



April 19, 2017

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Re: [REDACTED]

Dear Ms. Martire:

I am writing in response to your letter of March 21, 2017 ("Request") (copy attached), requesting a private letter ruling ("PLR") concerning the application of the Chicago Hotel Accommodations Tax ("Hotel Tax" or "Tax"), Chapter 3-24 of the Municipal Code of Chicago ("Code"), to the charges imposed by [REDACTED] for the use of its retreat and conference center (the "Center"). As discussed below, based on the facts set forth in your Request, we are of the opinion that charges imposed for the use of the Center are not subject to the Hotel Tax.

The Hotel Tax ordinance provides:

"Hotel accommodations" means a room or rooms in any building or structure kept, used or maintained as or advertised or held out to the public to be an inn, motel, hotel, apartment hotel, lodging house, bed-and-breakfast establishment, vacation rental as defined in Section 4-6-300, shared housing unit as defined in Section 4-14-010, dormitory or similar place, where sleeping, rooming, office, conference or exhibition accommodations are furnished for lease or rent, whether with or without meals. Code Section 3-24-020(A)(4).

Although the ^{Step}Center provides sleeping and conference accommodations for the guests who attend the retreats that it hosts, the ^{Step}Center is not in a building or structure "kept, used or maintained as or advertised or held out to the public to be an inn, motel, hotel ... or similar place." Id. Instead, it is in a building or structure kept, used and maintained as a religious facility, and the sleeping and conference accommodations are incidental to its religious mission and functions. In our opinion, it was not the intent of the City Council to have the Hotel Tax apply in such a situation.

This opinion is based on the law as of the date of this letter and the facts as represented in your Request being accurate and complete. The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to Section 3-4-325 of the Code.

Very truly yours,


Weston W. Hanscom
Deputy Corporation Counsel
(312) 744-9077

cc: Joel Flores, Department of Finance

McDermott Will & Emery

Boston Brussels Chicago Dallas Düsseldorf Frankfurt Houston London Los Angeles Miami
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March 21, 2017

BY HAND DELIVERY

Tax Policy Section
City of Chicago Department of Revenue
Room 300
DePaul Center
333 South State Street
Chicago, IL 60604-3977

Re: Request for Private Letter Ruling

To the Tax Policy Section of the City of Chicago Department of Revenue:

McDermott Will & Emery, LLP writes to request a private letter ruling that [REDACTED] is not obligated to collect or remit the Chicago Hotel Accommodations Tax imposed by Chi. Mun. Code Sec. 3-24-010, *et seq.* ("Chicago Tax"). A completed power of attorney form is enclosed with this submission. To the best of its knowledge and belief, CCI is not under audit or investigation by the Department of Revenue ("Department"). In support of its request for ruling, [REDACTED] states as follows:

Statement of Facts and Other Pertinent Information:

The [REDACTED] is a Congregation of [REDACTED] some of whom are retired from active ministry, who reside together and gather daily for prayer and the Eucharistic celebration at various locations across the United States, including in Chicago. The mission of the [REDACTED] is to "work for the transformation of the world by awakening and deepening faith with and for the people of our times." In Chicago, the [REDACTED] operations are run by [REDACTED] which is an Illinois not-for-profit corporation.¹

The [REDACTED] Chicago address is at [REDACTED]. The [REDACTED] have owned property at this location for nearly 100 years. The location includes a Convent, a Chapel, and since 2002, a retreat and conference center (the "Center"). Consistent with the [REDACTED] mission, the Center provides a place for people to find space for quiet, reflection and prayer. The Center offers group retreats and days of prayer. It is also available to

[REDACTED] is a 501(c)(3) tax-exempt religious organization which has also qualified for an Illinois Sales Tax Exemption (No. E9990-1137-07). Although the Congregation of the [REDACTED] is authorized by the [REDACTED] Church, it does not receive any financial support from the [REDACTED] Church or any of its [REDACTED].

individuals for private spiritual retreats, and the Chapel is open for daily mass and prayer. In addition, [REDACTED] offers the Center for rental by certain other not-for-profit organizations for activities, including for overnight stays.

The Center is housed in the same building as the Chapel and the Convent. The location is not kept, used or maintained as, advertised, or held out to the public as a hotel or conference facility. In particular, the Center is not available for rental by members of the general public. In order to rent the facility, interested persons/organizations must contact [REDACTED] directly to request authorization. To that end, the [REDACTED] website provides, in relevant part:

We welcome adult religious groups, as well as non-profit groups that focus on personal growth, justice, education, the environment, community organizing, health care, neighborhood development, volunteer service and other areas of human endeavor.²

The website does not permit on-line reservations. Rather, persons/organizations interested in renting the Center are directed to contact the [REDACTED] staff, and rentals are not approved unless they are deemed to fall within the [REDACTED] mission.

[REDACTED] traditionally has not collected or remitted any state or local hotel taxes on its rentals of the Center. [REDACTED] did not collect or remit state or local hotel tax based on its belief that its rentals were exempt from tax because [REDACTED] is an Illinois not-for-profit religious organization with an active sales tax exemption, because the Center is not available for rental to the general public, and because [REDACTED] typically rents to individuals or groups for religious purposes, or to not-for-profit organizations which themselves have Illinois sales tax exemptions.

In June 2016, [REDACTED] received a Compliance Alert from the Illinois Department of Revenue (No. 2016-15) regarding the Illinois Hotel Operators' Occupation Tax (35 ILCS 145/1, et seq.) ("HOOT"). As a result of its receipt of this Compliance Alert, and subsequent discussions with the Illinois Department of Revenue, effective January 1, 2017, [REDACTED] registered with the State of Illinois and began to collect and remit the HOOT and related state-imposed hotel occupancy taxes to the State of Illinois.

[REDACTED] subsequently also attempted to obtain a business license from the City of Chicago, which is a prerequisite for remission of the Chicago Tax. On February 27, 2017, however, [REDACTED] was informed that its business license registration application was rejected because the City of Chicago does not license any religious orders or religious activities. A copy of the email that [REDACTED] counsel received from the City reflecting this determination is enclosed with this submission. [REDACTED] followed up with the City regarding the denial of its business license application and now understands that its application will be processed.

[REDACTED]

[REDACTED]

Earlier this year, [REDACTED] wrote to the City requesting forgiveness of any past tax obligation for the Chicago Tax for reasons of financial hardship. By this communication, and for the reasons set forth below, [REDACTED] also requests a private letter ruling from the City that it is not obligated to collect or remit the Chicago Tax.

Statement of Authorities Supporting Taxpayer's Views:

The Chicago Tax is imposed upon renters of "hotel accommodations" in the City of Chicago at the rate of four and one-half percent of the gross rental or leasing charge. The Tax defines a "hotel accommodation" as:

"Hotel accommodations" means a room or rooms in any building or structure kept, used or maintained as or advertised or held out to the public to be an inn, motel, hotel, apartment hotel, lodging house, bed-and-breakfast establishment, vacation rental as defined in Section 4-6-300, shared housing unit as defined in Section 4-14-010, dormitory or similar place, where sleeping, rooming, office, conference or exhibition accommodations are furnished for lease or rent, whether with or without meals.

3-24-020(A)(4). To the best of [REDACTED] knowledge and understanding, there are no regulations or rulings that provide additional details regarding the City's interpretation of this defined term.

The Center is not a "hotel accommodation" within the meaning of the Chicago Tax because it is not "kept, used or maintained," or "held out to the public" as an inn, motel, hotel, or other accommodation available for public rental. As explained above, the Center is located in a building which also houses the Convent and the Chapel. [REDACTED] does not accept reservations from the general public. Rather, persons or organizations interested in renting the Center must contact the Center's staff and explain the purpose of the requested rental. Rental requests that do not fit the Cenacle's purpose are and have been rejected. Many of its rentals are to members of the [REDACTED] faith, including individuals and groups who rent the Center for private spiritual retreats involving programming organized and run by the [REDACTED]

Although [REDACTED] currently is collecting and remitting the HOOT and other state hotel occupancy taxes, this does not suggest it must also collect and remit the Chicago Tax, because the Chicago Tax differs from the HOOT in many significant respects. The Chicago Tax is imposed on the end user, while the HOOT is imposed on the hotel operator. In addition, the Chicago Tax is imposed upon the "gross rental or leasing charge," which includes charges from the rental of hotel rooms, conference rooms and exhibition space, while the HOOT only is imposed on receipts for hotel room rentals. The tax rate also differs. In addition, the two taxes do not use the same defined terms. The Chicago Tax is imposed based on defined terms including "hotel accommodations," "gross rental or leasing charge," and "operator." In contrast, the HOOT is imposed based on defined terms which include "hotel," "occupancy," "room or

[REDACTED]

rooms” and “rent” or “rental.” The only term common to both taxes – “person” – is defined differently.

Because of these differences, Illinois Department of Revenue (“IDOR”) pronouncements regarding its interpretation of the HOOT, and in particular the application of the HOOT to “public” rentals,³ are neither binding, nor persuasive indicators, of the manner in which the Chicago Tax should be interpreted in response to this request for private letter ruling.

In response to concerns expressed by [REDACTED] and other religious not-for-profit organizations regarding the application of the HOOT, IDOR has reviewed and approved proposed legislation which would amend the HOOT to exempt religious organizations from the obligation to collect and remit the tax when renting in furtherance of their purpose, or renting to other not-for-profit religious organizations. A copy of the proposed legislation (Senate Bill 587, Amendment #1) is enclosed with this submission. The bill was passed by the Senate Revenue Committee without objection on March 16, 2017. It is currently scheduled for second reading by the full Senate on March 28.

Statement of Contrary Authority

To the best of [REDACTED] knowledge and belief, there are no contrary authorities supporting the conclusion that [REDACTED] is subject to the Chicago Tax.

List of Documents Submitted with this Request for PLR:

The documents submitted with this request include the following:

1. Completed Power of Attorney
2. City of Chicago business license rejection email
3. Pending legislation to amend the HOOT (SB 587, Amendment #1)
4. IDOR June 2016 Compliance Alert and August 31, 2016 Q&A.

For all the foregoing reasons, we respectfully request that the City issue a private letter ruling confirming that [REDACTED] has no obligation to collect or remit the Chicago Tax on its rentals of the Center.

³ IDOR maintains that the HOOT is applicable to *all* rentals made by the Center because *some* of the Center’s rentals are to third parties who use the Center for meetings which involve third party programming. *See, e.g.*, IDOR’s August 31, 2016 Q&A regarding the June 2016 Compliance Alert (copy enclosed). IDOR has maintained this position even though [REDACTED] restricts its rentals to third party not-for-profit organizations that run programming consistent with the [REDACTED] mission. There is no similar ruling or construction of the Chicago Tax.

[REDACTED]

Tax Policy Section
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Sincerely,

Mary Kay Martire

Mary Kay Martire

Enclosures

cc: Weston Hanscom (via email, w/ enc.)

