

ST 13-0077-GIL 11/26/2013 HOTEL OPERATORS' OCCUPATION TAX

Gross receipts received from representatives of Taipei Economic and Cultural Representative Office in the United States possessing cards issued by American Institute of Taiwan that state the holder of the card is exempt from state and local sales taxes, restaurant and similar taxes are exempt from the Hotel Operators' Occupation Tax. 35 ILCS 145/3. (This is a GIL.)

November 26, 2013

Dear Xxxxx:

This letter is in response to your letter dated November 19, 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 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:

This is an inquiry concerning a room tax exemption that was disallowed by your office. According to the excise office for the rooms division, they explained at this time the foreign cards from American Institute in Taiwan would not be accepted from room tax deductions. I was somewhat surprised as there was never a notice received from Springfield that certain foreign diplomat agency cards should not be accepted for exemption status. Due to this policy change, the August 2013 State Room Tax needed to be amended and the hotel was left with the loss of the taxes not paid.

Is there any reason the American Institute in Taiwan's card is not being accepted in the state of Illinois for tax exemption and how long the policy will be affect. Copies of the notice, tax return and copy of the diplomatic card are attached for reference.

While the AMOUNT that was disallowed for the state and city room taxes was not that significant, it was not knowing this agency was blocked by the state for exemption.

DEPARTMENT'S RESPONSE:

The United States of America recognized the government in Beijing as the sole, official government of China on January 1, 1979. As a result, the United States could no longer treat the government in Taiwan as the official government of China. Congress enacted the Taiwan Relations Act, Pub. L. 96-8 (April 10, 1979), codified at 22 UCS 3301 *et seq.*, to create a mechanism whereby it could maintain commercial, cultural and other relations between the people of the United States and the people of Taiwan.

Pub. L. 96-8 states, in part:

Sec. 4. (22 USC 3303) (a) The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.

(b) The application of subsection (a) of this section shall include, but shall not be limited to, the following:

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan. . . .

Sec. 8. (22 USC 3307) (a) The Institute, its property, and its income are exempt from all taxation now or hereafter imposed by the United States (except to the extent that section 11(a)(3) of this Act requires the imposition of taxes imposed under chapter 21 of the Internal Revenue Code of 1954, relating to the Federal Insurance Contributions Act) [26 USC 401] or by any State or local taxing authority of the United States.

Sec. 10. (22 USC 3309) (a) Whenever the President or any agency of the United States Government is authorized or required by or pursuant to the laws of the United States to render or provide to or to receive or accept from Taiwan, any performance, communication, assurance, undertaking, or other action, such action shall, in the manner and to the extent directed by the President, be rendered or provided to, or received or accepted from, an instrumentality established by Taiwan which the President determines has the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with this Act.

(b) The President is requested to extend to the instrumentality established by Taiwan the same number of offices and complement of personnel as were previously operated in the United States by the governing authorities on Taiwan recognized as the Republic of China prior to January 1, 1979.

(c) Upon the granting by Taiwan of comparable privileges and immunities with respect to the Institute and its appropriate personnel, the President is authorized to extend with respect to the Taiwan instrumentality and its appropriate personnel,

such privileges and immunities (subject to appropriate conditions and obligations) as may be necessary for the effective performance of their functions.

The President of the United States issued Executive Order No. 12143 on June 22, 1979. This Executive Order has been superseded by Executive Order No. 13014. In addition, the Taipei Economic and Cultural Representative Office in the United States (“TECRO”) and the American Institute in Taiwan (“AIT”), a private non-governmental agency created to maintain relations with Taiwan on behalf of the United States government, pursuant to Section 6 of the Act, entered into an AGREEMENT ON PRIVILEGES, EXEMPTIONS, AND IMMUNITIES BETWEEN THE AMERICAN INSTITUTE IN TAIWAN AND THE COORDINATION COUNCIL FOR NORTH AMERICA AFFAIRS [now known as TECRO] dated October 2, 1980.

The AGREEMENT states, in part:

Article 5

...

(f) The receiving counterpart organization shall undertake to ensure that the designated employees of the sending counterpart organization shall be exempt from payment of central and local sales taxes, except those normally included in the price of goods and services. This exemption shall not, however, extend to charges for specific services rendered.

(g) . . . The receiving counterpart organization shall undertake to ensure that these employees shall also be exempt from payment of central excise taxes on gasoline, diesel fuel and lubricating oil.

By letter dated January 21, 2003, issued by the Director, Diplomatic Tax and Customs Program, United States Department of State, the Director stated, in part:

“The Department of State’s Legal Advisor’s Office, has stated that it was the intent of the Signatories to the *Agreement on Privileges, Exemptions and Immunities Between the American Institute in Taiwan and the coordination Council of North American Affairs*, that references exempting counterpart organizations from “central and local sales taxes” (Article 5(f)) includes exemptions from all federal, state, and municipal taxes on sales of goods and services, including the transient occupancy tax, more commonly known as hotel tax, and also including, for example, gasoline taxes and utilities taxes as well as retail sales taxes. This position is reflected in the uniform practice of tax exemption for TECRO and AIT throughout the United States and Taiwan under the Agreement.”

The Department received confirmation from the AIT that the letter reflects the current position of the State Department and that AIT and its employees receive the same privileges in Taiwan.

The Hotel Operators' Occupation Tax is not imposed upon gross rental receipts for which the hotel operator is prohibited from obtaining reimbursement for the tax from the customer by reason of a federal treaty. 35 ILCS 145/3. Gross receipts received from representatives of TECRO possessing cards issued by AIT that state the holder of the card is exempt from state and

local sales taxes, restaurant and similar taxes are exempt from the Hotel Operators' Occupation Tax.

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
Associate Counsel