

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Hotel Operators' Occupation Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 480
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
480.101	Amendment
480.105	Amendment
480.110	Amendment
480.115	Amendment
480.125	Amendment
480.130	New Section
- 4) Statutory Authority: Implementing the Hotel Operators' Occupation Tax Act [35 ILCS 145] and authorized by Section 2505-795 of the Civil Administrative Code of Illinois (Department of Revenue Law) [20 ILCS 2505].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends 86 Ill. Adm. Code Part 480, Hotel Operators' Occupation Tax Act (35 ILCS 145), to reflect the changes made to the Act by Public Act 103-0592 that address the tax obligations of re-renters of hotel rooms and hosting platforms. The rulemaking adds additional statutory definitions and updates the section on the exemption for foreign missions.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

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12) Time, Place, and Manner in which interested persons may comment on this proposed

rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Thomas Grudichak
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 524-4821
REV.GCO@illinois.gov

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: This rule affects small businesses that are subject to the Hotel Operators' Occupation Tax Act.
- B) Reporting, bookkeeping or other procedures required for compliance: Familiarity with tax reporting, documentation to support tax exemptions, and electronic filing procedures.
- C) Types of professional skills necessary for compliance: Computer skills and tax preparation skills.

14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule:

72 Accommodation and Food Services

- B) Categories that the agency reasonably believes the rulemaking will impact, including:

- ii. regulatory requirements;

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- vii. training requirements;
- viii. recordkeeping.

15) Regulatory Agenda on which this rulemaking was summarized: January 2025

The full text of the Proposed Amendments begins on the next page:

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 480

HOTEL OPERATORS' OCCUPATION TAX ACT

Section

480.101	Nature, Rate and Scope of the Tax
480.105	Definitions
480.110	Registration and Returns
480.115	Books and Records
480.120	Penalties, Interest and Procedures
480.125	Claims to Recover Erroneously Paid Tax
480.130	Applicability

AUTHORITY: Implementing the Hotel Operators' Occupation Tax Act [35 ILCS 145] and authorized by Section 2505-795 of the Civil Administrative Code of Illinois (Department of Revenue Law) [20 ILCS 2505].

SOURCE: Adopted July 6, 1962; codified at 8 Ill. Reg. 8611; amended at 13 Ill. Reg. 10693, effective June 16, 1989; amended at 16 Ill. Reg. 3578, effective February 25, 1992; amended at 21 Ill. Reg. 2383, effective February 3, 1997; amended at 21 Ill. Reg. 13654, effective September 29, 1997; amended at 24 Ill. Reg. 17814, effective November 28, 2000; amended at 39 Ill. Reg. 1849, effective January 16, 2015; amended at 43 Ill. Reg. 5109, effective April 17, 2019; amended at 44 Ill. Reg. 16471, effective September 25, 2020 ; ; amended at 48 Ill. Reg. 14846, effective September 25, 2024; amended at 49 Ill. Reg. _____, effective _____.

Section 480.101 Nature, Rate and Scope of the Tax

a) Nature and Rate of Tax

- 1) The Hotel Operators' Occupation Tax Act (the Act) imposes a tax upon hotel operators at the rate of 5% of 94% of the gross rental receipts from engaging in business as a hotel operator, excluding, however, from the gross rental receipts, the proceeds of renting, leasing or letting hotel rooms to permanent residents of a hotel (i.e., from persons who occupy or have the right to occupy such rooms for at

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least 30 consecutive days) and proceeds from the tax imposed under subsection (c) of Section 13 of the Metropolitan Pier and Exposition Act.

- 2) There is also imposed an additional tax upon hotel operators at the rate of 1% of 94% of the gross rental receipts received by the hotel operator from engaging in business as a hotel operator, excluding, however, from gross rental receipts, the proceeds of the renting, leasing or letting to permanent residents of that hotel and proceeds from the tax imposed under subsection (c) of Section 13 of the Metropolitan Pier and Exposition Act.
- 3) A hotel is any kind of building in which the public may, for a consideration, obtain living quarters or sleeping or housekeeping accommodations (e.g., hunting lodges, camps, cabins, apartments, houses and rooms). (For a more complete definition of "hotel", see Section 480.105.)
- 4) The exclusion for permanent residents means that the tax is imposed on hotel operators engaging in the business as a hotel operator renting rooms for use as living quarters, or for sleeping or housekeeping accommodations, when renting is done on a transient basis.
- 5) The tax is an occupation tax whose legal incidence is on the lessor of the rooms. Nevertheless, persons subject to the tax imposed by the Hotel Operators' Occupation Tax Act may reimburse themselves for their tax liability under the Act by separately stating the tax as an additional charge that may be stated in combination, in a single amount, with any locally imposed hotel operators' occupation tax. If any hotel operator collects an amount (however designated) which purports to reimburse such operator for hotel operators' occupation tax liability measured by receipts which are not subject to hotel operators' occupation tax, or if any hotel operator, in collecting an amount (however designated) which purports to reimburse such operator for hotel operators' occupation tax liability measured by receipts which are subject to tax under the Act, collects more from the guest or re-renter than the operator's hotel operators' occupation

