ST 20-0042-GIL 12/21/2020 PARKING EXCISE TAX

This letter discusses the Parking Excise Tax. 35 ILCS 525; 86 Ill. Adm. Code 195. (This is a GIL.)

December 21, 2020

NAME
ADDRESS

Dear Xxxx:

This letter is in response to your letter dated July16, 2020, 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.

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:

> Please view this letter as a private letter ruling request as to the application of the Illinois Department of Revenue's ("IDOR") new Parking Excise Tax Regulations to COMPANY ("COMPANY"). This ruling is requested for all taxable periods from and after its issuance until COMPANY's material facts that are the basis of this ruling change. Such a private letter ruling request is proper under 86 Ill. Adm. Code § 1200.110.
>
> No authority exists that is contrary to the positions expressed in this request for a private letter ruling. Nor are the issues in this request part of a current audit or litigation matter with the IDOR concerning COMPANY or any related company. There are no regulations that are clearly dispositive of the issues in this request.
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> To the best of knowledge of both COMPANY and COMPANY's representative, the IDOR has not previously ruled on the same or similar issue for COMPANY or a predecessor. Neither COMPANY nor its representative has previously submitted the same or a similar issue to the IDOR but withdrew it before a letter ruling was issued. And, there are no authorities that COMPANY or its representative is aware of that are contrary to the ruling request made herein by COMPANY.
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> **Background**

COMPANY operates parking garages at various locations in Illinois. Its main office is located at ADDRESS, Chicago, Illinois. COMPANY does hourly, daily and monthly rentals of parking spaces in Illinois to the public. It also sells parking spaces to third parties for resale to the public. COMPANY is registered to collect Chicago Parking Tax, Cook County Parking Tax and parking taxes for other municipalities. It is also registered as an operator to collect Illinois Parking Excise Tax (35 ILCS 525, *et seq.*).

Some of the third-party resellers to which COMPANY sells parking are web-based aggregators of parking. A web-based aggregator, like COMPANY1 and COMPANY2, are companies that contract with lot operators and others to resell to the public available parking spaces at multiple garages and locations in the Illinois. While these web based aggregators would normally be required to collect and remit state and local parking taxes on their sales, in some cases, in order to shift the responsibility to collect and remit parking tax on their sales, a web-based aggregator will enter into agency agreements with some garage operators that place the responsibility to collect and remit parking tax on the garage operators. COMPANY does NOT enter into such agency agreements with web-based aggregators.

In addition, COMPANY does not enter into agency agreements with booking intermediaries or facilitators of parking nor does it engage such booking agents to fulfill transactions between itself and a parker. All sales of available parking by COMPANY to web-based aggregators are made for resale by the aggregators directly to the public.

Significantly, because these resale customers are solely treated as customers of the web based aggregators, some major web-based aggregators, such as COMPANY2, do NOT even disclose the name, email or identity of their customers/parkers to COMPANY, while some other aggregators merely disclose some very limited information on their customers like their email address or sometimes simply a name. However, none of these aggregators disclose their parkers/customers address, credit/debit card information, or driver's license information to COMPANY. Rather these aggregators only provide limited booking information, such as the start and end date, aggregator's booking number for their customers, bar codes and in some instances the license plate numbers, to allow entry of their customers into the garage. COMPANY is even prohibited in these aggregator agreements from soliciting such aggregators' customers. *See*, COMPANY2 Agreement, Par. 5. (COMPANY is prohibited from any "direct marketing to COMPANY2 customers".) Because of this, COMPANY does not bill or invoice the aggregators' customers or contact such customers in any way. As a result, COMPANY does not enter into any parking transaction with such customers and does not collect parking charges from these customers. Rather, COMPANY's agreement is only with the web-based aggregators.

As to the parking price charged by these web-based aggregators, the aggregators resell the parking based upon either an agreed to gross parking price for which they can resell the parking to their customers or in some cases the aggregators can set their own final resale price based on the aggregator's determination of best price it can get taking into consideration factors like demand and location. *See,* COMPANY2 Agreement and Brochure, attached. These aggregators make their profit by reselling the parking and taking a percentage of the gross price charged to its parking customers as well as imposing additional flat fees. Sometimes the flat fees are incorporated in the gross parking charge and other times they are separately stated. The aggregator contracts with their customers/parkers directly, collects the parking charges and fees (by directly charging the parkers credit/debit card), as well as collects the taxes which may be included in the charges and fees. On a monthly basis, the

aggregator remits to COMPANY the amount contracted for with COMPANY for the parking after deducting all fees and agreed to discounts. The aggregator keeps the remaining amount as its own revenues and profit for the sale of the parking.

