

Section 3 of the Hotel Operators' Occupation Tax Act, 35 ILCS 145/1 et seq., states that, "the tax is not imposed upon gross rental receipts for which the hotel operator is prohibited from obtaining reimbursement for the tax from the customer by reason of a federal treaty." 35 ILCS 145/3(d). (This is a GIL.)

December 8, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 26, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

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

I am writing to seek your help regarding collecting reimbursement for hotel taxes unjustly charged to my boss, Information Division Director PERSON1, and me. You see, we are exempt from payment of hotel and other taxes as foreign representatives of the COUNTRY whose relations with the United States are covered by the ACT. (See attached identifying documents and PERSON1's June 3, 1998, letter to PERSON2 of the Taxpayer Assistance Center.) My colleague, PERSON3, spoke today with PERSON4 in the Miscellaneous Tax Department. PERSON4 suggested that we fax our documentation to you because the situation has only partially been remedied by the two Springfield hotels since PERSON5 of the Taxpayer Assistance Center contacted the hotels' general managers on June 4th.

I received a check for \$2.65 from HOTEL1, but the hotel tax that I paid totaled \$3.00, and PERSON1 has not received a check at all. Also, HOTEL2 evidently has not yet processed a credit for \$10.00 in state and local taxes charged to my credit card, which was used to cover both of our Signature Inn bills. (See attached receipts and check from HOTEL1.)

This apparent lack of compliance is quite mystifying. and PERSON5 verbally acknowledged to PERSON3 in June that the documentation we provided supported our tax exemption status, *including from hotel taxes*, according to the Illinois Department of Revenue's own Informational Bulletin FY98-27 (January 1998) on Tax Exemptions for Foreign Diplomatic and Consular Personnel.

I request that you review all of the attached documentation and call me back, this week if possible, to inform me of whether it meets your

understanding of the criteria for full tax-exempt status, as it should. Ultimately, I would like a letter from your office to be sent to HOTEL2 and HOTEL1 notifying them of our eligibility for *full* tax exemption and demanding that they immediately reimburse us in *full* for the taxes that we were forced to pay. In case the hotel managers are concerned that they might be liable for payment of these taxes, please reassure them that that will not be the case as long as they follow the Illinois Department of Revenue's guidelines for hotel taxes and waivers. I would appreciate your sending me copies of any correspondence from your office to the hotels so that I can track the progress of this situation.

Let me emphasize that it is not the money, but the principle, that matters to PERSON1 and me. It is a U.S. law, the ACT, passed by the U.S. Congress, including Illinois' elected representatives, that exempts designated employees of the COUNTRY from all taxation and affords the COUNTRY the same diplomatic privileges that existed prior to 1979. (See attached pages of ACT and checked passages.) We are only asking to be treated in accordance with U.S. law and to receive a modicum of good faith from these two hotels in your historic state capital.

Please call me at #### to advise me of the steps that the Legal Affairs Department is taking and whether you need further documentation. I look forward to hearing from you soon.

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The legal incidence of the Hotel Operators' Occupation Tax is on the hotel operator, not the renter of the room. See the enclosed copy of 86 Ill. Adm. Code 480.101. However, the hotel operator is authorized to collect a "reimbursement" from the person renting the room. Although the Hotel Operators' Occupation Tax Act authorizes hotel operators to charge this reimbursement, it does not require them to do so.

Under the Vienna Convention, some foreign diplomats are not required to pay reimbursement charges which are similar in nature to taxes. The exemption for rentals to certain diplomatic personnel applies only to diplomatic personnel possessing certain types of diplomatic tax exemption cards issued by the U.S. Department of State, Office of Foreign Missions. See the enclosed copy of FY98-27. In documenting this exemption afforded to the hotel operators, we advise that they obtain a copy of the diplomatic card, or at minimum, a description of the holder's exemption number listed on the card along with other identifying information (i.e. the holder's name, mission that they are part of, and the expiration date of the exemption card).

In conclusion, the Hotel Operators' Occupation Tax is not imposed upon charges for hotel rooms to foreign diplomats where a foreign treaty prohibits reimbursement to be collected. Therefore, hotels should not be collecting the tax from diplomats in these circumstances.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.