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tax liability in the transaction is, the guest or re-renter, as applicable, shall have a legal right to claim a refund of such amount from such operator. However, if such amount is not refunded to the guest or re-renter, as applicable, for any reason, the hotel operator is liable to pay such amount to the Department. [35 ILCS 145/3(f)]

- 6) Any amount added to a taxable rental charge and collected because of the tax also represents a portion of the gross rental receipts that are subject to the tax. However, the tax rate, instead of being a flat 6% of total receipts, has been adjusted by the General Assembly to be 5% of 94% plus 1% of 94% of total receipts, in order to avoid the payment of tax on amounts added to rental charges because of the tax.
- 7) Persons who engage in the business of renting, leasing or letting of rooms that are not subject to tax under the Hotel Operators' Occupation Tax Act (e.g., the rentals are only to permanent residents or the rentals are exempt as provided in subsection (c)(2)) are not required to register and remit the tax imposed by the Hotel Operators' Occupation Tax Act.
- 8) Re-renters
 - A) 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, subject to the provisions of subsections (a)(8)(D) and (a)(8)(E), the re-renter is the hotel operator for the purposes of the taxes under subsections (a)(1) and (a)(2).

EXAMPLE 1: Company contracts with Hotel Operator for 10 rooms in Hotel Operator's hotel for specific dates and pays Hotel Operator for the rooms. Guests can book hotel rooms through the Company's website, including 1 of the 10 rooms in the Hotel Operator's hotel. Company collects and retains the rent from the guest renting the room. The Company is a re-renter of the hotel rooms rented from Hotel Operator, is the hotel operator for purposes of the tax, and is liable for taxes on the rent collected from the person.

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EXAMPLE 2: Company operates a website that lists hotel rooms that guests may rent through the Company's website. A guest selects a hotel and the type of room the guest wishes to rent. The Company's system verifies the availability of the room with the Hotel Operator, rents and pays for the room, and confirms the booking with the guest. The Company collects and retains the rent it quoted the guest. The Company is a re-renter of the hotel room rented from Hotel Operator, is the hotel operator for purposes of the tax, and is liable for taxes on the rent collected from the person.

EXAMPLE 3: Company operates a website that lists hotel rooms that guests may rent through the Company's website. A guest selects a hotel and the type of room the guest wishes to rent. The Company's system verifies with the availability of the room with the Hotel Operator and facilitates the rental of the room to the guest. The Company collects the rent it quoted the guest. The Company subsequently sends the rent to the Hotel Operator less its fee. The Company is a re-renter of the hotel room rented from Hotel Operator, is the hotel operator for purposes of the tax, and is liable for taxes on the rent collected from the person.

EXAMPLE 4: VAC enters into agreements with owners or tenants of owner-occupied, tenant-occupied, or non-owner-occupied dwellings (including apartments, houses, cottages, or condominiums) located in this State to list the dwellings on VAC's platform for short-term rental. All dwellings are rented for less than 30 consecutive days and are reserved in advance. OWNER lists a condominium on VAC's platform for \$500 per day. OWNER also charges an \$80 fee for cleaning the condominium. A person rents the condominium for 7 days. VAC charges and collects from the person \$3,500 for the condominium rental, \$80 for the cleaning services, and a \$700 VAC service fee. It forwards \$3580 to OWNER (\$3500 rent + \$80 cleaning fee) and retains the \$700 service fee. VAC does not have any Hotel Operator Occupation Tax liability. OWNER

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is the operator for purposes of the tax and has a Hotel Operator Occupation Tax liability on the \$3580 received from VAC.

- B) If the re-renter is headquartered outside of this State and has no presence in this State other than its business as a re-renter, conducted remotely, then, subject to the provisions of subsections (a)(8)(D) and (a)(8)(E), such re-renter is the hotel operator for the purposes of the taxes under subsections (a)(1) and (a)(2) if it meets one of the following thresholds:
 - i) the cumulative gross receipts from rentals in Illinois by the re-renter of hotel rooms are \$100,000 or more; or
 - ii) the re-renter of hotel rooms cumulatively enters into 200 or more separate transactions for rentals in Illinois.
- C) A re-renter of hotel rooms who is headquartered outside of this State and has no presence in this State other than its business as a re-renter, conducted remotely, shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether the re-renter meets the threshold of either paragraph (i) or (ii) of subsection (a)(8)(B) for the preceding 12-month period. If such re-renter of hotel rooms meets the threshold of either paragraph (i) or (ii) of subsection (a)(8)(B) for a 12-month period, the re-renter is subject to tax under the Act and is required to remit the tax imposed under the Act and file returns for the 12-month period beginning on the first day of the next month after the re-renter determines that the re-renter meets the threshold of paragraph (i) or (ii) of subsection (a)(8)(B). At the end of that 12-month period, such re-renter of hotel rooms shall determine whether the re-renter continued to meet the threshold of either paragraph (i) or (ii) of subsection (a)(8)(B) during the preceding 12-month period. If the re-renter met the threshold in either paragraph (i) or (ii) of subsection (a)(8)(B) for the preceding 12-month period, the re-renter is a hotel operator in this State and is required to remit the tax imposed under the Act and file