Rulings Requested

1. Web-based parking aggregators that purchase parking from COMPANY for resale are required to collect and remit the Tax on their parking charges.

2. COMPANY is only required to remit Tax on the parking charges remitted to COMPANY by the parking aggregators to which COMPANY sells parking spaces for resale.

3. Alternatively, if COMPANY is required to remit Tax on the parking charges levied and collected by the web-based aggregators from their customers, then these charges would not include separately stated fees imposed and retained by the aggregators.

4. Alternatively, if the aggregators determine the parking price for the parking rather than COMPANY, then such aggregators are liable to remit the Tax on such parking price.

5. Alternatively, if COMPANY is required to remit Tax on the parking charges levied and collected by the aggregators from their customers as a result of the IDOR revisions to the proposed regulations that became effective May 13, 2020, then COMPANY should not be liable for such Tax for periods prior to May 13, 2020?

Applicable Law

The Illinois Parking Excise Tax Act (the "Act") imposes a Parking Excise Tax (the "Tax") effective January 1, 2020 "on the privilege of using in this state a parking space in a parking area or garage". 35 ILCS 525. The Tax is on the purchaser of the parking and is collected by the operator. The total purchase price paid for parking is taxable under the Tax. 35 ILCS 525/10-5. This includes "the *consideration paid* for the purchase of the parking space" including all convenience fees, markups, service fees, facilitation fees, and other charges. *Id.*

Under the Act, an "operator" required to collect the Tax is any "person who engages in the business of operating a parking area or garage, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking ...." 35 ILCS 525/10-5.

An operator also expressly includes "any facilitator or aggregator that collects from the purchaser the charge or fee paid for parking. 35 ILCS 525/10-5. An "aggregator" is commonly understood to mean "someone .... that gathers together materials from a variety of sources." https://www.merriam-webster.com/dictionary/aggregator. Or, in the cases of parking, an aggregator is someone that accumulates available parking from a variety of sources for resale to the public. A facilitator is commonly understood to mean "someone or something that facilitates something." https://www.merriam-webster.com/dictionary/facilitator. So, with respect to parking, a facilitator is a person that facilitates an agreement for parking. Consequently, an aggregator or facilitator that is directly involved in the rental of the parking spaces and collects the parking charges is plainly deemed an "operator" under the Tax. *Id.*

However, the Act does exclude certain facilitators that are *merely* booking intermediaries from being operators, but such booking intermediaries are limited to persons or entities that do not

enter into the transaction themselves with their customers, but merely process and fulfill *"reservation transactions between an operator and a person or entity desiring parking"*[1] *Id.* So facilitators that are merely agents of the operator and who purely process transactions between the garage operators and the parkers can be excluded from the requirements of being an operator. *Id.*

Applicable Regulation

In late 2019, the IDOR initially issued proposed regulations on the interpretation of the Tax. 86 Ill. Admin Code 195.100 *et seq.* The IDOR revised these proposed regulations in early 2020. Apparently, because of COVID 19, no hearing on these revised regulations occurred and these revised regulations were ultimately approved without change by the Joint Committee on Administrative Rules, becoming effective May 13, 2020.

The Parking Excise Tax Regulations attempt to explain the difference between the web-based companies that resell parking and those web-based companies that are merely marketing agents or facilitators that only market or advertise parking spaces as agents or representatives of a garage operator, and through their agreement with the operator receive a fee for this marketing activity. Compare Sections 195.110(d) and (e). For instance, in Section 195.110(d) Example 1, the regulations make it clear that if the web-based company actually rents the parking space to the purchaser that the web-based company is deemed an "operator" and liable to collect and remit the Tax to the IDOR. On the other hand, Section 195.110(e)(1) allows certain marketing agents and facilitators to avoid being considered "operators" under the Tax. Section 195.110(e)(1) however plainly presupposes that the marketing agent or facilitator is not entering into the rental agreement for itself but is merely marketing or facilitating a parking transaction between the parker and the garage operator. Section 195.110(e)(1) appears to be grounded on the definition of booking intermediary in the Act, in which the Act excludes from the definition of "operator" a booking intermediary that merely facilitates a *"transaction between an operator and a person or entity desiring parking." See,* Sec. 195.105 (definition of booking intermediary). Thus, Sections 195.110(d) and (e) recognize the fundamental distinction between web-based companies that act as resellers (such as parking aggregators) and those that are merely marketing agents or facilitators of a garage operators [sic] transaction with a parker. In other words, if the web-based company is not an agent of the garage operator but rather is the party actually contracting with the customer, then the parking charges levied by the web-based company would be considered paid to it as an operator, and would not be "consideration paid" to the garage operator. *See,* Section 195.105. Therefore, Section 195.110(e)(1) on its face would not apply to those web-based aggregators that directly contract with parkers for the parking spaces, and are not merely marketing or booking agents of the garage operator.

