



City of Chicago
Rahm Emanuel, Mayor

Department of Law

Edward N. Siskel
Corporation Counsel

Revenue Litigation
30 North LaSalle Street
Suite 1020
Chicago, Illinois 60602-2580
(312) 744-5691
(312) 744-6798 (FAX)
(312) 744-5131 (TTY)
www.cityofchicago.org

March 28, 2017

Stanley R. Kaminski, Esq.
Duane Morris
190 South LaSalle Street
Suite 370
Chicago, IL 60603
SRKaminski@duanemorris.com

Re: [REDACTED]

Dear Stan:

I am writing in response to your letter of June 2, 2016 ("Request") (copy attached), requesting a private letter ruling on behalf of [REDACTED] ("[REDACTED]" under Uniform Revenue Procedures Ordinance Ruling #3 ("URPO Ruling #3"), concerning the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to certain computer software and computer equipment that [REDACTED] leases for use within the City of Chicago ("City" or "Chicago").

As noted in URPO Ruling #3, "Whether to issue a private letter ruling in response to a private letter ruling request is within the discretion of the Department." Section 5(f). For a number of reasons, the Department is not issuing a PLR in this case. These include the following provisions of URPO Ruling #3:

- For a private letter ruling, a taxpayer or tax collector must submit a letter ... including the following information:
 - A complete statement of the facts and other information pertinent to the request. Section 6(a).
 - Copies of all contracts, licenses, agreements, instruments or other documents relevant to the request. Section 6(d).
- A private letter ruling will not be issued on alternative plans of proposed transactions or hypothetical situations. Section 5(b).

- If there is case law or there are rules, which are dispositive of the subject of the request, the Department will decline to issue a private letter ruling on the subject. Section 5(e).

As also noted in URPO Ruling #3, in lieu of a PLR, "the Department, through the Corporation Counsel's Office, may issue a general information letter ... This letter is a statement of the City's position as to a general area of the law and is not to be considered a private letter ruling." Section 10. In this case, we are in a position to issue a General Information Letter ("GIL") concerning Issues A.1 through F, as stated in your Request.

Issue A.1.

The Department's PLR of October 29, 2014 remains in effect.

Issue B.1.a. (software installed on [REDACTED] server outside Chicago).

Code Section 3-32-030(A) states:

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.

Code Section 3-32-030(C) states:

For purposes of this chapter, the lease or rental of personal property shall be deemed to take place at the location where the lessee takes possession or delivery of the personal property.

Based on these provisions, we agree that where [REDACTED] installs software on a server located outside Chicago, the first "prong" of Section 3-32-030(A) ("Prong 1") is not invoked – i.e., there is no lease or rental in the city of personal property. This does not, however, mean that there is no use in the City, under the second prong ("Prong 2").

Code Section 3-32-020(I) states:

"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." (emphasis added).

Where [REDACTED] installs software on a server located outside the City and allows its agents to use the software from locations in the City, Prong 2 is invoked – i.e., there is use in the city of personal property that is leased or rented outside the city.

In your Request, you point out that Code Section 3-32-020(I) also states:

In the case of a nonpossessory 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. Request at 6, 9.

For a nonpossessory computer lease, this shifts the sourcing rule for Prong 1, from "the location where the lessee takes possession or delivery of the personal property" (which does not exist in the case of a nonpossessory lease) to "the location of the terminal or other device by which a user accesses the computer." It does not, however, change the sourcing rule for Prong 2, which is always the location(s) at which the lessee and its agents use the leased property.

In the case of a nonpossessory computer lease, the lessee's "agents, representatives or other authorized designees" (hereafter collectively "agents") use the provider's computer and software remotely, from terminals or other devices. In the case of a possessory software lease, where the software is installed on a central computer (*i.e.*, server) that is owned or leased by the lessee of the software, the lessee's agents use the software in the same way – *i.e.*, remotely, from terminals or other devices. We therefore do not agree that remote use of software is irrelevant to the application of Prong 2.

Despite the above, you have indicated that [REDACTED] has worked from the assumption that software is used at the location of the server on which it is installed, with remote use disregarded. Because this is a complex issue, and because the City has not issued any ruling or other official written guidance on point, as a policy matter the City will accept [REDACTED] interpretation unless and until a contrary ruling or other official written guidance is issued, in which case the ruling or other official written guidance will be applied prospectively.

We also note that, even if remote use were considered, Code Section 3-32-050(A)(1) exempts "[t]he use in the city of personal property leased or rented outside the city if the property is primarily used (more than 50 percent) outside the city." It is our understanding this is the case with the software at issue in our PLR of October 29, 2014, which is why we did not reach the issue of whether remote use could ever be relevant.

Issue B.1.a – alternative scenario (software installed on [REDACTED] server inside Chicago).

Where [REDACTED] installs software on a server located inside Chicago, Prong 1 is invoked – *i.e.*, there is the lease or rental of personal property in the City, because the lease or rental of personal property is deemed to take place at the location where the lessee takes possession or delivery of the personal property. Code Section 3-32-030(C). Under the language of the ordinance, each lease or rental payment is subject to tax under Prong 1 unless the property is used "solely" outside of Chicago. See Code Section 3-32-030(D) (emphasis added).

