

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 PLR.)

August 20, 2018

Dear Xxxxx:

This letter is in response to your letter dated July 19, 2018, in which you requested 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I believe what I am looking for is a Private Letter Ruling in regards to a tax question regarding tax exemption on hotel stays for 30+ continuous days. COMPANY (COMPANY's Tax ID: ###) works as an intermediary between insurance companies and their insureds securing temporary housing for the insureds when their home is damaged and deemed unlivable until repairs are completed. COMPANY will pay for the room and tax on such accommodations and will then invoice the insurance company for those charges, so ultimately it is the insurance company footing the bill.

We recently had a client stay at the HOTEL at ADDRESS in CITY IL and what makes this stay unique is that a different housing company (COMPANY 1) paid for the first 30 days (XX/XX/XX – XX/XX/XX) on the BANK CARD ending in XXXXX and then we took over providing the accommodations for the insured from DATE – DATE and paid with the BANK CARD ending XXXXX. I have included the entire folio of CLIENT's stay at the hotel for you to reference. In this situation the guest (CLIENT), the insurance company (INSURANCE COMPANY), the hotel (HOTEL) did not change; only the temporary housing changed from COMPANY 1 to COMPANY.

The hotel did give a refund to COMPANY 1 for the first 30 days, but then starting charging COMPANY tax when they took over billing even though there were no interruptions in the stay. Based on my review of the tax code, I think the stay should have remained tax exempt when COMPANY took over billing due to the following information contained in: Illinois Department of Revenue Publication 106: Allowable Deductions for IDOR-Collected Hotel Taxes. I have copied and pasted the publication and the link for this publication is: <http://www.revenue.state.il.us/Publications/Pubs/Pub-106.pdf>. To the best of my knowledge the taxpayer and the tax payer's representative the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, or whether the tax taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

Illinois Department of Revenue Publication 106 Purpose: To explain to hotel operators the deductions that are allowable under the hotel taxes collected by the Illinois Department of Revenue. Objectives: To identify the hotel taxes that are collected by the Illinois Department of Revenue To identify who is responsible for paying the hotel taxes To identify allowable deductions under the hotel taxes To answer frequently asked questions regarding hotel tax deductions Allowable Deductions for IDOR-Collected Hotel Taxes General Information: This publication explains the proper reporting of allowable deductions for the hotel taxes collected by the Illinois Department of Revenue (IDOR). Throughout this publication, the term "hotel tax" refers to all IDOR-collected hotel taxes to which you are subject. What hotel taxes does the IDOR collect? The IDOR collects the following state and Chicago area hotel taxes on Form RHM-1, Hotel Operators' Occupation Tax Return: State tax Illinois Hotel Operators' Occupation Tax (HOOT) Chicago area taxes Metropolitan Pier and Exposition Authority (MPEA) Hotel Tax Chicago Municipal Hotel Tax (CMHT) Illinois Sports Facilities Tax (ISFT). The IDOR does not collect any local hotel taxes other than the Chicago area taxes listed above. All other local taxes are paid directly to the local taxing authority. Upon whom are these taxes imposed? The state and Chicago area hotel taxes collected by the IDOR are imposed on persons in the occupation of renting, leasing, or letting rooms to the public for living quarters for periods of less than 30 days (i.e., hotel operators). The HOOT is imposed on all hotel operators whose businesses are located in Illinois. The CMHT and ISFT are imposed on hotel operators whose businesses are located in the city of Chicago. The MPEA Hotel tax is imposed on hotel operators whose businesses are located within the MPEA boundaries. Depending on the location of your business, you may be subject to one or more of these hotel taxes. What deductions are allowable under these taxes? You may take the following deductions on Form RHM-1: local hotel tax paid directly to a local jurisdiction and not collected by the IDOR receipts from permanent residents receipts from foreign diplomats receipts from student housing not applicable to hotels receipts associated with display rooms, public rooms, sampler rooms, meeting rooms, dressing rooms for swimming pools, offices, and private dining rooms receipts from the sale of food and beverages receipts from the use of a telephone receipts associated with barber shops, laundry services, vending services, ticket sales, valet parking, garage rent, promotions, photos, magazines, and sundries room adjustment charges, allowances, and discounts bad debts and uncollectables intracompany sales refunds Each of these items is deductible under all IDOR-collected state and Chicago area hotel taxes. If an item is not listed above, it most likely is not an allowable deduction on Form RHM-1. Note: Receipts from the sale of food and

