the amount of real property taxes paid during the tax year on real property used for hospital purposes during the prior tax year; or (ii) the cost of free or discounted services provided during the tax year pursuant to the hospital's charitable financial assistance policy in the form of tax credits against the tax imposed under subsections (a) and (b) of Section 201 of the Illinois Income Tax Act, 35 ILCS 5/101, et seq (the "Act").
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> Pursuant to Section (b) of the Illinois Hospital Tax Credit Act, a hospital such as COMPANY 1 can sell/transfer any accrued Illinois income tax credits under the Illinois Hospital Tax Credit Act to a qualified purchaser within one year of the payment of the Property Taxes (i.e. on or before September 29, 2019 in this case).

> COMPANY 1's direct cost of free or discounted services during 2015, 2016, and 2017 exceeded (by a very large sum) the amount of the Property Taxes paid on September 28, 2018. However, COMPANY 1's direct cost of free or discounted services provided solely in 2017 did **not** exceed the amount of the Property Taxes paid on September 28, 2018 (because the Property Taxes paid on September 28, 2018 included the 2015 omitted assessment and the 2016 omitted assessment, as well as the 2017 assessment).
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> Based on our reading of the Illinois Hospital Tax Credit Act, we believe that COMPANY 1 is entitled to an Illinois income tax credit in the amount of $$$ (i.e. the entire amount of the Property Taxes paid on September 28, 2018) for use against 2018 income tax liabilities because the direct cost of free or discounted services provided by COMPANY 1 during 2015, 2016 and 2017 exceeded $$$ (i.e. the entire amount of Property Taxes paid on September 28, 2018). Thus, the amount of the paid Property Taxes becomes the amount of the Illinois income tax credit. We further believe that COMPANY 1 can transfer/sell that 2018 Illinois income tax credit in the amount of $$$ to a qualified purchaser (so long as that Illinois income tax credit is transferred or sold prior to September 27, 2019.)
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> Based on the foregoing, we are hereby seeking a determination pursuant to Section 1200.120 of the Act from the Department that supports COMPANY 1's position that a hospital eligible for an income tax credit pursuant to the Illinois Hospital Tax Credit Act should look to the aggregate amount of the eligible hospital's direct costs of free or discounted services during 2015, 2016 and 2017 because the Property Taxes paid by COMPANY 1 on September 28, 2018 included the 2015 omitted tax year assessment, the 2016 omitted tax year assessment, and the 2017 tax year assessment.
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> Please call or write with any additional questions. We would appreciate receiving your response as soon as possible (preferably on or before December 24, 2018, so we can close the tax credit sale with the qualified purchaser on or before December 31, 2018).

RULING

Section 223 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/223) provides for the following credit against the regular income tax:

> (a) For tax years ending on or after December 31, 2012 and ending on or before December 31, 2022, a taxpayer that is the owner of a hospital licensed under the Hospital Licensing Act, but not including an organization that is exempt from federal income taxes under the Internal Revenue Code, is entitled to a credit against the taxes imposed under subsections (a) and (b) of Section 201 of this Act in an amount equal to the lesser of the amount of real property taxes paid during the tax year on real property used for hospital purposes during the prior tax year or the cost of free or discounted services provided during the tax year pursuant to the hospital's charitable financial assistance policy, measured at cost.
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> (b) If the taxpayer is a partnership or Subchapter S corporation, the credit is allowed to the partners or shareholders in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code. A transfer of this credit may be made by the taxpayer earning the credit within one year after the

> credit is earned in accordance with rules adopted by the Department. The Department shall prescribe rules to enforce and administer provisions of this Section. If the amount of the credit exceeds the tax liability for the year, then the excess credit may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first. In no event shall a credit under this Section reduce the taxpayer's liability to less than zero.

As provided in subsection (a) of this Section, an eligible licensed hospital is allowed a credit against the regular income tax imposed under IITA Section 201(a) and (b) in an amount equal to the *lesser of* : (i) the amount real property taxes paid during the taxable year on real property used for hospital purposes during the prior taxable year, or (ii) the cost of free or discounted services provided during the taxable year at Illinois locations pursuant to the hospital's charitable financial assistance policy. In this case, to compute the COMPANY 1's credit under Section 223 for its taxable year that includes September 28, 2018, the taxpayer must compare the amount of real property taxes paid during such taxable year on real property used for hospital purposes during its prior taxable year with the cost of free or discounted services provided during the taxpayer's taxable year that includes September 28, 2018.

In the present case, you have stated that COMPANY 1 properly paid on September 28, 2018 an amount of $## in real property taxes on property used for hospital purposes during 2017. To determine whether the amount of the credit for your taxable year that includes September 28, 2018 is $##, you must compare this amount with the cost of free or discounted services provided during your taxable year that includes September 28, 2018. The credit under IITA Section 223 is the lesser amount.

In your letter you state that COMPANY 1 has until September 27, 2019 to transfer the credit. You should note that Department Form 1299-D Instructions provides, regarding transfer of the credit under IITA Section 223, as follows:

> The Hospital Credit may be transferred, either by selling or donating the credit,
> - by the taxpayer who originally earned the credit, and
> - only if the transfer occurs *within one year after the due date of that taxpayer's return, including extensions*. (Emphasis added)

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)