However, Personal Property Lease Transaction Tax Ruling #1 appears to assume a different result in certain situations. Ruling #1 had an original effective date of March 8, 1974 and was revised in 1984. It provides, in pertinent part: "When delivery or use of leased property takes place in Chicago, the transaction is taxable unless it is proved that the agreement was not entered

into within the City and that 50% or more of the use did not occur within the City." Section 2(d). Unless and until Ruling #1 is revoked or amended, no tax will be due for periods other than the month of delivery, if delivery occurs in the City and 50% or more of the use occurs outside of the City.¹ If Ruling #1 is revoked or amended in a manner that affects this GIL, the change will be prospective.

Issue B.1.b.

See discussion of Issue B.1.a. above.

Issue B.1.c.

As noted above, 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." Code Section 3-32-020(I) (emphasis added). Thus, where [REDACTED] allows a vendor, as a [REDACTED] designee, to install on the vendor's servers software that [REDACTED] has leased from a software provider, remote use of that software by employees of the vendor will be treated the same as remote use of software by employees or other agents of [REDACTED].²

Issue B.2.

We will follow ROT Regulation Section 130.2105, by which the Illinois Department of Revenue ("IDOR") has determined that the delivery of information or data by electronic means is not treated as the transfer of tangible personal property. See Request at 10. That regulation does not apply to software, which is treated as tangible personal property. Whether a license of software is treated as a sale or a lease will remain governed by Amended Lease Tax Ruling #5. If a license of software is deemed a lease, then its taxation and sourcing will be determined as discussed above.

Issue B.3.

We agree that charges for custom software are not taxable. We will follow IDOR Regulation Section 130.1935 on the issue of whether a charge is for custom software.

¹ Although Ruling #1 adds the condition that "the lease was entered into outside of the City," the Lease Tax ordinance makes no reference to where the lease was entered into, and for policy reasons we will not change the result for situations in which the lease was entered into inside of the City. The use to which we refer is remote use, from terminals or other devices.

² We assume that, for purposes of this question, the vendor is a business that performs certain services for [REDACTED] and that in connection with those services the vendor uses software that has been leased by [REDACTED].

Issue C.1.a.

We agree that Code Section 3-32-030(B.1) provides: "In the case of 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 rate of the tax imposed by this chapter shall be 5.25 percent of the lease or rental price." We also agree that, for such a lease, the tax applies only to the extent of use in the City.

Issue C.1.b.

We agree that in the case of 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 not supplied by the customer, the rate of the tax is nine percent. We also agree that, for such a lease, the tax applies only to the extent of use in the City.

Issue C.2.

Please see Lease Tax Ruling #12 paragraphs 9 – 13, discussing Exemption 11.

Issue D.1.

We agree that Code Section 3-32-050(A)(9) exempts "[t]he nonpossessory lease of a computer to effectuate the execution, clearing, processing, matching or recording of a trade on a board of trade designated as a contract market by the Commodity Futures Trading Commission or on a securities exchange registered with the Securities and Exchange Commission, or any other trade of any security (as defined in section 475(c)(2) of the Internal Revenue Code of 1986, as amended, without regard to the last sentence thereof), or any comparable security with respect to commodities, whether or not the parties to the lease also are parties to the trade."

Issue D.2.

We agree that Code Section 3-32-050(A)(10) exempts "[t]he nonpossessory lease of a computer to effectuate the deposit, withdrawal, transfer or loan of money or securities, including any related review of accounts or investment options by the account owner, whether or not the parties to the lease also are parties to the deposit, withdrawal, transfer or loan."

Issues E.1 and 2.

We agree that Code Section 3-32-020(K) states that "[t]he term 'lease price' or 'rental price' shall exclude separately stated optional charges not for the use of personal property." On the issue of bundled charges, please see Lease Tax Ruling #3 and Lease Tax Ruling #12 paragraph 14.

Issue F.

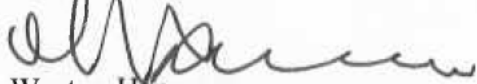
We agree that where [REDACTED] obtains software licenses in bulk, and where no downloading or terminal access occurs in Chicago, no Lease Tax is due.

Letter to Stanley R. Kaminski
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This GIL is based on the text of the Lease Tax and other applicable law as of the date of the GIL.

Please let us know if you have questions or need anything further.

Very truly yours,



Weston Hanscom
Deputy Corporation Counsel
Revenue Litigation Division
Department of Law
312-744-9077

cc: Joel Flores, Department of Finance

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Duane Morris®

FIRM and AFFILIATE OFFICES

STANLEY R. KAMINSKI
DIRECT DIAL: +1 312 499 0105
PERSONAL FAX: +1 312 277 6423
E-MAIL: SRKaminski@duanemorris.com

www.duanemorris.com

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June 2, 2016



Chicago Department of Finance
Attn: Tax Policy Section
DePaul Center, Room 300
333 South State Street
Chicago, Illinois 60604-3977

Re: Follow-Up Private Letter Ruling Request [REDACTED]

Dear Sir or Madam:

On behalf of [REDACTED] we hereby request the issuance of a private letter ruling under Section 5 of the Uniform Revenue Procedures Ordinance Ruling Number 3. [REDACTED] is currently registered under, and is subject to, the Chicago Personal Property Lease Transaction Tax ("CTT") on computer software and computer equipment that it leases for use within the City of Chicago. [REDACTED] is not currently under audit for CTT by the Department of Finance ("DOF").

[REDACTED] headquarters is located at [REDACTED] Chicago, Illinois 60603, and it has facilities located in multiple jurisdictions throughout the United States, including large data operations centers located in [REDACTED] (primary) and [REDACTED] (backup), Illinois. Servers in these locations process the work of [REDACTED] front, middle, and back office operations.