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returns for the subsequent 12-month period. If, at the end of a 12-month period during which such re-renter is required to remit the tax imposed under the Act, the re-renter determines that the re-renter did not meet the threshold in either paragraph (i) or (ii) of subsection (a)(8)(B) during the preceding 12-month period, the re-renter shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether the re-renter meets the threshold of either paragraph (i) or (ii) of subsection (a)(8)(B) for the preceding 12-month period. [35 ILCS 145/3(b-5)]

- D) 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 that 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 as provided in subsections (a)(1) and (a)(2). [35 ILCS 145/3-2]
- E) A re-renter of hotel rooms may take a credit against the tax it incurs on the rental of a hotel room under the Act for the amount it paid under subsection (a)(5) to a hotel operator as reimbursement for the tax incurred under the Act for the rental of that room for the purposes of re-rental. [35 ILCS 145/3-3]

EXAMPLE 1: Company rents a downstate hotel room from Hotel Operator for \$100. Hotel Operator charges the Company \$100 plus \$5.98 to reimburse the Hotel Operator for its tax liability under the Act. Company rents the hotel room to a guest and charges the guest \$150 plus \$8.97 to reimburse the Company for its tax liability under the Act. Hotel Operator must file a return and remit \$5.98 in tax. The Company must file a return and pay tax. The Company may take a credit for the \$5.98 it paid Hotel Operator. The Company must file a return and pay \$2.99 in tax.

EXAMPLE 2: Company facilitates the rental of Hotel Operator's downstate hotel room. Company rents the hotel

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room to a guest and charges the guest \$200 plus \$11.96 to reimburse the Company for its tax liability under the Act. Of the \$211.96 collected from the guest, Company passes on \$100 to the Hotel Operator for the rental of the room. The Company advises the Hotel Operator it will pay the tax on the entire amount it receives from its customer and does not pass on \$5.98 to reimburse the Hotel Operator for its tax liability under the Act. Hotel Operator must file a return and remit \$5.98 in tax. Because the Company did not reimburse Hotel Operator for its tax liability, it cannot take a credit for the \$5.98 tax paid by Hotel Operator. The Company must file a return and pay \$11.96 in tax.

b) Scope of the Tax – Examples of Taxability and Exemption

- 1) Since the hotel operators' occupation tax is imposed on receipts from renting rooms for living quarters, or for sleeping or housekeeping accommodations, the tax does not apply to the receipts from the renting of rooms for other purposes, such as for use as display rooms or sample rooms, as meeting rooms, as offices or as private dining rooms.
- 2) Since the tax is limited to the renting of rooms to the "public", a private club that restricts its renting of rooms to its members and their guests would not be liable for the tax on its rental receipts from those rooms.
- 3) Hotel operators engaging in the business as a hotel operator renting rooms to the public for use as living quarters, or for sleeping or housekeeping accommodations, is subject to the tax even if the person paying for the room may be a church (except as provided in subsection (c)(2)), charity (except as provided in subsection (c)(3)) or school or some other kind of nonprofit organization, and even if the person paying for the room may be a governmental agency or instrumentality (federal, State or local, or even a foreign government).
- 4) There is no exemption simply because the lessor of the rooms is a nonprofit organization, such as a church (except as provided in

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subsection (c)(2)), charity (except as provided in subsection (c)(3)) or school. However, a college or other school is not subject to the tax on its receipts from renting rooms to its students for use as living quarters or for sleeping or housekeeping accommodations because this is not the renting of the rooms to the "public". Nevertheless, if the school rents rooms for these purposes to persons who are not enrolled with the school in courses of study for credit, that renting is not being done to students, but is being done to the "public", and the school incurs hotel operators' occupation tax liability on its rental receipts from this activity, if the lessees do not qualify as permanent residents.

