

Organizations possessing "E" numbers issued by the Department are exempt on purchases used in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007. (This is a GIL.)

June 22, 2011

Dear Xxxxx:

This letter is in response to your letter dated May 20, 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](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:

I am requesting a binding legal opinion ruling to use the enclosed "Exempt Organization Attestation of Direct Billing" letter as proof of payment for all federal government, state and local government and nonprofit employees that qualify for exemption from state and local sales tax and state and local hotel room tax. This letter was designed in cooperation between the GOVERNMENT taxing authority and CORPORATION.

In today's environment of identity theft, most guests are reluctant to allow any business to make a copy of their organization's credit card.

Please let me know if you have questions or need additional information. I appreciate your assistance in this matter.

**DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department declines to issue a private letter ruling. Furthermore, the

Department does not approve the accuracy of private legal publications or forms. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

### Retailers' Occupation Tax Act

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007. Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

All sales to an exempt entity holding an E number must be documented. See the Department's regulation at 86 Ill. Adm. Code 130.810(b) which states:

To support deductions made on the tax return form, as authorized under the Act, on account of receipts from isolated or occasional sales of tangible personal property, on account of receipts from sales of tangible personal property for resale, on account of receipts from sales of tangible personal property made within the protection of the Commerce Clause of the Constitution of the United States, on account of receipts received by the seller from sales made to any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, on account of receipts received by the seller from sales made on or after March 21, 1963, to any governmental body or on any other ground, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the name and address of the taxpayer's customer in each such transaction, the character of every such transaction (whether it is a sale for resale, a sale made within the protection of the Commerce Clause of the Constitution of the United States, an isolated or occasional sale, etc.), the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the nontaxable character of such transaction under the Act.

The Department's regulations further provide that:

When a seller claims exemption from the Retailers' Occupation Tax for receipts received by the seller from his sale of tangible personal property to a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, the seller should include such receipts in his Retailers' Occupation Tax return form, but then should deduct such receipts on the line provided for that purpose in the return form. 86 Ill. Adm. Code 130.2005(r)(1). Sellers claiming the benefit of this exemption are cautioned against laxity in claiming the benefit of this exemption without verifying the status of the purchaser since the seller will have the burden of proof in establishing his right to any such claimed exemption. The Courts have held repeatedly that the burden of sustaining a right to tax exemption is on the person claiming such exemption. 86 Ill. Adm. Code 130.2005(r)(3).

Some of our regulations addressing sales to tax exempt organizations and governmental bodies can be found at 86 Ill. Adm. Code 130.120 (Nontaxable Transactions), Section 130.2004 (Sales to Nonprofit Arts or Cultural Organizations), Section 130.2005 (Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons), Section 130.2007 (Exemption Identification Numbers) and Section 130.2080 (Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel).

### The Hotel Operators' Occupation Tax Act

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. 35 ILCS 145/1 *et seq.* 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 Hotel Operators' Occupation Tax Act does not include any provision for the exemption of exclusively charitable, religious, or educational organizations, or for governments or their agencies. Therefore, hotel operators renting rooms to organizations possessing exemption numbers, or governmental units (State, Federal, local) are not exempt from paying the tax on room rentals to such entities and the above mentioned tax exemption identification numbers cannot be used to avoid this tax. See 86 Ill. Adm. Code 480.101(b)(4).

Please remember the Hotel Operators' Occupation Tax is not a tax imposed upon those guests renting the rooms. Rather, it is imposed upon persons (i.e., hotel operators) engaged in the business of renting, leasing or letting rooms in a hotel. However, hotel operators are allowed to reimburse themselves for their tax liability by collecting a corresponding amount of reimbursement from customers.

There are two factors we would like to stress in regard to exclusively charitable, religious, or educational organizations, or for governments or their agencies. First, the tax is not imposed upon the entity renting the room from the hotel operator. It is imposed, rather, upon the hotel operator. An exemption is useless in this context, because there is no tax that is being imposed upon the entity. There is no tax, in other words, from which the group could be exempted. Secondly, the terms of the Hotel Operators' Occupation Tax Act do not provide that exclusively charitable, religious or educational organizations or government agencies are exempted from paying the reimbursement charges which hotel operators are authorized to charge.

The only exemptions available to hotel operators are for rentals to permanent residents and to certain diplomatic personnel. 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. See Section 480.101(b)(7).

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  
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