The ruling request is a follow-up to the ruling request sent on [REDACTED] in which a response from the Chicago Department of Law was dated [REDACTED]. (See attached.) Since that date, the DOF has issued a new CTT ruling and a new bulletin which may have impacted [REDACTED] operations.

The purpose of this letter ruling request is to obtain an updated ruling on the application of the CTT specifically to the purchases of market data and licenses of certain computer software by [REDACTED] also seeks a ruling on the taxability under the CTT of streaming stock market data and market data services, both possessory and nonpossessory.

DUANE MORRIS LLP

190 SOUTH LASALLE STREET, SUITE 3700 CHICAGO, IL 60603-3433
DM3\3845827.3

PHONE: +1 312 499 6700 FAX: +1 312 499 6701

FACTS

██████ is an Illinois ██████ corporation. It has branches in selected states throughout the United States as well as foreign branches located in Beijing, London, Melbourne, Singapore, and Toronto. ██████ is the predominant subsidiary of the ██████ ("██████"). Other affiliates of ██████ and ██████ are engaged in banking, investment and asset management businesses. These other affiliates are located in the United States and throughout the world.

In order to perform its services for its clients and to operate its business, ██████ acquires computer software to run its data servers, mainframes, desktop and laptop computers. This software includes infrastructure, business applications and desktop/laptop software. ██████ also acquires market data from various vendors for its investment and customer service functions.

For purposes of this ruling request, the computer software at issue is software that meets the five (5) license requirements of the Illinois Department of Revenue ("IDOR"), Retailers Occupation Tax ("ROT") Regulation Section 130.1935(a)(1). As a result, effective September 1, 2013, under CTT Amended Ruling Number 5, such software licenses have been deemed leases by the DOF.

██████ also licenses and receives possession of (through electronic downloads) market and other "financial data" via the internet (nonpossessory). Since the downloading or electronic receipt of data or information is not the transfer of tangible personal property (and thus not canned computer software) under the ROT, (ROT Regulation Section 130.2105; ST 06-0081-GIL), this request seeks clarification as it is unclear how the DOF currently treats such downloads under the CTT.

As previously noted, possession of the software or data purchased by ██████ is generally delivered through direct connection via circuit or internet downloads directly to ██████ servers, mainframes or desktops/laptops. Sometimes the software or data is received by CD-ROM, USB, or e-mail and then uploaded to such servers, mainframes or desktop/laptops ("servers, terminals, or computers"). Such software or data may be accessed at the physical location of where the software or data has been installed or accessed remotely by ██████ employees from various locations. License fees for the use of such software or data are invoiced to and paid by ██████ at its headquarters in Chicago or more often its ██████ payment center.

██████ also purchases news and market exchange data feeds and cloud computing services via the internet and other delivery mechanisms. News and stock market exchange data feeds are generally streaming data (real time, delayed, or request response). For these news or data feeds or cloud computing services, ██████ employees remotely access such news, data and services through ██████ computer terminals, and/or third-party vended applications, which may combine software and data, (desktops/laptops) located both inside and outside of Chicago. ██████ also purchases brokerage, market investment and money transfer services, as well as vendor data analysis services.

ISSUES

A. General

1. Please confirm that the information provided in the DOF's October 29, 2014 ruling to [REDACTED] is still correct.

B. Possessory Transfers of Stock Market Software or Data

1. The following transfers are exempt from Illinois ROT as exempt licenses of software. Please confirm the taxability of the following transactions and uses under the CTT:

- a. The license of market data software where the initial possession of the software program is supplied to [REDACTED] by disk or download, is only subject to the CTT to the extent the physical location [REDACTED] servers and computers, upon which such software is received, is in Chicago.
- b. When market data or software is licensed from a vendor and where possession is transferred to [REDACTED] (by download or otherwise), the access of such data or software by a [REDACTED] employee, whether from a terminal inside or outside of Chicago, through an internal [REDACTED] private network, is not determinative of its taxability under the CTT; rather, for potentially taxable transfers, the physical location of the servers or computers upon which such software or data is received by [REDACTED] determines its taxability under the CTT.
- c. When market data or software is licensed by [REDACTED] but the possession of such data or software is delivered directly (by disk or electronically) to a [REDACTED] vendor, as a [REDACTED] designee, in such situations, the taxability of the data or software is determined by the physical location of the vendor's servers or computers upon which the data or software is stored, rather than the terminal from which the data or software may be accessed by the vendor's or [REDACTED] employees. However, if such vendor location is unknown, it would appear that the billing address of the vendor could be used to determine the taxability of the data or software.

2. Please advise whether for possessory transfers of market data, the licensing and delivery of such data by electronic means (e.g., downloading) is considered taxable under the CTT, when such a transfer is not treated as the transfer of tangible personal property (and thus not considered canned computer software) by the IDOR. If it is subject to the CTT, is it only taxable if physically located on a [REDACTED] computer or server in Chicago and not acquired for a perpetual period of time, or is another test used to determine its taxability?

3. Please confirm that the license of customized software or data, including the customization of prewritten software or data, where 50% or more of the cost of the customized software or data is the customization charge, is not taxable under the CTT.

