

ST 18-0017-GIL 05/07/2018 MISCELLANEOUS

This letter discusses the application of Metropolitan Pier and Exposition Authority Retailers' Occupation Tax to sales of food, alcoholic beverages, and soft drinks sold on boats and other watercraft. See 70 ILCS 210/13. (This is a GIL.)

May 7, 2018

Re: **COMPANY – Request for Private Letter Ruling**

Dear Xxxxx:

This letter is in response to your letter dated August 16, 2017 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](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:

I am writing this letter to respectfully request a private letter ruling, pursuant to Illinois Administrative Code §1200.110, as to whether my client, COMPANY (“COMPANY”), is responsible for paying the Metropolitan Pier and Exposition Authority Food and Beverage Tax (the “MPEA Tax”) for sales of food, alcoholic beverages and soft drinks sold on COMPANY’s tour boats that depart from and return to COMPANY’s docks on the Chicago River.

A Power of Attorney authorizing my representation of COMPANY is enclosed.

**Statement of Material Facts**

COMPANY is an Illinois corporation with an office located at ADDRESS, CITY, Illinois. COMPANY provides public boat tours which depart from and return to its docks on the main branch of the Chicago River. Some of COMPANY’s tours take place entirely on

the Chicago River, while other tours go into Lake Michigan. COMPANY's passengers may purchase pre-packaged food and beverages, including soda and alcoholic beverages, for consumption while on a COMPANY tour.

COMPANY does not have any docks on the shoreline of Lake Michigan, including Navy Pier, and none of its boats depart from, return to, or stop at any point on Navy Pier or the shoreline of Lake Michigan.

COMPANY received a Notice Before Collection Action from the Department, dated MONTH XX, XXXX, stating that COMPANY is required to file monthly ST-4 returns and pay the MPEA Tax for the period from MONTH XXXX – MONTH XXXX. A true and correct copy of this Notice is attached as Exhibit A.

#### Contracts, Licenses, Agreements

There are no contracts, licenses or agreements that are relevant to this request. COMPANY does not own, lease, license or otherwise have any agreement relating to the possession or use of any dock on Navy Pier or any other improvements, docks or piers on the shoreline of Lake Michigan.

#### Tax Periods At Issue / No Pending Matters or Prior Rulings

This PLR request relates to all prior MPEA Tax periods including all prospective periods (the "Periods at Issue").

To the best of COMPANY's and my knowledge, 1) there is no audit or litigation pending with the Department regarding COMPANY's or a related taxpayer's MPEA Tax liability for the Periods at Issue, and 2) the Department has not previously ruled on the same or a similar issue for COMPANY or a predecessor of COMPANY.

#### Statement of Authorities and Analysis

The MPEA Tax is a retailers' occupation tax of 1% on the gross receipts from food prepared for immediate consumption, alcoholic beverages and soft drinks. 70 ILCS 210/13 (the "MPEA Tax Act"). Section 13(b) of the MPEA Tax Act generally describes the Metropolitan Pier and Exposition Authority boundaries.

In addition to establishing the boundaries, Section 13(b) of the MPEA Tax Act specifically addresses the application of the MPEA Tax to sales of food and beverages that occur on boats, rather than sales that occur on land, and reads as follows:

"The tax authorized to be levied under this subsection (b) may also be levied on food, alcoholic beverages and soft drinks sold on boats and other watercraft **departing from and returning to the shoreline of Lake Michigan** (including Navy Pier and all other improvements fixed to land,

docks or piers) [between the Stevenson Expressway to Diversey Avenue].” [emphasis added]

It is a maxim of statutory construction that specific provisions of a statute control over general provisions, where the general terms may otherwise be controlling. See, e.g., *Kepner v. United States*, 195 U.S. 100, 125 (1904); *U.S. V Kuecker*, 740 F.2d 496, 502 (7<sup>th</sup> Cir. 1984). Specific provisions targeting a particular issue apply instead of provisions more generally covering the issue. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 444-45 (1987) (holding that absent explicit statutory or contractual authorization for the taxation of the expense of litigant’s witness as costs, federal courts are bound by the limitations set out in 28 U.S.C. 1821 and 1920). General language of a statute, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same statute. *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204 (1932).