IDOR in the initial proposed Section 195.110(e)(1) provided that a marketing agent or facilitator must also meet eight requirements in order to avoid being an operator under the Tax. Later, the IDOR revised the proposed regulations by eliminating one of these requirements. But, this revision did not change the underlying requirement that the company be essentially a marketing agent or facilitator that acts on behalf of the garage operator to market or facilitate a transaction between the garage operator and the parker, rather than a company that itself directly enters into a parking contract with the customer for parking.

[1] This appears to be referring to a selling agent situation in which the agent is not entering into the contract itself but is merely the agent of the seller, or maybe also the COMPANY3 model where COMPANY3 merely facilitates the transaction between the seller and the buyer, and itself is not a party to the transaction.

The other requirements of Section 195.110(e)(1) that are relevant for purposes of this ruling request are:

C) the operator establishes the purchase price for the parking.

D) the person markets or facilitates the rental of the parking spaces at the purchase price set by the operator.

F) any additional fees charged to the customer and retained by the person are separately stated.

Analysis

1. The web-based parking aggregators purchasing parking spaces from COMPANY for resale are operators that are required to collect and remit parking Tax to IDOR.

The Act makes it clear that an operator much collect the Tax on the purchase price paid for the parking it sells. 35 ILCS 525. An "operator" includes a person who "collects the consideration for parking." 86 Ill. Admin. Code 195.105. Moreover, both the Act and the regulations expressly provide that an operator encompasses not only the garage operator but also "any facilitator or aggregator that collects from the purchaser the charge or fee for parking." *Id.* Therefore, when COMPANY sells available parking spaces to an aggregator for resale to the public, and the aggregator enters into a contract with a parker for the sale of the space and collects the parking charge, the aggregator is expressly considered an "operator" liable to collect and remit the parking Tax. *Id.* It also makes no difference under the Act whether the aggregator could also be a facilitator of parking in other situations since both are operators under the Act. *Id.*

The only exception to the above is if a company is merely a marketing agent or a facilitator of a parking transaction between the garage operator and customer (*i.e.,* a booking intermediary), such that the company is simply marketing and facilitating the "transaction" between the garage operator and the parker. *Id.* But, this is a very limited exception which does not apply here. First, the web-based company must not be the one entering into the parking agreement for itself, rather it must just be facilitating the "transaction" between the garage operator and the parker. Put more succinctly, the web-based company must be acting solely as the garage operator's agent in marketing and finding available parkers so that the garage's operator and parker are the only ones entering into the parking agreement.[2] On the other hand, if, as here, the web-based company itself entering into the transaction with the parker, such that the parker is the web-based company's customer, then the web-based company is not merely facilitating or marketing the parking, it is the reseller of the parking and an operator under the Tax.

Here, COMPANY contracts with the web-based aggregators to resell its available spaces to the public. It is a resale situation and no agency agreement, either written or otherwise, is entered into by COMPANY with the aggregators. In essence, COMPANY allows the web-based aggregator to purchase available parking spaces under a consignment like scenario. This means that when a potential customer/parker contacts the web-based aggregator for

[2] *See,* footnote 1.

parking, the parker becomes the aggregator's customer and the aggregator then enters into the transaction with the parker for the parking space. When that occurs, the web-based aggregator notifies COMPANY that it is selling the space to one of its customers. COMPANY does NOT enter into an agreement with these customers. COMPANY is not even given the name of the aggregator's customer in many instances and is never given the address of such parkers/customers or their credit or payment card information. No billing or invoicing is sent to the customer by COMPANY. No parking charge is paid by the aggregator's customer to COMPANY. Rather, a booking number and bar code information is provided by these web-based aggregators to COMPANY in order for COMPANY to allow the aggregator's customers to enter the lot. The parkers are solely the customers of the web-based aggregator and COMPANY is not even allowed to solicit the aggregators' customers. *See, e.g.,* COMPANY2 Agreement, par. 5. Ultimately, COMPANY is paid for the parking *monthly* by the web-based aggregator after the aggregator's discounts and other fees are applied.

