

The occupation of selling is comprised of the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price. Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. 86 Ill. Adm. Code 270.115. (This is a GIL.)

April 1, 2021

Dear Xxxx:

This letter is in response to your letter dated March 11, 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.

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:

Re: Illinois Parking Excise Tax

The parking facility is usually located next to or near the residential building. This is a request for a general information letter on the application of the residential off-street parking exemption in the Illinois Parking Excise Tax ("Parking Tax").

I represent a number of parking facilities that at times provide residential off-street parking by contract with landlords or condominium associations to the occupants of their apartment and condominium ("condo") buildings in order to satisfy the residential off-street parking requirements of such buildings

The residential off-street parking exemption in the Parking Tax provides that residential off-street parking by home or apartment tenants or condo occupants is exempt from the Parking Tax, if there is a written arrangement for parking between the landlord and tenant, or between the condo association and its owners, occupants or guests of the unit, to provide for residential off- street parking. 35 ILCS 525/L0-20(2). It has

always been understood that it makes no difference if the building itself has the parking availability or there is a facility near the building that provides for the parking. Neither the Parking Tax nor the Parking Tax Regulations suggest that the location of the facility makes any difference as to whether the residential off-street parking qualifies for the exemption.

While in many instances, the apartment or condo building has parking built into the building, in many other instances the residential building has to rely upon parking facilities next to or near the building for the required residential off-street parking for its tenants or occupants. In both of those cases (whether parking is in the same building or near the building), when the landlord or condo association is not the owner or operator of the parking facility, the landlord or condo association either licenses space from or contracts with the parking facility owner or operator to fulfill the necessary residential off-street parking that it has arranged to provide to its tenants or occupants. As a result, the landlord or condo association will enter into an agreement with the tenant or occupant that will arrange for the parking, and then direct the tenant or occupant to the parking facility to obtain the arranged-for parking. Sometimes the landlord or condo association will collect the parking rent and pay the facility for the parking while in other situations the parking facility will have the tenant or occupant sign an additional separate agreement based on the license or contract with the landlord or condo association and collect the rent directly.

Issue: An issue was raised by a landlord as to whether it makes any difference if the residential off- street parking is provided in the same residential building or in a facility next to or near the building where the tenant or occupant resides. However, based on the language of the Parking Tax and the Regulations, the location of the parking facility is irrelevant to the exemption if the requirements of the exemption are met. This letter simply asks the Illinois Department of Revenue ("TDOR") to confirm that fact.

Analysis: The Parking Tax is "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" 35ILCS 525/10-10(a); 86 Ill. Admin Code Section 195.110(a) However, the Parking Tax exempts from the tax:

residential off-street parking for home or apartment tenants or condominium occupants, if the arrangement for such parking is

provided in the home or apartment lease or in a separate writing between the landlord and tenant, or in a condominium agreement between the condominium association and the owner, occupant, or guest of a unit, whether the parking charge is payable to the landlord, condominium association, or to the operator of the parking spaces....

35 ILCS 525/10-20(2). The Parking Tax Regulations, like the Parking Tax itself, recognize that the parking itself may be provided by someone other than the landlord or condo association since the payment may be made directly to the "operator of the parking spaces". 86 Ill. Admin Code Section 195.115(c)(emphasis added). The regulations explain in more detail in Example 1 that the exemption encompasses agreements with separate operators that provide the actual parking:

A person enters into a residential lease agreement with a landlord that requires the landlord to provide 2 parking spaces to the tenant for \$\$\$ per month. The landlord has made arrangements with an operator of a parking garage to make available 2 parking spaces to the tenant. The lease requires the tenant to pay the \$\$\$ per month directly to the operator of the garage. The operator is not required to collect tax from the tenant on the use of the 2 parking spaces. The operator should obtain a copy of the lease and maintain it in its books and records.

See *also*, Example 2 to 86 Ill. Admin Code Section 195.115(c). Nowhere does the Regulation require that the parking facility be in the same residential building, which makes sense since the entire purpose of the exemption is simply to exempt residential off-street parking of residents and occupants of these buildings.

Because it makes no difference where the residential off-street parking is provided under the explicit language of the Parking Tax and the Regulations, nor would such a distinction appear logical for either the purposes or intent of the exemption, we request the IDOR issue a general information letter confirming this fact.

If you have any questions, please call or email me.

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

residential off-street parking for home or apartment tenants or condominium occupants, if the arrangement for such parking is provided in the home or apartment lease or in a separate writing between the landlord and tenant, or in a condominium agreement between the condominium association and the owner, occupant, or guest of a unit, whether the parking charge is payable to the landlord, condominium association, or to the operator of the parking spaces [35 ILCS 525/10-20(2)]; 86 Ill. Adm. Code 195.115(c).

The Department’s parking rules provide two examples to help explain the exemption for residential off-street parking for home or apartment tenants or condominium occupants.

There is no requirement in the Parking Excise Tax Act or the Department’s parking rules that require that off-street parking spaces provided in the home or apartment lease or in a separate writing between the landlord and tenant, or in a condominium agreement between the condominium association and the owner, occupant, or guest of a unit, be in located in the residential or condominium building occupied by the tenant or condominium owner, occupant, or guest, or be contiguous to such building for the exemption to apply. However, such a parking space should be close enough to the building to serve the purpose for which it is intended -- residential off-street parking for home or apartment tenants or condominium occupants.

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,

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Richard S. Wolters
Associate Counsel

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