- 5) Likewise, the renting of rooms on a transient basis to the public for use as living quarters or sleeping or housekeeping accommodations when the lessor is a charitable organization, such as the Y.M.C.A. or the Y.W.C.A., is subject to the hotel operators' occupation tax.
- 6) If an operator should 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 operator's additional receipts from this source are subject to the hotel operators' occupation tax. However, that tax does not apply to the operator's receipts from selling food, beverages or other tangible personal property, nor to receipts from the selling of tickets to theatre performances or other similar activities, nor to other receipts that are not in any way reasonably connected with or attributable to the renting, leasing or letting of rooms for use as living quarters or for sleeping or housekeeping accommodations; provided that exemption for nontaxable receipts cannot be claimed unless supported by proper books and records as provided for in Section 4 of the Hotel Operators' Occupation Tax Act and in Section 480.115.

c) Exemption from Hotel Operators' Occupation Tax

- 1) 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 (Section 3 of the Act). Under the Vienna Convention, some

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foreign diplomats are not required to pay reimbursement charges that are similar in nature to taxes.

- A) The exemption for rentals to certain diplomatic personnel applies only to diplomatic personnel possessing certain types of diplomatic tax exemption cards issued by the U.S. Department of State, Office of Foreign Missions. There are 2 types of diplomatic tax exemption cards: personal tax exemption cards and mission tax exemption cards. Mission tax exemption cards are used by foreign missions to obtain exemption from certain taxes, including taxes on hotel stays and lodging, on purchases in the United States that are necessary for the mission's operations and functions. The Office of Foreign Missions is the only entity in the United States with legal authority to authorize diplomatic and consular tax exemption privileges. Foreign missions may not independently purport to authorize or otherwise certify to a vendor or governing tax authority the availability of tax exemption privileges for the embassy, its consular posts or members. A mission tax card may not be used to exempt taxes on hotel or lodging expenses unrelated to a mission's diplomatic or consular functions, such as those related to tourism, medical treatment, or leisure travel. The exemption only applies if
- i) the foreign mission holds a valid Mission Tax Exemption Card that allows for the relief of such taxes;
 - ii) the travel of the individuals described above is conducted in support of the missions' diplomatic or consular functions; and
 - iii) the lodging costs are paid for with a check, credit card, or wire transfer transaction in the name of the foreign mission. Cash is not an acceptable form of payment.

In addition, the American Institute in Taiwan/Washington issues Mission Tax Exemption Cards and Personal Tax Exemption Cards to officials of the Taipei Economic and

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Cultural Representative Office. For examples of these cards, see 86 Ill. Adm. Code 130.Illustration A.

- B) In documenting this exemption, a hotel operator must obtain the mission's name, the card holder's name, the exemption number, the expiration date, and a photocopy of the diplomatic card.
- 2) Effective July 1, 2017, the Hotel Operators' Occupation Tax is not imposed upon gross rental receipts received by an entity that is organized and operated exclusively for religious purposes and possesses an active Exemption Identification Number (ExIN) issued by the Department pursuant to the Retailers' Occupation Tax Act when acting as a hotel operator renting, leasing, or letting rooms:
- A) in furtherance of the purposes for which it is organized; or
 - B) to entities that:
 - i) are organized and operated exclusively for religious purposes;
 - ii) possess an active ExIN issued by the Department pursuant to the Retailers' Occupation Tax Act; and
 - iii) rent the rooms in furtherance of the purposes for which they are organized.
 - C) No gross rental receipts are exempt under subsection(c)(2) unless the hotel operator obtains the active ExIN from the exclusively religious entity to whom it is renting and maintains that number in its books and records.
 - D) Gross rental receipts from all rentals other than those described in subsection (c)(2) are subject to the tax imposed by the Hotel Operators' Occupation Tax Act, unless otherwise exempt under that Act. [35 ILCS 145/3(d-5)]

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EXAMPLE 1: A religious organization is organized and operated exclusively for religious purposes and has an active ExIN. It operates a retreat center and organizes and conducts a 3-day marriage counseling seminar and rents rooms to the participants of the seminar. The seminar is in furtherance of its organizational purposes. The receipts from these rentals are not subject to the hotel operators' occupation tax under subsection (c)(2).

EXAMPLE 2: Religious Organization A is organized and operated exclusively for religious purposes and has an active ExIN. It operates a retreat center and rents a block of rooms to Religious Organization B. Religious Organization B is organized and operated exclusively for religious purposes, possesses an active ExIN, and provides rooms to the participants of a spiritual seminar it has organized and will conduct. The seminar furthers the organizational purposes of Organization B. Organization A's receipts from these rentals are not subject to the hotel operators' occupation tax under subsection (c)(2). In this Example, if the rooms are paid for by the individual participants and not by Organization B, Organization A must keep records demonstrating that the individual to whom the room was rented was a participant in the seminar conducted by Organization B. If Organization A does not keep these records, the receipts from those rentals are taxable.

