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January 28, 2016

Ms. Rebecca Jenson
Midwest Real Estate Data, LLC
2443 Warrenville Road, Suite 600
Lisle, Illinois 60532

Re: Response to Request for Private Letter Ruling

Dear Ms. Jenson:

I am writing in response to your letter dated October 15, 2015 ("Request") (copy attached), requesting a private letter ruling concerning the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax" or "Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to the Multiple Listing Service ("MLS") maintained by Midwest Real Estate Data, LLC ("MRED") and used by the members of various REALTOR® Associations ("Associations"), including the Chicago Association of REALTORS® ("CAR").

Based on the facts set forth in the Request, along with our meeting on December 18, 2015, we are of the opinion that the use of the MLS by members of the Associations qualifies for the "membership organization" exemption set forth in Code Section 3-32-050(8), whether viewed as a lease by MRED to an Association, a lease by an Association to its members, or a lease by MRED to the members of an Association.

Code Section 3-32-050(8) exempts "[t]he lease, rental or use of personal property that is leased by a membership organization to a member of such membership organization, or by a person that is wholly owned directly or indirectly by one or more membership organizations to a member of any of such membership organizations, provided that substantially all of the lessor's leases of personal property of the same type are to such members."

Based on the information received, MRED and the Associations are membership organizations, and all users of the MLS are members of an Association. Although five of the twelve Associations whose members use the MLS are not members of MRED, approximately 97% of MRED's leases are to the seven Associations that are members of MRED (viewing the leases as between MRED and the Associations) or to members of those seven Associations (viewing the leases as between MRED and the Association members).

Because we believe that the "membership organization" exemption applies, we need not and do not reach the other arguments set forth in the Request.

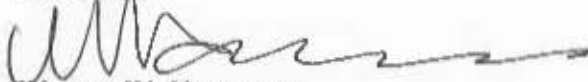
Midwest Real Estate Data, LLC

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This opinion is based on the text of Chapter 3-32 of the Code as of the date of this letter and the facts as represented being true. 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.

Sincerely,



Weston W. Hanscom

Deputy Corporation Counsel

(312) 744-9077

Enclosure

cc: Joel Flores, Department of Finance
Kim Cook, Department of Law



October 15, 2015

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

RE: Request for Private Letter Ruling regarding City of Chicago's Personal Property Lease Transaction Tax / Tax Ruling #12 Pertaining to the Same

Dear Sir or Madam:

Midwest Real Estate Data, LLC ("MRED") seeks from the City of Chicago Department of Revenue a private letter ruling regarding application of the City of Chicago's Personal Property Lease Tax ("the Tax") to MRED. Pursuant to §6 of the Department's Uniform Revenue Procedures Ruling #3, MRED submits this letter and supporting documents relevant to its request.

For the reasons set forth herein, MRED believes that it is not subject to the Tax because its services fall within exemptions to the Tax. MRED first seeks confirmation that the Tax applies only to its transactions with its customer that maintains a primary business address in the City of Chicago. It further seeks confirmation from the Department that: 1) its services fall within the exemptions to the Tax; and 2) it does not need to collect the tax based upon application of these exemptions.

I. Statement of Material Facts

A. MRED's Operating Agreement and its Members.

MRED maintains the Multiple Listing Service ("MLS") used by various Realtor® Associations. "The purpose and business of the Company shall be to operate a multiple listing service pursuant to rules and regulations consistent with NAR [National Association of Realtors] requirements in order to provide the Service to REALTOR® Associations and to Participant REALTOR® Firms, [and] to aggregate and distribute the listing and other data of Participant REALTOR® Firms . . ." See, Amended and Restated Operating Agreement of MRED (revised August 6, 2015), Art. II, §2.3 (a copy of which is attached hereto as Exhibit 1).

MRED is a limited liability corporation with two types of members. Exhibit 1, Art. II, §2.7; Art. III, §3.1. All of the Common Units are owned by MLSNI, and MLSNI is therefore the sole Common Member. *Id.*, Ex. A thereto. MLSNI is owned, in turn, by seven local REALTOR® Associations: Chicago Association of REALTORS® ("CAR"); Heartland REALTOR® Organization; Mainstreet Association of REALTORS®; North-Shore Barrington Association of REALTORS®; Oak Park Association of REALTORS®; REALTOR® Association of Fox Valley; and Three Rivers Association of REALTORS®. By their use of the term "REALTOR®", each of these owners is a Member Board of the NAR. See, 2015 Constitution of the NAR, Art. III, §1(B) (attached hereto as Exhibit 2).

