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February 5, 2020

Stanley R. Kaminski, Esq.
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Suite 370
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Re: Parking Tax

Dear Stan:

I am writing in response to your letter of December 12, 2019 ("Request") (copy attached), requesting a general information letter ("GIL"), under Uniform Revenue Procedures Ordinance Ruling #3, concerning the application of the Chicago Parking Lot and Garage Operations Tax ("Parking Tax"), Chapter 4-236 of the Municipal Code of Chicago, to complimentary parking provided by commercial office lessors.

We agree that, under the facts described in your Request, complimentary parking provided by commercial office lessors is not subject to the Parking Tax. This assumes that, as stated in your Request, the true object of the transaction is a lease of commercial office space, with the complimentary parking provided incidental to that object. It does not mean there could not be situations in which ostensibly "free" parking is taxable. For example, if a store paid a certain amount per month for the lease of a certain number of spaces in a nearby parking lot, the Parking Tax would apply to those payments, even if the store allowed its customers and employees to use the spaces for free.

Please let us know if you have questions or need anything further.

Very truly yours,

Weston Hanscom
Deputy Corporation Counsel
Revenue Litigation Division
Department of Law
312-744-9077

cc: Elaine Herman, Department of Finance

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December 12, 2019

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

Re: General Information Letter on the Chicago Parking Lot and Garage Operations Tax to Complimentary Parking Provided by Commercial Office Lessors

Dear Sir and/or Madam:

Please take this letter as a request for a General Information Letter under Section 10 of Uniform Revenue Procedures Ruling Number 3, on the Application of the Chicago Parking Lot and Garage Operations Tax ("Parking Tax") to complimentary parking provided by commercial office lessors. To the best of our knowledge, the issues raised in this letter request are not currently part of an audit, administrative hearing or litigation involving the Chicago Department(s) of Finance or Law.

FACTS

The fact pattern is as follows: We represent various commercial office building lessors that provide complimentary parking as one of the amenities included in their office lease to their tenants. This free parking is provided in the lease as a first come, first serve basis, and limits or states the amount of parking any tenant can use for its employees or guests, so that all tenants have equal access to the parking. In some instances, the parking is in an open area, while in others it is gated for security. Like other building amenities, such as sidewalks, elevators, stairs, landscaping, etc, this free parking amenity is provided at no charge in the lease agreement, Moreover, the lease price does not change whether or not a tenant uses the free parking amenity. Free parking at office buildings is similar to free parking provided at shopping malls, motels, strip malls, apartment buildings, etc. to tenants, their employees, guests or patrons.

ISSUE

Is complimentary parking provided as a free amenity to office building tenants subject to the Chicago Parking Tax?

APPLICABLE LAW

The Chicago Parking Tax is imposed on the "use and privilege of parking a motor vehicle in or upon any parking lot or garage in the City of Chicago." Chicago Mun. Code, § 4-236-020(a). The tax varies based on the "charge or fee" paid for the parking. § 4-236-020(a) and (d). Free or complimentary parking is not taxable. Chicago Parking Tax Information Bulletin, Vol. 4, No. 2 (2/18/2000).

"'Charge or fee paid for parking' means the gross amount of **consideration for the use or privilege of parking a motor vehicle** in or upon any parking lot or garage in the City of Chicago, valued in money, whether received in money or otherwise, including cash, credits, property and services, determined without any deduction for costs or expenses whatsoever." § 4-236-010. "'Operator' means any person who **conducts the operation of a parking lot or garage**, as defined by this chapter, or who, directly or through an agreement or arrangement with another party, **collects the consideration for parking or storage of motor vehicles** at such parking place." *Id.*

ANALYSIS

Free parking is not taxable under the Parking Tax. The Parking Tax only applies where a "charge or fee" (*i.e.*, consideration) is paid for the parking. Therefore, to be taxable, there must be an actual parking transaction in which the parking of a motor vehicle is being provided for *"consideration."* Chicago Mun. Code § 4-236-020(a). Making a parking area available to a tenant, its employees, and its guests for no charge, as an amenity to an office lease is not the sale of parking for consideration and is not subject to the Parking Tax Ordinance. If it were, every shopping center, restaurant, office building, strip mall, theater, hotel, etc. would owe Parking Tax on every free space made available to their tenants, occupants or guests. *See, American Airlines v. Dept. of Revenue,* 58 Ill. 2d 251 (1974) (If the item is provided as a free amenity and not "bargained for" by the parties, then no consideration passes and no sale occurrs.).[1]