As the above facts plainly demonstrate, the web-based aggregators at issue here are not any type of booking or marketing agents of COMPANY, rather these aggregators are resellers of COMPANY's parking spaces. Therefore, under the Act, these aggregators are operators subject to the Tax and required to remit the Tax to the IDOR on their parking transactions.

A review of the IDOR Parking Excise Tax Regulations do [sic] not change this result. As noted above, Sections 195.110(d) and (e) recognize two different situations involving web-based companies involved in the sale of parking. Web-based companies acting as aggregators and reselling parking spaces are operators required to collect the Tax. *Id.* However, certain web-based companies that are merely marketers or facilitators of parking where they are simply facilitating a transaction between the garage operator and a parker and meet seven other requirements, are excluded from being operators. Section 195.110(e)(1). As the facts patently indicate, the situation at issue here is the former. As a result, the IDOR regulations do not change the requirement that the web-based aggregators who are reselling COMPANY's parking are operators required to collect and remit the Tax under the Act. Note: This is also consistent with the Chicago Parking Tax which treats aggregators as operators under the Chicago Parking Tax. *See,* Chicago Department of Revenue Information Bulletin, Chicago Parking Tax, DATE (Vol. 2015, No. 1) attached.

2. COMPANY is only liable to remit Tax on the parking charges paid to it by the web-based aggregators reselling such parking, and is not subject to Tax on the parking charges levied and collected by these third party web-based aggregators for parking spaces resold by such aggregators.

Under Section 195.105 of the Parking Excise Tax Regulations, an operator must collect Tax on the "consideration paid" for the parking. Since COMPANY's is selling its parking for resale by web-based aggregators, the consideration paid to it by the aggregator is the price subject to the Tax for which COMPANY has to remit Tax. On the other hand, the amount these aggregators resell the parking to their customers is not consideration paid by such aggregators' customers to COMPANY, rather it is the consideration being paid to the aggregators. As such, COMPANY would not be subject to Tax on the resale price or fees charged by the aggregator. This is made clear in the examples in Section 195.110(d) in which it is explained that the garage operator is only liable to remit Tax on the price of the parking charged to the web-based reseller. Moreover, Section 195.110(e)(2) further instructs that when a person fails to meet the requirements of that subsection (like in this situation where a

reseller is involved), then "[t]he operator is responsible for remitting tax to the Department on the amount received from the person [web-based company]."

In addition, while Section 195.110(e)(3) imposes the parking Tax on fees paid by certain operators as a cost of doing business, it does not apply in this case This subjection only applies if the web-based company merely "assists an operator in marketing or facilitating the rental of the operator's parking spaces." Here the web-based aggregators go way beyond marketing or facilitating a rental transaction between COMPANY and a parker, rather they market and facilitate a rental transaction between themselves and the parker. The web-based aggregators parkers are solely customers of the aggregator. The aggregators approve and enter into the parking transaction and treat the parkers as their customers alone. This is readily apparent from the central fact that COMPANY is generally not provided with the identity of the aggregators' customers/parkers, and cannot even contact the aggregators' customers to solicit future sales.

Consequently, the fees and charges the aggregator imposes on its customers in the resale of the parking is not a cost of doing business by COMPANY, but sales revenue received by the aggregator for the resale of the parking.

3. Alternatively, if COMPANY is required to remit Tax on the parking charges levied and collected from the parkers by the web-based aggregators, this should exclude separately stated fees imposed and retained by the aggregator.

Under the Parking Excise Tax, COMPANY should not be required to collect tax on the separately stated fees charged and retained solely by the web-based aggregators reselling parking acquired from COMPANY. First, these fees are not set by COMPANY, nor are they collected by or for COMPANY. Therefore, to the extent these separate fees are taxable, they cannot be considered consideration received by COMPANY. Second, Section 195.110(e)(3) of the regulations provide:

> Any additional fees charged to customers and retained by the person are also taxable unless the person separately states the fees to the purchaser and the fees are not related to, or incidental to, obtaining the use or privilege of using a parking space in a parking area or garage.