C. Nonpossessory Access and Use of Stock Market Data or Software

1. Please confirm the taxability of the following transactions and uses under the CTT:

- a. The purchase of remote (nonpossessory) cloud-based use of computer hardware and software to input, modify or retrieve data *supplied by* [REDACTED] is only taxable to the extent such hardware and software is accessed and used by a [REDACTED] employee at a computer terminal (or similar device) located in Chicago and only at the CTT tax rate of 5.25%.
- b. [REDACTED] purchase of remote (nonpossessory) cloud based use of computer hardware and software, where [REDACTED] does not provide any of the data which is processed by the hardware and software, is taxable only to the extent of [REDACTED] employees use of such software through computer terminals (or similar devices) located in Chicago at the CTT full 9% tax rate.

2. Please confirm that [REDACTED] purchase of streaming news or stock market data feeds of current news or stock market information, where only the news or market information is being received (and no search function provided), is not taxable under the CTT under CTT Exemption #11. (Chgo Muni. Code. §3-32-050 A.(11)).

D. CTT Exemptions #9 & #10 (Chicago Muni. Code, §3-32-050 A.(9) & (10).)

1. Please confirm that market brokerage services which involve [REDACTED] remote access and use of computers and computer software, and the acquisition of market data, in order to clear, execute or process market transactions, when the service charge is based on a subscription or transactional basis and is paid by [REDACTED] to allow it to place trades of securities, commodities or similar investments on a recognized exchange, is not taxable under the CTT Exemption 9.

2. Please confirm that the payment for subscription or transactional services that involve [REDACTED] access and use of computers, computer software and data to effectuate the transfer or loan of money or securities, is not taxable under CTT Exemption #10.

E. Separately Stated and Optional Services

1. Please confirm that the following services are not taxable under the CTT, if separately stated on vendor invoices and are optional:

- a. Administrative Charges
- b. Travel Reimbursements
- c. Miscellaneous (non-lease) Charges
- d. Customer Support Charges
- e. Training Charges
- f. Special Labor Charges or Implementation Fees
- g. Programing or Customization Charges

2. Please confirm that if any of such service charges listed in (E.1.) are not separately stated and optional, that they are taxable under the CTT but only to the extent they relate to a taxable lease of computer hardware or software, or if such a determination cannot be reasonably made, then in the same proportion that the underlying transaction they relate to is taxable under the CTT.

F. Non-Use in Chicago of Possessory Software or Cloud Access based Software

Please confirm that software licensed and downloaded by [REDACTED] or licensed by [REDACTED] to accessed online over the cloud is only taxable for those licenses actually used and when the machine or terminal that actually downloads or access such software does so from a location in Chicago.

LAW

Under the CTT, a tax is imposed upon the lease or rental in the City of Chicago of personal property, or the privilege of using in the City of Chicago personal property that is leased or rented outside of the City of Chicago. Chgo Muni. Code, § 3-32-030.A. The CTT is imposed on both (a) "possessory" leases of personal property, and (b) "nonpossessory" leases of personal property. Chgo Muni. Code, § 3-32-020.I.

Possessory Leases

A possessory lease of personal property is a classic lease or rental situation when the physical possession of the property is transferred. When possession of the property is transferred, the actual possession of such software is the use of such property since possession is the exercise of power over such property. *See*, Chgo Muni. Code, § 3-32-020.I and 020.R; *see also*, CTT Ruling Number 8 ("garaging, storing or keeping of the property constitutes use"). Therefore, when a possessory lease of the property occurs, the location of the property while it is

being used or operated by the lessee is the location that determines its taxability under the CTT. *See similarly, e.g., Square D Company v. Johnson*, 233 Ill. App. 3d 1070 (1st Dist. 1992) (“use” occurs “where the jet was actually located” and not where corporation could control its use). For example, a leased vehicle garaged in Chicago for 13 hours a day and then operated outside of Chicago by the lessee for 11 hours a day is considered primarily used in Chicago and subject to the CTT. Similarly, a leased computer solely located in Chicago during the lease period is considered used 100% in Chicago and entirely taxable under the CTT. In such a situation, it is irrelevant that the lessee could also remotely use the computer from his or her home while outside of Chicago. Likewise, a leased printer located solely in Chicago is considered 100% subject to the CTT, even if it can be accessed remotely from outside Chicago to print documents.

Nonpossessory Lease

A nonpossessory lease of computers or computer software is a special creation of the CTT. Chgo Muni. Code, § 3-32-020.I. A nonpossessory lease expands the reach of the CTT beyond classic leases or rentals. A nonpossessory lease occurs where use, but not possession, of personal property transfers to the lessee. Chgo Muni. Code, § 3-32-020.I. Therefore, this special provision only applies when possession of the leased property stays in the hands of the lessor. As a result, the DOF has established a special rule for determining where “use” occurs for imposing the CTT on such nonpossessory leases. Chgo Muni. Code, § 3-32-020.I. The special rule is quite straightforward and clearly provides that 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” for CTT purposes. *Id.*; CTT Amended Ruling Number 5, § 2 (“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”); *see similarly*, CTT Ruling Number 9, § 3.

Letter Ruling

In the Chicago Department of Law (“DOL”) Letter Ruling dated [REDACTED], the DOL confirmed that [REDACTED] was only taxable under the CTT on its acquisition of computer software, hardware and services as follows:

1. For the licenses of computer software acquired by [REDACTED] is not subject to CTT, where the possession of the software is delivered (by download over the internet or otherwise) outside of Chicago to [REDACTED] and remains on [REDACTED] data servers and mainframes located outside of Chicago for its entire license period, no matter where remote access, if any, of such software may occur.