The second type of membership consists of Preferred Members, which own Preferred Units of MRED. Exhibit 1, Art. II, §2.7. Preferred Members are signatories to the Operating Agreement and must by definition be a REALTOR® member of NAR. *Id.*, Art. I, pp. 7-8, definitions of "Firm" and "Preferred Member." Currently, there are 72 Preferred Member Firms. Exhibit 1, Ex. B thereto.

B. MRED's customers.

MRED provides services, through its Contract for Services Association Agreements ("CSA"), to only twelve customers. See, September 2015 Invoices, attached hereto as Group Exhibit 3. These twelve customers are distinct local real estate boards or associations: Bolvidere Board of REALTORS®; Chicago Association of REALTORS®; REALTOR® Association of Fox Valley; HomeTown Association of REALTORS®; Heartland REALTOR® Organization; Illinois Valley Association of REALTORS®; Kankakee-Iroquois-Ford Association of

REALTORS®; Mainstreet Association of REALTORS®; Northern Illinois Commercial Association of REALTORS®; North-Shore Barrington Association of REALTORS®; Oak Park Association of REALTORS®, and Three Rivers Association of REALTORS®. Again, each of MRED's "customers" is also a Member Board of the NAR. Exhibit 2, Article III, §1(B).

All of MRED's contracts are identical and to members of a membership organization—NAR—as required by the Operating Agreement. Exhibit 1, Art. I, pp. 8, 9, definitions of "CSA Agreement," "Service," and "Service Agreement." A copy of MRED's CSA with the Chicago Association of Realtors is attached hereto as Exhibit 4.

As demonstrated by MRED's invoices, the only customer located within Chicago—and therefore the *only* customer arguably subject to the Tax—is the Chicago Association of Realtors ("CAR"). Exhibit 3. As discussed herein, MRED's transactions with CAR are exempt from the Tax under the plain language of the ordinance.

C. The Personal Property Lease Tax.

Code Section 3-32-030 imposes a tax upon: "(1) the lease or rental in the city of personal property, or (2) the privilege of using in the city personal property that is leased or rented outside the city." §3-32-030(A) (a copy of the full ordinance is attached hereto as Exhibit 5). "Personal property" is defined in the ordinance to include any and all property other than real property. §3-32-020(Q). A "lease" is defined in the ordinance to include a "nonpossessory computer lease," in which a customer obtains access to a provider's computer and uses the provider's computer to input, modify or retrieve data and information without the intervention of personnel acting on behalf of the provider. §3-32-020(I).

Furthermore, a "lessee" under the ordinance means any person who leases or rents personal property from another, while a "lessor" means any person who leases or rents personal property to users. §3-32-020(L), (M). "Use" is defined in the ordinance as the exercise of any right over personal property by a lessee, and includes the use of personal property by the agents, representatives, or authorized designees of the lessee. §3-32-030(R).

Although "the incidence of the tax and the obligation to pay the tax are upon the lessee of the personal property," 3-32-030(A), it is the lessor, or, as in the case of MRED, the provider of the computer, that is required to collect the Tax. As the City noted in another ruling on the Tax:

The lessor is responsible for collecting the tax from the lessee at the time of each lease or rental payment, and for remitting the tax to the Department of Revenue ("Department"). Lessors that fail to collect or remit the tax are liable to the City for the amount of such tax, plus interest and penalties.

See, Tax Ruling #11, attached hereto as Exhibit 6, citing Code Section 3-32-070.

The ordinance also lists twelve different types of leases, rental or uses that are not subject to the Tax. §3-32-050. Below, we have set forth the exemptions under §3-32-050 A that apply to MRED:

Notwithstanding any other provision of this chapter, the following leases, rentals or uses shall be exempt from the tax imposed by this chapter:

(8) The lease, rental or use of personal property that is leased by a membership organization to a member of such membership organization, or by a person that is wholly owned directly or indirectly by one or more membership organizations to a member of any such membership organizations, provided that substantially all of the lessor's leases of personal property of the same type are to such members.

