TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 480
HOTEL OPERATORS' OCCUPATION TAX ACT

Section 480.101 Nature, Rate and Scope of the Tax

a) Nature and Rate of Tax

1) The Hotel Operators' Occupation Tax Act imposes a tax 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 the renting, leasing or letting, excluding, however, from the gross rental receipts, the proceeds of the renting, leasing or letting to permanent residents of that hotel (i.e., from persons who occupy or have the right to occupy such rooms for at least 30 consecutive days).

2) There is also imposed an additional tax 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 the renting, leasing or letting, excluding, however, from gross rental receipts, the proceeds of the renting, leasing or letting to permanent residents of that hotel.

3) A hotel is any kind of building in which the public may, for a consideration, obtain living quarters or sleeping or housekeeping accommodations (e.g., hunting lodges, camps, cabins, and third-party platform rentals of apartments, houses and rooms). (For a more complete definition of "hotel", see Section 480.105.)

4) The exclusion for permanent residents means that the tax is imposed on the business of renting rooms for use as living quarters, or for sleeping or housekeeping accommodations, when renting is done on a transient basis.

5) The tax is an occupation tax whose legal incidence is on the lessor of the rooms. Nevertheless, persons subject to the tax imposed by the Hotel Operators' Occupation Tax Act may reimburse themselves for their tax liability under the Act by separately stating the tax as an additional charge that may be stated in combination, in a single amount, with any locally imposed hotel operators' occupation tax.

6) Any amount added to a taxable rental charge and collected because of the tax also represents a portion of the gross rental receipts that are subject to the tax. However, the tax rate, instead of being a flat 6% of total receipts, has been adjusted by the General Assembly to be 5% of 94% plus 1% of 94% of total receipts, in order to avoid the payment of tax on amounts added to rental charges because of the tax.

7) Persons who engage in the business of renting, leasing or letting of rooms that are not subject to tax under the Hotel Operators' Occupation Tax Act (e.g., the rentals are only to permanent residents or the rentals are exempt as provided in subsection (b)(8)) are not required to register and remit the tax imposed by the Hotel Operators' Occupation Tax Act.

b) Scope of the Tax − Examples of Taxability and Exemption

1) Since the Hotel Operators' Occupation Tax is imposed on receipts from renting rooms for living quarters, or for sleeping or housekeeping accommodations, the tax does not apply to the receipts from the renting of rooms for other purposes, such as for use as display rooms or sample rooms, as meeting rooms, as offices or as private dining rooms.

2) Since the tax is limited to the renting of rooms to the "public", a private club that restricts its renting of rooms to its members and their guests would not be liable for the tax on its rental receipts from those rooms.

3) The business of renting rooms to the public for use as living quarters, or for sleeping or housekeeping accommodations, is subject to the tax even if the person paying for the room may be a church (except as provided in subsection (b)(8)), charity or school or some other kind of nonprofit organization, and even if the person paying for the room may be a governmental agency or instrumentality (federal, State or local, or even a foreign government).

4) There is no exemption simply because the lessor of the rooms is a nonprofit organization, such as a church (except as provided in subsection (b)(8)), charity or school. However, a college or other school is not subject to the tax on its receipts from renting rooms to its students for use as living quarters or for sleeping or housekeeping accommodations because this is not the renting of the rooms to the "public". Nevertheless, if the school rents rooms for these purposes to persons who are not enrolled with the school in courses of study for credit, that renting is not being done to students, but is being done to the "public", and the school incurs Hotel Operators' Occupation Tax liability on its rental receipts from this activity, if the lessees do not qualify as permanent residents.

5) Likewise, the renting of rooms on a transient basis to the public for use as living quarters or sleeping or housekeeping accommodations when the lessor is a charitable organization, such as the Y.M.C.A. or the Y.W.C.A., is subject to the Hotel Operators' Occupation Tax.

