



DEPARTMENT OF LAW
CITY OF CHICAGO

September 23, 2021

By: Email

Stanley R. Kaminski
Duane Morris
190 South LaSalle Street, Suite 3700
Chicago, IL 60603
SRKaminski@duanemorris.com

Re: [REDACTED]

Dear Stan:

I am writing in response to your letter of August 30, 2021 ("Request") (copy attached), requesting a private letter ruling ("PLR") concerning the application of the Chicago Parking Lot and Garage Operations Tax ("Parking Tax"), Chapter 4-236 of the Municipal Code of Chicago ("Code"), to the operations of [REDACTED] at the garage located at [REDACTED] in Chicago.

Based on the facts set forth in your Request, along with the additional facts set forth in your email of September 9, 2021 (copy also attached), we agree that [REDACTED] is applying the residential exemption to the Parking Tax in compliance with the Parking Tax Ordinance and Parking Tax Amended Ruling #1.

This PLR is based on the text of the Parking Tax Ordinance and Parking Tax Amended Ruling #1 as of the date of this letter and the facts as represented in the Request and your email being accurate. The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to Code Section 3-4-325. Please be advised, however, that pursuant to Uniform Revenue Procedures Ordinance Ruling #3, Section 12, reliance on written advice in a PLR that is ten or more years old shall be deemed not reasonable unless ratified in writing by the Corporation Counsel's Office.

Very truly yours,

Weston W. Hanscom

cc: Department of Finance

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FIRM and AFFILIATE OFFICES

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August 30, 2021

Chicago Department of Finance
Tax Policy Section
DePaul Center
333 South State Street, Suite 300
Chicago, Illinois 60604-3977

Re: Private Letter Ruling Request for [REDACTED]

Dear Sir/Madame:

This is a request for a Private Letter Ruling (“Ruling Request”) under Sections 5 and 6 of Uniform Revenue Procedures Ruling Number 3. This Ruling Request is being made on behalf of my client, [REDACTED] Chicago, Illinois. This company is not the subject of any audit or investigation by the Chicago Department of Finance (“DOF”). Attached is my power of attorney for [REDACTED] (Exhibit A). This Ruling Request asks for a Private Letter Ruling be issued to [REDACTED] on the application of the residential parking exemption under the Chicago Parking Lot and Garage Operations Tax (“Parking Tax”) in light of the issuance of Chicago Parking Lot and Garage Operations Tax Amended Ruling # 1, effective July 1, 2021 (“Amended Ruling #1”).

RELEVANT FACTS

[REDACTED] is an operator of parking lots and garages in Chicago, Illinois. It provides parking to the general public, residents of apartment buildings and condominium building, as well as parking to various groups such as hospital employees, government employees, hotel employees, etc. [REDACTED] parking rates vary based on number of factors. This includes an evaluation of the presumed length of time parking will be likely used by the class of parkers by past practice and experience, the type of parker purchasing the parking, and in some instances the location in the parking lot that is used by the parker. For example, residential monthly parking is totally different from monthly commuter parking. A resident by practice and experience uses the parking space for a 24/7 period, including overnight, so the normal use of the space, and the period of maintenance and security over that occupied space is much higher than a commuter that pays for monthly parking and who

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by normal practice and experience uses the space for only a few hours a day for 5 days a week. Thus, the parking space routinely used by a resident parker over the weekend, is normally NOT used by the commuter parker and hence can be resold by the lot operator to generate additional parking revenue. In short, while both may be monthly parking, it is extremely rare that a commuter monthly parker will use the space for anywhere near the time a resident uses the parking space, as a result, the charge for residential monthly parking will generally be higher. Moreover, in some cases, a monthly residential parker may have a special parking location to also account for a higher rate.

In addition, there are special parking rates for government, hospital, healthcare, hotel, restaurant, retail, office and other groups that is offered by [REDACTED]. There are actually dozens of possible rates depending on location. These monthly rates, while similar to residential monthly parking, are not directly comparable public parking to residential parking since they are offered to certain types of commuters that by normal practice and experience will be using the parking for specific time periods (e.g., 9 am to 6 pm, or 7 pm to 5 am, etc.) and not 24/7.