2. For the license of computer software acquired by [REDACTED] is subject to CTT, where the possession of the software is delivered (by download over the internet or otherwise) inside of Chicago to [REDACTED] desktop/laptop computers or computer servers located

in Chicago and remain on such desktop/laptop computers or computer servers inside Chicago for its entire license period, no matter where remote access, if any, of such software may occur.

3. When ██████ acquires multiple licenses of the same software for use by its employees and such software is delivered (by download over the internet or otherwise) to ██████ for use in its desktop/laptop computers both inside and outside of Chicago, that the CTT is only due on the portion of the license fees for such software that is located on such computers inside of Chicago during the license period, no matter where remote access, if any, of such software may occur.

4. When ██████ pays for the nonpossessory use of computer hardware and software programs or databases (accessed over the internet or otherwise), such as time-sharing or cloud computing, that CTT is only due on the charges paid by ██████ for the nonpossessory use of such software at ██████ terminals located inside the City of Chicago and not at ██████ terminals located outside the City of Chicago, when terminal use locations can be identified or reasonably estimated by ██████. The letter ruling also explained that the DOF would be happy to discuss the alternative methods of determining the CTT due if terminal use locations cannot be identified or reasonably estimated.

New CTT Ruling #12 and Information Bulletin

CTT Ruling #12, and the DOF Information Bulletin issued in November, 2015, were designed to discuss the scope of the CTT, clarifying issues raised in Ruling 12, clarifying CTT Exemption #11, explain the new small business exemption passed by the Chicago City Council, and explain the new reduced rate of tax (5.25%) on remote (cloud) computer use where the user/customer supplies the data that is imputed, modified or retrieved on such computer.

CTT Ruling #12 makes it clear that the "Passive access to information is an exempt use of the provider's computer. In the case of a stock market 'ticker-tape,' the customer simply receives the one-way dissemination of a scrolling list of current stock prices for a set group of businesses. In that case, the customer's use of the provider's computer is *de minimis*, as there is no search function (or at most a single or infrequent 'channel' selection), and the charge is predominantly for information transferred to the customer (in the form of one-way 'streaming')." .

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

The November 2015 Information Bulletin makes it clear that the new 5.25% tax rate for the CTT applies to "cloud" products such as PaaS, IaaS and SaaS (where the nonpossessory lease is 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), but not to "database" products (where the nonpossessory lease is 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 provider).

The CTT Ordinance provides for the following Exemptions:

CTT Exemption #11

The CTT provides in Exemption 11 that "Under 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 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 nonpossessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character."

CTT Exemption #10

The CTT provides in Exemption 10 that "The nonpossessory lease of a computer to effectuate the deposit, withdrawal, transfer or loan of money or securities, including any related review of accounts or investment options by the account owner, whether or not the parties to the lease also are parties to the deposit, withdrawal, transfer or loan." Chgo Muni. Code. §3-32-050 A.(10).

CTT Exemption #9

The CTT provides in Exemption 9 that "The nonpossessory lease of a computer to effectuate the execution, clearing, processing, matching or recording of a trade on a board of trade designated as a contract market by the Commodity Futures Trading Commission or on a securities exchange registered with the Securities and Exchange Commission, or any other trade of any security (as defined in section 475(c)(2) of the Internal Revenue Code of 1986, as amended, without regard to the last sentence thereof), or any comparable security with respect to commodities, whether or not the parties to the lease also are parties to the trade." Chgo Muni. Code. §3-32-050 A.(9).

ANALYSIS

A. General

Issue A.1.

Because new CTT Ruling #12 did not change the CTT issues previously raised and addressed in the DOL's [REDACTED] letter Ruling to [REDACTED] the analysis provided in that letter should still hold true today.

B. Possessory Transfer of Stock Market Software or Data

Issue B.1.a.

Because the CTT only taxes possessory leases of personal property based on where such property is located when it is used, [REDACTED] licenses of market data software where the software is delivered outside of Chicago and possession of the software remains on [REDACTED] computer servers and mainframes located outside of Chicago, are not taxable under the CTT. This software is received, possessed and located, and thus used, by [REDACTED] on its servers and computers located outside of Chicago, so no taxable use of such software ever occurs in Chicago. Simply put, when the CTT taxes normal "possessory" leases of personal property, the determination of the taxable use in the City is based on the physical possession and use of the property in the City during the lease or rental period. Therefore, for possessory leases (unlike nonpossessory leases) any possible remote use of such property, by a remote terminal or otherwise, is irrelevant to this inquiry, since remote terminal use only applies to "nonpossessory leases." *See*, Chgo Muni. Code, § 3-32-020.I. ("In the case of a nonpossessory computer lease, the location of the terminal or the device . . . shall be deemed . . . the place of use."). Accordingly, [REDACTED] receipt and exclusive possession of the market data software on [REDACTED] servers and computers located outside of Chicago is not subject to CTT.

Issue B.1.b.

As noted above, when a possessory lease of software or data occurs (assuming the data or software is taxable under the CTT), then the CTT is due based on the physical location of the data server or computer upon which the software or data is stored. *See*, Chgo Muni. Code, § 3-32-020.I and 020.R; *see also*, CTT Ruling Number 8 ("garaging, storing or keeping of the property constitutes use"). And, as explained in B.1.a. above, any remote terminal use of such data or software by [REDACTED] employees is irrelevant to the taxability of such software or data under the CTT.

