

This letter discusses the exemption provided in Section 3(d-5) of The Hotel Operators' Tax Act. See 35 ILCS 145/3. (This is a PLR.)

February 9, 2018

Dear Xxxxx:

This letter is in response to your letter dated October 25, 2017, 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:

Pursuant to 2 Ill. Admin. Code Sec. 1200.110, COMPANY 1 writes to request a private letter ruling that COMPANY ("COMPANY") is not obligated to collect or remit Illinois Hotel Operators' Occupation Tax, 35 ILCS 145/2, *et seq.* ("HOOT") on charges for the rental of overnight accommodations at its FACILITY located at ADDRESS, CITY, Illinois ("FACILITY"). A completed power of attorney form is enclosed with this submission. To the best of its knowledge and belief, COMPANY is not under audit or investigation by the Illinois Department of Revenue ("Department") with respect to this or any other issue. There is no litigation pending on this issue in a case involving COMPANY or a related taxpayer in which the Department is named as a plaintiff or defendant.

In support of its request for ruling, COMPANY states as follows:

Complete Statement of Facts and Other Pertinent Information

The ("GROUP") is a FAITH BASED GROUP, some of whom are retired from active ministry, who reside together and gather daily for a prayer and the Eucharistic

celebration at various locations across the United States, including in CITY. In CITY, the GROUP' operations are run by COMPANY, which is a 501(c)(3) tax-exempt religious organization with an active Illinois Sales Tax Exemption Number.

The GROUP were first organized as an Illinois not-for-profit religious organization in 19XX. Their organizational documents, copies of which are enclosed, describe the purpose for which the GROUP was formed as follows:

The object for which it is formed is (1) To maintain and conduct social settlements for the improvement of the social, intellectual and religious condition of poor FAITH and other persons in the City of CITY and elsewhere within the United States and the other countries of the world and for all other purposes for which social settlements and social settlement work are or may be maintained under the laws of the State of Illinois.¹ (2) The religious and secular instruction and training, including manual training, of the neglected and ignorant whether children or adults. (3) The free circulation of good literature. (4) Any and all other beneficent and charitable purposes for which a corporation may be created under the law of the State of Illinois, excluding the care of orphan, pauper or destitute children.

In his MONTH XX, 19XX letter to the Illinois Secretary of State recommending approval of the GROUP's application for charter, a copy of which is enclosed, a state agent for the Illinois Department of Public Welfare reported that the GROUP's statement of purpose "meets with the approval of the church authorities."

The GROUP's current statement of mission (copy enclosed) is reflective of its original organizing documents. The Mission Statement provides:

We work for the transformation of the world by awakening and deepening faith with and for the people of our times.

The GROUP's CITY location includes a Convent, a Chapel, and since 20XX, the FACILITY. Consistent with the GROUP's mission, the FACILITY:

- (1) provides a place for people to find space for quiet, reflection and prayer;
- (2) offers group retreats and days of prayer;
- (3) is available to individuals for private spiritual retreats; and

¹ The settlement movement was a reformist social movement, beginning in the 1880s and peaking around the 1920s in England and the United States, with a goal of getting the rich and poor in society to live more closely together in an interdependent community. Settlement houses typically were located in impoverished urban areas, and provided educational, recreational and other social services to the surrounding community. At the time, the GROUP acquired property at LOCATION, the surrounding neighborhood was an impoverished, immigrant community.

(4) is available for rental for overnight stays by not-for-profit groups engaged in programming consistent with the GROUP's mission.

The FACILITY is housed in the same building as the Chapel and the Convent. There are XX double and XX single rooms. All rooms are simply furnished. The rooms do not contain a television or telephone. For most rooms, bathrooms are shared and located at the end of the hallways. Photos of the FACILITY are included with this submission.

The FACILITY is not kept, used or maintained as, advertised, or held out to the public as a hotel or conference facility. In particular, the FACILITY is not available for rental by members of the general public. In order to rent the facility, interested persons/organizations must contact COMPANY directly to request authorization. To that end, the GROUP's website provides, in relevant part:

We welcome adult religious groups, as well as non-profit groups that focus on personal growth, justice, education, the environment, community organizing, health care, neighborhood development, volunteer service and other areas of human endeavor.