6) If an operator should make a separate and specific charge for the use of bedding or other facilities furnished in connection with the use of a room as living quarters or for sleeping or housekeeping accommodations, the operator's additional receipts from this source are subject to the Hotel Operators' Occupation Tax. However, that tax does not apply to the operator's receipts from selling food, beverages or other tangible personal property, nor to receipts from the selling of tickets to theatre performances or other similar activities, nor to other receipts that are not in any way reasonably connected with or attributable to the renting, leasing or letting of rooms for use as living quarters or for sleeping or housekeeping accommodations; provided that exemption for nontaxable receipts cannot be

claimed unless supported by proper books and records as provided for in Section 4 of the Hotel Operators' Occupation Tax Act and in Section 480.115.

7) The Hotel Operators' Occupation 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 (Section 3 of the Act). Under the Vienna Convention, some foreign diplomats are not required to pay reimbursement charges that are similar in nature to taxes.

   A) 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. There are 2 types of diplomatic tax exemption cards: personal tax exemption cards and mission tax exemption cards. For each of these categories, 2 types of color-coded cards are issued: a blue-striped card that allows an individual or mission to make purchases exempt from all sales and use taxes and taxes on hotel rooms and a striped card of one of several other colors (yellow, green, red, or red-green) that allows an individual or mission to make tax-exempt purchases in all purchase categories except for the restricted purchase categories printed on the colored stripe. In June 2011, the Office of Foreign Missions began issuing newly designed diplomatic tax exemption cards. In addition, the American Institute in Taiwan/Washington issues Mission Tax Exemption Cards and Personal Tax Exemption Cards to officials of the Taipei Economic and Cultural Representative Office. For examples of these cards, see 86 Ill. Adm. Code 130.Illustration A.

   B) In documenting this exemption, a hotel operator must obtain the mission's name, the card holder's name, the exemption number, the expiration date, and a photocopy of the diplomatic card.

8) Exemption from Hotel Operators' Occupation Tax

   A) *Effective July 1, 2017, the Hotel Operators' Occupation Tax is not imposed upon gross rental receipts received by an entity that is organized and operated exclusively for religious purposes and possesses an active Exemption Identification Number (ExIN) issued by the Department pursuant to the Retailers' Occupation Tax Act when acting as a hotel operator renting, leasing, or letting rooms:*

      i) *in furtherance of the purposes for which it is organized; or*

      ii) *to entities that:*
         - *are organized and operated exclusively for religious purposes;*
         - *possess an active ExIN issued by the Department pursuant to the Retailers' Occupation Tax Act; and*
         - *rent the rooms in furtherance of the purposes for which they are organized.*

B) *No gross rental receipts are exempt under subsection (b)(8)(A) unless the hotel operator obtains the active ExIN from the exclusively religious entity to whom it is renting and maintains that number in its books and records.*

C) *Gross rental receipts from all rentals other than those described in subsection (b)(8)(A) are subject to the tax imposed by the Hotel Operators' Occupation Tax Act, unless otherwise exempt under that Act.* [35 ILCS 145/3(d-5)]

EXAMPLE 1: A religious organization is organized and operated exclusively for religious purposes and has an active ExIN. It operates a retreat center and organizes and conducts a 3-day marriage counseling seminar and rents rooms to the participants of the seminar. The seminar is in furtherance of its organizational purposes. The receipts from these rentals are not subject to the Hotel Operators' Occupation Tax under subsection (b)(8)(A).

EXAMPLE 2: Religious Organization A is organized and operated exclusively for religious purposes and has an active ExIN. It operates a retreat center and rents a block of rooms to Religious Organization B. Religious Organization B is organized and operated exclusively for religious purposes, possesses an active ExIN, and provides rooms to the participants of a spiritual seminar it has organized and will conduct. The seminar furthers the organizational purposes of Organization B. Organization A's receipts from these rentals are not subject to the Hotel Operators' Occupation Tax under subsection (b)(8)(A). In this Example, if the rooms are paid for by the individual participants and not by Organization B, Organization A must keep records demonstrating that the individual to whom the room was rented was a participant in the seminar conducted by Organization B. If Organization A does not keep these records, the receipts from those rentals are taxable.

EXAMPLE 3: Religious Organization A is organized and operated exclusively for religious purposes and has an active ExIN. It operates a retreat center. Religious Organization A's organizational documents demonstrate it is organized, in part, to partner with school districts to provide one-on-one support to students to help them overcome the educational and societal challenges they face both in and out of school. Organization B is a not-for-profit organization that provides funds and support to school districts that serve at-risk students. Religious Organization A rents a block of rooms to Organization B for participants attending a seminar conducted by Organization B for educators of at-risk youth. Because the seminar conducted by Organization B is in furtherance of Organization A's organizational purposes, the receipts from the rental to Organization B are not subject to the Hotel Operators' Occupation Tax under subsection (b)(8). In this Example, Religious Organization A must keep records demonstrating that the seminar was in furtherance of its organizational purposes (e.g., a copy of its charter, mission statement, and by laws, as well as any brochures or agendas pertaining to the seminar). In addition, if the rooms are paid for by the individual participants and not by Organization B, Religious Organization A must keep records demonstrating that the individual was a participant in the seminar conducted by Organization B (e.g., a copy of the seminar's sign-in sheet).

EXAMPLE 4: A religious organization operates a retreat center, is organized and operated exclusively for religious purposes, and has an active ExIN. It rents a block of rooms to persons attending a wedding reception at the center or rents a block of rooms to a not-for-profit organization that conducts a sports-medicine seminar. The receipts from either of these rentals do not qualify for the exemption in subsection (b)(8)(A) because the rentals are neither made in furtherance of the organizational purposes of the religious organization operating the retreat center, nor made to a religious organization organized and operated exclusively for religious purposes that has an active ExIN.

D) Records

i) When a religious organization that has an active ExIN operates a retreat center, conducts an event in furtherance of its organizational purposes, and rents rooms to persons attending that event, the religious organization must obtain and maintain the following: documents demonstrating the nature of the event (e.g., brochures, pamphlets, or agendas of the event); documents demonstrating how the rental of the rooms was in furtherance of its organizational purposes (e.g., a copy of the religious organization's mission statement or charter); and the dates of the room rentals.

ii) When a religious organization that has an active ExIN operates a retreat center and rents rooms to an entity organized and operated exclusively for religious purposes with an active ExIN that conducts an event in furtherance of its organizational purposes, the religious organization operating the retreat center must obtain and maintain the following: the name, address, and phone number or email of the renting religious organization conducting the event; the renting religious organization's active ExIN; documents demonstrating the nature of the event (e.g., brochures, pamphlets, or agendas of the event); a certification that the room rentals were in furtherance of the organizational purposes of the renting religious organization; the dates of the room rentals; and any contracts between the retreat center and the religious organization that rented the rooms.

iii) When a religious organization that has an active ExIN operates a retreat center and is not conducting an event at the center but rents to another organization that conducts an event that furthers the organizational purposes of the retreat center's religious organization, the religious organization operating the retreat center must obtain and maintain the following: the name, address, and phone number or email of the renting organization conducting the event; documents demonstrating the nature of the event (e.g., brochures, pamphlets, or agendas); a certification by the religious organization operating the retreat center that the room rentals by the renting organization were in furtherance of the retreat center's organizational purposes, and documents demonstrating how the rental of the rooms was in furtherance of the retreat center's organizational purposes (e.g., the retreat center's mission statement or charter); the dates of the room

rentals; and any contracts between the religious organization operating the retreat center and the renting organization conducting the event.

c) How to Compute Applicable Tax Rate or Effective Date of New Tax

1) For the purposes of the Hotel Operators' Occupation Tax Act, any tax liability incurred in respect to the renting, leasing or letting of rooms in a hotel shall be computed by applying, to the gross receipts from the renting, leasing or letting, the tax rate in effect as of the date the lessee occupies a specific room or rooms or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. Deposits paid in advance shall be deemed to be received as rental receipts when the specific room or rooms to which the deposit is applied as rent shall be deemed to be rented, leased or let within the meaning of the preceding sentence.

2) Likewise, when something that has been exempted becomes taxable as to room renting, leasing or letting that occurs on or after some particular date, the date of renting, leasing or letting for this purpose shall be deemed to be the date when the lessee occupies a specific room or rooms or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms.

(Source: Amended at 44 Ill. Reg. 16471, effective September 25, 2020)