

This letter discusses the Hotel Operators' Tax Act. See 86 Ill. Adm. Code 480.101(b)(3).
(This is a GIL.)

November 1, 2016

Dear Xxxxx:

This letter is in response to your letter dated August 8, 2016, 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 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 have been advised to write to this department, by the tax helpline on the Illinois' website, to get a legal clarification on hotel operator's occupation tax, for summer camps/religious church retreat centers. The law states that anyone who is in the business of renting hotel rooms (any building with living quarters) to the public is subject to this tax. However the law never defines the word public and has not issued rulings for summer camps/church retreat centers. This leads to the following instances that I am requesting clarification:

- I. Would a camp that is only for Christian groups to host overnight retreats and camps be subject to the tax since they are only offering this to one group of people? If another religion asked to rent this space they would be denied. Would it prevent the tax if only groups within a certain distance (mileage) were allowed to rent? Typically local churches rent the campground for the purpose of a retreat for their congregation members. Aside from renting to churches, the campground also hosts youth camps lasting up to one week in duration. At some camps, local area children are encouraged to take part in performing arts, while other camps simply break away from the everyday world, all to explore and further their understanding of Christianity. All endeavors for this

campground include Christianity as its focus, in a non-denominational capacity. This facility on the grounds does contain rooms similar to dorm rooms; i.e. not just areas for tents. The grounds do not allow campers or recreational vehicles. Individuals cannot rent out a room, whether by night or week or month, etc. A group of individuals wanting to use the space would be permitted provided they are representing a church i.e. a youth group or an adult retreat for the weekend. It appears the determination for whether this camp would be subject to this tax lies upon the definition of "open to the public."

- II. If nonprofits are not subject to other sales taxes and other types of tax, would they be subject to this tax if operated solely for a purpose of being a place for (a) youth or (b) Christian church group excursions?

Please advise and give a legal understanding to these more complex tax issues.

DEPARTMENT'S RESPONSE:

The Hotel Operators' Occupation Tax Act ("HOOT") imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel, as defined in the Act. HOOT defines "hotel" to include any building or buildings in which the public may, for consideration, obtain living quarters, sleeping or housekeeping accommodations. See 35 ILCS 145/2(1). HOOT defines "rent" 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). The definition of "rent" must be read in conjunction with the term "occupancy." HOOT defines "occupancy" as "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." See 35 ILCS 145/2(3).

If a person engaged in the business of renting, leasing or letting sleeping accommodations does not rent rooms to the public but, rather, rents exclusively to its members, the Department would generally not consider the facilities open to the public. In contrast, if a person engaged in the business of renting, leasing or letting sleeping accommodations rents rooms to its members, as well as to the public, the Department would consider the facilities open to the public and, thus, all rental receipts would be subject to HOOT.

HOOT operates very differently from what is commonly referred to as "sales taxes" in Illinois. In Illinois, sales tax consists of two separate but complementary taxes. The Retailers' Occupation Tax (ROT) is imposed on the retailer and the Use Tax (UT) is imposed on the purchaser. Since the UT 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 UT, then the retailer is generally exempt from paying ROT. 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 UT and the retailer is exempt from ROT.

However, that is not the result with HOOT. Under 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 sales tax exempt status can attach. A hotel operator is not exempt from HOOT when renting rooms to entities holding “E” numbers issued by the Department.

HOOT authorizes hotel operators to collect an amount from their customers that represents reimbursement for the hotel operators’ 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.

The Department recently issued a Compliance Alert to educate and remind taxpayers who rent sleeping accommodations both to their members and to the general public that all their rental receipts are subject to HOOT. See CA-2016-15. After issuing the Compliance Alert, the Department followed-up with several examples of “frequently asked questions and answers” (FAQs). Many of the questions you have asked can be answered by reviewing these documents, as well as other materials found on the Department’s website. Specifically, you may wish to review General Information Letter ST 08-0167, dated December 5, 2008, which discusses liability for HOOT and Retailers’ Occupation Tax in regard to a religious organization’s summer camp lodging provided to members and nonmembers. Generally, the situations you have described will require the camp to be registered and to remit HOOT on all rentals.

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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