The website does not permit on-line reservations. Rather, persons/organizations interested in renting the FACILITY are directed to contact the COMPANY's staff, and rentals are not approved unless they are deemed to fall within the GROUP's mission. Examples of secular not-for-profit organizations who have rented the FACILITY in recent years include the following:

ORGANIZATION. This not-for-profit organization is a Vipassana meditation group active in CITY since 19XX. Its practice is based on mindfulness meditation as taught within the tradition of Theravada Buddhism.

ORGANIZATION 1. This not-for-profit partners with CITY school districts to place ORGANIZATION 2 members in the district's neediest schools to provide students with one-on-one support to overcome challenges they face both in and out of school. In addition to working with individual students who are at-risk of dropping out, ORGANIZATION 1 provides support to help transform the whole school – including leading school-wide events and activities, after school programming, and in class support for teachers.

ORGANIZATION 3. Some not-profit organizations, including ORGANIZATION 3, bring young adults to CITY to experience helping the poor and then having their prayer, reflection and spiritual processing together at the FACILITY.

COMPANY maintains a record of the active Illinois and other state sales tax exemption numbers held by the not-for-profit entities who rent overnight accommodations at the FACILITY.

Documents Relevant to the Request

The following documents are submitted in support of this request for ruling:

1. Organizational Documents for the GROUP;
2. Current Mission Statement;
3. COMPANY's current Illinois Sales Tax Exemption authorization;
4. Photos of rooms rented at the FACILITY (including shared baths); and
5. MONTH XX, 20XX TAXING GROUP opinion letter advising that COMPANY is not obligated to collect or remit the CITY Hotel Accommodations Tax.

Tax Period at Issue

All time periods on and after the date of the Department's private letter ruling granting this request for ruling.

Statement of Authorities Supporting the Taxpayers' Views

In Public Act 100-0213, signed into law on August 18, 2017, the Illinois General Assembly amended the HOOT to provide an additional exemption for rentals by religious organizations ("Amendment"). The Amendment provides that on and after July 1, 2017, the HOOT does not apply to gross rental receipts received by an entity that is organized and operated exclusively for religious purposes and has an active Illinois sales tax exemption when acting as a hotel operator renting, leasing or letting rooms:

- (1) in furtherance of the purposes for which it is organized; or
- (2) to entities that themselves (i) are organized and operated exclusively for religious purposes, (ii) possess an active Illinois sales tax exemption number and (iii) rent the rooms in furtherance of the purposes for which they are organized.

35 ILCS 145/3(d-5). All gross receipts from religious organizations that do not qualify for the exemption remain subject to the HOOT. *Id.*

COMPANY's charges for overnight accommodations at the FACILITY qualify for the religious organization exemption set forth in the Amendment. As noted above, COMPANY is a not-for-profit religious organization with an active Illinois sales tax exemption number. Its rentals are limited to persons or organizations who are (1) participating in a private retreat or programming run by the GROUP, (2) participating in a meeting or conference held by another religious organization which itself has an active Illinois sales tax exemption number and is conducting programming consistent with its purpose, or (3) participating in programming being conducted by another not-for-profit organization, the content of which is consistent with the GROUP's mission. Requests for rentals which do not fall within these categories (for example, persons wanting to rent rooms to attend programming conducted elsewhere, or persons wanting to rent rooms for social purposes) are rejected.

On April 19, 2017, COMPANY obtained a letter ruling from the CITY LEGAL DEPARTMENT (Corporation Counsel's Office, Revenue Litigation Section) ("CITY Letter Ruling") (copy enclosed) that charges imposed for use of the FACILITY were not subject to the CITY Hotel Accommodations Tax ("CITY Hotel Tax"), imposed by Ch. 3-24 of the Municipal Code of CITY. In support of its ruling, the CITY Letter Ruling states:

Although the FACILITY provides sleeping and conference accommodations for the guests who attend the retreats that it hosts, the FACILITY is not in a building or structure "kept, used or maintained as or advertised or held out to the public to be an inn, motel, hotel ... or similar place." *Id.* Instead, it is in a building or structure kept, used and maintained as a religious facility, and the sleeping and conference accommodations are incidental to its religious mission and functions. In our opinion, it was not the intent of the City Council to have the Hotel Tax apply in such a situation.

For similar reasons, the Department should conclude that the FACILITY's rentals, as described herein, are consistent with its organizational purpose and thus not subject to the HOOT.

