

Redemption of a hotel chain's "rewards points" for stay at one of its hotels is not subject to Hotel Operators' Tax liability. See 35 ILCS 145/1 *et seq.* (This is a GIL.)

August 23, 2013

Dear Xxxxx:

This letter is in response to your letter dated April 12, 2013, 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:

XYZ, a wholly owned subsidiary of ABC, operates a loyalty program designed to promote and increase hotel occupancy within the ABC brands. ABC is a global hotel company that owns, operates, and franchises hotels throughout the world, and has extensive interests in the state of Illinois. This program is funded by the hotels (owned, managed and franchise). Basically, the hotels contribute into a fund and when loyalty members stay at their hotels, the hotels are reimbursed from the fund including the applicable taxes that relate to the stay at a hotel. The purpose of this letter is to request a private letter ruling on the taxability of the following:

- a. Are the amounts paid to the participating hotel, from the XYZ Program, for the XYZ members' redeemed hotel stay taxable to the hotel?
- b. Are the amounts paid to the participating hotel, from the XYZ Program, for the XYZ members' redeemed hotel stay taxable to the XYZ program?
- c. Are the fees paid by the participating hotels to the XYZ Program taxable to XYZ?

**Facts:**

As part of its corporate promotional plan, XYZ, a wholly owned subsidiary of ABC, operates a rewards program called XYZ for frequent guests of its hotels. XYZ does not own the hotels or the franchise rights to the hotels which participate in its loyalty rewards program. The program gives these frequent guests reward points when they stay at any ABC hotel. These points can be exchanged for complimentary lodging. The points have no dollar value to a hotel guest; the guest cannot resell the points on the open market.

All ABC hotels are required to participate in this reward points program by terms of their license or management agreement. Each hotel pays a fee on the room revenue charged by members into a ABC reward points program fund each month. The fee is approximately 4% (or another agreed-to percentage) of revenue generated from the rewards members stay at that hotel. The cost of administering, managing, and marketing the reward points program is paid from each hotel's monthly contributions. XYZ is a marketing company that is not intended to make a profit.

When a guest redeems points for a complimentary night's stay at a ABC brand hotel, that hotel is paid an amount to cover the guest's stay at the hotel. The staff managing the fund handles all reward point redemption reservations. To redeem points for a complimentary stay, members must either contact a central rewards reservation desk set up specifically for the program or book online. No guest can make arrangements directly with the hotel to redeem points for a complimentary stay. The rewards desk makes the reservation for the member and then issues an electronic confirmation to the hotel.

The amount the hotel is compensated for redemption is based on hotel occupancy level during the members stay. Total award compensation for the month will be subtracted from the monthly assessment invoice total in order to determine the amount of payment from the hotel to the central fund.

- a. If the member hotel owed the XYZ program \$750, and XYZ program owed the member hotel \$500, the member hotel would pay the XYZ program \$250 for that period.
- b. If the member hotel owed XYZ program \$500, and XYZ program owed the member hotel \$750, the member hotel would receive \$250 from XYZ for that period.

The reimbursement from the fund to the hotel includes the applicable occupancy and sales taxes that relate to the stay at that hotel.

### **General Information**

1. ABC is not currently engaged in litigation or audit with the Department with regard to this or any other tax matter.
2. The Department has not previously ruled regarding this matter for ABC Hotels Corporation.
3. This private letter ruling is not requested with regard to hypothetical or alternative proposed transactions. This private letter ruling is requested to determine the Hotel Operators' Occupation Tax consequences of the actual business practices of ABC owned, ABC Managed and Franchised Hotels.
4. ABC requests that certain information be deleted from the private letter ruling prior to its dissemination. ABC requests that its name and the name of any and all related entities be deleted.

### **Illinois Law**

The Hotel Operators' Occupation Tax Act ('the HOOT') (35 ILCS 145/1 et seq.) is imposed upon persons engaged in the business of renting, leasing or letting rooms in a hotel. The tax is imposed on the gross rental receipts from such renting, leasing or letting, (35 ILCS 145/3)

**Section 2** of the HOOT sets for the definitions of various terms. The term 'hotel' means: ... *any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses.*

Section 2 of the HOOT also defines the term ‘occupancy.’ The term ‘occupancy’ means: ... *the use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose, or the right to use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.*

In addition, it also defines the term ‘rent.’ The term ‘rent’ means: ... *the consideration received for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature.*

The Department has adopted rules governing the HOOT at 86 Ill. Adm. Code 480. Section 480.101 of the Department’s rules sets forth rules governing the nature, rate and scope of the tax.