MPEA does not have the power to levy taxes for any purpose, except as specifically provide in the MPEA Tax Act. 70 ILCS 210/13(a). By including the quoted paragraph at the end of Section 13(b), the legislature specifically addressed sales taking place on boats, and limited the application of the MPEA Tax to sales on boats both departing from and returning to docks on the shoreline of Lake Michigan, including Navy Pier. As noted, COMPANY’s tour boats do not depart from or return to Navy Pier or any other improvements, docks or piers on the shoreline of Lake Michigan.

Tax ordinances are construed against the taxing authority. When a statute is clear and unambiguous on its face, there is no need to look at the legislative history of the statute for interpretation. *EEOC v. Chicago Housing Authority*, 725 F. Supp. 392, 393 (7<sup>th</sup> Cir. 1989). A tax law, in particular, is construed strictly. *Kankakee County Bd. of Review v. Property Tax Appeal Bd.*, 226 Ill. 2d 36, 52 (2007). A tax statute must be strictly construed against the government and in favor of the taxpayer. *Chi. Bears Football Club v. Cook County Dep’t of Revenue*, 2014 IL App. (1<sup>st</sup>) 122892 ¶26. If there is any doubt about the meaning of a tax law or its reach, then the law is strictly construed against the taxing body and in favor of the taxpayer or tax collector. *Kankakee County Bd. of Review*, 226 Ill.2d at 52.

Food and beverage sales on COMPANY’s boats should be excluded from the MPEA Tax under the specific provision addressing sales on boats. Any contrary construction would violate the cardinal rule to give effect to every part of the ordinance. Accordingly, it is COMPANY’s view that the MPEA Tax does not apply to sales of food, alcoholic beverages and soft drinks sold on COMPANY’s tour boats, and the MPEA Tax may not be levied on such sales.

We have researched this issue and are unable to locate any authorities contrary to COMPANY’s views as set forth in this letter.

Trade Secret Information

There is no specific trade secret information in this letter that must be redacted prior to public dissemination.

Ruling Requested

COMPANY requests that the Department issue a private letter ruling confirming that the MPEA Tax does not apply to sales of food and beverages sold on COMPANY's tour boats that depart from and return to COMPANY's docks on the Chicago River.

We look forward to the Department's response. If you have any questions, please feel free to contact me.

**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). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions.

The Metropolitan Pier and Exposition Authority Act ("Act) requires the Metropolitan Pier and Exposition Authority to impose a Metropolitan Pier and Exposition Authority Retailers' Occupation Tax upon all persons engaged in the business of selling tangible personal property at retail at the rate of 1.0% of the gross receipts (i) from the sale of food, alcoholic beverages, and soft drinks sold for consumption on the premises where sold and (ii) from the sale of food, alcoholic beverages, and soft drinks sold for consumption off the premises where sold by a retailer whose principal source of gross receipts is from the sale of food, alcoholic beverages, and soft drinks prepared for immediate consumption within the territory described in the Act. 70 ILCS 210/13(b). The boundaries of the Metropolitan Pier and Exposition Authority are described in subsection (b) of Section 13.