EXAMPLE 3: Religious Organization A is organized and operated exclusively for religious purposes and has an active ExIN. It operates a retreat center. Religious Organization A's organizational documents demonstrate it is organized, in part, to partner with school districts to provide one-on-one support to students to help them overcome the educational and societal challenges they face both in and out of school. Organization B is a not-for-profit organization that provides funds and support to school districts that serve at-risk students. Religious Organization A rents a block of rooms to Organization B for participants attending a seminar conducted by Organization B for educators of at-risk youth. Because the

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seminar conducted by Organization B is in furtherance of Organization A's organizational purposes, the receipts from the rental to Organization B are not subject to the hotel operators' occupation tax under subsection (c)(2). In this Example, Religious Organization A must keep records demonstrating that the seminar was in furtherance of its organizational purposes (e.g., a copy of its charter, mission statement, and by laws, as well as any brochures or agendas pertaining to the seminar). In addition, if the rooms are paid for by the individual participants and not by Organization B, Religious Organization A must keep records demonstrating that the individual was a participant in the seminar conducted by Organization B (e.g., a copy of the seminar's sign-in sheet).

EXAMPLE 4: A religious organization operates a retreat center, is organized and operated exclusively for religious purposes, and has an active ExIN. It rents a block of rooms to persons attending a wedding reception at the center or rents a block of rooms to a not-for-profit organization that conducts a sports-medicine seminar. The receipts from either of these rentals do not qualify for the exemption in subsection (c)(2) because the rentals are neither made in furtherance of the organizational purposes of the religious organization operating the retreat center, nor made to a religious organization organized and operated exclusively for religious purposes that has an active ExIN.

E) Records

- i) When a religious organization that has an active ExIN operates a retreat center, conducts an event in furtherance of its organizational purposes, and rents rooms to persons attending that event, the religious organization must obtain and maintain the following: documents demonstrating the nature of the event (e.g., brochures, pamphlets, or agendas of the event); documents demonstrating how the rental of the rooms was in furtherance of its organizational purposes (e.g., a

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copy of the religious organization's mission statement or charter); and the dates of the room rentals.

- ii) When a religious organization that has an active ExIN operates a retreat center and rents rooms to an entity organized and operated exclusively for religious purposes with an active ExIN that conducts an event in furtherance of its organizational purposes, the religious organization operating the retreat center must obtain and maintain the following: the name, address, and phone number or email of the renting religious organization conducting the event; the renting religious organization's active ExIN; documents demonstrating the nature of the event (e.g., brochures, pamphlets, or agendas of the event); a certification that the room rentals were in furtherance of the organizational purposes of the renting religious organization; the dates of the room rentals; and any contracts between the retreat center and the religious organization that rented the rooms.
- iii) When a religious organization that has an active ExIN operates a retreat center and is not conducting an event at the center but rents to another organization that conducts an event that furthers the organizational purposes of the retreat center's religious organization, the religious organization operating the retreat center must obtain and maintain the following: the name, address, and phone number or email of the renting organization conducting the event; documents demonstrating the nature of the event (e.g., brochures, pamphlets, or agendas); a certification by the religious organization operating the retreat center that the room rentals by the renting organization were in furtherance of the retreat center's organizational purposes, and documents demonstrating how the rental of the rooms was in furtherance of the retreat center's organizational purposes (e.g., the retreat center's mission statement

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or charter); the dates of the room rentals; and any contracts between the religious organization operating the retreat center and the renting organization conducting the event.

- 3) Effective July 1, 2023, the Hotel Operators' Occupation Tax shall not apply to gross rental receipts received from the renting, leasing, or letting of rooms to an entity that is organized and operated exclusively by an organization chartered by the United States Congress for the purpose of providing disaster relief and that possesses an active Exemption Identification Number (ExIN) issued by the Department pursuant to the Retailers' Occupation Tax Act if the renting, leasing, or letting of the rooms is in furtherance of the purposes for which the exempt organization is organized. The American National Red Cross is an example of an organization chartered by the United States Congress for the purpose of providing disaster relief pursuant to 36 U.S.C. Ch. 3001. [35 ILCS 145/3(d-10)]
- A) The exempt chartered organization must make the payment itself for the renting of the rooms. Cash payments are not allowed with the exemption. Acceptable payment methods include:
- i) use of a credit card that is directly billed to the organization and is either in its name only or in the organization's name and the name of a person authorized to use it; or
 - ii) a check drawn on an account belonging only to the organization; or
 - iii) use of a purchase order from the organization that is billed to the organization.
- B) To qualify, the hotel operator must obtain and maintain from the organization:

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- i) documentation that the renting, leasing, or letting of the room is associated with the organization. Acceptable documentation includes a copy of an employee identification badge; and
 - ii) a copy of the active Illinois Exemption Number Certificate issued by the Department. (Note: It is the operator's responsibility to verify that the organization's ExIN is valid and active).
- 4) Such tax is not imposed upon the privilege of engaging in any business in Interstate Commerce or otherwise, which business may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State. [35 ILCS 145/3(d)]
- d) How to Compute Applicable Tax Rate or Effective Date of New Tax
 - 1) For the purposes of the Hotel Operators' Occupation Tax Act, any tax liability incurred in respect to the renting, leasing or letting of rooms in a hotel shall be computed by applying, to the gross receipts from the renting, leasing or letting, the tax rate in effect as of the date the lessee occupies a specific room or rooms or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. Deposits paid in advance shall be deemed to be received as rental receipts when the specific room or rooms to which the deposit is applied as rent shall be deemed to be rented, leased or let within the meaning of the preceding sentence.
 - 2) Likewise, when something that has been exempted becomes taxable as to room renting, leasing or letting that occurs on or after some particular date, the date of renting, leasing or letting for this purpose shall be deemed to be the date when the lessee occupies a specific room or rooms or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 480.105 Definitions

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"Department" means the Department of Revenue.

