ST-19-0013-GIL 07/15/2019 MISCELLANEOUS

This letter discusses the Parking Excise Tax Act. 35 ILCS 525/ (This is a GIL.)

July 15, 2019

Dear Xxxx:

This letter is in response to your letter dated June 25, 2019, 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: Request for General Information Letter (GIL) Addressing Applicability of Forthcoming Parking Excise Tax to Municipally-Operated Lots

To Whom It May Concern:

My firm represents a number of local governmental entities throughout the State. We have fielded numerous inquiries from our governmental clients regarding the "Parking Excise Tax Act," which is Article 10 of SB 690 (the "Act"), which recently passed both chambers of the General Assembly and is presently awaiting the governor's signature to become law. Upon the governor's signature, which may have occurred by the time you read this, the Act will become effective January 1, 2020.

This letter constitutes a formal request for a General Information Letter from IDOR on the applicability of the parking excise tax created by the Act on parking lots, structures and areas operated directly by municipalities or other local government entities.

The Act will impose a new 6% (hourly, daily, weekly) to 9% (monthly, annual) tax on the privilege of parking vehicles in parking lots and garages throughout the State. The tax is borne by customers in the form of an extra line-item cost on each parking transaction

collected by parking lot operators and remitted to the Department of Revenue (IDOR) on a monthly basis.

Many of our municipal clients in the Chicago area operate fee-based commuter parking lots and have inquired whether the new tax applies to these lots operated directly by municipalities, or whether they are exempt. We have reviewed the proposed Act and find its applicability to municipally-owned parking lots and structures to be ambiguous. Our analysis is set forth in brief below.

Section 10-5 of the Act establishes definitions. An "Operator" under the Act, of the sort responsible for collecting and remitting the tax returns and proceeds, is in relevant part "any person who engages in the business of operating a parking area or garage…". The definition of "Person" does not include any explicit reference to governmental bodies, as does the definition of "person" in every other Illinois excise tax. This is, perhaps, suggestive of a legislative intention to exclude local government bodies operating parking lots from being subject to the new parking excise tax. On the other hand, Section 10-20(1) pointedly exempts parking operated "by the federal government or its instrumentalities" and does not contain a similar exemption for local governments or other political subdivisions of the State.

Transcripts of the floor debate over House Amendment 2 and House Amendment 3 to SB 690, which amendments create the new parking excise tax, are not yet available as of this writing. I look forward to any guidance you may be able to offer.

DEPARTMENT'S RESPONSE:

The Parking Excise Tax Act ("Act"), beginning on January 1, 2020, imposes a tax 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. 35 ILCS 525/10-10(a).

"Operator" means 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 or storage of motor vehicles, recreational vehicles, or other self-propelled vehicles, at that parking place.

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court.

The Department is in the process of drafting rules for the Act. It recognizes that the definition of "person" does not include the State of Illinois, the federal government, and units of local government. It is important to note that, although the Act exempts parking in a parking area or garage operated by the federal government or its instrumentalities that has been issued an

active tax exemption number by the Department under Section 1g of the Retailers' Occupation Tax Act, for the exemption to apply, the parking area or garage must be operated by the federal government or its instrumentalities. The exemption does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or any other manner.

Thank you for your letter. We will address the issue you raise in the Department's rules. After the Department's proposed rules have been published in the Illinois Register, the public will have an opportunity to provide comments.

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,

Richard S Wolters
Associate Counsel

RSW:rkn

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