Therefore, when market data or software is licensed from a vendor and possession is transferred to [REDACTED] (by download or otherwise), any access of such data or software by a [REDACTED] employee whether from a terminal inside or outside of Chicago, through an internal

████ private network, is not determinative of its taxability under the CTT, rather the physical location of the data server or computer upon which such software or data is stored determines its taxability under the CTT.

Issue B.1.c.

Consistent with the analysis in the above two issues, when market data or software is licensed by █████ but delivered directly (by disk or electronically) to a █████ vendor, as a █████ authorized designee (rather than █████ in such situations, since the possession of the software or data has been transferred to █████ vendor, the taxability of the data or software is determined by the physical location of the vendor's servers or computers upon which the data or software is stored. This is because the CTT provides that "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*." Chgo Muni. Code. § 3-32-020(R); CTT Ruling #12. Therefore, whether the data or software sits on █████ computers or its authorized vendor's computers, the physical location of the server or computer is what is relevant to determine the taxability of the software or data stored upon it. And, as explained in B.1.a. above, any remote terminal use of such data or software by █████ employees (or the vendor's employees) is irrelevant to the taxability of such software or data under the CTT.

When there are complicating and/or unknown factors such as where the 3rd party █████ vendor could have multiple data servers and these data servers are located in different municipalities and/or states, the location of these data servers (where the data or software lies) could be anywhere and change daily, weekly, monthly, etc. depending on where the vendor has capacity or other factors as determined by the vendor. In these situations, █████ does not control where the market data or software is delivered or used. Nor does █████ have a "right of notification" with respect to where the market data or software is delivered or used. The placement of the market data or the software is at the sole discretion of the vendor. In such situations, it would appear that it would be reasonable to use the billing address of the vendor to determine the use location for CTT purposes. This would be consistent with CTT Ruling 12, Section 16.

Issue B.2.

The licensing and delivery of information or data by electronic means (*e.g.*, downloading) is not treated as the transfer of tangible personal property (and thus not considered the transfer of computer software) by the IDOR. ROT Regulation Section 130.2105; ST 06-0081-GIL. As a result, since CTT Ruling #5 relies on how canned software is taxed under Regulation 130.1935 to determine its taxability under the CTT, this Ruling cannot be used to determine whether such downloaded data is taxable under the CTT. As a result, the question arises as to whether such downloaded data should be taxed as a lease or as a sale.

Because CTT Ruling #5 does not apply, the only test that appears relevant to determine the taxability of the downloaded data is the pre-Ruling 5 test in CTT Ruling #5a. This Ruling looks at the characteristics of the transfer to see if it's a sale or lease and uses the concept of whether the license is perpetual or not, like used in other states, to determine if the transfer is a lease or sale.

If it is ultimately determined by the DOF that the download of data is a taxable lease, then the possessory transfer rules would appear to apply, which means that the transfer is subject to the CTT only if the data is physically located on [REDACTED] computer or data server in Chicago.

As in the analysis of Issue B.1.a. above, any remote terminal use of data acquired in a "possessory lease" is irrelevant to the taxability of the data under the CTT. Chgo Muni. Code, § 3-32-020.I.

Issue B.3.

Under the CTT, the words "lease" or "rental" shall include a transfer of the use of software within the meaning of this chapter only if, for purposes of the Illinois Retailers' Occupation Tax and Illinois Use Tax, the software is not "custom" software and the transfer is an exempt license of software. Sec. 3-32-020.I. Moreover, the definition of software includes data under the CTT. Sec. 3-32-020.E. As a result, the purchase of custom software or custom made data is not taxable under the CTT.

Under the IDOR regulation 130.1935, custom software includes customized software where the customization is 50% or more. As stated in the regulation: "if the pre-written program or module was previously marketed, the new program will qualify as a custom program if the price of the pre-written program was 50% or less of the price of the new program. If the pre-written program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50% of the contract price to the consumer." Sec. 130.1935.c).3).

As a result, if [REDACTED] purchases or licenses computer software or data that has been customized by 50% or more as noted in the IDOR regulations, this should exempt such customized software or data from the CTT.

C. Nonpossessory Access and Use of Stock Market Data or Software

Issue C.1.a.

Nonpossessory leases of computers and computer software are not taxable at their physical locations, rather such leases are taxable at the terminal locations the lessee uses to access and manipulate such hardware and software. Chgo Muni. Code, § 3-32-020.I. *See similarly*, CTT Amended Ruling Number 5; CTT Ruling Number 9. As a result (unlike possessory leases of computers and software) in a non-possessory lease of computers and software, the physical location of the computer and software is irrelevant to the determination of the taxability of the transaction under the CTT.

Moreover, the remote (nonpossessory) use of cloud software and computers is taxed at only a 5.25% tax rate under the CTT if the remotely accessed software or hardware is used to input, modify or retrieve data supplied by the customer. Chgo Muni. Code, § 3-32-030.B.1. Consequently, the purchase of remote (nonpossessory) cloud-based computer hardware and software usage to input, modify or retrieve data supplied by ██████ is only taxable to the extent such hardware and software is accessed and used by a ██████ employee at the computer terminal (or similar device) location in Chicago and only at the tax rate of 5.25%.

Issue C.1.b.