Therefore, such additional fees charged by the aggregator are not to be taxable to COMPANY.

4. Alternatively, even if the web-based aggregators purchasing parking from COMPANY could qualify under Section 195.110(e)(1) of the regulations, nevertheless these web-based aggregators lose that qualification when they can set the parking price for the parking.

In some situations, rather than reselling parking at a negotiated and agreed to resale price, web-based aggregators, like COMPANY2, are now using internal software programs to set pricing based on various factors such as demand and location. *See* attached COMPANY2 Brochure on its IQ program. Even if we assume that these web-based aggregators could somehow qualify under Section 195.110 (e)(1), because these aggregators set or establish the purchase price or use a program to set or establish the purchase price, the aggregators would not qualify under subsections (C) and (D) of Section 195.110(e)(1) and must register as operators under the Tax. In those situations, COMPANY should not and can not be required

to collect and remit the Tax on the sales price charged by the aggregators, but is only liable to collect and remit Tax on the consideration paid for the parking by the aggregators to COMPANY.

5. Alternatively, if COMPANY is required to remit Tax on the parking charges collected from the parkers by the web-based aggregators as a result of IDOR's revision to the proposed regulations that became effective May 13, 2020, COMPANY should not be liable for such Tax for periods prior to May 13, 2020.

COMPANY believes that under the current adopted regulations it is not liable for Tax on the parking price (including fees) charged by the third party web-based aggregators that resell such parking to their own customers. However, if the IDOR disagree with this analysis and believes that a web-based aggregator that resells parking to its own customers can qualify under Section 195.110(e)(1), then COMPANY believes that for the period prior to May 13, 2020 that it should be able to rely on the IDOR regulations as originally proposed, as well as the undeniable fact that these third party aggregators were not agents of COMPANY. In essence, it would be fundamentally unfair to make COMPANY remit a Tax on these aggregators resale of parking, for those parking charges never collected or received by COMPANY.

The regulations original subsection G (Section 195.110 (e)(1)(G)) required that a person facilitating or marketing parking for the garage operator must have an agreement with the garage operator that requires the garage operator to collect the Tax for the facilitator or marketer, in order for such facilitator or marketer to avoid being considered an operator under the Tax. Therefore, pursuant to previous subsection G, since there was no such agreement with COMPANY, the web-based aggregators at issue herein (even if they actually qualified as mere facilitators) would be deemed operators and required to collect and remit the Tax on their resales of the parking to the public. COMPANY relied on this straight-forward rational requirement clearly founded in basic contract law, as well as the fact that these web-based aggregators were not facilitators of parking but resellers, as its reason for not collecting Tax on such aggregators [sic] resale price for the parking. Thus, prior to the final regulations being adopted, COMPANY does not believe it should be retroactively punished for this change in the proposed regulations. Thus, if the IDOR determines that COMPANY must collect Tax on the resale price of parking sold by such web-based aggregators to their own customers, then COMPANY requests that this position not be applied retroactively to the beginning of January 2020.

Based on the above, COMPANY request a private letter ruling be issued that confirms the conclusions set forth herein by COMPANY. We reserve the right to withdraw this private letter ruling request if a negative ruling on any portion is contemplated. Thank you again for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

When making determinations regarding whether multiple persons are engaged in the business of operating a parking area or garage, the Department will rely on written documentation. Documentation must be in the form of a written agreement between the parties or written communications, for example, letters or emails, exchanged by the parties which contain the terms of the agreement. In other words, written communications must show a meeting of the minds. A

statement made by one party without an acknowledgement or acceptance by the other party will be insufficient documentation.

Your letter does not contain anything except representations by you and your client regarding your client's arrangements with third parties to rent its parking spaces. If there is a lack of written documentation demonstrating that the conditions in subsection (e)(1) of 86 Ill. Adm. Code 195.110 are met, the third parties cannot claim they are not engaged in the business of operating parking areas or garages. Both your client and the third parties are engaged in the business of operating parking areas or garages and are responsible for registering with the Department and collecting and remitting tax. The third party is responsible for collecting and remitting tax on the purchase price received from the customer. The third party may take a credit for the tax paid by your client. Any additional fees charged to customers and retained by the third party are also taxable to the third party unless the third party separately states the fees to the purchaser and the fees are not related to, or incidental to, obtaining the use or privilege of using a parking space in the parking area or garage. 86 Ill. Adm. Code 195.110(e)(3). Your client is responsible for remitting tax to the Department on the amount received from the third party without any reduction for any fees retained by the third party pursuant to the agreement to compensate the third party for providing services to your client. 86 Ill. Adm. Code 195.110(e)(2).

