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August 10, 2017

Mary Kay Martire  
McDermott Will & Emery  
227 West Monroe Street  
Chicago, IL 60606  
[mmartire@mwe.com](mailto:mmartire@mwe.com)

Re: [REDACTED]

Dear Ms. Martire:

I am writing in response to your letter of May 10, 2017 ("Request") (copy attached), requesting a private letter ruling ("PLR") concerning the application of the Chicago Restaurant and Other Places For Eating Tax ("Restaurant Tax"), Chapter 3-30 of the Municipal Code of Chicago ("Code"), to the charges imposed by [REDACTED] for food and beverages served at its retreat and conference center (the "Center").

For the reasons set forth in your Request, we agree that [REDACTED] is not required to pay the Restaurant Tax. In particular, we agree that the Center is not operated as a "restaurant or other business." In addition, we note that the non-exempt sales of the Center, even if otherwise taxable, would likely fall below the *de minimis* threshold set forth in the ordinance.

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  
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.  
Strategic alliance with MWE China Law Offices (Shanghai)

Mary Kay Martire  
Attorney at Law  
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May 10, 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 tax imposed by the Chicago Restaurant and Other Places for Eating Tax Ordinance imposed by Chi. Mun. Code Sec. 3-30-010, *et seq.* ("Chicago Restaurant Tax"). A completed power of attorney form is enclosed with this submission. To the best of its knowledge and belief, [REDACTED] 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 [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.

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,

[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 [REDACTED] is authorized by the [REDACTED] Church, it does not receive any financial support from the [REDACTED] Church or any of its [REDACTED].

US practice conducted through McDermott Will & Emery LLP.

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reflection and prayer. The Center offers group retreats and days of prayer. It is also available to 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. Meals are provided on site at no charge to the [REDACTED] [REDACTED] most of whom reside at the Convent. In addition, on occasion meals are provided to the not-for-profit organizations that rent the Center's facility. The not-for-profit organizations pay for the food service. Meals are provided by [REDACTED] a third party with whom [REDACTED] contracts to provide food service.

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 restaurant. The Center is not available for dining by members of the general public. In order to eat at the facility, a person who is not a [REDACTED] must be attending a program sponsored at the Retreat Center. 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.<sup>2</sup>

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 taxes on its sales of food at the Center. [REDACTED] did not collect or remit the Chicago Restaurant Tax based on its belief that its food sales were exempt from tax because [REDACTED] is an Illinois not-for-profit religious organization with an active sales tax exemption, because the Center does not consider itself to be a restaurant, does not sell food to members of the general public, and is not available for rental to the general public. Also, [REDACTED] typically rents to individuals or groups for religious purposes, or to not-for-profit organizations which themselves have Illinois sales tax exemptions.

As you know, [REDACTED] previously requested and received a private letter ruling from the City confirming that it is not obligated to collect or remit the Chicago Hotel Accommodations Tax ("Chicago Hotel Tax") on its rentals of the Center. For similar reasons, [REDACTED] now also requests a letter ruling that it is not obligated to collect or remit the Chicago Restaurant Tax on its food sales to conference attendees.

**Statement of Authorities Supporting Taxpayer's Views:**

The Chicago Restaurant Tax is imposed on each "place for eating" located in Chicago at the rate of 0.25 percent of the selling price of all food and beverages sold at retail by the place for eating. Chic. Mun. Code §3-30-030. The Municipal Code defines a "place for eating" as "any restaurant or other business, by whatever name, that is a place of eating under 65 ILCS 5/11-42-5." Chic. Mun. Code §3-30-020(A)(5). 65 ILCS 5/11-42-5 provides municipalities with the authority to tax and regulate "all places for eating and amusement."

The Center is not a "place for eating" subject to the Chicago Restaurant Tax because it is not a "restaurant or other business" within the meaning of the Ordinance. The Center is not a restaurant; it is not open for sales of food to members of the general public. Nor is the Center a "business;" rather [REDACTED] is a not-for-profit organization, associated with the [REDACTED] that only rents its facility to other non-for-profit groups consistent with its purpose. Proceeds from its rentals and sales of food are used to support the [REDACTED] and their mission. In addition, many of the Center's food sales are made to not-for-profit organizations that have obtained sales tax exemption certificates from the State of Illinois, and as a result are exempt from the Chicago Restaurant Tax. (See Chic. Mun. Code §3-30-040 (Exemptions), which provides that all sales of food and beverages which are exempt from tax under the Illinois Retailers' Occupation Tax Act also are exempt from the Chicago Restaurant Tax.)

In addition, while it is not possible to predict this with certainty, [REDACTED] may not be obligated to pay the Chicago Restaurant Tax because the amount of tax it would owe annually would be less than \$200, and thus below the occasional or *de minimis* sales threshold set forth in the Ordinance (§3-30-050). For example, for the first quarter of 2017, assuming it owed the Tax, [REDACTED] estimates its liability would be \$47.00. Requiring [REDACTED] to undertake all the steps required to collect and remit this small amount of tax would be a significant burden. Having investigated the matter, [REDACTED] has been informed that it could not obtain the business license necessary to remit the tax unless it obtained a change in zoning which would permit it to operate a "restaurant or other place of business" at the Center. For this additional reason, [REDACTED] requests that the City issue a private letter ruling relieving it from the burden of this obligation.

**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 Restaurant Tax.

**List of Documents Submitted with this Request for PLR:**

The documents submitted with this request include the following:

1. Completed Power of Attorney

[REDACTED]

Tax Policy Section

May 10, 2017

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2. April 19, 2017 private letter ruling from City of Chicago Department of Law, Revenue Litigation Division, concluding that charges imposed by [REDACTED] for use of the Center are not subject to the Chicago Hotel Tax.

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 Restaurant Tax on its sales of food at the Center.

Sincerely,



Mary Kay Martire

Enclosures

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

[REDACTED]

[REDACTED]



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)]\*

Mary Kay M. Martire  
McDermott, Will & Emery  
227 W. Monroe St.  
Chicago, IL 60606  
312-984-2096

Nicholas Furtwengler  
McDermott Will & Emery  
227 W. Monroe St.  
Chicago, IL 60606  
312-984-7677

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)
All	All

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  $\Rightarrow$  .....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 or for taxpayers(s)**

(If signed by a corporate officer, 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.)

..... **Treasurer** .....

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

(Also type or print your name below if signing for a taxpayer who is not an individual.)

[Redacted]

.....

(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





City of Chicago  
Rahm Emanuel, Mayor

Department of Law

Edward N. Siskel  
Corporation Counsel

Revenue Litigation  
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April 19, 2017

Mary Kay Martire  
McDermott Will & Emery  
227 West Monroe Street  
Chicago, IL 60606  
[mmartire@mwe.com](mailto:mmartire@mwe.com)

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 Center provides sleeping and conference accommodations for the guests who attend the retreats that it hosts, the 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 Milan  
Munich Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.  
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Mary Kay Marfisi  
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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.<sup>1</sup>

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

<sup>1</sup> [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.<sup>2</sup>

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.

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 Conacle'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

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,<sup>3</sup> 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.

<sup>3</sup> 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.

Tax Policy Section  
March 21, 2017  
Page 5

Sincerely,

*Mary Kay Martire*

Mary Kay Martire

Enclosures

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

