



June 28, 2016

City of Chicago
Rahm Emanuel, Mayor

Department of Law

Stephen R. Patton
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Revenue Litigation Division
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[Redacted]

Re: [Redacted] - Private Letter Ruling

Dear [Redacted]

I am writing in response to your letter dated March 28, 2016 ("Request") (copy attached), requesting a private letter ruling ("PLR") concerning the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to the fees charged by [Redacted]

Based on the facts set forth in your Request, along with our subsequent communications, including your email of June 2, 2016 (copy also attached), we are of the opinion that the fees charged by [Redacted] are subject to the Lease Tax, at the low rate provided by Code Section 3-32-030(B.1), which applies to "the nonpossessory lease of a computer primarily for the purpose of allowing the customer to use the provider's computer and software to input, modify or retrieve data or information that is supplied by the customer ..." The tax applies only to fees attributable to customer use in Chicago.

This PLR is based on the text of the Lease Tax Ordinance as of the date of this letter and the facts as represented in the Request being true. The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to Code Section 3-4-325.

Very truly yours,

Weston W. Hanscom
Deputy Corporation Counsel
City of Chicago, Law Department
Revenue Litigation Division
30 N. LaSalle, Suite 1020
Chicago, IL 60602
312-744-9077

Cc: Joel Flores, Department of Finance





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

Letter Ruling Applicant



Dear Tax Policy Section:

[REDACTED] is hereby requesting a private letter ruling from the Department in regards to the taxability of its subscription services as interpreted under the recently issued Ruling #12 for the Personal Property Lease Transaction Tax and the November 2015 Bulletin. [REDACTED] has filed for the Voluntary Disclosure Program as described in the Bulletin and the City's decision in this ruling will result in the determination of the liability (if any) under the Voluntary Disclosure.

Facts & Inquiry:

[REDACTED] supplies an electronic platform for connecting [REDACTED] parts suppliers with [REDACTED] repairers looking for replacement parts. [REDACTED] does not sell the parts. The subsequent sale transaction is handled between the supplier and repairer outside of the [REDACTED] platform.

[REDACTED] provides a portal *to connect* suppliers and repairer. This service provides the repairer the opportunity to submit a Request for Quote describing what they are seeking to purchase. Suppliers then have the opportunity to respond and submit a Quote if they can meet the repairer's requirements. [REDACTED] merely provides the portal for the posting and response to quote requests. All the data posted to the portal is proprietary information regarding the repairer's needs for parts. The charge to the suppliers is predominately for information transferred to the supplier rather than for the supplier's use or control of the computer.

When a repairer requires parts to complete a repair job, they log onto the [REDACTED] portal and enter a Request for Quote. For [REDACTED], they may select their preferred supplier and may also add additional suppliers that offer parts that meet the criteria of the repairer and that also sell into the repairer's territory. The repairer does not have the ability to search all repairers similar to a "Google" search within the platform. For alternative parts, the repairer cannot select which supplier to submit the Request for Quote to. Rather, the Request for Quote is automatically sent to



[REDACTED]

all suppliers that offer the requested part. There is very limited search functionality available within the portal.

[REDACTED] does not process the transaction for the sale of the goods, and therefore is not a merchant model. The suppliers pay a periodic fee to participate with the connection service portal to respond to requests for quotes. The repairers do not pay a fee.

[REDACTED] is not under audit or other investigation by the Department. The inquiry for this letter ruling request is whether the [REDACTED] platform qualifies for Exemption 11 as the provider's computer is de minimis and the related charge is predominantly for information transferred to the supplier rather than for the supplier's use or control of the computer.

Authority

Section 3-32-030(A) of the Municipal Code of Chicago ("Code")

Except as otherwise provided in this chapter, a tax is imposed 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. The incidence of the tax and the obligation to pay the tax are upon the lessee of the personal property.

Code Section 3-32-020 provides:

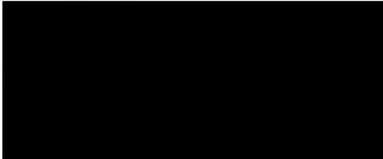
"Lease" or "rental" means any transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or by some other term, that includes a "non-possessory lease". The term "non-possessory lease" means a lease or rental wherein use but not possession of the personal property is transferred and includes, but is not limited to, leased time on or use of ... computers, computer software, ... or data processing equipment, whether the time is fully or partially utilized, and specifically includes a "non-possessory computer lease".

The term "non-possessory computer lease" means a non-possessory lease in which the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information, in each case without the intervention (other than de minimis intervention) of personnel acting on behalf of the provider. The term "non-possessory computer lease" includes, but is not limited to, time sharing or time or other use of a computer with other users. In the case of a non-possessory computer lease, the location of the terminal or other device by which a user accesses the computer shall be deemed to be the place of lease or rental and the place of use of the computer for purposes of the tax imposed by this chapter.

Code Section 3-32-020(R) provides:

"Use" means the exercise of any right to or power over personal property by a lessee incident to the lease or rental of that property including, but not limited to, the permanent or temporary storage, stationing or garaging of personal property by the lessee. "Use" by a lessee includes not only the use of personal property directly by the lessee but also the use of personal property by the lessee's agents, representatives or other authorized designees.

[REDACTED]



Code Section 3-32-050(A)(11) ("Exemption 11") provides:

Notwithstanding any other provision of this chapter, the following leases, rentals or uses shall be exempt from the tax imposed by this chapter. Under rules to be prescribed by the department, the non-possessory lease of a computer in which the customer's use or control of the provider's computer is de minimis 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 non-possessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character.

