

This letter discusses the Parking Excise Tax Act. 35 ILCS 525/. (This is a GIL.)

August 9, 2019

**Re: General Information Letter Request Pursuant to 2 Ill. Admin Code 1200.120**

Dear Xxxx:

This letter is in response to your letter dated July 19, 2019, 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](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. General Information**

We represent a Client who is a full-service commercial real estate operating company (“Client”). Client is not currently engaged in litigation or audit with the Illinois Department of Revenue regarding the question presented below. To the best of our knowledge, the Department has not previously ruled regarding this issue for any Illinois taxpayer. Client’s question involves the department’s application of its newly enacted Illinois Parking Excise Tax pursuant to Illinois Public Act 101-0031 (“Parking Tax”) to Client’s business operations. Simply, Client’s question is whether the Parking Tax applies to no charge parking (i.e. free) offered as an amenity to its commercial tenants? Pursuant to 2 Ill. Admin Code 1200.120, client hereby requests the Department provide guidance with regards to its newly enacted Parking Tax to ensure that Client is compliant with the new tax, effective January 1, 2020.

**II. Business Operation Facts**

Clients owns multi-unit commercial office buildings located in Illinois (“Office Buildings”). Client leases office space to individuals or businesses who use the space exclusively for commercial purposes (“Commercial Tenants”). Client often serves as the property manager of its Office Buildings. Client has engaged us to determine if they are required to collect Illinois Parking Excise Tax on free parking spaces provided to its Commercial Tenants located in parking lots connected to, or adjacent to the Office Buildings.

The Commercial Tenants' parking rights are governed exclusively by the terms of the parties' lease agreements. Client gratuitously offers its Commercial Tenants a designated number of "Reserved" parking spaces, "Unreserved" parking spaces, or a combination of both. The parking spaces are a commercial amenity for its tenants and a Client operating expense which is necessary in the competitive field of commercial real estate. Moreover, pursuant to many local zoning requirements, Client is often legally required to provide parking spaces to its Commercial Tenants. The number of parking spaces granted to an individual Commercial Tenant is dependent on the size of office space leased from Client and/or the number of employees of the Commercial Tenant. The parking spaces are strictly available for use by the individual Commercial Tenant's employees and/or the Commercial Tenants' customers and designated guests.

The monthly rent charged by Client to its Commercial Tenants for the lease of the office space is unaffected by the number or type of parking spaces provided to Commercial Tenants. Similarly, the monthly rent due is unaffected by whether the Commercial Tenant does not use some or all the parking spaces. For example, if a Commercial Tenant does not use the parking space, it is not entitled to a refund or credit of the monthly rent. Client's limitation of parking spots to each Commercial Tenant prevents overcrowding, ensures parking is available for its Commercial Tenants, ensures the parking lot is only used by tenant employees and/or customers rather than the general public, and increases the safety of the Commercial Tenants. Most, but not all, parking lots contain a security gate for which Commercial Tenant's employees or guests must swipe a parking badge to enter the gated parking lot.

Client never issues its Commercial Tenants an invoice or separately charges its Commercial Tenants for the use of the parking lot.

### **III. Question Presented:**

Whether Taxpayer's Commercial Tenants are subject to the Illinois Parking Excise Tax on "no charge" parking spaces, which are not separately bargained for in the lease agreement and for which are provided to Commercial Tenants as an amenity for their monthly lease of office space?

### **IV. Legal Authorities**

On June 28, 2019, the Illinois Governor approved Illinois Public Act 101-0031 which, among other things, created the "Parking Excise Tax Act." Effective January 1, 2020, "a tax is imposed on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles...at the rate of ...9% of the purchase price for a parking space paid for on a monthly or annual basis. P.A. 101-0031, 10-10(a) Notably, the tax is to be collected from the purchaser by the operator of the parking lot. *Id* at 10-10(b).

The following terms are defined by the act and pertinent to this inquiry:

"Charge of fee paid for parking" means the gross amount of consideration for the use or privilege of parking a motor vehicle in or upon any parking lot or garage in the State,

collected by an operator and valued in money, whether received in money or otherwise, including cash, credits, property and services, determined without any deduction for costs or expenses, but not including charges that are added to the charge or fee on account of the tax imposed by this Act or on account of any other tax imposed on the charge or fee.” *Id.* At 10-5.