"Hosting platform" or "platform" means a person who provides an online application, software, website, or system through which a short-term rental located in this State is advertised or held out to the public as available to rent for occupancy. For purposes of this definition, "short-term rental" means an owner-occupied, tenant-occupied, non-owner-occupied dwelling, including, but not limited to, an apartment, house, cottage, or condominium, located in this State, where: (i) at least one room in the dwelling is rented to an occupant for a period of less than 30 consecutive days; and (ii) all accommodations are reserved in advance; provided, however, that a dwelling shall be considered a single room if rented as such.

"Hotel" means any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping, or housekeeping accommodations. The term includes, but is not limited to, inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses, retreat centers, conference centers, and hunting lodges. For the purpose of re-renters of hotel rooms only, "hotel" does not include a short-term rental

"Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

"Operator" means any person engaged in the business of renting, leasing, or renting rooms in a hotel.

"Permanent resident" means any person who occupied or has the right to occupy any room or rooms, regardless of whether or not it is the same room or rooms, in a hotel for at least 30 consecutive days..

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability

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company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

"Rent" or "rental" means 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. "Rent" or "rental" includes any fee, charge, or commission received from a guest by a re-renter of hotel rooms specifically in connection with the re-rental of hotel rooms, but does not include any fee, charge, or commission received from a short-term rental by a hosting platform.

"Re-renter of hotel rooms" means 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.

"Room" or "rooms" means any living quarters, sleeping or housekeeping accommodations.

"Shared hotel brand" means an identifying trademark that a hotel operator is expressly licensed to operate under in accordance with the terms of a hotel franchise or management agreement. [35 ILCS 145/2]

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 480.110 Registration and Returns

a) Registration

- 1) It is unlawful for any person to engage in business as a hotel operator in this State without a Certificate of Registration from the Department.

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- 2) Any person who engages in such business is required to apply to the Department for a Certificate of Registration on a form which is prescribed by the Department, and which will be furnished on request. Upon receipt of the application to register in proper form, the Department will issue a Certificate of Registration to the applicant. Such Certificate of Registration must be publicly displayed.
 - 3) All the provisions of Subpart G of the Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130) (including the provisions concerning the furnishing of bond or other security by taxpayers to the Department, among other things), to the extent to which any such provision is not inconsistent with the Hotel Operators' Occupation Tax Act [35 ILCS 145] , and the Sections promulgated thereunder, shall apply to the tax collected pursuant to this Part.
 - 4) All of the provisions of Sections 2a and 2b of the Retailers' Occupation Tax Act, in effect on the effective date of the Hotel Operators' Occupation Tax Act shall apply to persons in business as hotel operators in this State, to the same extent as if such provisions were included herein. [35 ILCS 145/5]
- b) Return and Payment of the Tax
- 1) Except as provided hereinafter in this Section, on or before the last day of each calendar month, every person engaged as a hotel operator in this State during the preceding calendar month shall file a return with the Department, stating:
 - A) The name of the operator;
 - B) the operator's residence address and the address of the operator's principal place of business and the address of the principal place of business (if that is a different address) from which the operator engages in business as a hotel operator in this State (including if required by the Department, the address of each hotel from which rental receipts were received);

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- C) total amount of rental receipts received by the operator during the preceding calendar month from engaging in business as a hotel operator during such preceding calendar month;
 - D) total amount of rental receipts received by the operator during the preceding calendar month from renting, leasing or letting rooms to permanent residents during such preceding calendar month;
 - E) total amount of other exclusions from gross rental receipts allowed by the Act;
 - F) gross rental receipts which were received by operator during the preceding calendar month and upon the basis of which the tax is imposed;
 - G) the amount of tax imposed, less a discount of 2.1% or \$25.00 per calendar year, whichever is greater, which is allowed to reimburse the operator for the expenses incurred in keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request pursuant to the Act, if the return and payment are filed in accordance with this Section;
 - H) Credit for any reimbursement of tax paid by a re-renter of hotel rooms to hotel operators for rentals purchased for re-rental, as provided in Section 480.101(a)(8)(E);
 - I) the amount of penalty due, if any; and
 - J) such other reasonable information as the Department may require.
- 2) If the operator's average monthly tax liability to the Department does not exceed \$200.00, the Department may authorize the operator's returns to be filed on a quarter annual basis, with the return for January, February and March of a given year being due by April 30 of such year; with the return for April, May and June of a given year being

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due by July 31 of such year; with the return for July, August and September of a given year being due by October 31 of such year, and with the return for October, November and December of a given year being due by January 31 of the following year.

