

Gross receipts from the rentals of rooms to "permanent residents" are not subject to Hotel Operators' Occupation Tax liability. A "permanent resident" is any person who has occupied or has the right to occupy any room or rooms in a hotel for at least 30 consecutive days. 35 ILCS 145/2(5), 3(f); 86 Ill. Adm. Code 480.101, 105. (This is a GIL.)

February 8, 2023

NAME/ADDRESS

Dear Mrs. XXX:

This letter is in response to your letter dated November 11, 2022, 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 Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a letter ruling on the subject." 2 Ill. Adm. Code 1200.110(a)(3)(D). The Department recently met and determined that it is declining to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions. In your letter you have stated and made inquiry as follows:

Illinois Department of Revenue Private Letter Ruling Request

Taxpayer: NAME

Request: Private Letter Ruling

PLR Requestor: NAME

Taxpayer Inquiry: Hotel Occupancy Operator Tax (HOOT)

Tax Period(s): DATE1 – DATE2 & DATE2 – DATE3

Subject of Request: Tax Refund - 30 Consecutive Days Hotel Stay / 3rd
Party Bookings Hotel Stay / Permanent Residents
Tax Exemptions

Relevant Documents: These documents are labeled by exhibits **A-1 / F-2**
and includes the following:

- Third Party Booking Receipts (**A1 - A12**)
- Hotel Registry (**B**)
- Hotel Folio's Gross Receipts (**C**)
- Proof of Debit Card Authorizations & Payments (**D1-D7**)
- Statements of Authorities (**E**)
- Relevant Authorities (**F-1/F-2**)

Involved parties:

Taxpayer - NAME

Hotel Operator – COMPANY1 **DBA** COMPANY1

Managing Members: NAME2

NAME3

NAME4

NAME5

NAME6

NAME7

Hotel General Manager: NAME8

The following statements summarize the material facts concerning the taxpayer inquiries in regards [sic] to Illinois Hotel Occupancy Operator Tax, in addition to other possible applicable rules pertaining to the taxpayer issues.

The taxpayer booked a hotel reservation through COMPANY2 which operates on behalf of its parent company COMPANY3., a third party travel technology company.

The taxpayer was attempting to acquire a temporary permanent residency with the COMPANY1 while qualifying for the purchasing of a property, utilizing the hotel as proof of consistent rent payments and proof of temporary residency.

On DATE1 the taxpayer booked the first initial reservation and checked into the COMPANY1, located at ADDRESS2.

The reservation was for a five-day stay with the departure date of DATE4.

The taxpayer then rebooked a second reservation with a check-in of DATE4, and a departure date of DATE5.

From DATE5, through DATE2, the taxpayer booked ten separate reservations over the course of thirty-five consecutive days, with a grossed rental receipt amount of \$,\$\$\$,\$\$, which included \$\$\$,\$\$ of COMPANY2 taxes and fees.

By the end of the 12th, reservation, checking in on DATE6 with a departure date of DATE2 the taxpayer contacted the hotels general manager NAME8 and requested a tax refund.

The request was forwarded to NAME2, a managing member of COMPANY1 which operates under COMPANY1.

NAME7 responded advising the taxpayer that she was not entitled to any tax refund due to booking indirectly with COMPANY2.

NAME7 went on to explain that multiple reservations, that check guests in and out, in addition to third party bookings would cause the taxpayer to forfeit their rights to tax refunds.

There were no taxes refunded or adjusted for the tax period of DATE1 to DATE2.

The taxpayer began booking directly with the COMPANY1 on DATE2 with a daily rate of \$\$ the taxpayer was assessed a daily Hotel Occupancy Operator tax of 6% which was equivalent to \$,\$\$ and a local municipal hotel tax of 6% which was also equivalent to \$,\$\$.

All of these payments made by the taxpayer included taxes.

On DATE3 a balance dispute arose due to multiple issues but primarily as a result of tax refund discrepancies.

NAME7 advised the taxpayer that the city of CITY is unincorporated and does not exempt taxes for hotel guests regardless of the length of their stay.

The first issue pertaining to the tax period of DATE1 through DATE2 supersedes 30 consecutive days.

The second issue pertaining to the tax period of DATE2 through DATE3 also supersedes 30 consecutive days.

These issues are specifically pertaining to Illinois hotel operators tax laws and rules. The facts of the issues within this request are accurate, and directly relate to the laws that govern permanent residents.

The total gross receipts from the first tax period is \$,,\$,\$,\$ & \$,,\$,\$,\$ for the second tax period. The rental gross proceeds for 73 consecutive days, DATE1 through DATE3 total \$,,\$,\$,\$.

The taxpayer has not received any tax refunds for the first tax period and only partial taxes for the second tax period of approximately \$,\$,\$,\$.

The following authorities support the taxpayer views by defining permanent residents, and explaining the grounds in which the taxing rules are applicable to a permanent resident per Illinois Compiled Statutes:

(35 ILCS 145/2) (5) Definitions.

The Illinois Hotel Operator's Occupancy Tax Act defines a permanent resident as *"any person who occupied or has the right to occupy any room or rooms, regardless of whether or not it is the same room or rooms, in a hotel for at least 30 consecutive days"*

(35 ILCS 145/3) Rate; exemptions.

- (a) A tax is imposed upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 5% of 94% of the gross rental receipts from such renting, leasing or letting, excluding, however, from gross rental receipts, the proceeds of such renting, leasing or letting to permanent residents of that hotel and proceeds from the tax imposed*

under subsection (c) of Section 13 of the Metropolitan Pier and Exposition Authority Act.(b) There shall be imposed an additional tax

- (b)** *upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 1% of 94% of the gross rental receipts from such renting, leasing or letting, excluding, however, from gross rental receipts, the proceeds of such renting, leasing or letting to permanent residents of that hotel and proceeds from the tax imposed under subsection (c) of Section 13 of the Metropolitan Pier and Exposition Authority Act.*

The CITY municipal ordinance codes below, further reiterates [sic] the Illinois department of revenue tax authorities by implementing similar exceptions for permanent residents with a hotel stay of 30 consecutive days.

§ 35.021 TAX IMPOSED, RATE; PERMANENT RESIDENTS EXCEPTED. A tax is hereby levied and imposed upon the use and privilege of renting, leasing or letting of rooms in a hotel in the city at a rate of 6% of the gross rental receipts from such rental, leasing or letting. The ultimate incidence of and liability for payment of said tax shall be borne by the user, lessee or tenant of said rooms. The tax herein levied shall be in addition to any and all other taxes. *Gross rentals shall not include proceeds from renting, leasing or letting to permanent residents of the establishment*

A 2018 Ruling from the Illinois Department of Revenue further supports the conclusion of the taxpayer views which collectively addresses all of the taxpayer's concerns and inquiries.

ST 18-0009-PLR 08/20/2018; Regardless of whether the person contracted with the hotel operator to stay 30 consecutive days at check-in, if a person qualifies as a permanent resident (stays at least 30 consecutive days at the hotel), the gross receipts received by the hotel operator would not be subject to tax for that period.

If the hotel operator charges a person the hotel tax for a room (whether or not it is the same room) for at least a 30-consecutive day period, the person shall have a legal right to claim a refund of The amount of tax collected for such room from the hotel operator.

*The statute does not require that the payment for a room be by the same entity for at least 30 consecutive days, **only** that a person occupy or have the right to occupy a room for at least 30 consecutive days.*

In conclusion the taxpayer views have been previously addressed in separate rulings issued by the department for similar matters, in that the taxpayer, regardless of the method of payments, method of bookings, frequency of payments, or changing of rooms, is entitled to a full tax refund on all gross proceeds or rent payments for the 73 - consecutive days during the tax period of DATE1 – DATE3 for both periods booked directly and indirectly with the COMPANY1, including the City of CITY hotel taxes based off the cities taxing ordinances.

This PLR Request has been prepared by Taxpayer NAME and humbly presented to the Illinois Department of Revenue in hopes that the department will issue a ruling which corresponds with the taxpayers [sic] inquiries.

I NAME, have no knowledge of any pending litigations and or audits for the tax period(s) of this request. ✓

I NAME, have not presented any request to the department prior to the present one, and to the best of my knowledge, the department has not ruled on any previous matters, or received any submissions that were withdrawn before a ruling was issued on behalf of myself. ✓

I NAME, affirm with certainty that I have researched local municipal authorities, county authorities, state authorities, and federal authorities and have been unable to locate any authorities that contradict the views within this request. ✓

DEPARTMENT'S RESPONSE:

The Hotel Operators' Occupation Tax Act (35 ILCS 145/1 *et seq.*) imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. The tax is imposed at a rate of 5% of 94% of the gross rental receipts from the renting, leasing or letting of such rooms. An additional tax is also imposed at a rate of 1% of 94% of such gross rental receipts. The gross proceeds from rental receipts for rentals to "permanent residents" are excluded from Hotel Operator's Occupation Tax liability. 86 Ill. Adm. Code 480.101(a)(1)-(2).

A permanent resident is any person who occupies or has the right to occupy any room or

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rooms, regardless of whether it is the same room or rooms, in a hotel for at least 30 consecutive days. 86 Ill. Adm. Code 480.105. Regardless of whether the customer contracted with the hotel operator to stay 30 consecutive days at check-in, if a person qualifies as a permanent resident (stays at least 30 consecutive days at the hotel), the gross receipts received by the hotel operator would not be subject to tax for that period.

If the hotel operator charges the customer the hotel tax for a room (whether or not it is the same room) for a 30 consecutive day period, the customer has a legal right to claim a refund of the amount of tax collected for such room from the hotel operator. 35 ILCS 145/3(f). However, any taxes collected by the hotel operator that are not refunded to the customer for any reason must be remitted to the Department. 35 ILCS 145/3(f). Upon an unconditional refund of the tax to the permanent resident, the hotel operator may file a claim for credit for any hotel tax paid by the operator. 86 Ill. Adm. Code 480.125(a)-(b).

Please note that the Department has no authority to compel the hotel operator to file a claim for credit. See 35 ILCS 145/7; 35 ILCS 120/6-6c; 86 Ill. Adm. Code 480.125. This procedure is a matter of business between the customer and the hotel operator. The hotel operator is not required by the tax laws to file a claim for credit. See 35 ILCS 145/7; 35 ILCS 120/6-6c; 86 Ill. Adm. Code 480.125. If a hotel operator does not agree to file a claim for credit on a given transaction, the customer must enforce his or her right to collect the taxes as the customer would any other debt owed to the customer.

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,

Katarzyna Kowalska
Associate Counsel

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