(11) Under the rules to be prescribed by the department, the nonpossessory lease of a computer in which the customer's use or control of the provider's computer is *de minimus* and the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the

computer, such as the nonpossessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character.

§3-32-050 A (8), (11).

In June, the City's Finance Department published its Tax Ruling #12 pertaining to the Tax, a copy of which is attached hereto as Exhibit 7. Specifically, Tax Ruling #12 purports to extend the Tax to the online procurement of real estate listings, car prices, stock prices, economic statistics, and "similar information or data that has been compiled, entered and stored on the provider's computer." Exhibit 7, ¶16. In addition, under the ruling, the Tax will apply to the online procurement of "word processing, calculations, data processing, tax preparation" and "other applications available to a customer through access to a provider's computer and its software." *Id.* In the Ruling, the Department expressly notes that these "examples are sometimes referred to as cloud computing, cloud services, hosted environment, software as a service, platform as a service, or infrastructure as a service." *Id.* Thus, it is apparent that the City construes "services," such as those MRED provides to its customers through its CSA Agreements, as being subject to the Tax.

As you know, the City has delayed implementation of the new Tax Ruling #12 until January 2016.

II. Statement of Authorities

A. **MRED Seeks Confirmation That The Only Customer From Whom It Is Required To Collect the Tax Is Its Single Customer With A Chicago Business Address, CAR.**

The only "lessees" that MRED transacts with are the 12 REALTOR® Associations with which MRED has entered into CSA Agreements. Of these, CAR is the only "lessee" or "customer" with a primary business address in Chicago. "In general, this means that the lease tax will apply to customers whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information." Exhibit 7, ¶16. "If a provider has no information to indicate that any of its customer's use will take place in Chicago, then the provider will not be required to collect the lease tax from its customer." *Id.*, ¶18. Based upon this language, the only MRED "customer" or "lessee" subject to the Tax is CAR.

MRED requests confirmation that if it is required to collect the Tax, that it is only required to collect the Tax from its customer with a Chicago business address.

B. **MRED's Transactions With CAR Are Exempt From The Tax.**

1. **MRED is a "membership organization", CAR is one of its members, and any transaction between MRED and CAR is thus exempt from the Tax under the first clause of §3-32-050 A (8).**

The ordinance defines "membership organization" as follows:

"... a corporation or other person that is organized on a membership basis. A person that is wholly owned by members of a membership organization, and that is operated primarily to furnish goods, services or facilities to members of the organization, shall be deemed a membership organization, its owners shall be deemed its members, and the membership organization and the deemed membership organization shall be treated as a member of the other... The term "membership organization" does not include an organization whose primary purpose is to sell or lease personal property to persons who do not manage the organization, have the right to elect management, or have trading privileges on the organization."

§3-32-020(N) (emphasis added).

Based upon the foregoing, MRED is "a person that is wholly owned by members of a membership organization," e.g., the National Association of Realtors [NAR]. Moreover, MRED "is operated primarily to furnish goods, services or facilities to members of the organization." Exhibit 1, Art. II, §2.3; §3-32-020(N). As such, MRED should "be deemed a membership organization" as that term is defined under the ordinance, §3-32-020(N).



As noted above, MRED's customers, including CAR, are 12 local real estate boards or associations. While these associations do not manage MRED directly, they do have the right to elect management for MRED. Exhibit 1, Art. V, §5.2(a)(B). As such, the exclusionary language found in the last sentence of the definition of a "membership organization" under §3-32-020(N) of the ordinance simply does not apply to MRED.

Moreover, CAR is one of the owners of MLSNI, MRED's sole Common Unit Owner. See, Section 1.A., above. As an owner of MRED, CAR is a "member" of MRED under the language of the ordinance. §3-32-020(N). Accordingly, the transactions between MRED and CAR constitute "[t]he lease, rental or use of personal property that is leased by a membership organization [MRED] to a member of such membership organization [CAR]" and is therefore exempt under the first clause of §3-32-050 A (8).

MRED requests confirmation that its transaction with CAR falls within the exemption set forth in the first clause of §3-32-050 A (8), and any such transactions between MRED and CAR are therefore exempt from the Tax.