- 3) If the operator's average monthly tax liability to the Department does not exceed \$50.00, the Department may authorize the operator's returns to be filed on an annual basis, with the return for a given year being due by January 31 of the following year.
- 4) Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.
- 5) Notwithstanding any other provision in the Act concerning the time within which an operator may file the operator's return, in the case of any operator who ceases to engage in a kind of business which makes the operator responsible for filing returns under the Act, such operator shall file a final return under the Act with the Department not more than one month after discontinuing such business.
- 6) Where the same person has more than one business registered with the Department under separate registrations under the Act, such person shall not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.
- 7) In the operator's return, the operator shall determine the value of any consideration other than money received by the operator in connection with engaging in business as a hotel operator and the operator shall include such value in the operator's return. Such determination shall be subject to review and revision by the Department.
- 8) Where the operator is a corporation, the return filed on behalf of such corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of such corporation.

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- 9) The person filing the return shall, at the time of filing such return, pay to the Department the amount of tax due.
- c) Special Reporting Problem Connected With Exclusion for Permanent Residents. The Act defines a "permanent resident" as a person who occupies or has the right to occupy a room for at least 30 consecutive days. It will not always be possible for a hotel to determine whether a guest is a "permanent resident" at the end of a particular reporting period. In such cases:
 - 1) Where a guest has occupied a room for 30 consecutive days as of the end of a reporting period, no tax is due.
 - 2) Where a guest has a binding contract for at least 30 days, no tax need be reported or paid; except that, if the contract is terminated before the end of the first 30 days, a tax should be paid for the period up to the time when the contract is terminated.
 - 3) Where the hotel does not know whether a guest is a "permanent resident" at the end of the period for which a return is filed (because the first 30 days are not up), a tax should be paid. If the guest later stays for 30 days, the amount of rental for the first 30 days, or portion thereof, upon which a tax has already been paid, should be deducted in Item 3 on the return for the next month, and a schedule should be filed with the return explaining such deduction.
- d) Gross Receipts or Gross Billing Basis of Reporting
 - 1) At the beginning of a registration under the Hotel Operators' Occupation Tax Act, the registrant may elect to file returns on the receipts basis (reporting, for the return period, only those receipts received during such return period), or the registrant may elect to file returns on the gross billing basis (reporting, for the return period, all rentals billed during the return period whether collected during such return period or not).
 - 2) An operator may change from the gross billing basis to the gross receipts basis of reporting in tax returns without obtaining special

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permission from the Department. However, once an operator has commenced to file returns on the gross receipts basis, the operator may not change the operator's method of reporting to the gross billing basis without first obtaining permission from the Department to make this change.

- 3) On the receipts basis of reporting, since the operator does not report and pay tax on receipts until the operator receives them, the operator would never have any occasion for taking a bad debt deduction on the operator's returns. However, where the operator who is filing returns on the gross billing basis pays tax to the Department on a billing which later turns out to be a bad debt, and which is charged off on the operator's books as a bad debt for federal income tax purposes, the operator may take a deduction for such bad debt on the operator's Hotel Operators' Occupation Tax return to the Department. If such operator, after taking such bad debt deduction, should later realize a recovery thereon, the operator shall report and pay tax on the amount of such recovery when filing the operator's return for the return period in which such recovery occurs.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 480.115 Books and Records

- a) General Requirements
Every operator shall keep separate books or records of the operator's business as an operator so as to show the rents and occupancies taxable under the Hotel Operators' Occupation Tax Act separately from the operator's transactions that are not taxable under that Act. If any such operator fails to keep separate books or records, the operator shall be liable to tax at the rate designated in Section 3 of the Hotel Operators' Occupation Tax Act upon the entire proceeds from the operator's business.
- b) Preservation and Retention of Records
 - 1) Books and records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue proposed assessments as provided by the Act

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shall be preserved until the expiration of that period unless the Department, in writing, shall authorize their destruction or disposal prior to that expiration. (See 86 Ill. Adm. Code 130.825.)

