

Gross receipts from the rentals of rooms to "permanent residents" are not subject to Hotel Operators' Occupation Tax liability. A "permanent resident" is any person who has occupied or has the right to occupy any room or rooms in a hotel for at least 30 consecutive days. See 86 Ill. Adm. Code 480.101. (This is a GIL.)

October 14, 2010

Dear Xxxxx:

This letter is in response to your letter dated October 1, 2010, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

According to Illinois Publication 106 the Hotel Operators' Occupation Tax is not due when there is a binding contract with a permanent resident for at least 30 days. However, there is no information regarding contracts between a hotel and guests for multiple rooms for at least 30 days.

This letter is a formal request for a legal written ruling on the permanent resident status of a company occupying a block of rooms over a period of at least 30 days. The company has entered into an agreement with the hotel to block off 50 rooms per night for their employees. Each month is treated as a separate 30 day period, with the exception of February. Throughout each 30 day period, the number of rooms used may vary from the original room block of 50. Some nights may have fewer than 50 rooms used, while others may have more than 50 rooms used. Even though some of the rooms may not be used, the original 50 rooms are not released to the public.

The company has many employees who work in shifts, so it is a frequent occurrence that throughout the course of a single day, 1 room will be used by 2 different people, and the company will be billed for the cost of using the room twice. Since they are still occupying the same room, are they exempt from both charges?

Our request is that the Department issue a ruling on the exempt status of this situation. Since there is a contract in place, and the room block of 50 is not released to the public, are all room charges exempt from the Hotel Operators' Occupation Tax, or just a portion of the rooms? How should we determine the amount of rooms that should be tax exempt? Should the taxability of the rooms be determined by the number of rooms used, billed, or reserved per day?

I appreciate your assistance in this matter.

#### **DEPARTMENT'S RESPONSE:**

The Hotel Operators' Occupation Tax Act (35 ILCS 145/1 *et seq.*) imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. The tax is imposed at a rate of 5% of 94% of the gross rental receipts from the renting, leasing or letting of such rooms. An additional tax is also imposed at a rate of 1% of 94% of such gross rental receipts. The gross proceeds from rental receipts for rentals to "permanent residents" are excluded from Hotel Operator's Occupation Tax liability.

A permanent resident is any person who occupies or has the right to occupy any room or rooms, regardless of whether it is the same room or rooms, in a hotel for at least 30 consecutive days. See 86 Ill. Adm. Code 480.101 and 480.105. Regardless of whether the customer contracted with the hotel operator to stay 30 consecutive days at check-in, if a person qualifies as a permanent resident (stays at least 30 consecutive days at the hotel), the gross receipts received by the hotel operator would not be subject to tax for that period.

If a business and a hotel operator enter into an agreement that requires a business to rent a specific number of rooms for at least 30 consecutive days and the business is unconditionally obligated to pay for such rooms, whether or not they are occupied during that period, then the business is a permanent resident for those specific number of rentals, the hotel operator is not subject to the Hotel Operator's Tax with respect to the rental receipt for those specific number of rentals, and it does not have to charge and collect the tax. The rooms may be occupied by different employees of that business during that 30 consecutive day period.

If a business and a hotel operator enter into an agreement that does not unconditionally obligate the business to pay for a specific number of rooms for at least 30 consecutive days, the hotel operator is required to charge and collect the tax. If the hotel operator charges the business the hotel tax for a room (whether or not it is the same room) for a 30 consecutive day period, the business shall have a legal right to claim a refund of the amount of tax collected for such room from the hotel operator.

Any taxes collected by the hotel operator that are not refunded to the customer for any reason must be remitted to the Department. 35 ILCS 145.3(f). Upon an unconditional refund of the tax to the permanent resident, the hotel operator may file a claim for credit for any hotel tax paid by the operator. 86 Ill. Adm. Code 480.125.

It is unclear from your letter whether the company is unconditionally obligated to pay for the block of rooms for at least 30 consecutive days. If the company is not unconditionally obligated to pay for the block of rooms for at least 30 consecutive days, as noted above, the hotel operator is required to charge and collect the tax.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:msk