Beginning January 1, 2020, the Parking Excise Tax Act ("Act") imposes a tax on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles. The tax is imposed upon the person purchasing and using a parking space in a parking area or garage. 35 ILCS 525/10-10; 86 Ill. Adm. Code 195.100.

> "Operator" means any person who engages in the business of operating a parking area or garage, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking or storage of motor vehicles, recreational vehicles, or other self-propelled vehicles, at that parking place. This includes, but is not limited to, any facilitator or aggregator that collects from the purchaser the charge or fee paid for parking. "Operator" does not include a bank, credit card company, payment processor, booking intermediary, or person whose involvement is limited to performing functions that are similar to those performed by a bank, credit card company, payment processor, or booking intermediary.

The tax is imposed at the rate of 6% of the purchase price for a parking space paid for on an hourly, daily, or weekly basis; and 9% of the purchase price for a parking space paid for on a monthly or annual basis. The tax must be collected from the purchaser by the operator. 35 ILCS 525/10-10; 86 Ill. Adm. Code 195.110(a).

> "Purchase price" means the consideration paid for the purchase of a parking space in a parking area or garage, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property, and shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever. "Purchase price" includes any and all charges that the recipient pays related to or incidental to obtaining the use or privilege of using a parking space in a parking area or garage, including but not limited to any and all related markups, service fees, convenience fees, facilitation fees, cancellation fees, overtime fees, or other such charges, regardless of terminology.

The operator of a parking area or garage must collect the tax on the purchase of all parking spaces in a parking area or garage unless the operator is exempt from collecting the tax or the tax is not due on the transaction. The Act does not contain a resale exemption for purchases of parking space by a person that intends to resell the parking space to a customer. 86 Ill. Adm. Code 195.110(d). However, an operator that has paid or remitted the tax imposed by the Act to another operator in connection with the same parking transaction, or the use of the same parking space, is entitled to a credit for the tax paid or remitted against the amount of tax owed under the Act, provided that the other operator is registered under the Act. The operator claiming the credit shall have the burden of proving it is entitled to claim a credit. An invoice to the operator that separately states "tax paid" or states "all taxes included" is sufficient documentation to permit the operator to claim the credit. 86 Ill. Adm. Code 195.110(c).

In addition to limited exemptions from collecting the tax contained in 86 Ill. Adm. Code 195.110 and 195.115, the Act provides an exemption to persons that assist operators in marketing or facilitating the rental of operators' parking spaces. A person who, for a fee, assists an operator in marketing or facilitating the rental of the operator's parking spaces, reserves parking spaces for customers in the operator's parking area or garage, collects the purchase price from customers, and remits the purchase price to the operator (less the fee if permitted by the agreement), is not engaged in the business of operating a parking area or garage if the following conditions are met:

A) the person has no ownership interest in, or legal right to operate, lease or license, parking areas or garages;

B) the operator controls and sets the inventory of parking spaces customers may reserve using the person's services;

C) the operator establishes the purchase price for the parking spots;

D) the person markets or facilitates the rental of the parking spaces at the purchase price set by the operator;

E) the person represents to prospective customers that all taxes are included in the purchase price or separately states the tax based on the purchase price set by the operator;

F) any additional fees charged to customers and retained by the person are separately stated; and

G) the operator is registered with the Department to collect and remit the tax imposed by the Act. 86 Ill. Adm. Code 195.110(e)(1).

A fee retained by the person that assists an operator in marketing or facilitating the rental of the operator's parking spaces pursuant to subsection (e)(1) is a cost of doing business of the operator and is not deductible from the purchase price for purposes of calculating the tax the operator must remit to the Department. The operator is liable on the full purchase price paid by the customer for the parking space. Moreover, if the conditions in subsection (e)(1) are met, any additional fees charged to customers and retained by the person are also taxable to the operator unless the person separately states the fees to the purchaser and the fees are not related to, or incidental to, obtaining the use or privilege of using a parking space in a parking area or garage. 86 Ill. Adm. Code 195.110(e)(3).

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 or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW/ld