“‘Operator’ means any person who engages in the business of operating a parking area or garage, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking or storage of motor vehicles...” *Id.*

“‘Parking area or garage’ means any real estate, building, structure, premises, enclosure or other place, whether enclosed or not, except a public way, within the state, where motor vehicles, recreational vehicles, or other self-propelled vehicles, are stored, housed or parked for hire, charge, fee or other valuable consideration in a condition ready for use, or where rent or compensation is paid to the owner, manager, operator or lessee of the premises for the housing, storing, sheltering, keeping or maintaining motor vehicles, recreational vehicles, or other self-propelled vehicles....” *Id.*

“‘Purchase price’ means the consideration paid for the purchase of a parking space in a parking area or garage, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property, and shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever...” *Id.*

“‘Purchase price’ includes any and all charges that the recipient pays related to or incidental to obtaining the use or privilege of using a parking space in a parking area or garage, including, but not limited to any and all related markups, service fees, convenience fees, facilitation fees, cancellation fees, overtime fees, or other such charges, regardless of terminology. However, “purchase price” shall not include consideration paid for ...(1) optional, separately stated charges not for the use or privilege of using a parking space in the parking area or garage....” *Id.*

## **V. Brief Conclusions**

- (1) Free parking offered to Commercial Tenants as an amenity to the tenants’ lease of office space is not subject to the Parking Lot Tax because there is no charge, or purchase price, for the parking spaces; and
- (2) Client is not engaged in the business of operating a parking lot and therefore has no obligation to collect Parking Lot Tax from its Commercial Tenants.

## **VI. Legal Analysis**

Illinois’ recently enacted Parking Lot Tax is imposed on the purchase price, or gross amount of consideration, for the use or privilege of parking a motor vehicle in or upon any parking lot or garage in Illinois. The Act defines purchase price as the consideration paid for the parking space, valued in money or otherwise. While the tax is imposed on the purchasers, or users of the parking lot, the tax is to be collected by

parking lot operators, who are defined as those businesses “engage[d] in the business of operating a parking area or garage, or who, ... collects the consideration for parking or storage of motor vehicles.” P.A. 101-0031, 10-5.

Here, the Parking Lot Tax is not applicable to Client’s business operations for two reasons. First and foremost, Client does not charge a purchase price upon its Commercial Tenants for the use or privilege of parking a motor vehicle in Client’s Office Building parking lots. See ST-13-0043-GIL (Redemption of a hotel chain’s “reward points” for a stay at one of its hotels is not subject to Hotel Operators’ Tax liability because no gross receipts were collected as part of the patron’s hotel stay). Accordingly, Client does not collect consideration of any kind for the Commercial Tenants’ use of or privilege of parking on or upon the parking lots located adjacent to or on the premises of the Office Buildings. The Commercial tenants use of the parking lot is a complimentary amenity that is legally required to be provided by Client pursuant to local zoning laws or necessary in the competitive field of commercial real estate, or both.

Secondly, the Parking Lot Tax is not applicable to Client’s business operations because Client is engaged in the business of operating commercial real estate properties and pertinent here, it is not engaged in the business of operating parking lots, and therefore, does not qualify as a parking lot operator under the Act. As stated above, Client derives no consideration from its Commercial tenants for their use of the Parking Lot. Moreover, the Commercial Tenant’s monthly rent payment for their lease of the Office Building space is unaffected by the use or non-use of the parking spaces. Lastly, the parking lot is exclusively available to Commercial Tenants and its guests and customers only. Client’s parking lots located upon or adjacent to its Office Buildings are not available for use to the general public.

## **VII. Summary**

Client request the Department confirm its analysis of the application of the newly enacted Parking Lot Tax, as set forth above. Should the Department contend otherwise, Client requests the Department provide its legal analysis and authorities for such conclusions.

## **DEPARTMENT’S RESPONSE:**

Beginning on January 1, 2020, a tax is imposed on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles, at the rate of:

- 1) 6% of the purchase price for a parking space paid for on an hourly, daily, or weekly basis; and
- 2) 9% of the purchase price for a parking space paid for on a monthly or annual basis. 35 ILCS 525/10-10.

“Operator’ means any person who engages in the business of operating a parking area or garage, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking or storage of motor vehicles, recreational vehicles, or other self-propelled vehicles, at that parking place.”

“Parking area or garage’ means any real estate, building, structure, premises, enclosure or other place, whether enclosed or not, except a public way, within the state, where motor vehicles, recreational vehicles, or other self-propelled vehicles, are stored, housed or parked for hire, charge, fee or other valuable consideration in a condition ready for use, or where rent or compensation is paid to the owner, manager, operator or lessee of the premises for the housing, storing, sheltering, keeping or maintaining motor vehicles, recreational vehicles, or other self-propelled vehicles.”

“Purchase price’ means the consideration paid for the purchase of a parking space in a parking area or garage, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property, and shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever.”

The Department believes the Client is not an operator of a parking area or garage. A parking area or garage is a place where motor vehicles, recreational vehicles, or other self-propelled vehicles, are stored, housed or parked for hire, charge, fee or other valuable consideration. For the Parking Excise Tax to apply, an operator must receive consideration for the use of a parking space. “Consideration” is defined broadly. However, when a lessor provides commercial tenants parking spaces at “no charge” that are provided to commercial tenants as an amenity for their monthly lease of office space, the lessor is not engaged in the business of operating a parking area or garage and is not required to collect and remit taxes on the parking spaces provided to commercial tenants.

Thank you for your letter. The Department is in the process of drafting rules for the Act. We will address the issue you raise in the Department’s rules. After the Department’s proposed rules have been published in the Illinois Register, the public will have an opportunity to provide comments. The Department’s position may change during the rulemaking process.

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