

This letter discusses the exemption from Parking Excise Tax when parking in a parking area or garage operated by the State, State universities created by statute, or a unit of local government, e.g., counties, municipalities, townships, and special districts. See 86 Ill. Adm. Code 195.115(b). (This is a PLR.)

April 12, 2021

Dear: NAME

This letter is in response to your letter dated January 27, 2021, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This letter is submitted as a request for a private letter ruling regarding the application of the Illinois Department of Revenue's ("IDOR") Parking Excise Tax to the COMPANY ("COMPANY"). The COMPANY is a municipal corporation, which exists and operates pursuant to (70 ILCS 210).

This ruling is requested for all taxable periods from and after its issuance until COMPANY's material facts that are the basis of this ruling change. Such a private letter ruling request is proper under 86 Ill. Adm. Code § 1200.110. To the best of our knowledge, no authority exists that is contrary to the positions expressed in this request for a private letter ruling. Nor are the issues in this request part of a current audit or litigation matter with the IDOR concerning COMPANY or any related company. There are no regulations that are clearly dispositive

of the issues in this request. To the best knowledge of COMPANY, the IDOR has not previously ruled on the same or similar issue for COMPANY or a predecessor. COMPANY has not previously submitted the same or a similar issue to the IDOR and, there are no authorities that COMPANY is aware of that are contrary to the ruling request made herein by COMPANY. There is no information herein that is considered a trade secret that COMPANY requests be redacted/omitted from publicly disseminated versions of the private letter ruling.

Statement of Facts/Background

The COMPANY, a municipal corporation, owns and operates the LOCATION, including several parking lots. The COMPANY holds a contract with BUSINESS to manage the parking lots, including collection of parking fees and remitting those revenues to COMPANY. Under that contract, BUSINESS is paid a flat management fee. The parking management contract is included as an attachment for reference. The COMPANY has been issued a governmental exemption from IDOR for sales taxes (letter attached). BUSINESS holds a certificate of registration/license for the parking excise tax (attached) and has been filing and submitting PE-100-Parking Excise Tax Return (sample attached).

Applicable Laws/Regulation

COMPANY requests that IDOR confirm that it falls within an exemption from The Parking Excise Tax, 35 ILCS 525/10-5.

Title 86 Part 195 Section 115 Exemption from Tax

The tax imposed by the Act shall not apply to:

(b) parking in a parking area or garage operated by the State, State universities created by statute, or a unit of local government (e.g., counties, municipalities, townships, and special districts) that have been issued an active tax exemption number by the Department under Section 1g of the Retailers' Occupation Tax Act. For this exemption to apply, the parking area or garage must be operated by the State, State universities created by statute, or the unit of local government. The exemption under this subsection (b) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or held in any other manner whatsoever;

From the IDOR website

[https://www2.illinois.gov/rev/research/taxinformation/excise/Pages/Parking FAQ.aspx#qst11](https://www2.illinois.gov/rev/research/taxinformation/excise/Pages/Parking%20FAQ.aspx#qst11)

What if I operate a parking area owned by an entity that is exempt from the Parking Excise Tax Act?

If you operate a parking area owned by an exempt entity, you may still be required to collect and remit the Parking Excise Tax. See 86 Ill. Admin. Code 195.115.

Example 2: A municipality owns a parking area. The parking area has signs that indicate the lot is owned and operated by the municipality. It retains a company to install machines on the lot that accept electronic payments. The company also provides a mobile application that permits a person to pay for parking electronically. All payments made by a customer either by using the machine on the lot or the mobile application go directly to the municipality. The company subsequently receives a fee for its services from the municipality. The municipality is the operator of the lot and pursuant to Section 195.1 15(b) is not required to collect and remit the tax.

Analysis/ Rulings Requested

The COMPANY is a municipal corporation that owns and operates the parking lots. The parking lots have signs that indicate that the lots are owned and operated by COMPANY. COMPANY receives the parking revenues directly and COMPANY sets and approves the parking rates. COMPANY holds a contract with BUSINESS to manage its parking lots, including the installation of machines and a mobile application to collect parking fees. BUSINESS is paid a flat fee for its services independent of the parking fees collected. COMPANY believes that the fact pattern described in the FAQs listed above apply and therefore COMPANY is not required to collect and remit the parking excise tax. COMPANY requests that IDOR provide a private letter ruling confirming this interpretation regarding the applicability of the exemption.

DEPARTMENT'S RESPONSE:

The Illinois Parking Excise Tax Act (the "Act") imposes a Parking Excise Tax (the "Tax") effective January 1, 2020 "on the privilege of using in this state a parking space in a parking area or garage". 35 ILCS 525. The Tax is on the purchaser of the parking and is collected by the operator. The total purchase price paid for parking is taxable under the Tax. 35 ILCS 525/10-5. This includes "the consideration paid for the purchase of the parking space" including all convenience fees, markups, service fees, facilitation fees, and other charges. *Id.*

Under the Act, an “operator” required to collect the Tax is 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” 35 ILCS 525/10-5.

The operator of a parking area or garage must collect the tax on the purchase of all parking spaces in a parking area or garage unless the operator is exempt from collecting the tax or the tax is not due on the transaction. 86 Ill. Adm. Code 195.110(d).

The tax imposed by the Act does not apply to

- b) parking in a parking area or garage operated by the State, State universities created by statute, or a unit of local government, *e.g.*, counties, municipalities, townships, and special districts, that have been issued an active tax exemption number by the Department under Section 1g of the Retailers' Occupation Tax Act. For this exemption to apply, the parking area or garage must be operated by the State, State universities created by statute, or the unit of local government. The exemption under this subsection (b) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or any other manner whatsoever.

86 Ill. Adm. Code 195.115(b).

A person that provides payment processing, collection functions, parking area maintenance, or security functions is not an operator subject to the tax when:

- 1) all parking revenues flow directly to the operator;
- 2) the operator sets the parking rates;
- 3) the person is paid a separate fee for the service provided; and
- 4) the sign at the parking area or garage does not identify the person as the operator.

86 Ill. Adm. Code 195.110(l).

COMPANY states in its request that COMPANY and BUSINESS have entered into an Agreement whereby BUSINESS provides payment processing, collection functions, parking area maintenance, or security functions in garages owned and operated by COMPANY, COMPANY is a municipal corporation, has an exemption number issued to it by the Department, receives the parking revenues collected by

BUSINESS on a daily basis, sets the parking rates, pays BUSINESS a separate management fee, and the signage bears the name of COMPANY. All payments made by customers, either by using a machine on the lot or by mobile app, go directly to COMPANY. These statements are confirmed by a review of the Agreement between COMPANY and BUSINESS.

The Agreement states, among other things, that the relationship between COMPANY and BUSINESS shall be that of principal and agent. One or more bank accounts in the name of COMPANY shall be created pursuant to the Agreement, and BUSINESS must make daily deposits of gross receipts received from customers into one or more accounts. All gross receipts collected by BUSINESS are the sole property of COMPANY; and, if any time held by BUSINESS, the receipts are held in trust for COMPANY. On a monthly basis BUSINESS may deduct its management fee from gross receipts. BUSINESS is permitted to draw upon the operating account to pay operating expenses incurred by it in performance of its responsibilities pursuant to the Agreement.

It is the Department's ruling that COMPANY is the operator of the garage, that BUSINESS is not an operator of the parking areas or garages subject to the Agreement, and the gross receipts collected from customers parking in parking area or garages subject to the Agreement are exempt from tax pursuant to Section 195.115(b).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

RSW:rkn

