



INFORMATIONAL BULLETIN

Lease Tax on Cell Towers

Lessors of Space on Telecommunications Towers

The purpose of this Informational Bulletin is to describe the application of the Chicago Personal Property Lease Transaction Tax (“Lease Tax” or “Tax”) to the lease or rental of space on telecommunications towers (“cell towers”).

Background

The Lease Tax Ordinance, chapter 3-32 of the Municipal Code of Chicago (“Code”), imposes a Tax on the lease or rental in the city of personal property. As of the date of this Informational Bulletin, the rate of the Tax is 9% of the lease or rental price. The incidence of the Tax and the obligation to pay the Tax are upon the lessee of the personal property, but the lessor is responsible for collecting it. See Code Sections 3-32-030 and 3-32-070. It is the duty of each lessor to collect the Tax from the lessee at the time of each lease or rental payment, and to remit the Tax to the Chicago Department of Finance (“Department”). Id.

Application of the Lease Tax to cell tower leases

In general, for agreements that involve both a lease of personal property and the lease of real property, or the sale of a service, the lessor is required to separate the taxable lease or rental portion from the nontaxable portion. If the lessor fails to separate the lease or rental portion of the price charged from the non-taxable portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for the use of any personal property. If this occurs, then the portion not representing the use of personal property would be non-taxable. See Department Lease Tax Ruling #7, Section 5.

Safe Harbor for computation of Lease Tax on cell tower leases

Because the lease or rental of space on cell towers generally involves not only the lease of personal property but also the lease of real property, and possibly the sale of a service, the Department offers a safe harbor for collection and remittance (by a lessor) or for payment (by a lessee). Specifically, the Department will not assess additional taxes

on cell tower lessors who timely remit the Tax based on 40% of the total consideration charged for the lease or rental of space on their cell towers. The purpose of the safe harbor is to promote administrative convenience and avoid disputes.

Example: A lessor charges its customer \$1,000 per month for the lease or rental of space on its cell tower, the use of its real property and the provision of certain services. The lessor may compute the Lease Tax due using the safe harbor as follows:

\$1000 charge x 40% safe harbor rate = \$400 taxable amount
 \$400 taxable amount x 9% tax rate = \$36.00 Lease Tax due per month

Lessors who choose not to rely on this 40% safe harbor rate must report 100% of lease or rental charges and then deduct all non-lease charges to compute the taxable amount. If upon audit the Department determines that the non-lease charges were overstated, additional Tax due will be assessed, along with applicable interest and penalties.

Payment and filing requirements for cell tower lessors

For all periods beginning after February 1, 2016, all lessors are required to collect and remit the Lease Tax and file applicable returns pursuant to the Uniform Revenue Procedures Ordinance, chapter 3-4 of the Code, on all transactions involving the lease or rental of space on cell towers. Accordingly, lessors must remit the Lease Tax to the Department on the 15th day of the month following collection of the Tax and file an annual return on the 15th day of August following the end of the fiscal year, which ends on June 30. This may require a lessor to register with the Department for payment of the Lease Tax.

Additional Questions?

Additional tax information and forms can be found at:
www.cityofchicago.org/finance.

You may also contact us by email at:
taxpolicy@cityofchicago.org or by phone at 312-747-4747.