- 2) In determining the period for which the Department is authorized to issue a proposed assessment, the following material (with necessary adaptations because of the time when the Hotel Operators' Occupation Tax became effective) from Sections 4 and 5 of the Retailers' Occupation Tax Act [35 ILCS 120] (which are incorporated by reference into Section 7 of the Hotel Operators' Occupation Tax Act) must be considered.
- 3) Except in case of willful failure or refusal to file a return, or except in case of a fraudulent return, or except with the consent of the person to whom the proposed assessment is to be issued, no proposed assessment shall be issued on and after each January 1 and July 1 covering gross receipts received during any month or period of time more than 3 years prior to that January 1 and July 1, respectively:
 - A) Provided, however, that:
 - i) the foregoing limitations upon the issuance of a proposed assessment shall not apply to the issuance of a proposed assessment with respect to any prior period of time in cases in which the Department has, within the period of limitation then provided, notified the person making the return of a proposed assessment even though that return had not been corrected by the Department in the manner required by the Act prior to the issuance of the notice; and
 - ii) the foregoing limitations upon the issuance of a proposed assessment shall not apply to the issuance of any such assessment with respect to any prior period of time prior in cases in which the Department has, within the period of limitation then provided, notified a person of the amount of tax computed even though the Department had not determined the amount of tax due

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from that person in the manner required by the Act prior to the issuance of the notice; but in no case shall the amount of any such proposed assessment for any period otherwise barred by the Act exceed for that period the amount shown in the Notice of Proposed Assessment.

- B) If, when a tax or penalty under the Act becomes due and payable, the person alleged to be liable is out of the State, the proposed assessment may be issued, within the times limited by the Act, after that person enters or returns to the State; and if, after the tax or penalty under the Act becomes due and payable, the person alleged to be liable departs from and remains out of the State, the time of that person's absence is no part of the time limited for the issuance of the proposed assessment; but these provisions concerning absence from the State shall not apply to any case in which, at the time a tax or penalty becomes due under the Act, the person allegedly liable is not a resident of this State.
- c) **Preservation of Books During Pendency of Assessment Proceedings**
However, if a Notice of Proposed Assessment has been issued, and if the questions raised by that Notice have not been completely disposed of, books and records reflecting receipts received during the period covered by the proposed assessment must be preserved until the termination of all proceedings before the Department and before any court upon review.
- d) **Department Authorization to Destroy Records Sooner than Would Otherwise be Permissible**
In all cases, the Department may, in writing, authorize the destruction of books and records and other papers prior to the expiration of the periods of time during which the taxpayer, except for the written authorization from the Department, is required to keep the books and records.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 480.125 Claims to Recover Erroneously Paid Tax

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- a) **The Filing of Claims**
Where an operator pays Hotel Operators' Occupation Tax to the Department in error, either as a result of a mistake of fact or an error of law, the operator may file a claim with the Department upon a form which the Department prescribes and will issue on request.
- b) **Bearing the Burden of the Tax**
In addition to proving that the claimant did not owe the tax for which recovery is sought, the claimant must also prove that the claimant bore the burden of the amount of such tax, either by not shifting the burden of the tax to anyone else in the first instance, or by unconditionally refunding any amounts passed on because of the tax to the operator's customers, who bore the burden thereof.
- c) **Statute of Limitations**
As to any claim filed with the Department on and after each January 1 and July 1, no amount of tax or penalty erroneously paid (either in total or partial liquidation of a tax or penalty under The Hotel Operators' Occupation Tax Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited.
- d) **Credit Memorandum or Refund**
When any claim is allowed, the Department shall issue an assignable credit memorandum to the claimant for the amount so allowed.
- e) **Refunds**
In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department will make such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum). The two most likely situations where this would be the case are the situation in which the claimant has discontinued business and the situation in which the claimant will have a small volume of liability to the Department in the foreseeable future, but receives a large credit memorandum which it therefore might take the claimant a long time to liquidate by using it to pay current taxes. In these instances, the claimant

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probably would have to sell the credit memorandum at a loss in order to realize anything from it within any reasonable period of time.

- f) Procedure – Incorporation by Reference
 - 1) The procedure for disposing of claims and of credit memoranda shall be the same as that provided for in the Retailers' Occupation Tax Act.
 - 2) In general, the provisions of 86 Ill. Adm. Code 130: Subpart O of the Retailers' Occupation Tax rules (including provisions concerning interest on overpayments of tax as well as other provisions) shall apply to claims under The Hotel Operators' Occupation Tax Act. For that purpose, said Subpart O is incorporated by reference into this rule and made a part hereof.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 480.130 Applicability

- a) Persons engaged in the business of renting, leasing or letting rooms in a hotel only to permanent residents are exempt from the provisions of the Act. In addition, persons engaged in the business of renting, leasing, or letting rooms in a hotel whose only rentals are as described in Section 480.101(c)(2)(A) and (B) and possess active ExINs are exempt from the provisions of the Act. [35 ILCS 145/9]
- b) All of the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11 and 12 of the Retailers' Occupation Tax Act and Section 3-7 of the Uniform Penalty and Interest Act shall apply to persons engaging in business as a hotel operator in this State to the same extent as if such provisions were included herein. [35 ILCS 145/7]

(Source: Added at 49 Ill. Reg. _____, effective _____)