

**CITY OF CHICAGO
DEPARTMENT OF FINANCE
RULING**

Pursuant to Sections 2-32-096, 3-4-030, 3-4-150 and 3-32-120 of the Chicago Municipal Code, I, Andrew Sheils, as Acting Comptroller of the City of Chicago Department of Finance, do hereby adopt and promulgate Personal Property Lease Transaction Tax Amended Ruling #5, as set forth below, effective September 1, 2013.

Dated: August 6, 2013

Andrew Sheils
Acting Comptroller
Department of Finance

**CITY OF CHICAGO
DEPARTMENT OF FINANCE
PERSONAL PROPERTY LEASE TRANSACTION TAX RULING**

Personal Property Lease Transaction Tax Amended Ruling #5
Subject: Usage of Computers and Computer Software
Effective date: September 1, 2013

Formerly Ruling #9
Original effective date: February 1, 1987
Amended: February 15, 1988, June 1, 2004

BACKGROUND

Section 1. Pursuant to Section 3-32-030(A) of the Chicago Municipal Code ("Code"), the Chicago Personal Property Lease Transaction Tax (the "lease tax" or "tax") is imposed upon (1) the lease or rental in the City of Chicago ("City") of personal property, or (2) the privilege of using in the City personal property that is leased or rented outside the City. "Lease" or "rental" means any transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or by some other term, and includes a 'nonpossessory lease'." Code Section 3-32-020(I).

TIME-SHARING

Section 2. Leased time on a computer is subject to the tax. Section 3-32-020(H). This includes the time-sharing of a computer with other users. For time-sharing purposes (where the possession of the computer is not transferred), the user of the computer shall be deemed using the computer at the location of the user's access terminal to the computer. Therefore, if the user's terminal is within the City, the lease tax will apply to all charges for the use of the computer and its software, which is accessed by the user at such terminal. However, charges for the storage of information on the computer by the user, which will be used at a later date by the user, and not in the immediate

processing of information, shall be deemed a usage of the computer at the computer location and not at the access terminal; because this is not an actual use of the computer by means of an access terminal but instead is a charge for storage at the computer location. If at a later date, a charge is made for accessing the stored information from a terminal located in Chicago, such access charge would be taxable.

PRINTING

Section 3. Charges for printing services or other services, provided that such charges are not for the use of any personal property and are separately stated and optional, are not subject to the lease tax. See Chicago Personal Property Lease Transaction Tax Ruling #3 (2004), which explains in general that a separately stated and optional charge for services is excluded from tax.

COMPUTERS

Section 4. Where the actual possession, but not title or ownership, of a computer is transferred to a user for use in the City, for consideration, such a transaction is a lease subject to the lease tax. The tax will be due for all lease or rental charges associated with the usage of the computer and its software in the City. Separately stated optional charges not for the use of the computer, its software or other personal property used in the City shall not be subject to the lease tax. An example would be separately stated maintenance charges, if the charges are optional.

COMPUTER SOFTWARE

Section 5. The lease of computer software in the City is subject to the lease tax, but the sale of computer software is not.

Pursuant to Code Section 3-32-020(I), a lease is defined as "any transfer of the possession or use of personal property, but not title or ownership"

Pursuant to 35 ILCS 120/2, the Illinois Retailers' Occupation Tax ("ROT") (sometimes referred to as the "sales tax") "is imposed upon persons engaged in the business of selling at retail tangible personal property, including computer software"

Pursuant to 35 ILCS 120/1, "[s]ale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption"

Pursuant to 20 ILCS 2505/25, the Illinois Department of Revenue ("IDOR") has the power to administer and enforce all the rights, powers, and duties contained in the Retailers' Occupation Tax Act ("ROTA").

Pursuant to 35 ILCS 120/12, IDOR is authorized to make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of the provisions of the ROTA as may be deemed expedient.

Pursuant to 35 ILCS 120/12, IDOR has promulgated a regulation concerning computer software, including the following provision:

- 1) A license of software is not a taxable retail sale if:
 - A) it is evidenced by a written agreement signed by the licensor and the customer;
 - B) it restricts the customer's duplication and use of the software;
 - C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
 - D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury, by the licensor; and
 - E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

86 Illinois Administrative Code Section 130.1935.

Accordingly, IDOR has determined that where a transfer of software meets the five-part test set forth in 86 Illinois Administrative Code Section 130.1935, the transfer is not a sale.

Pursuant to Code Section 3-32-020(I), any transfer of personal property that is not a sale is a lease. Therefore, a transfer of software that meets the five-part test set forth in 86 Illinois Administrative Code Section 130.1935 is a lease, subject to the lease tax.