Attached are the current terms and conditions for monthly parking at [REDACTED] lots and garages (Exhibit B). As you can see they are basically the same for all monthly parkers since practice and experience dictates the rate. However, the terms and conditions of these parking leases do state that those monthly parkers that are NOT residential monthly parkers that plan to use a space for overnight storage or 48-hour consecutive parking are required to notify [REDACTED] for permission. This information can also be used in the future to help determine if the parker is really a commuter parker or a residential parker or a different type of parker that should be subject to a different rate. Parkers that regularly need 24/7 parking, like residential parkers, increase the cost for [REDACTED] and depending on their situation, will likely subject them to a higher rate for parking. The list of monthly parking rates for one of [REDACTED] locations is attached (Exhibit C).

[REDACTED] also operates some parking lots both within two blocks and more than two blocks from the residential building that a resident is purchasing monthly parking from [REDACTED]. The parking is provided based on an understanding between [REDACTED] and the parkers Condominium Association or Landlord to provide such residents and their guests parking. These understandings are sometimes in writing or sometimes oral. The Condominium Association or Landlord usually supplies a list of such residents, or sometimes electronically confirms such resident, or sometimes the resident provides a lease or other documentation that the parker is a resident of the building at issue. The parker then enters into a parking agreement with [REDACTED].

OPINIONS REQUESTED

1. The commuter and special group category monthly parking rates offered by [REDACTED] as detailed herein are not considered comparable public parking rates to residential monthly parking rates offered by [REDACTED] as that term is used in the new Amended Ruling # 1.

2. As long as [REDACTED] has an understanding or agreement with the Landlord or Condominium Association to provide parking to residents, has documentation either from the residential monthly parker or from the Landlord or Condominium Association confirming that the parker is a resident of the building for which parking is being provided for, and [REDACTED] has a signed monthly parking agreement with that resident parker, the residential exemption will apply to that residential parker or its guest, and also that this is sufficient to overcome the two block presumption in the Amended Ruling #1.

RELEVANT LAW AND ANALYSIS

Background

The Chicago Parking Tax imposes a tax “upon the use and privilege of parking a motor vehicle in or upon any parking lot or garage in the City of Chicago.” Chgo Mun. Code, Sec. 4-236-020(a). However, Section 4-236-020(c) provides:

(c) The tax imposed by this chapter shall not apply to: (i) residential off-street parking of house or apartment tenants or condominiums, wherein an arrangement for such parking is provided in the house or apartment lease or in a separate writing between the landlord and tenant, or if in a condominium between the condominium association and the owner, occupant or guest of a unit, whether the parking charge is payable to the landlord, condominium association, or to the operator of the parking lot or garage;

The original underlying purpose of this exemption was to make sure there was sufficient off-street parking available for residents and guests of apartment and condominium buildings as required under the Chicago Zoning Ordinance. *See*, Chicago Municipal Code, (2009), Section 4-236-020(c). Under this residential exemption, the parking lot and garage operator do not have to collect and remit Parking Tax on parking agreements entered into with residents and guests of apartment and condominium buildings when parking was provided by or arranged through a Condominium Association or Landlord to the resident or guest. When provided directly by a third party parking operator, the operator had to verify the residency of the parker and enter into a parking agreement with the parker. This verification could take many forms, but obtaining a list from the Landlord or Condominium Association of the buildings’ residents was always deemed sufficient by the Chicago Department of Revenue and then DOF.

Amended Ruling #1

In 2021, the DOF issued new Amended Ruling #1 to prospectively address some issues with respect to the claiming of the residential exemption. This Ruling added certain new terms and presumptions about the applicability of the exemption. While the Chicago Law Department issued a letter (General Information Letter or “GIL”) to clarify some points in the Amended Ruling, it instructed that to get a more detailed answer a private letter ruling request should be requested.