beverages, prepaid phone cards, barber shop services, laundry services, vending services, promotions, photos, magazines, and sundries may be subject to Illinois Sales Tax. Are receipts from “no shows” deductible on Form RHM-1? No. When a guest become liable for paying a charge to rent a room, the receipts from the rental are subject to hotel tax, regardless of whether the person actually occupies the room. Do I include all hotel taxes I collected on Form RHM-1, Line 1, Total receipts? Yes. You must include all state, Chicago area, and local hotel taxes you collected in your total receipts on Form RHM-1, Line 1. If you collected a local hotel tax, you may deduct that tax on Line 2, Local tax deduction, because you pay it directly to the local jurisdiction. You may not deduct the amount you collected for the MPEA Hotel Tax, CMHT, or ISFT on Line 2. Who is a “permanent resident?” A permanent resident is a person who has the right to occupy any room in a hotel for a least 30 consecutive days. PUB-106 (R-1/08) Page 1 of 3 If I have a contract with a permanent resident, do I owe hotel tax for the first 30 days of that guest’s stay? When you have a binding contract with a permanent resident for at least 30 days, no hotel tax is due. However, if the contract is terminated before the end of the first 30 days, you owe hotel tax for the period up to the time when the contract was terminated. If a guest stays for 30 consecutive days or more, has paid hotel tax, and later asks for a refund, what do I do? In this situation, your guest has a legal right to request a refund of hotel tax paid. Therefore, you should refund the amount of tax paid to your guest. If you do not refund the amount of tax paid, you are liable to pay that amount to us. We do not refund hotel tax to hotel guests. If I am unsure whether or not a guest is “permanent” at the end of the reporting period, should I report and pay hotel tax on that guest’s stay? When you do not know whether a guest is a permanent resident at the end of the period for which you are filing Form RHM-1 because the guest’s first 30 days have not ended, you owe hotel tax on receipts from that rental. If the guest later stays for 30 days, the receipts from that rental for the first 30 days, or portion thereof, upon which you have already paid tax should be deducted on Form RHM-1, step 2, Line 3, for the next month. Be sure to include a breakdown with that month’s RHM-1 explaining the deduction. Who is a “foreign diplomat?” A foreign diplomat is an official from a foreign country who is stationed in the United States while working as a diplomat, consular officer, or staff member at a foreign mission. This individual has been issued a tax exemption card. Each card contains the individual’s picture and either a blue, a green, a yellow, or a red stripe. A blue-striped card exempts the individual from paying hotel tax. A red-striped card exempts the individual from paying hotel tax over a minimum purchase amount listed on the face of the card. A yellow-striped or green-striped card exempts the individual from paying hotel tax unless hotels are listed as a restricted category on the face of the card, (e.g., exempt on purchases, exempt hotels). The United States Department of State, Office of Foreign Missions, issues two types of exemption cards: A personal tax exemption card is for use only by the individual named on the card. A mission tax exemption card is for official use only. In order to receive the exemption, your guest must provide you with proper identification. You must attach a copy of both sides of the tax-exempt card to Form RHM-1 to be allowed to take receipts from the rental of a room to a foreign diplomat as a deduction. Please indicate the color of the card on your return. If you do not attach a copy of the card to the return, we will bill you for tax due, plus penalty and interest. If a foreign diplomat is accompanied by visitors, are receipts from rentals to those visitors also exempt form hotel tax? If a foreign diplomat has a blue-striped mission card, red-striped mission card and is spending above the minimum purchase amount listed on the card, or yellow-striped or green striped mission card that does not

specifically restrict hotels, he or she may rent rooms on behalf of the mission and obtain tax-exempt lodging for visitors or nonaccredited persons. The individual using the card does not need to stay at the hotel. He or she may pay the hotel bill with a mission credit card or a mission check, but may not use a personal credit card, check or cash. The foreign diplomat may not use his or her personal tax exemption card to pay for hotel rooms of those outside his or her immediate family. Where can I get more information about foreign diplomats and tax exemption cards? If you would like more information about foreign diplomats and their exemption from hotel tax, request a copy of Diplomatic Tax Exemption Program by contacting: U.S. Department of State, Office of Foreign Missions 77 West Jackson Blvd., Suite 2122 Chicago, IL 60604 Phone 312-353-5762 Fax: 312-353-5768 or writing to: Office of Legal Services (5-500) Illinois Department of Revenue 101 West Jefferson Street Springfield, IL 62702 Are receipts from rentals to federal, state, and local government employees exempt from hotel tax? No. Receipts from rooms rented to federal, state, and local government employees are not exempt from hotel tax. Being government employees does not exempt these individuals from paying hotel tax. Are receipts from rentals to persons affiliated with schools or charitable, religious, or other not-for-profit organizations exempt from hotel tax? No. Receipts from rooms rented to individuals associated with these groups are not exempt from hotel tax. Being associated with a school or not-for-profit organization does not exempt these individuals from paying hotel tax. If a person or not-for-profit organization presents a tax exemption certificate issued by the Illinois Department of Revenue to me, are receipts from that rental exempt from hotel tax? No. A tax exemption certificate issued by the Illinois Department of Revenue exempts certain entities from Illinois Sales Tax, not hotel tax. Page 2 of 3 PUB-106 (R-1/08) Allowable Deductions for IDOR-Collected Hotel Taxes Call us at 217-782-6045. Call our TDD (telecommunications) device for the deaf) at 1 800 544-5304. Write us at Illinois Department of Revenue, Miscellaneous Taxes Division P.O. Box 19477, Springfield, IL 62794-9477. Visit our website at tax.illinois.gov. Call our 24-hour Forms Order Line at 1 800 356-6302. For information or forms printed by authority of the State of Illinois (605- copies – 1/08 – P.O. number 2080460). Because of confusion on this issue, we have revised exemption certificates to specifically state that the organization is not exempt from the hotel tax. I operate a private club and rent rooms only to club members and their guests. Am I exempt from paying hotel tax? Since hotel tax is limited to the renting of rooms to the public and your club restricts its renting of rooms to members and their guests, you are not liable for hotel tax on your rental receipts from such rooms. Are schools that rent rooms to students are living quarters subject to hotel tax? A school is not subject to hotel tax on receipts from renting rooms to its students for use as living quarters, or for sleeping or housekeeping accommodations, because these are not rentals to the public. If the school rents rooms for such purposes to persons who are not enrolled with the school in courses of study for credit, such renting is being made to the public. Therefore, the school owes hotel tax on receipts from such rentals, as long as the person does not qualify as a permanent resident. If a guest requests a roll-away bed, are receipts from the rental of the bed subject to hotel tax? Yes. Receipts from the rental of the rollaway bed are subject to hotel tax. If you 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 receipts from this source are subject to hotel tax. Are receipts from meeting or banquet rooms subject to hotel tax? No. Since hotel tax is imposed on receipts from renting rooms for living quarters or for sleeping or housekeeping accommodations, the tax does