Basically, under Illinois law, the true object or entirety of a transaction must be reviewed to determine the taxability of an item. *Communications & Cable of Chicago v. City of Chicago*, 275 Ill. App 3d 680 (1995). Therefore, if the true object of the transaction was a lease of commercial office space, any incidental parking that was provided complimentary to such office space lease is not subject to Parking Tax. Simply put, complimentary parking, like the use of sidewalk space, elevators, bathrooms and other amenities do not become taxable transactions

[1] Notably, off-street commercial parking is also required by the Chicago Zoning Ordinance.

when provided incident to a lease of office space. *See, Theo B. Robertson Products Co. v. Nudelman*, 389 Ill. 281 (1945) (amenities provided to office building tenants were not taxable sales of such products); *Communications & Cable of Chicago v. City of Chicago, supra.* (lease of cable box and remote were incidental to amusement service and not subject to City Transaction (Leasing) Tax); *American Airlines, Inc. v. Dept of Revenue*, 58 Ill. 2d 251 (1974) (meals provided to airline passengers were incidental to the transportation service and thus are not subject to Illinois sales/use tax); *Springfield Hotel-Motel Assoc. v. City of Springfield,* 119 Ill. App. 3d 753 (1983)("maid service, television, telephone, *et al.*, is only incidental to the use of the tangible property, *i.e.*, the structure and the appointments and accouterments in the room.").

Rather, Illinois law is clear that when a service or property is provided as part of, but incidental to a larger transaction, and the service or property has no "significant" value to the recipient without the underlying larger transaction, such service or property is not the object of the transaction and taxable. *See*, *Colorcraft Corporation v. Department of Revenue*, 112 Ill. 2d 473 (1986). For example, the Illinois Appellate Court noted in *Communications Cable* that cable boxes provided as part of a cable service were "incidental" to the cable services provided and taxable, since such boxes were basically "valueless" to the patrons without the underlying cable service, and were a "small portion of the total cost." *Id.* Similarly, the Illinois Supreme Court in *American Airlines* held that meals provided on aircrafts were *not* subject to Illinois sales/use tax since the meals did not have a "bargained for" value between the parties and were part of the "operating expense" of the airline. *Id.* As such, they were not sold for "consideration." And, the Supreme Court explained in *Robertson Products*, that amenities provided by "hotels and office buildings" like "furniture" and other "equipment" are not subject to Illinois sales tax, since "hotels and office building are not in the business of selling" such items, rather they "are in the business of running a hotel or an office building." *Id.* at 285-286. Applying these basic principles, since the complimentary parking is merely an amenity provided as part of the office lease transaction and has "no" value to the tenant without the office lease, it is incidental to the office lease transaction and not taxable.

Significantly, this exact issue was recently addressed by the Illinois Department of Revenue ("IDOR") with respect to the new Illinois Parking Excise Tax. In a recent letter ruling, the IDOR held that the Illinois Parking Tax did not apply to complimentary parking at office buildings, since the office landlord would not be deemed an "operator" of a parking area or garage for such parking. Moreover, since the parking was a no charge amenity, there was also no consideration for the parking. In summary, since the parking provided is a complimentary amenity to the office lease, and no separate charge for the parking is imposed, it is an incidental part of the office lease and not a sale of parking space, and thus is not subject to the Illinois Parking Tax. *See,* IDOR Info Letter ST-19-006 GIL. Similarly, in the new draft Illinois Parking Tax regulations, the IDOR has held that a "lessor of commercial real estate" is not subject to Illinois Parking Tax on those required "minimum number of parking spaces" provided to a lessee under an office lease, unless a specific value for the parking spaces is provided in the lease agreement. 86 Ill. Admin Code § 195.110(f). Notably, the Illinois Parking Tax is substantially similar to the Chicago Parking Tax.

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CONCLUSION

In conclusion, we respectfully request a General Information Letter confirming that complimentary parking provided by commercial office lessors to their tenants, as noted in this letter, is not subject to the Chicago Parking Tax.

Very truly yours,

Stanley R. Kaminski

SRK/rlc