(See, Letter from Wes Hanscom, dated July 15, 2021.) The GIL, however, did address some of the issues, such as the two block presumption between the parking garage and the residential building can be measured either from the address of the buildings or closest corners. Similarly, that this presumption did not add any new requirements to the exemption and that the exemption can be claimed if the documentation requirements are met, and this will overcome the presumption. In addition, that the exemption can be claimed by any sufficient documentation of residency and does not have to be a list provided by the Landlord or Condominium Association. Finally, to claim the exemption involving a third party garage operator, only a written agreement for monthly parking between the residential parker and the garage operator is needed, and no written agreement between the residential parker and the Landlord or Condominium Association is needed.

Nevertheless, [REDACTED] believes additional issues must be clarified for its situation. [REDACTED] needs clarification of the terms “comparable parking” and “comparable public parking” used in Sections 6 and 7 of Amended Ruling #1, as well as the documentation requirement of Section 6. Our understanding of this “comparable public parking” concept is that it compares different types of monthly “public” parking (as opposed to special group parking) to see if residential monthly parking is being charged a higher rate than compared to identical non-residential public monthly parking offered to any member of the general public, for the same parking space, with the same terms and conditions and restrictions, and with the same likely 24/7 use of the parking space based on practice and experience.

As noted above, [REDACTED] provides residential monthly parking but in some of its garages and lots this residential parking rate is at a higher rate than the rate for commuter monthly parking or special category monthly parking, such as for government employees, hospital or healthcare workers or hotel employees. As again noted above, these different categories of parkers, by normal practice and experience, use the parking differently than residential monthly parking that use the parking 24/7. Because of this [REDACTED] incurs more costs and obtains less overall parking revenues for its parking spaces when it leases monthly to a resident. Therefore, since commuter parking by practice and experience is not 24/7, this determines the actual parking rate. And, in some cases, the location of the residential parking may be a factor in the parking rate, since the residential parking may be in a special location.

Moreover, while the current written terms and conditions for the monthly parking are mostly the same for all parkers, there are some additional restrictions recently added for non-residential monthly parking. [REDACTED] states in its terms and conditions that non-residential parkers that plan to use the space for overnight storage or forty-eight (48) consecutive hours must notify [REDACTED] for permission. Violations of this provision, per the terms and conditions, can result in the termination of parking privileges. This information should also operate in the future as a check mechanism to notify [REDACTED] as to whether the parker may be a 24/7 parker (e.g., residential parker), and if that occurs regularly, should possibly be moved to a different parking rate.

Similarly, special monthly rates for government, hospital, hotel and other groups are done based on [REDACTED] experience with such parkers to set a complete rate and a rate that reflects [REDACTED] cost and the normal use of the parking space. Thus, the monthly commuter parking and the special monthly rate parking for special groups or categories of parkers are not "comparable public parking" rates to residential monthly rates because of the factors that go into their determination and the normal use of the spaces, based on practice and experience. The City noted in the July 15, 2021 GIL, that it "sounded reasonable" to conclude that such commuter monthly parking and special category monthly parking are not "comparable parking" or "comparable monthly parking" under Amended Ruling #1.

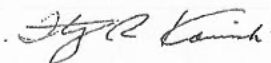
As to the documentation for the residential exemption, [REDACTED] enters into either a written or oral arrangement with the Landlord or Condominium Association to provide for residential parking, it then obtains either a list of residents (normally electronic list) from the Landlord or Condominium Association for the parking, a confirmation from the Landlord or Condominium Association of a specific resident, or [REDACTED] has the resident provide a lease or other documentation to demonstrate it's a resident of the building. [REDACTED] then enters into the written monthly parking agreement with the resident. [REDACTED] believes this should be sufficient documentation for the residential exemption. In the July 15, 2021 GIL, the City acknowledged that the garage operator may have other books and records that establish the residential exemption and that the operator was not limited to an approved list from the Landlord or Condominium Association.