2. Even if MRED is not deemed a "membership organization," its transactions with CAR are exempt from the Tax under the second clause of §3-32-050 A (8).

Even if MRED itself were not deemed a "membership organization" or CAR was not deemed a "member" of MRED, the second clause of the exemption Subsection A (8) broadly applies to "[t]he lease, rental or use of personal property... by a person that is wholly owned directly or indirectly by one or more membership organizations, provided that substantially all of the lessor's leases of personal property of the same type are to such members." §3-32-050 A (8) (emphasis added).

Without question, MRED is wholly owned directly or indirectly by one or more membership organizations. Section 1.A, above. Further, as demonstrated in Section 1.B above, MRED provides services through its CSA Agreements, to 12 distinct local real estate boards or associations, including CAR. All of MRED's leases are identical and to members of a membership organization--NAR--as required by the Operating Agreement. Exhibit 1, Art. 1, pp. 8, 9 (defining "CSA Agreement," "Service," and "Service Agreement"). As such, MRED believes that it falls within the membership organization exemption in §3-32-050(8), without regard as to whether MRED itself technically falls within the definition of "membership organization."

MRED requests confirmation that its transaction with CAR falls within the membership organization exemption set forth in the second clause of §3-32-050(8), and any such transactions between MRED and CAR are therefore exempt from the Tax.

3. MRED's services fall within the exemption set forth in Subsection A. (11).

Subsection A. (11), provides as follows:

Notwithstanding any other provision of this chapter, the following leases, rentals or uses shall be exempt from the tax imposed by this chapter:

(11) Under the rules to be prescribed by the department, the nonpossessory lease of a computer in which the customer's use or control of the provider's computer is *de minimus* and the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the computer, such as the nonpossessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character.

Exemption (11) provides that the Tax does not apply to "the nonpossessory lease of a computer in which the customer's use or control of the provider's computer is *de minimus* and the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the computer..." §3-32-050A (11). In construing this exemption (11) in its most recent Tax Ruling # 12, the City's Department of Finance stated, "exempt use may be demonstrated either (a) by access to information or data which is entirely passive (such as streaming data), without interactive use, or in other cases, (b) by access to materials that are primarily proprietary, such as copyrighted newspapers, newsletters or magazines." Exhibit 8, ¶9.

The language of the ordinance itself indicates that exemption (11) applies to the services offered by MRED to all of its members, including CAR. As noted above, CSA users agree to "input any and all property listing information...into the database, which shall be a common database of all listing information submitted by CSA's users." Exhibit 4, §4.2. This aspect of MRED's Services would not seem to be subject to the Tax, according to the City's own interpretation: "Likewise, if a customer pays a provider to create a database, the charge is for the service of creating the database for that customer and is not subject to lease tax, even if the database is accessed electronically." Exhibit 8, ¶7.

Similarly, in its Tax Ruling #12, the City took the position that access to proprietary materials is also an exempt use of the provider's computer. Specifically, Tax Ruling #12 states:

The customer may pay a subscription fee for the ability to download or otherwise access the desired information or data, and the subscription fee may allow the customer to use a search function to locate the information or data that the customer wishes to download or otherwise access, but the value of the search function is subordinate to the value of the information or data that the customer wishes to download or access (i.e., the charge is predominantly for the information or data).

Exhibit 8, ¶11.

Here, the Recitals section of MRED's CSAs provide that MRED retains real estate listing, property tax/ownership records, real estate/appraisal office and broker appraiser rosters, and other information, as well as the fact that all real estate listing data is confidential and the sole property of MRED and Authorized Firms. Exhibit 4, Recitals, ¶¶B, D. In addition, the CSA specifically provides that "[a]ll MRED Data, including data submitted by CSA and CSA Users, is the property of MRED and the listing brokers," and that the CSA and CSA Users are granted a non-exclusive license to access MRED Data. Exhibit 4, §4.5, §5.2. These sections of MRED's CSA Agreements illustrate that the data which MRED's customers are downloading is entirely proprietary and therefore exempt from the Tax under exemption (11), as interpreted by the City itself. Exhibit 8, ¶11.

MRED requests confirmation that it falls with the proprietary materials exemption set forth in §3-32-050(11).