"The tax authorized to be levied under this subsection may be levied within all or any part of the following described portions of the metropolitan area:

1) that portion of the City of Chicago located within the following area:

Beginning at the point of intersection of the Cook County - DuPage County line and York Road, then North along York Road to its intersection with Touhy Avenue, then east along Touhy Avenue to its intersection with the Northwest Tollway, then southeast along the Northwest Tollway to its intersection with Lee Street, then south along Lee Street to Higgins Road, then south and east along Higgins Road to its intersection with Mannheim Road, then south along Mannheim Road to its intersection with Irving Park Road, then west along Irving Park Road to its intersection with the Cook County -

DuPage County line, then north and west along the county line to the point of beginning; and

2) that portion of the City of Chicago located within the following area:

Beginning at the intersection of West 55th Street with Central Avenue, then east along West 55th Street to its intersection with South Cicero Avenue, then south along South Cicero Avenue to its intersection with West 63rd Street, then west along West 63rd Street to its intersection with South Central Avenue, then north along South Central Avenue to the point of beginning; and

3) that portion of the City of Chicago located within the following area:

Beginning at the point 150 feet west of the intersection of the west line of North Ashland Avenue and the north line of West Diversey Avenue, then north 150 feet, then east along a line 150 feet north of the north line of West Diversey Avenue extended to the shoreline of Lake Michigan, then following the shoreline of Lake Michigan (including Navy Pier and all other improvements fixed to land, docks, or piers) to the point where the shoreline of Lake Michigan and the Adlai E. Stevenson Expressway extended east to that shoreline intersect, then west along the Adlai E. Stevenson Expressway to a point 150 feet west of the west line of South Ashland Avenue, then north along a line 150 feet west of the west line of South and North Ashland Avenue to the point of beginning.”

The boundaries are delineated on a map and described on the Department’s Form IDOR-535.

Portions of the Chicago River are located within the boundaries described in paragraph (3). Food, alcoholic beverages, and soft drinks sold at retail for consumption on boats and other watercraft located within these boundaries at the time the sales are made are subject to the Metropolitan Pier and Exposition Authority Retailers’ Occupation Tax.

Section 13(b) of the Act provides that tax may also be levied on food, alcoholic beverages, and soft drinks sold on boats and other watercraft departing from and returning to the shoreline of Lake Michigan (including Navy Pier and all other improvements fixed to land, docks, or piers) described in paragraph (3). This provision makes it clear that the MPEA boundaries include Lake Michigan when a watercraft departs from the shoreline of Lake Michigan (including Navy Pier and all other improvements fixed to land, docks, or piers) and returns to the same shoreline. Food, alcoholic beverages and soft drinks are subject to tax when sold during excursions within this area.

The Department cannot support the interpretation of Section 13 (b) which you advocate. It is the Department’s position that the language regarding watercraft departing from and returning to the shoreline of Lake Michigan is not intended to limit the scope of the tax to only those watercraft that leave the shoreline of MPEA boundaries. Instead, these provisions address the unique issues raised by the sale of food and beverages on watercraft afloat on waters (Lake Michigan) contiguous to the land-based boundaries of the MPEA region. Section 13(b) unequivocally provides that if such watercraft depart from and return to the shoreline of Lake Michigan, they are considered to be within

the MPEA region and tax can be levied on sales made while the watercraft are afloat on Lake Michigan. Absent such language, authority to tax these transactions could be disputed, as these watercraft are afloat on waters outside the land-based boundaries of the MPEA region. Because of Section 13(b), however, watercraft that originate and terminate their trips at a dock on the shoreline of the MPEA region cannot avoid tax by asserting that their sales are made outside MPEA territory.

As noted above, the provisions of Section 13(b) address the unique circumstances of watercraft afloat on Lake Michigan. Unlike these watercraft, your client's watercraft are located within the boundaries of the MPEA region, i.e., on portions of the Chicago River that are clearly within boundaries of the MPEA region. The existence of a specific statutory provision added to resolve ambiguity regarding authority to tax watercraft afloat on Lake Michigan does not negate imposition of tax on watercraft that are indisputably located within the boundaries of the MPEA region. As such, all sales made by watercraft that depart from and return to locations on the Chicago River which are within the boundaries of the MPEA region are subject to tax (whether those excursions occur on the Chicago River or both the Chicago River and Lake Michigan).

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, 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

RSW:bkl