CONCLUSION

[REDACTED] asks that the DOF issue a private letter ruling confirming the above stated understanding of the application of the Chicago Parking Tax.

Thank you again for your time and consideration of this matter.

Very truly yours,



Stanley R. Kaminski

SRK/rlc
Attachments
cc: Wes Hanscom



City of Chicago
Department of Finance

Power of Attorney and
Declaration of Representative

PART I. - Power of Attorney

Taxpayer(s) name, identifying number, and address including ZIP code (Please type or print)

[Redacted]

hereby appoints (name(s), address(es), including ZIP code(s), and telephone number(s) of individual(s))*

STANLEY R. KAMINSKI, DUANE MORRIS, LLP,
190 S. LaSalle ST., SUITE 3700, CHICAGO, IL

60603

Tel.: 312-499-0105

as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Chicago Department of Finance for the following tax matter(s). Specify the type(s) of tax and year(s) or period(s).

Type of Tax	Year(s) or Period(s)
PARKING TAX	2021 - FORWARD

The attorney(s)-in-fact (or either of them) are authorized, subject to revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters (excluding the power to receive refund checks, and the power to sign the return, unless specifically granted below).

Send copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

- 1 the appointee first named above, or
- 2 (names of not more than two of the above named appointees).....

Initial here if you are granting the power to receive, but not to endorse or cash, refund checks for the above tax matters to:

- 3 the appointee first named above, or
- 4 (name of one of the above designated appointees).....

This power of attorney revokes all earlier powers of attorney and tax information authorizations on file with the Department of Finance for the same tax matters and years or periods covered by this power of attorney, except for the following:

.....
.....
(Specify to whom granted, date, and address including ZIP code, or refer to attached copies of earlier powers and authorizations.)

Signature of Stanley R. Kaminski (partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.)

X [Signature] [Title] 8/9/2021
 (Signature) (Title, if applicable) (Date)
 (Also type or print your name below if signing for a taxpayer who is not an individual.)

.....
.....
(Signature) (Title, if applicable) (Date)

*You must authorize an organization, firm, or partnership to receive confidential information, but your representative must be an individual who must complete part II

Exhibit A.