As explained in Issue C.1.a. above, non-possessory leases of computers and computer software are not taxable at their physical locations. Rather such leases are taxable at the terminal locations the lessee uses to access and manipulate such hardware and software. Chgo Muni. Code, § 3-32-020.I. And, when the customer does not provide the data or information used in the input, modification or retrieval, rather the data is provided by the provider of the computers and software, the CTT tax rate is 9%. Therefore, when ██████ purchases remote (nonpossessory) cloud-based computer hardware and software usage where ██████ does not provide any of the data which is processed by the hardware and software, ██████ will be taxable only to the extent of ██████ employees use of such software through computer terminals (or similar devices) located in Chicago at the full 9% tax rate.

Issue C. 2.

The CTT provides that “the nonpossessory 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 nonpossessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character.” Chgo Muni. Code, §3-32-050 A.(11). This means that the passive receipt of information or data, such as streaming or real time (or time-delayed streaming) current news or data, when no search functions are provided, is not taxable under the CTT. CTT Ruling 12. This would also logically include

streaming data received based on a request set by [REDACTED]. As a result, when [REDACTED] purchases such streaming news or stock market data feeds of current news or stock market information, where only the news or market information is being received (and no search function provided), this should not be taxable under the CTT under CTT Exemption #11. Moreover, even if a search function is provided for digital news feeds, such as the Wall Street Journal, if such feeds are for proprietary information, the feeds are still not taxable under the CTT. *See*, Ruling 12, Sec. 11.

D. CTT Exemptions #9 & #10

Issue D.1.

“The nonpossessory lease of a computer to effectuate the execution, clearing, processing, matching or recording of a trade” on an exchange is not taxable under the CTT. Chgo Muni. Code. §3-32-050 A.(9) (“Exemption #9”). This includes trades of stocks and commodities. *Id.* Here, when [REDACTED] purchases stock market services which involve [REDACTED] remote access and use of computers and computer software, including the acquisition of market data, in order to clear, process or make stock market or commodity transactions on an exchange. [REDACTED] pays a service charge based on a subscription or transactional basis that allows [REDACTED] to place, process or clear such trades of securities, commodities or similar investments. Consequently, under Exemption #9, these charges are not taxable under CTT.

Issue D.2.

“The nonpossessory lease of a computer to effectuate the deposit, withdrawal, transfer or loan of money or securities, including any related review of accounts or investment options by the account owner, whether or not the parties to the lease also are parties to the deposit, withdrawal, transfer or loan.” Chgo Muni. Code. §3-32-050 A.(10). Therefore, when [REDACTED] pays for subscription or transactional services that involve [REDACTED] access and use of computers, computer software and data to deposit, withdrawal, transfer or loan money or securities, it is not taxable under CTT Exemption #10.

E. Separately Stated and Optional Services

Issue E.1. and 2.

[REDACTED] pays for a number of ancillary charges for services in relation to its license and purchase of software and data. These include:

- a. Administrative Charges
- b. Travel Reimbursements
- c. Miscellaneous (non-lease) Charges
- d. Customer Support Charges
- e. Training Charges

- f. Special labor charges or implementation fees
- g. Programing or Customization Charges

The CTT provides that the term "lease price" or "rental price" shall exclude separately stated optional charges not for the use of personal property. Chgo Muni. Code, Sec. 3-32-020.K. As a result, when [REDACTED] incurs any of the above charges, if they are separately stated and optional, they are not taxable.

However, to the extent the charges are not separately stated or optional, then the charges are taxable only if the underlying transaction that they relate to is taxable. For transactions involving both taxable and nontaxable components, while the CTT does not expressly address the issue, it would appear that an allocation of these service charges between the taxable and nontaxable components should be made to determine the portion of these service that are taxable. If no direct allocation can be made, it would appear reasonable that a percentage allocation would be appropriate.

F. Non-Use in Chicago of Possessory Software or Cloud Access based Software

[REDACTED] in many instances purchases software licenses in bulk to either download software (possessory transfer) or access software via the cloud (over the internet) for its multiple locations across the country. As previously noted, license fees for the use of such software or data are invoiced to and paid by [REDACTED] at its headquarters in Chicago or more often its [REDACTED] payment center. Sometimes many of the licenses go unused, so no downloading or terminal access occurs in Chicago or anywhere else. Under the CTT, since no actual delivery, possession or use of the software occurs in Chicago, no CTT should be due on the software licenses acquired but not used¹. Likewise, since no terminal use of the cloud based software is occurring in Chicago, again no taxable use of such software would occur in Chicago. See, Chgo Muni. Code, Sec. 3-32-020(I); CTT Ruling #12. For example, [REDACTED] acquires licenses to give 200 terminal users the ability to access software over the cloud. Its [REDACTED] Payment Center pays for the licenses. However, [REDACTED] only uses 100 of the licenses, 25 in Chicago and 75 outside of Chicago, even those it had to pay for 200 licenses. Because only 25 licenses are used in Chicago (terminals in Chicago used to access cloud software), under the CTT only 25 of the licenses are taxable under the CTT.

CONCLUSION

[REDACTED] respectfully requests that the DOF issue a private letter ruling confirming [REDACTED] understanding of the application of the CTT to the issues discussed herein.

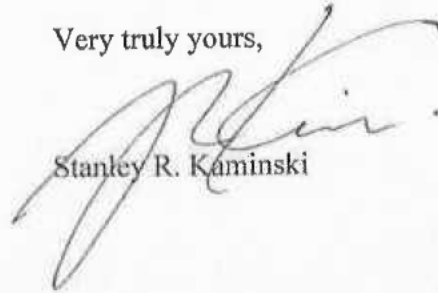
¹ This is similar to leasing a computer in the suburbs but never picking it up and thus never using it in the City, since no actual delivery or use occurs in the city, no taxable transaction or event takes place in the City. See CTT Ruling #1.

