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SPRINGFIELD



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FILE NO. S-1110

**REVENUE:**

**Applicability of Certain  
State and Local Taxes to  
State Employees Traveling  
on Official Business**

Mr. Elliot S. Epstein  
Director, Department of Finance  
State of Illinois  
524 South Second Street  
Room 300  
Springfield, Illinois 62706

Dear Mr. Epstein:

This responds to your letter requesting my opinion as to whether state employees traveling on state business must pay certain taxes and tax related charges included in their hotel and motel bills. For the reasons developed below, it is my opinion that they must.

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Section 3 of The Hotel Operators' Occupation Tax Act (Ill. Rev. Stat. 1975, ch. 120, par. 481b.33) provides in pertinent part that:

"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 95% 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.

\* \* \*

Persons subject to the tax imposed by this Act may reimburse themselves for their tax liability under this Act by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with any tax imposed pursuant to Section 8-3-13 of the 'Illinois Municipal Code'.

\* \* \*

You ask whether hotel operators can reimburse themselves for their tax liability by including a charge for that purpose on the bills of state employees.

As you point out in your letter, sections 3 and 9 of The Hotel Operators' Occupation Tax Act (Ill. Rev. Stat. 1975, ch. 120, pars. 481b.33 and 481b.39) set out certain exemptions, but neither section specifically exempts state employees while traveling on official business. You also bring to my attention that portion of section 2 of The

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Retailers' Occupation Tax Act (Ill. Rev. Stat. 1975, ch. 120, par. 441) which provides:

"A tax is imposed upon persons engaged in the business of selling tangible personal property at retail at the rate of 4 1/4% of the gross receipts from such sales of tangible personal property made in the course of such business prior to October 1, 1969, and at the rate of 4% of the gross receipts from such sales after September 30, 1969, excluding, however, from those gross receipts, \* \* \* (b) the proceeds of such sales to any governmental body, or to any corporation, society, association, foundation, \* \* \*" (emphasis added.)

You then ask whether this provision may be construed as to exempt state employees from the hotel operators' occupation tax. In my opinion, it may not.

The Hotel Operators' Occupation Tax Act and Retailers' Occupation Tax Act are entirely distinct taxing statutes and an exemption contained in one is not ipso facto applicable to the other. Section 7 of The Hotel Operators' Occupation Tax Act (Ill. Rev. Stat. 1975, ch. 120, par. 481b.37) does list several provisions of The Retailers' Occupation Tax Act that are applicable to persons in the hotel business, but section 2 is not one of the sections listed. I therefore am

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of the opinion that nothing in The Hotel Operators' Occupation Tax Act can be construed as providing the exemption you suggest. Further, I find nothing in the Illinois Constitution of 1970 requiring such an exemption in the absence of specific statutory authorization.

It has long been the rule in Illinois that while the General Assembly may exempt governmental property from property taxes, such property is not automatically exempt. Rather, governmental property, like private property, is only exempt if the legislature so provides by statute. (See, People ex rel. Paschen v. Hendrickson-Pontiac, Inc., 9 Ill. 2d 250; People ex rel. Olmsted v. University of Illinois, 328 Ill. 377; Sanitary Dist. of Chicago v. Gibbons, 293 Ill. 519.) The basis for these decisions was the permissive language of section 3 of article IX of the Illinois Constitution of 1870 which stated in pertinent part that:

"The property of the state, counties, and other municipal corporations, both real and personal,  
\* \* \* may be exempted from taxation; \* \* \*

That same permissive language has been carried over in the new constitution in section 6 of article IX, dealing

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with exemptions from real property taxes. In its majority report to the convention the Committee on Revenue and Finance noted that the first paragraph of section 6 is identical in substance to section 3 of article IX of the 1870 Constitution and that "the first sentence [of section 6] permits the General Assembly to exempt governmental property from taxation". (emphasis added.) VII Record of Proceedings 2150.

It therefore is apparent that with regard to property tax exemptions the rule in Illinois continues to be that governmental property is not exempt absent a specific statutory provision exempting it. Furthermore, it is my opinion that this same rule applies with regard to the applicability of non-property taxes to the state and its personnel. Certainly nothing in the Constitution indicates an intention on the part of the convention to require a different approach to non-property tax exemptions. Section 2 of article IX of Illinois Constitution of 1970 dealing with non-property taxes says only that exemptions "shall be reasonable". In addition, it is evident from the majority proposal of the Revenue and

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Finance Committee (VII Record of Proceedings 2075) and the floor debates (III Record of Proceedings 1863) that the convention intended that the task of specifying these exemptions should be left entirely to the legislature. Since the legislature has not provided an exemption from The Hotel Operators' Occupation Tax Act for state employees traveling on state business, it is my opinion that they must pay charges imposed pursuant to section 3 of that Act.

You next ask if state employees traveling on official business must pay charges or taxes imposed by hotel operators in Illinois pursuant to municipal ordinance, and once again, in my opinion, the answer to your question is yes.

The only state statute currently in effect relevant to your inquiry is section 8-3-13 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 8-3-13) which provides in relevant part:

"The corporate authorities of any municipality containing 500,000 or more inhabitants may impose a tax prior to July 1, 1969, upon all persons engaged in such municipality in the business of renting, leasing or letting rooms in a hotel, as defined in 'The Hotel Operators' Occupation Tax Act,' \* \* \*

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**\* \* \* In the administration of, and compliance with, this Section, the Department and persons who are subject to this Section shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in 'The Hotel Operators' Occupation Tax Act' (except where that Act is inconsistent herewith), as the same is now or may hereafter be amended, \* \* \*** (emphasis added.)

I construe the underlined portion of section 8-3-13 to mean that the exemptions found in The Hotel Operators' Occupation Tax Act are applicable to any taxing ordinance passed pursuant to section 8-3-13. Since state employees are not exempt from the provisions of the state Act it is my opinion that they are not exempt from a tax passed by a municipality pursuant to section 8-3-13.

Effective July 1 of 1976, section 8-3-14 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 8-3-14) will give to those municipalities having at least 25,000 and less than 500,000 inhabitants the power to:

**\* \* \* [I]mpose a tax upon all persons engaged in such municipality in the business of renting, leasing or letting rooms in a hotel, as defined**

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in 'The Hotel Operators' Occupation Tax Act,'  
at a rate not to exceed 5% 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, \* \* \* "

Once again, no provision is made for excluding from gross rental receipts those attributable to state employees. I therefore am of the opinion that effective July 1, state employees will be bound to pay charges imposed by hotel operators pursuant to section 8-3-14.

Finally, it is necessary to examine your second question in light of the power to tax given home rule municipalities under section 6(a) of article VII of the Illinois Constitution of 1970. Any taxing ordinance affecting the renting of rooms passed by a home rule municipality must be designed so that the incidence of the tax falls on the consumer and not the hotel operator. (See S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56; Paper Supply Co. v. City of Chicago, 57 Ill. 2d 533.) This is necessary in order to comply with section 6(e)2 of article VII of the Illinois Constitution of 1970 which provides that:



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"A home rule unit shall have only the power that the General Assembly may provide by law \* \* \* (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations."

Once such an ordinance is enacted by a home rule municipality there is nothing in the Constitution or laws of Illinois requiring that state employees traveling on state business be exempted from its operation. It is therefore my opinion that state employees must pay such taxes imposed by municipalities pursuant to their home rule powers.

Very truly yours,

A T T O R N E Y   G E N E R A L