TERMS AND

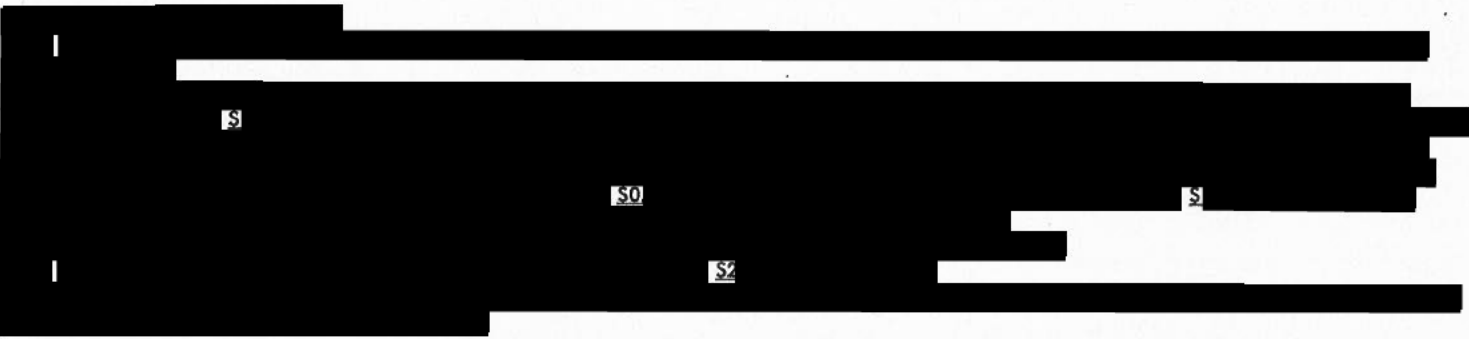
For Office 

CONDITIONS



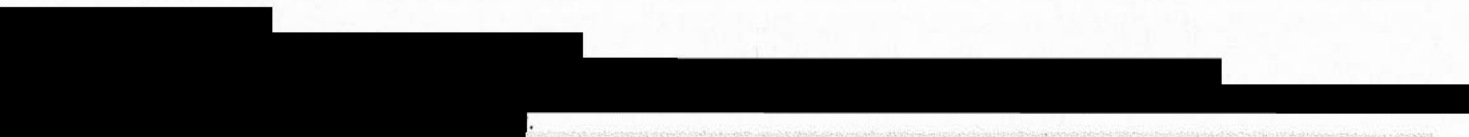




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D. For non-residential monthly parkers, overnight storage of a vehicle or the continuous use of a parking space for 48 consecutive hours or more is not permitted without prior approval of  Parking.



Exhibit B.



& Date: _____ **Initial & Date:** _____

Parkers by Rate Code: [REDACTED] *

Active Parkers as of 6/17/2021

Rate Code	Active Parkers
Construction Workers \$195.00	1
[REDACTED] \$220.00	1
Exempt Motorcycle - Resident \$100.00	4
Exempt Non Reserved - Resident \$270.00	232
Exempt Related \$155.00	1
Exempt Reserved - Resident \$365.00	4
Non Reserved - Resident \$318.60	5
Non -Tenant \$310.00	3
[REDACTED] Employee \$100.00	67
[REDACTED] \$150.00	23
Special Resident Rate \$210.00	1

— Public

* Includes TAXes where Applicable

Exhibit C.

Jill Murray

From: Kaminski, Stanley <SRKaminski@duanemorris.com>
Sent: Thursday, September 9, 2021 4:34 PM
To: Weston Hanscom
Cc: Steven Tomiello
Subject: RE: PLR request [REDACTED]

[Warning: External email]

Wes

Here are [REDACTED] answers to your questions. If you have any questions please call or let me know.

YOUR QUESTION ARE:

- For each category of monthly parker listed, a detailed description of what the name of the category means.
- For each category, a statement of whether [REDACTED] considers it exempt, along with an explanation of why or why not.
- For each category that [REDACTED] does not consider exempt, a statement of whether [REDACTED] considers it comparable to exempt parking, along with an explanation of why or why not.
- For each category that [REDACTED] considers exempt, an explanation of how the rate gives the benefit of the exemption to the parker. In other words, is the rate 20% lower than it would be for that category of parker if it were not exempt and, if so, what facts support that conclusion?
- A representative sample of the type of documentation that [REDACTED] uses to confirm exempt status.

For the Sample garage at issue, the Active Parkers as of 6/17/2021:

Rate Code	Active Parkers
1. Construction Workers \$195.00	1
2. [REDACTED] \$220.00	1
3. Exempt Motorcycle - Resident \$100.00	4
4. Exempt Non Reserved - Resident \$270.00	232
5. Exempt Related \$155.00	1
6. Exempt Reserved - Resident \$365.00	4
7. Non Reserved - Resident \$318.60	5
8. Non -Tenant \$310.00	3
9. [REDACTED] Employee \$100.00	67
10. [REDACTED] \$150.00	23
11. Special Resident Rate \$210.00	1

ANSWERS TO YOUR QUESTIONS ABOVE FOR EACH PARKER CLASS ABOVE:

For #1.

These are construction workers that are working near the parking garage.

No exemption apply to them,

These are not comparable to a residential parker, since they only park for a portion of the day and usually 5 days a week, rather than 24/7 use for a residential parker.

For #2.

These are employees of [REDACTED]

No exemption applies to them

These are not comparable to a residential parker, since they only park for a portion of the day and usually 5 days a week, rather than 24/7 use for a residential parker.

For #3.

These are residents of a nearby apartment building.

Because they are residents of a residential apartment building or condo, LAZ treats them as exempt from parking tax.