4. MRED's transactions with its members are not subject to the Tax because they constitute leases for re-lease.

Alternatively, if MRED does not qualify for the "membership organization" exemption under §3-32-050 A. (8) or the "information" exemption under §3-32-050 A. (11), then MRED's transactions with its CSAs are not subject to the Tax because, ultimately, any lease by MRED to its CSAs are ultimately for re-lease by the CSAs to their respective CSA Users. As such, §3-32-060 of the ordinance applies to MRED's Services. That section of the ordinance states as follows:

3-32-060 Leases for re-lease.

A. A lessee of personal property shall not be required to pay the tax imposed by this chapter for any lease or rental payment period in which the lessee in turn will act as a lessor of the same property, provided that the lessee supplies to its lessor a written verification that the property is being leased for re-lease, together with either (A) a re-lease certificate issued by the department, or (B) documentary evidence that the subsequent lease is exempt from or otherwise not subject to, the tax.

B. Subsection A of this section shall not apply if the lessee in turn will act as a lessor of the same property in a transaction that is exempt pursuant to subsection 3-32-050 A.(4), A.(7), or A.(8) of this chapter.

Here, MRED's CSA Agreement makes clear that its purpose is "to provide wholesale Services" to each CSA "and thus to permit CSA Users who have submitted a participation application through CSA to receive services provided by MRED." Exhibit 4, §3.1. The CSA Agreement also provides that each CSA will be "the exclusive agent

in the purchase, sale and billing of core and basic MLS Services provided by MRED..." *Id.* Further, the CSA Agreements establish that each CSA is free to set its own fees and charges to the CSA Users. *Id.*, §7.1.

In light of the foregoing, each CSA Agreement itself would constitute written verification that, to the extent each CSA is obtaining a "nonpossessory computer lease" as defined by the statute, such a lease is for the immediate re-lease to the CSA Users.

MRED requests confirmation that it is not subject to the Tax pursuant to §3-32-060.

iii. Contrary Authority

MRED is not aware of any contrary authority concerning its interpretation or application of the definition of "membership organization", or exemption (8), and submits that any interpretation of the Ordinance that differs from the argument above would be contrary to the Ordinance's plain language.

With regard to MRED's interpretation and application of exemption (11), the language of Tax Ruling #12, unlike the language of the ordinance itself, indicates the City's view that exemption (11) does not apply to the services offered by MRED to its members. Exhibit 7, ¶6.c ("Examples of transactions that are subject to the lease tax include charges incurred: ... to obtain real estate listings and prices..."). However, this assertion would be predicated upon a failure to understand the full nature of the services provided by MRED to its customers. Again, as noted above, CSA users agree to "input any and all property listing information...into the database, which shall be a common database of all listing information submitted by CSA's users." Exhibit 4, §4.2. Given the City's own interpretation as reflected in Tax Ruling #12, ¶7, MRED's Services would not seem to be subject to the Tax.

MRED is not aware of any contrary authority concerning its interpretation of §3-32-060. However, the City would need to issue a "re-lease certificate," which is available upon request from the Department of Finance.

Sincerely,

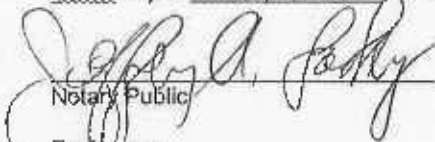


Rebecca Jensen,
President & CEO
Midwest Real Estate Data, LLC

REBECCA JENSEN, being first duly sworn, deposes and says under penalty of perjury that she is the **President and CEO of Midwest Real Estate Data, LLC**, and has read the foregoing instrument, and that she knows the contents thereof; and that said response is true and correct to the best of her knowledge, information and belief.



Subscribed & Sworn to before me this
15th day of OCTOBER 2015



Notary Public



- Enclosures
- Exhibit 1 – Operating Agreement
 - Exhibit 2 – Constitution of NAR
 - Exhibit 3 – September 2015 Invoices
 - Exhibit 4 – Sample Contract for Services Association Agreement
 - Exhibit 5 – Copy of Ordinance
 - Exhibit 6 – Tax Ruling #11
 - Exhibit 7 – Tax Ruling #12

