ST 24-0039-GIL 11/14/2024 HOTEL OPERATORS' TAX

A hotel operator who rents, leases, or lets rooms subject to tax under the Hotel Operators' Occupation Tax Act to a re-renter of hotel rooms incurs the tax under the Act on the gross rental receipts it receives from that re-renter of hotel rooms and cannot claim any resale exemption. See 35 ILCS 145/3-2. (This is a GIL.)

November 14, 2024

NAME
TITLE
COMPANY1
EMAIL

Dear NAME:

This letter is in response to your letter dated October 30, 2024, 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 https://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:

Good afternoon,

We received the attached notice from an online travel company, COMPANY2stating that they will now pay taxes on all of their bookings.
IL tax ruling below states that hotel operators should collect the taxes and remit it directly to the state and that we cannot claim it as exempt even if COMPANY2pays the taxes.

If COMPANY2doesn't pay us the taxes, we will be hit with a HUGE tax expense since XX% of our business comes from these companies.

Could you please provide guidance on this? Are they in violation of this ruling or am I missing something?

Thank you!

DEPARTMENT'S RESPONSE:

The Hotel Operators' Occupation Tax Act ("the Act") imposes a tax upon hotel operators at the rate of 6% of 94% of the gross rental receipts from engaging in business as a hotel operator, excluding, however, from gross rental receipts, the proceeds of renting, leasing, or letting hotel rooms to permanent residents of a hotel and proceeds from the tax imposed under the Metropolitan Pier and Exposition Authority Act. See 35 ILCS 145/3(a) and (b). Beginning on July 1, 2024, if the renting, leasing, or letting of a hotel room is done through a re-renter of hotel rooms, then the re-renter is the hotel operator subject to Hotel Operators' Occupation Tax. See 35 ILCS 145/3(c)). However, a hotel operator who rents, leases, or lets rooms subject to tax under the Act to a re-renter of hotel rooms incurs the tax under the Act on the gross rental receipts it receives from the re-renter of hotel rooms and cannot claim any resale exemption. In such situations, the re-renter of hotel rooms incurs tax under the Act on its gross rental receipts. See 35 ILCS 145/3-2. A re-renter of hotel rooms, however, may take a credit against the tax it incurs on the rental of a hotel room under the Act for the amount it paid to the hotel operator as reimbursement for the tax incurred under the Act for the rental of that room for the purposes of re-rental. See 35 ILCS 145/3-3.

The Act defines "re-renter" as a person who is not employed by the hotel operator but who, either directly or indirectly, through agreements or arrangements with third parties, collects or processes the payment of rent for a hotel room located in this State and (i) obtains the right or authority to grant control of, access to, or occupancy of a hotel room in this State to a guest of the hotel or (ii) facilitates the booking of a hotel room located in this State. A person who obtains those rights or authorities is not considered a re-renter of a hotel room if the person operates under a shared hotel brand with the operator. See 35 ILCS 145/2(9).

The Act defines "rent" or "rental", in relevant part, as 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. See 35 ILCS 145/2(6).

If a hotel operator receives gross rental receipts on the rental of a hotel room, that hotel operator owes tax under the Act on those gross rental receipts. If those receipts are received from a hotel re-renter who re-rents that hotel room to a guest, then the hotel re-renter also owes tax under the Act on the gross rental receipts it receives from the guest.

The hotel re-renter may, however, take a credit against the tax it incurs under the Act on the re-rental of a hotel room equal to the amount it paid to the hotel operator as reimbursement for the tax incurred under the Act for the rental of that room for the purposes of re-rental. This statutory structure effectively requires the re-renter to pay tax only on the markup of the hotel room. While a hotel re-renter who pays tax on the gross rental receipts it receives from a re-rental of a hotel room without taking credit for any tax it remits to the hotel operator when it rents the room for re-rental satisfies its liability under the Act, this does not absolve the hotel operator who rented the room to the re-renter from its tax obligation under the Act on the rental of the room for re-rental. The Act prohibits resale exemptions. See 35 ILCS 145/3-2. Hotel operators should structure their rental transactions accordingly.

Sincerely,

Samuel J. Moore
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson St
Springfield, IL 62794

(217) 782-7055

SJM:sce