

This letter explains the application of the Hotel Operators' Occupation Tax when rentals are made to persons holding "E" numbers. (This is a GIL.)

May 23, 2011

Dear Xxxxx:

This letter is in response to your email dated May 13, 2011, 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 to review regulations, letter rulings and other types of information relevant to your inquiry.

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

I just want to be 100% clear that even though we are an instrumentality of the government and are tax exempt per Title 12, United States Code, Section 531 we still have to pay hotel (lodging) taxes in the state of Illinois.

Please confirm back so can [sic] advise our accounting department since we do have our NY employees traveling to Chicago and do not want to give them incorrect information on tax exemption.

DEPARTMENT'S RESPONSE:

For your information, you may want to look at the Department's regulation at 86 Ill. Adm. Code 480.101, which explains the nature, rate and scope of the Hotel Operators' Occupation Tax Act ("HOOT") and can be found on the Department's website. As you can see from Section 480.101 (b)(3), a hotel operator incurs this tax on room rentals to entities that would otherwise be exempt from sales taxes (i.e., entities such as exclusively charitable, religious, or educational groups or government entities that possess exemption identification numbers issued by the Department).

The HOOT operates very differently from what is commonly referred to as "sales taxes" in Illinois. In an Illinois sales tax context, there are two separate but complementary taxes involved. The Retailers' Occupation Tax is imposed on the retailer and the Use Tax is imposed on the purchaser. Since the Use Tax is imposed on the purchaser, there is a tax to which an exempt purchaser's

exempt status can attach and, because these taxes are complementary, if the purchaser is exempt from paying Use Tax then the retailer is generally exempt from the Retailers' Occupation Tax. As a result, when an exempt entity purchases tangible personal property and presents its exemption identification number ("E" number) to a retailer, its purchases are exempt from Use Tax and the retailer is exempt from Retailers' Occupation Tax.

However, that is not the result with the HOOT. Under the HOOT, tax is imposed only upon the hotel operator. There is no complementary tax imposed upon the room occupant. Since there is no tax liability imposed upon the room occupant, there is nothing to which an occupant's exempt status can attach. In addition, the HOOT does not exempt a hotel operator from tax when a room is rented to an exempt entity holding an "E" number issued by the Department.

The HOOT authorizes hotel operators to collect an amount from their customers that represents reimbursement for the hotel operator's tax liability. The fact that room occupants hold an exemption identification number issued by the Department does not exempt them from paying this reimbursement charge, if imposed by the hotel operator.

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

Very truly yours,

Debra M. Boggess
Associate Counsel

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