not apply to receipts from the renting of rooms for other purposes (e.g., for use as display rooms, sample rooms, meeting rooms, offices, or private dining rooms). If I operate a bed and breakfast and do not include the breakfast in the room rate, are receipts from the breakfast subject to hotel tax? No. The receipts you receive from selling food, beverages, or other tangible personal property are not subject to hotel tax. If you provide complimentary food to your guests and do not operate a restaurant that is open to the public, you must pay Illinois Use Tax on the food items when they are purchased. If you sell food to your guests and operate a restaurant that is open to the public, your receipts are subject to Illinois Sales Tax. You must be registered separately with us to report and pay sales tax on these items. Are "in-room movies" subject to hotel tax? Receipts for movie rentals are not subject to hotel tax if you are not the entity that actually provides the movie, authorize a movie vendor to install equipment in the rooms and sell movies to your guests, and merely collect the money for the movie vendor. However, if you actually provide movies to your guests, these receipts are subject to hotel tax. What if a person or organization refuses to pay hotel tax? As a hotel operator, the liability for paying hotel tax falls upon you, not your guests. You may, however, pass hotel taxes to which you are subject on to your guests as separately stated items on your guests' bills. If you do not pay the tax liability on Form RHM-1, you will be assessed for the tax due, plus penalty and interest. Will I be penalized if I fail to properly identify a deduction I claim on Form RHM-1? If you do not properly identify a deduction you claim on Form RHM-1, we will automatically assess you for the tax due, plus penalty and interest. If the deduction is allowable, you must file an amended Form RHM-1 identifying the allowable deduction you are claiming. If after reviewing your return, we determine the deduction is allowed, we will withdraw the assessment in full. If we determine the deduction is not allowed, you will owe the full assessment. How can I correct an error made on my return? If you made an error on your Form RHM-1 (e.g., failed to claim an allowable deduction), you must file an amended return to correct the error. (To file an amended return, use form RMH-1 and check the "amended" box.) You must pay any additional tax due. Penalty and interest will be due on the additional tax if you do not file the amended return and pay the additional tax due by the due date of the original return. If your amended return shows you have overpaid tax, you must indicate this fact and request a refund or credit. Questions? If you have questions or need more information, please call or write us. Our telephone numbers and address are listed at the end of the publication.

If any additional information is needed, please do not hesitate to contact me.

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 occupies 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 person contracted with the hotel operator to stay 30 consecutive days at check-in, if a person 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 charges a person the hotel tax for a room (whether or not it is the same room) for at least a 30-consecutive day period, the person shall have a legal right to claim a refund of the amount of tax collected for such room from the hotel operator.

Any taxes collected by the hotel operator that are not refunded to the customer for any reason must be remitted 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.

Based upon the facts in your letter, your client occupied a room in a HOTEL for a total of 56 consecutive days (checking in on DATE, 20XX and checking out on DATE, 20XX). As noted above, the statute provides that to be considered a permanent resident, a person must occupy or have a right to occupy any room for at least 30 consecutive days. Your client occupied a room in a HOTEL for 56 consecutive days and should have been considered a permanent resident. As such, the HOTEL was not subject to the Hotel Operator's Tax with respect to the rental receipts for those 56 days and, thus, should not have sought reimbursement of the tax from your client. The statute does not require that the payment for a room be by the same entity for at least 30 consecutive days, only that a person occupy or have the right to occupy a room for at least 30 consecutive days.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee