

This letter discusses liability for Hotel Operators' Occupation Tax and Retailers' Occupation Tax in regard to a religious organization's summer camp lodging provided to members and nonmembers and the selling of food and other items. See 86 Ill. Adm Code 480.101 and 130.2005. (This is a GIL.)

December 5, 2008

Dear Xxxxx:

This letter is in response to your letter dated September 5, 2007, in which you request 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.

In your letter you have stated and made inquiry as follows:

Please accept this letter as a request for a Private Letter Ruling pursuant to Illinois Administrative Code Sec. 1200.110. The ORGANIZATION requests the ruling to determine its tax liabilities under two separate Illinois taxes, (1) the Illinois Hotel Operator's Occupation Tax, and (2) Illinois Retailers' Occupation Tax. The following paragraphs provide a complete statement of the facts and other information necessary to process ORGANIZATION's two requests.

GENERAL BACKGROUND INFORMATION

A. Identification of Interested Party

The interested party is the ORGANIZATION.

B. General Information Regarding ORGANIZATION's Organizational and Operational Structure

ORGANIZATION is a subordinate organization of the ABC, a large religious denomination. It is operated as an association of churches under IRC Sec. 170(b)(1)(A)(i) providing theological oversight, pastoral care, and program resources to over three hundred churches in the state of Illinois. Since 1943, ORGANIZATION has, in furtherance of its religious purposes, operated a camping ministry providing religious and educational activities for the churches, Sunday school classes, youth organizations,

and other related ministries within ORGANIZATION's association. While ORGANIZATION provides a majority of its programmatic activities to members of ORGANIZATION, ORGANIZATION's religious programs, unlike a hospital or school, are not designed to be exclusive. Rather, the programs seek to reach beyond the ABC community exposing neighbors and friends to the tenets of the Christian faith.

To operate its camping ministry, ORGANIZATION owns two separate pieces of real property in Illinois, each designed in the tradition of a Christian youth camp with various outdoor and recreational facilities, cabins, dormitories, outdoor tent sites, and an amphitheater. The participating members of the camping programs stay overnight and engage in various religious and educational activities throughout the day and evening. For this reason, the provision of food on the premises has always been a necessary and integral part of ORGANIZATION's ministry operations. ORGANIZATION has a dining hall providing a breakfast, lunch, and dinner buffet for the participants of the various camping programs at three specific times each day. Participants must eat within these allocated times.

In addition to the dining hall, ORGANIZATION recently opened a small one-room SHOP and a small snack shop ('Cafe') in the recreational facility of one of its camps. SHOP carries: 1) a variety of utilitarian items for the convenience of campers that may have forgotten to pack something (i.e. toothpaste or soap), as well as 2) limited amount of memorabilia with the camp's name. The memorabilia are designed to serve as keepsakes for the campers and to promote ORGANIZATION's religious camping ministry. The shop is only open a few hours a day in an effort to discourage the campers, particularly children, from missing any of the daily religious activities. The cafeteria enables campers to purchase a drink, snack, or made to order sandwich and burger during the hours in which the dining hall is not open and serves as an excellent place for the participants to congregate for religious fellowship. ORGANIZATION does not operate its religious camping ministries with a view to profit. In fact, the camping ministry annually operates at a deficit for ORGANIZATION.

HOTEL OWNERS' OCCUPATION TAX REQUEST ('HOOT')

A. Description of Specific Business Reasons and Facts Related to the HOOT Request

ORGANIZATION's programmatic activities including the provision of overnight furnishings can be broken down into the following five distinct scenarios.

1. ORGANIZATION Camps for Young Adults and Children

Weeklong camps are offered to children and young adults with daily activities focused on spiritual edification as well as healthy and wholesome recreational activities for overall character, social, and cultural development. The children and/or young adults attending the camp are assigned into groups which share a small cabin or dorm room. The comprehensive fee for the camp includes the programs, food, and lodging and is paid by a respective participant's parents or a local church affiliated with the ABC, and lodging cannot be separately purchased. The program participants each receive a colored wristband which enables them to eat three buffet-style meals prepared daily at the dining hall.

2. ORGANIZATION Family Camp

In the first week of July each year, ORGANIZATION holds a weeklong FAMILY CAMP. FAMILY CAMP includes daily sermons, communal worship, and family-building

activities to develop unity and spiritual growth with the family. The comprehensive fee for the family camp is similar to the children and young adults' camp described above covering participation in the religious programs/activities, food, and lodging in cabins and dormitories. The families, similar to the children above, receive wristbands enabling them to eat at allocated times in the dining hall. However, ORGANIZATION also provides alternative options for families attending the camp with limited financial resources. Specifically, families can pay a lower fee by camping in a tent or staying in their own recreational vehicle. Families camping in a tent or a recreational vehicle may also opt out of the meals provided by the dining hall and receive a daily provision of food for the family to independently prepare at the campsite. These alternative fee options enable many lower income families associated with the ABC to participate in the spiritual development programs. Again, lodging cannot be separately purchased. As mentioned above, this camp only occurs once a year and is promoted by sending fliers to the ABC churches located in Illinois. This year, approximately one hundred and fifty families from ABC churches throughout Illinois attended FAMILY CAMP. This activity constitutes about two percent of the yearly programming.

3. Camps and Retreats Not Operated by ORGANIZATION

In addition to the aforementioned camps, ORGANIZATION also enables other religious and educational tax-exempt organizations to conduct camps and retreats at the facility. These camps and retreats are typically weekend or weeklong programs for 1) church youth groups; 2) organized men's, women's, and couples' ministries 3) church choirs; and 4) church leadership development retreats. In addition, two school districts conduct a one week 'band camp' for the school marching band. The participants use the same facilities but the programs are conducted and managed by the organization rather than ORGANIZATION. The organization pays ORGANIZATION a comprehensive fee which covers lodging, access to the recreational facilities, and food for all of the participants. These groups also receive wristbands which enable them to eat free meals each day at the dining hall.

4. Respite for Pastors of ABC

Pastors affiliated with the ABC seeking respite from their professional ministerial activities are also welcome to use ORGANIZATION's facilities for a few days as needed. Pastors are encouraged, but not required, to partake in the recreational activities/worship services offered during their stay and are also free to invite their families. The pastors and their families are not charged a fee for lodging, access to the recreational facilities, or meals. The pastors receive wristbands for the dining hall. ORGANIZATION's pastoral respite program is primarily intended to alleviate 'ministers' burnout'. Serving as the pastor of a local church is a stressful occupation and ORGANIZATION has provided a great service to many ABC pastors throughout Illinois in difficult times.

5. Family Reunions

ORGANIZATION has, from time to time, allowed extended families to use the facility for the purpose of holding a family reunion/retreat if, and only if, the camp is not otherwise being used. This service has been an accommodation to church families and is not encouraged by ORGANIZATION. Typically, an individual familiar with ORGANIZATION's ministries contacts the camp and reserves cabin space for use by a particular family and a fee is arranged to cover lodging and access to the recreational facilities for the family. Food is either included in the fee or paid for individually at the dining hall. ORGANIZATION had nine transactions of this nature from January to

August of 2007. The activity is less than one percent of the annual use of the camping facilities.

B. Analysis of Pertinent Law and Facts for HOOT

The Illinois Hotel Operator's Occupation Tax ('HOOT') imposes a tax on entities in the business of renting or leasing rooms in a hotel. 35 ILCS 145/3. The Act defines hotel as 'any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns motels, tourist homes or courts, lodging houses, rooming houses and apartment houses.' *Id.* The Department of Revenue has issued a General Information Letter imposing tax liability on a campground engaged in the business of renting cabins to the public. See PLR No. ST-96-0361, September 4, 1996. There is no exemption from HOOT simply because the lessor or the lessee of the rooms is organized as a not for profit corporation. 86 ILAC 480.101(b)(4)&(5). However, the entity must be a lessor engaged in the business of renting sleeping accommodations to the public for compensation. The Administrative Code provides two situational examples where the tax liability would not be present because the 'public' qualification is not met: 1) a private club renting rooms to its members; and 2) a college or other school renting rooms to its students.

In the five scenarios listed above, it is our belief that the first four are not subject to tax liability under HOOT since ORGANIZATION is not open to the public, and is not performing the function of a hotel. Conversely, ORGANIZATION is operating primarily to provide religious and educational programs to specifically identifiable groups. The provision of oversight furnishings for the participants is provided as an integral part of the programs and not for the purpose of renting or leasing rooms. For the foregoing reasons, it is our opinion that these transactions fall outside the scope the legislature's intent in imposing this tax. It is also our opinion that the de minimis and isolated nature of the transactions set forth in the fifth scenario (less than ten a year), do not qualify ORGANIZATION as an 'entity in the business of renting or leasing rooms' and are therefore not subject to taxation under HOOT.

RETAILERS' OCCUPATION TAX REQUEST ('ROT')

A. Description of Specific Business Reasons and Facts Related to the ROT Request

1. Description of the Dining Hall:

Nearly ninety-nine percent of the meals provided in the cafeteria-style dining hall are for the participants in the programs described in the first four scenarios listed above. ORGANIZATION estimates that between one to ten people not participating in the camping programs eat at the dining hall each day. However, these individuals are not members of the general public but are rather ORGANIZATION's employees, volunteers or other persons visiting the camp for a specific program or to provide a particular service. These individuals pay a set fee at the time of purchase to eat at the dining hall (\$6.50 for breakfast, \$8.00 for lunch, and \$8.50 for dinner; employees pay a discounted rate of \$4.00). ORGANIZATION does not advertise, solicit, or otherwise promote its dining hall to generate sales to the general public.

2. Description of SHOP

As described above, ORGANIZATION recently opened a small one-room shop known as SHOP within its recreational building. Access to the recreation building is limited to participants in the various camping programs. The shop has a small display

stocked with various utilitarian items that may be needed throughout the week such as soap, flashlights, toothpaste, mosquito repellent, swimming goggles, Bibles, devotional books, and sun screen lotion. Finally, the shop has a limited selection of t-shirts, coffee mugs, patches, and other small mementos, each displaying the camp's name or pictures of the camp which are purchased as keepsakes by the participating members. ORGANIZATION's motivation for selling these small items is not to make a profit. Conversely, ORGANIZATION offers the items to meet the needs of the participating members during their stay and to promote the organization's religious camping ministries.

3. Description of CAFE

ORGANIZATION also recently opened a small snack shop in its recreational facilities known as CAFE. CAFE sells snacks, drinks, and made to order meals such as sandwiches and burgers which are eaten at the time of sale. As stated above, access to the facility is limited to camping participants. The purpose for recently opening the café was to provide an additional option for participants that may have missed a meal at the dining hall as well as to enable an additional space where the camping participants can congregate for religious fellowship.

4. Description of Banquets

ORGANIZATION occasionally enables organizations to conduct banquets on its camping facility and provides food prepared in the cafeteria for attendees of the same. ORGANIZATION held fourteen banquets in 2006 and four to date in 2007. Ten of the eighteen banquets conducted over the last two years were for churches in which members of a congregation gathered for a special religious dinner accompanied by a time of worship. Seven of the eight remaining events were conducted by other exempt organizations such as schools, a college, and a local rotary club. The banquets range in size between twenty to a hundred guests, and the total revenue of all the banquets held for 2006 was less than seventeen-thousand dollars (\$17,000.00). In each banquet, ORGANIZATION's contractual relationship is with the organization, not the individual attendees. These organizations independently decide whether or not to charge a ticket price to attendees of the banquet. In many cases, the organizations simply request a charitable donation, or offering, during the event.

B. Analysis of Pertinent Law and Facts for ROT

Illinois law provides an exemption from Retailers' Occupation Tax liability for sales made to its members by exclusively religious, charitable, or educational organizations. See 86 ILAC 130.2005(a)(2). To date, Illinois law has defined 'membership' in terms of hospitals, schools, and museums, not for members associated with camping activities. In the instant case, ORGANIZATION is also a duly qualified religious association operated under the auspices of the ABC providing a majority of its programmatic activities to members of ABC churches in Illinois. However ORGANIZATION's camping facilities are operated as a Christian ministry and, unlike a school or hospital, are not designed to be exclusive. Rather, other individuals and organizations are welcomed and encouraged to use ORGANIZATION facilities in order to gain exposure to, and understand, the tenets of the Christian faith.

Given the uniqueness of its operations, ORGANIZATION seeks clarification of whether the participants in all of the religious and educational programs taking place at the two camping facilities constitute 'members' under ILAC 130.2005(a)(2). If included, ORGANIZATION believes that all of the dining hall sales are not subject to Retailers'

Occupation Tax since over ninety-nine percent of its sales are made to participating members of these camping programs and the facility is not open to the public. In addition, ORGANIZATION believes that, for the same reasons sales to participants at the newly-opened cafeteria known as the CAFE are also not subject to ROT.

If the Department of Revenue narrowly defines the term 'members', ORGANIZATION recognizes that the participants in the third scenario may not qualify since the participants are members of other qualified charitable, religious, and educational organizations. Nonetheless, dining hall and cafeteria sales to the participants in the first, second, and fourth scenarios would not create ROT liability since the participants in these programs are members of the ABC churches within ORGANIZATION's association.

ORGANIZATION also seeks a determination of whether sales from the store ORGANIZATION recently opened on its premises are subject to ROT liability since all of the sales are to participants in the programs. The store is not open to the public, is operated for only a few hours each day as a convenience to the campers, and provides only low-cost utilitarian items needed by the campers and a handful of ORGANIZATION memorabilia designed to promote the religious camping ministry.

Finally, ORGANIZATION requests confirmation that the organization does not incur ROT liability for banquets conducted by churches and/or other organizations that are duly recognized by the Department of Revenue as exempt from ROT. In addition, IDCAC requests a determination of whether a sales transaction for a banquet conducted by a non-exempt organization would be subject to ROT.

ADDITIONAL INFORMATION NECESSARY TO PROCESS REQUEST

A. Contracts, Licenses, Agreements, Instruments, or other Relevant Documents

Enclosed are brochures and DVD's describing the various camping ministries provided by ORGANIZATION.

B. Tax Period at Issue

The tax period at issue in both the HOOT and ROT issue is January to December of 2007 and all future years. No audit or litigation is pending with the Illinois Department of Revenue.

C. Statement of No Prior Rulings

Upon information and belief, and to the best of its knowledge, the Illinois Department of Revenue has not previously ruled on the same or a similar issue for ORGANIZATION nor has ORGANIZATION previously submitted this issue or a similar issue to the Illinois Department of Revenue.

D. Statement of Authorities

1. Illinois Hotel Operator's Occupation Tax, 35 ILCS 145/3
2. Illinois Administrative Code, 86 ILAC 480.101
3. Illinois Dept. of Revenue Private Letter Ruling, ST-96-0361, September 3, 1996.
4. Illinois Dept. of Revenue General Information Letter, ST-05-0139,
5. Illinois Dept of Revenue General Information Letter, ST-06-0011, December 29, 2005.
6. Illinois Administrative Code, 86 ILAC 130.2005(b)(1)

E. Statement of Contrary Authorities

None found.

F. Statement that No Trade Secret Information is Contained in this Request

No trade secret information is contained in this request for a private letter ruling.

G. Signature of Taxpayer's Representative

Enclosed please find a properly executed power of attorney evidencing my authority in this matter.

Thank you for your time and consideration of these two requests. Any specific questions may be forwarded to me at the address listed above.

DEPARTMENT'S RESPONSE:

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).

After reviewing the materials included with your request, the Private Letter Ruling Committee has decided not issue a Private Letter Ruling and issue a General Information Letter instead.

Hotel Owners' Occupation Tax Request

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). It has been the longstanding position of the Department that persons who rent cabins for sleeping accommodations are liable for HOOT, unless some other exemption applies.

There is no corresponding tax imposed upon hotel room occupants. Rather, a hotel operator may reimburse himself for his HOOT liability by collecting a corresponding reimbursement charge from a room occupant. Although a hotel operator may state the reimbursement charge as "hotel tax" on his bill, it is nothing more than a reimbursement charge. In our opinion, the only rental receipts not subject to the HOOT are receipts from the rental of rooms to permanent residents or to certain foreign diplomats. Given the structure of the tax, the hotel operator will incur HOOT liability on the rental receipts even when he is not reimbursed by the room occupant.

If a person engaged in the business of renting, leasing or letting rooms does not mean for its rooms to be “exclusive” (like a school, hospital or private club) but, rather, welcome and encourage “other individuals and organizations” to use its facilities (e.g. rooms), the Department would consider the facilities open to the public.

Persons or entities who do not restrict the rental of rooms only to its membership (like a school or private club) but also rent rooms to the public would incur HOOT liability on the rental receipts from all type of room rental activity, regardless of the number of times such type of rentals occur. The terms of HOOT do not provide any threshold which a person or entity that rents rooms must meet before becoming subject to HOOT. Notwithstanding, HOOT is a tax upon the receipts from renting rooms, if no receipts are received (for example, in instances where one is permitted to stay free of charge), no HOOT liability would result.

The Retailers’ Occupation Tax Request

The Illinois Retailers’ Occupation Tax (“ROT”) is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an “E” number). See 86 Ill. Adm. Code 130.2007. This number evidences that this State recognizes that the organization is exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose. See 86 Ill. Adm. Code 130.2005.

While organizations that have received an “E” number are, as a general matter, subject to ROT upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring ROT liability. Organizations that hold exemption numbers may engage in (1) sales to members, (2) noncompetitive sales, and (3) certain occasional dinners and similar activities, without incurring ROT liability. See 86 Ill. Adm. Code Sections 130.2005(a)(2) through 130.2005(a)(4).

For general information regarding sales by exempt organizations, we refer you to the Department’s regulation, “Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Persons” at 86 Ill. Adm. Code 130.2005. You may also want to review the Department’s letters on this subject.

The “Sales to Members” exemption found at 86 Ill. Adm. Code 130.2005(a)(2) is limited to sales by an exclusively religious, educational or charitable organization that are made *primarily for the purposes of the selling organization* to its members, or students in the case of a school. Please note the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. If such sales are made to the public at large, the selling activity is subject to the ROT. See Section 130.2005(a)(2) through (a)(4). If the selling organization makes sales only to members and are made for the organization's primary purpose, then it would not incur ROT liability. Whether the sales are for the primary purpose of the selling organization depends on the nature of the tangible personal property sold and how that tangible personal property is used. If an organization sells literature or other items of tangible personal property that would place them in competition with religious bookstores, the sales generally would not be primarily for the purpose of the selling organization. However, sales of choir robes or like tangible personal property to members would generally be primarily for the purpose of the selling

organization. It is important that these organizations not be cavalier in determining the nature of their sales.

If, however, organizations engage in ongoing selling activities to the public (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit ROT on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, which describes the requirements for validly executed Certificates of Resale.

Similarly, if the dining facilities provide food to both members and nonmembers, all sales will generally be taxable since the facilities are considered to be open to the public for sales tax purposes. However, if the facilities have a mechanism for identifying and documenting, at or before the time of sale, the nontaxable sales of food to members, then the sales of food to those members will not be subject to ROT liability. In such cases, sales to nonmembers will remain subject to tax.

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,

Debra M. Boggess
Associate Counsel

DMB:msk