Because a resident parker will use the parking space for a 24/7 period (24 hours a day, 7 days a week for 30 days a month) or almost 50% longer than other types of commuter parkers (10 to 12 hours a day , 5 days a week or 20 days a month) , the residential rate should logically be at least 33% to 40 % higher than other monthly parkers, factoring in the lower weekend parking costs. In other words, since the resident parker will use this space for a much longer period, this results in the loss of significant parking revenues every month in that these now used parking spaces can no longer be resold. Nevertheless, [REDACTED] substantially discounts the residential parking rate and removes the tax so the gross rate is generally less than or possible equal to other monthly parkers. For example, a non-resident commuter rate may be \$310.00 with tax. This assumes a normal 5 day a week and 10 to 12 hour use of the parking space. With the built in Chicago, Cook County and Illinois tax of 40%, the net rate is \$221. The rate for a resident that uses the space for 24/7 based on time use should be between \$294 and \$309 (or 33% to 40% more). However, [REDACTED] discounts that rate to \$270 at the above location. So the resident gets the parking space at a rate that is much less than the tax exemption.

The monthly rates are based on various factors including historic and logical assumed usage. Since these factors and assumptions have worked well, there has been no need to retain or analyze entry data (even if possible or cost effective) that verifies usage, nonetheless because of this new Ruling [REDACTED] has recently added a term in its conditions that requires notification to [REDACTED] of 48 hour overnight parking as well as storage of a vehicle , so if a non-resident vehicle is routinely parked 48 hours straight overnight and is recorded by security as doing so, violations can be issued. If enough violations are issued, [REDACTED] may notify the parker of the issue and change its rate or under its terms terminate the parker. But [REDACTED] believes based on past history that this will be a very rare event.

As to verifying a resident parker, [REDACTED] on its application asks for billing address of parker. If the address matches the residential building, [REDACTED] presumes the parker is a resident. In previous audits with the City the application was found acceptable. For some buildings the resident has a provision in its lease or addendum to the lease that states [REDACTED] is the parking garage to be used, if the resident supplies that lease or addendum that is also acceptable. A list of residents is sometimes requested from the building or a verification of a person, when the address does not match for some reason or the parking application cannot be found or for some buildings a list is determined to be needed.

For #4,

Same answers as #3, except this is a NON-reserved parking spot for a motor vehicle and not a motorcycle.

For #5.

Same answer as #3, except this is a special rate to a relative of the owners of the building when the relative is a resident of the building.

For #6.

Same as #3, except this is a reserved parking spot that is more expensive.

For #7.

Same as #3, except this is NOT exempt from Cook County Parking Tax since the County does not consider them exempt under the modified wording of its parking tax. Because [REDACTED] has to specially account for this parker and collect the Cook County parking tax, the monthly rate factors in those costs and taxes.

For #8.

This is regular non-resident commuter parking.

No exemption applies.

These are not comparable to a residential parker, since they only park for a portion of the day and usually 5 days a week, rather than 24/7 use for a residential parker.

For #9.

These are [REDACTED] employees.

No exemption applies.

These are not comparable to a residential parker, since they only park for a portion of the day and usually 5 days a week, rather than 24/7 use for a residential parker.

For #10.

These are [REDACTED] employees.

No exemption applies.

These are not comparable to a residential parker, since they only park for a portion of the day and usually 5 days a week, rather than 24/7 use for a residential parker.

For #11.

Same as #3, except that this is a special resident rate for a resident of a building that the owner of building asked to be given a special rate.

Please let us know if this is sufficient. If the City believes any of these groups monthly rates are comparable to residential parkers monthly rate so as to deny the residential exemption to the parker, let us know so we can notify the residential parkers that they are liable for the City parking tax and do not qualify for the exemption, so we can start collecting the tax from them. If you believe some tweak can be made to satisfy the exemption let us know.

Note: no formal written studies are done to set rates, these rates were based on logical and reasonable business and use assumptions, industry history and experience with different types of parkers, and market and competition considerations.

Stan