COMPANY further requests that any private letter ruling issued by the Department in response to this correspondence also conclude that COMPANY has no obligation to collect the following additional hotel-related taxes on its charges for overnight accommodations at the FACILITY:

- (1) Metropolitan Pier and Exposition Authority (MPEA) Hotel Tax (70 ILCS 210/13(c));
- (2) Illinois Sports Facilities (ISFT) Tax (70 ILCS 3205/19); and
- (3) Chicago Municipal Hotel Tax (65 ILCS 5\8-3-13).

(Collectively, “the Additional Hotel Taxes.”) The authorizing statutes for the Additional Hotel Tax each provide that in the “administration and compliance” of the tax, “the Department and persons subject” to the tax “shall have the same rights, remedies, privileges, immunities, powers, and duties, and shall be subject to the same conditions, restrictions, limitations, penalties, and definitions of terms and shall employ the same modes of procedure as are prescribed” in the HOOT (except where inconsistent), “as fully as if the provisions contained” in the HOOT “were set out in this subsection.” See 70 ILCS 210/13(c), 70 ILCS 3205/19; and 65 ILCS 5/8-3-13. As a result of this provision, the religious organization exemption set forth in the Amendment applies equally to the Additional Hotel Taxes.

Statement of Authorities Contrary to the Taxpayers’ Views

We are not aware of any authority contrary to the conclusion that COMPANY’s charges for overnight accommodations are exempt from the HOOT under the Amendment.

Statement Affirming No Prior Department Ruling or Request for Department Rulings

To the best of COMPANY’s and its representative’s knowledge and belief, the Department has not previously ruled on the same or similar issue for COMPANY or any predecessor to COMPANY. Nor has COMPANY or any prior representative of COMPANY previously submitted the same or a similar issue to the Department that was withdrawn before a letter filing was issued.

Statement Regarding Trade Secrets

There is no trade secret information that should be deleted from the publicly disseminated version of any private letter ruling issued in response to this request.

For all the foregoing reasons, we respectfully request that the Department issue a private letter ruling confirming that charges associated with COMPANY’s rental of overnight accommodations at the FACILITY, as described in this correspondence, qualify for exemption from the HOOT and the Additional Hotel Taxes.

If you have any questions or require further information, please do not hesitate to contact me.

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).

P.A. 100-0213 added subsection (d-5) to Section 3 of the HOOT. These new provisions state that effective July 1, 2017 HOOT does not apply to

“gross rental receipts received by an entity that is organized and operated exclusively for religious purposes and possesses an active Exemption Identification Number issued by the Department pursuant to the Retailers’ Occupation Tax Act when acting as a hotel operator renting, leasing, or letting rooms:

- (1) in furtherance of the purposes for which it is organized; or
- (2) to entities that (i) are organized and operated exclusively for religious purposes, (ii) possess an active exemption Identification Number issued by the Department pursuant to the Retailers’ Occupation Tax Act, and (iii) rent the rooms in furtherance of the purposes for which they are organized.

No gross rental receipts are exempt under paragraph (2) of this subsection (d-5) unless the hotel operator obtains the active Exemption Identification Number from the exclusively religious entity to whom it is renting and maintains that number in its books and records. Gross rental receipts from all rentals other than those described in items (1) or (2) of this subsection are subject to the tax imposed by this Act unless otherwise exempt under this Act.” See 35 ILCS 145/3(d-5).

Based upon all the information you provided regarding the GROUP (including the purposes for which the GROUP was formed and its mission), the FACILITY, and COMPANY’s rental of overnight accommodations at the FACILITY, COMPANY’s rentals of overnight accommodations would not be subject to HOOT pursuant to the provisions of subsection (d-5) of Section 3 of HOOT.

Similarly, COMPANY’s rentals would be exempt from the following additional taxes: the Metropolitan Pier and Exposition Authority Hotel Operators’ Tax (70 ILCS 210/); the Illinois Sports Facilities Hotel Tax (70 ILCS 3205/); and the Chicago Municipal Hotel Operators’ Tax (65 ICLS 5/) based on the HOOT incorporation by reference provisions set forth in those statutes. See 70 ILCS 210/13(c); 70 ILCS 3205/19; and 65 ILCS 5/8-3-13.

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:DMB:bkl