**Section 480.101(b)(1) provides:**

Since the Hotel Operators' Occupation Tax is imposed on receipts from renting rooms for living quarters, or for sleeping or housekeeping accommodations, the tax does not apply to the receipts from the renting of rooms for other purposes, such as for the use as display rooms or sample rooms, as meeting rooms, as offices or as private dining rooms.

**Section 480.101(b)(6)** prohibit taxpayers from separating out charges associated with the rental of rooms in an attempt to lower the tax base. In addition, the rule provides examples of types of receipts that are not for the right to occupy a room and are, therefore, not taxable under the HOOT:

If an operator should make a separate and specific charge for the use of bedding or other facilities furnished in connection with the use of a room as living quarters or for sleeping or housekeeping accommodations, the operator’s additional receipts from this source are subject to The Hotel Operators' Occupation Tax. However, that tax does not apply to the operator’s receipts from selling food, beverages or other tangible personal property, nor to receipts from the selling of tickets to theatre performances or other similar activities nor to other receipts which are not in any way reasonably connected with or attributable to the renting, leasing or letting of rooms for use as living quarters or for sleeping or housekeeping accommodations:

Provided that exemption for such nontaxable receipts cannot be claimed unless supported by proper books and records as provided for in Section 4 of the Hotel Operators' Occupation Tax Act and in Section 480.115 of this Part.

**Analysis**

1. Complimentary nights in hotels received through the redemption of reward points are not subject to the HOOT.

As noted above, the rewards point program is a customer appreciation tool used by ABC to benefit guests that make repeated visits to its hotels. The members of the program are rewarded with points for each paid stay at any ABC hotel. The points may be redeemed for complimentary nights at any ABC hotel.

The HOOT Tax is imposed on the gross rental receipts from the renting of hotel rooms. (35 ILCS 145/3) No gross rental receipts are received from a guest when a complementary room is received by the redemption of reward points.

The gross rental receipts associated with redeemed points are the gross rental receipts that were paid for rooms on which the points were earned.

The redemption of points earned by previous paid stay at a ABC for a complimentary room cannot be differentiated from ABC providing a promotion that offers a fourth night free when a guest pays for three nights stay. In such a situation, the consideration received for the four nights have been paid by the guest. It is just a reduction in price per room, since the cost of the fourth night has been borne by price paid for the three nights. Similarly, when a guest obtains a free night in exchange for accumulated reward points, the consideration for the free night has been paid by the guest at the time the points were earned.

2. Transactions between the hotels and the XYZ program fund are not taxable.

As noted earlier, each hotel pays a percentage of money into the marketing fund. When a member gets a complimentary stay at a hotel and the fund pays, it is the money that the hotel had contributed to the marketing fund that is being sent back to the hotel. This is not a third party payment or reimbursement. The money in the marketing fund is money held on the individual hotels behalf in proportion to payments into the fund. This can be compared to someone depositing money into a bank. When the depositor withdraws the money from the bank, the bank is not reimbursing the depositor. The depositor is reclaiming deposits that have been made previously. Transactions between the fund program and the hotels are, therefore, not taxable under HOOT.

### **Conclusion**

The Illinois law, as noted above does not address the issues mentioned above. We respectfully request guidance as to the taxability of our issue.

Please contact me if you have further questions or need additional information. Thank you in advance for your help.

### **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). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department declines to issue a Private Letter Ruling.

A tax is imposed upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 5% 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).

In regard to hotel rewards points programs, it is our understanding that Hotel Operators' Occupation Tax is remitted by the operator upon the initial stay, with a percentage of that amount put into the separate fund, wholly owned by the hotel's national franchisor, for reimbursement of gross charges by persons utilizing the rewards points program. Under these circumstances, the franchised hotels would not generally incur Hotel Operators' Occupation Tax liability on the redemption of the reward points by the customer. This determination is subject to change should a third party pay any reimbursement of the gross charges to the franchised hotels or if the operator upon the initial stay or stays did not remit Hotel Operators' Occupation Tax.

However, Retailers' Occupation Tax or Use Tax liability would be incurred on tangible personal property transferred incident to a person's stay under the rewards program. Tangible personal property, such as food, drinks, and condiments, would be subject to Retailers' Occupation Tax liability if sold to the occupant. If the tangible personal property were provided to the occupant free of charge, then the hotel would incur Use Tax liability as a donor in a gift situation. See 86 Ill. Adm. Code 150.305(c).

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,

Richard S. Wolters  
Associate Counsel

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