Personal Property Lease Transaction Tax Ruling #12 provides:



Examples of transactions that are subject to lease the tax include charges incurred:

- to perform legal research or similar on-line database searches (see *Meites v. City of Chicago*, 184 Ill. App. 3d 887 (1989));
- to obtain consumer credit reports (see Personal Property Lease Transaction Tax Ruling # 9 (June 1, 2004));
- to obtain real estate listings and prices, car prices, stock prices, economic statistics, weather statistics, job listings, resumes, company profiles, consumer profiles, marketing data, and similar information or data that has been compiled, entered and stored on the provider's computer; and
- to perform functions such as word processing, calculations, data processing, tax preparation, spreadsheet preparation, presentations and other applications available to a customer through access to a provider's computer and its software. These last 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.

Examples of transactions that are not subject to the lease tax:

- If a customer pays a provider to write a report, article or similar document consisting primarily of the provider's own observations, opinions, ideas or analysis (hereafter collectively referred to as a "report"), the charge is for the service of writing the report for that customer and is not subject to lease tax, even if the report is accessed electronically.
- 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.

Access to materials that are primarily proprietary is also an exempt use of the provider's computer. 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 otherwise access (i.e., the charge is predominantly for the information or data). This will typically apply in the case of a web site or "app" that allows a subscriber to download or otherwise access materials that are primarily proprietary, such as copyrighted newspapers, newsletters or magazines, that the subscriber



[REDACTED]

would have to purchase if the materials were acquired or accessed through other means, such as a purchase at a "bricks and mortar" store.

Analysis

The fee charged by [REDACTED] to its supplier subscribers is merely to allow them to receive, view and respond to requests for quotes from repairers. Subscribing to the [REDACTED] platform gives suppliers the ability to submit quotes to repairers who are also on the platform. From the supplier's perspective, the fee is primarily for the ability to access repairer's requests (i.e. information). The information that is posted by repairers and viewed by suppliers is proprietary information prepared by the repairers and suppliers. The primary use of the platform is to access the requests for quotes, reply to the requests for quotes and receive the quote responses. Any use or control of [REDACTED] computer or software is de minimis.

Conclusion

It is our conclusion based on the fact pattern and analysis that the fee charged by [REDACTED] to its customers qualifies for Exemption 11 as the customer's use or control of the provider's computer is de minimis and the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the computer and is therefore not subject to the Personal Property Lease Transaction Tax. We request that the City confirm this interpretation for periods both before January 1, 2016 and after based on the revisions to the applicable provisions.

If you require any additional input regarding this taxpayer's activities, please feel free to contact me.

[REDACTED]

[REDACTED]

[REDACTED]

Hanscom, Weston

From: [REDACTED]
Sent: Thursday, June 02, 2016 4:38 PM
To: Hanscom, Weston
Subject: [REDACTED] Letter Ruling Questions

Wes,

Sorry for the delay in getting these answers back to you from our call. The client contact was on vacation and then I was out last week. I think these will resolve your questions, but if we need to talk, just let me know.

1. Can parts suppliers that are looking for customers get access to the identity of the repair shops and what they are looking for - so as a marketing tool can they "mine" data about the repair shops?

No. We don't provide a list of the repairers to suppliers. We are a marketplace. We send suppliers quote requests & orders from repairers in the market. These requests can come from repairers they have an existing relationship with or requests from a new repairer.

Each company has a star rating made up of a number of criteria (professionalism, on time delivery etc).

Repairers and suppliers use this information to help determine if they want to do business with a new company.

2. Who owns the data that is entered by both parts suppliers and repair shops?
[REDACTED] owns the data but our Privacy Policy prevents us sharing data with other parties unless they have a contract with that party to do so.
3. How would you describe the service that the parts suppliers are getting for their subscription fee?
 - Opportunity to connect to more repairers in the marketplace.
 - Process efficiency from handling quote requests, orders and returns electronically. Removes the needs for phone calls and faxes. All information is kept up-to-date and in one place
 - Quote requests received through [REDACTED] are for full parts list for a repair. Historically repairers only sent subsets of the entire parts list. This allows suppliers to compete for a large slice of the pie of the total order.
 - Access to inventory integrations which enables suppliers to see their own inventory in [REDACTED] This allows for faster quoting and less errors.
 - Reporting.

4. How much is done within the platform vs what is done offline or are there other tools or applications that are used that are separate and apart from the monthly subscription fee?

Suppliers use a number of other systems to run their business. [REDACTED] is one of them. [REDACTED] is a tool to enable suppliers to sell parts more efficiently. As a result [REDACTED] is an enabler/tool for people rather than replacing them with a fully automated process.

5. What do you think is the predominate purpose or use of the application that the parts suppliers are paying for – is it getting at the customers' requests for bids or for tools to respond to the bid request and completing the order?

It's both. Access to new customers and keeping their existing customers, and the efficiencies from using an electronic platform for doing this business.

Let me know if you need further clarification on these answers or if I missed asking something. I believe that the subscription fee is for a tool and not a database and would consider it to be a non possessory computer lease, not a database subscription. If you don't agree with that, can we have a further conversation to discuss it before you issue your ruling?

Thanks

[Redacted]

[Redacted]

[Redacted]

[Redacted]