Chicago Department of Finance
Attn: Tax Policy Section
June 2, 2016
Page 15

Duane Morris

If you have any questions, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stanley R. Kaminski', written in a cursive style.

Stanley R. Kaminski

SRK:dmb



City of Chicago
Rahm Emanuel, Mayor

Department of Law

Stephen R. Patton
Corporation Counsel

Revenue Litigation Division
30 North LaSalle Street
Suite 1020
Chicago, IL 60602-2580

(312) 744-5691
(312) 744-6798 (Fax)

October 29, 2014

Stanley R. Kaminski, Esq.
Duane Morris
190 South LaSalle Street
Suite 370
Chicago, IL 60603
SRKaminski@duanemorris.com

Re: [REDACTED]

Dear Stan:

I am writing in response to your letter of [REDACTED] (copy attached), requesting a private letter ruling on behalf of [REDACTED] under Uniform Revenue Procedures Ordinance Ruling #3.

Your letter concerns the application of the Chicago Personal Property Lease Transaction Tax ("CTT") and raises four issues. We agree with your conclusions as to all four issues, with the following qualifications:

1. In agreeing to your conclusions, we are not necessarily agreeing with all of your analysis.
2. As to issue #4, we ask that [REDACTED] attempt to use the first sourcing method you describe on the last page of your letter - *i.e.*, "that if it can specifically determine or reasonably estimate the terminal use inside of Chicago, it should use such calculation to determine the CTT due and the DOF will accept any reasonable estimation." If [REDACTED] finds that this method is unworkable, then we will be happy to discuss alternatives at that point.

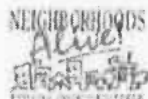
This opinion is based on the text of the CTT as of the date of this letter and the facts as represented in your letter.

Please let us know if you have questions or need anything further.

Very truly yours,

Weston Hanscom
Deputy Corporation Counsel
Revenue Litigation Division
Department of Law
312-744-9077

cc: Michael Luzzi, Department of Finance
Kim Cook, Department of Law



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FIRM and AFFILIATE OFFICES

STANLEY R. KAMINSKI
DIRECT DIAL: +1 312 499 0105
PERSONAL FAX: +1 312 277 6423
E-MAIL: SRKaminski@duanemorris.com

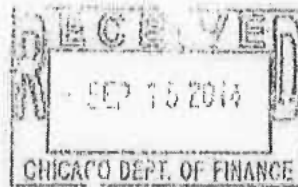
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██████████, 2014

Chicago Department of Finance
Attn: Tax Policy Section
DePaul Center, Room 300
333 South State Street
Chicago, Illinois 60604-3977



Re: Private Letter Ruling Request ██████████

Dear Sir or Madam:

On behalf of ██████████ we hereby request the issuance of a private letter ruling under Section 5 of the Uniform Revenue Procedures Ordinance Ruling Number 3. ██████████ is currently registered under and is subject to the Chicago Personal Property Lease Transaction Tax ("CTT") on computer software and computer equipment that it leases for use within the City of Chicago. ██████████ also collects and remits the Chicago Transaction Tax to the City of Chicago from the rental of ██████████ in the City of Chicago. ██████████ is not currently under audit for CTT by the Department of Finance ("DOF"). ██████████ headquarters is located at ██████████, Chicago, Illinois 60603, and it has facilities located in multiple jurisdictions throughout the United States, including large data operations centers located in ██████████ and ██████████ Illinois. There are over ten thousand servers located within these centers, which process the work of ██████████ front, middle, and back office operations.

The purpose of this letter ruling request is to obtain a ruling on the application of the CTT to licenses of computer software acquired by ██████████ where said software licenses are exempt from the Illinois Retailers' Occupation Tax ("ROT") and Use Tax, because they meet the five (5) requirements of the Illinois Department of Revenue ROT Software Regulation Section 130.1935(a)(1). ██████████ also seeks a ruling on the taxability under the CTT of remote computer services it purchases, such as time-sharing or cloud computing services.

DUANE MORRIS LLP

196 SOUTH LASALLE STREET, SUITE 3700 CHICAGO, IL 60601-3433
DM312932319.2

PHONE: +1 312 499 6700 FAX: +1 312 499 6701

FACTS

██████████ is an Illinois banking corporation. It has branches in selected states throughout the United States as well as foreign branches located in Beijing, London, Melbourne, Singapore, and Toronto. ██████████ is the predominant subsidiary of ██████████ ██████████. Other affiliates of ██████████ and ██████████ are engaged in banking, investment and asset management businesses. These other affiliates are located in the United States and throughout the world.

In order to perform its services for its clients and to operate its business, ██████████ acquires computer software to run its data servers, mainframes, desktop and laptop computers. This software includes infrastructure, business applications and desktop/laptop software.

For purposes of this ruling request, the only computer software at issue is software that meets the five (5) license requirements of the Illinois Department of Revenue ROT Regulation Section 130.1935(a)(1). As a result, effective September 1, 2013, under CTT Amended Ruling Number 5, such software licenses have been deemed leases by the DOF.

Possession of the software at issue is generally delivered through internet downloads (or disk uploads) directly to ██████████ servers, mainframes or desktops/laptops. License fees for the use of such software are invoiced to and paid by ██████████ at its headquarters in Chicago. Such software may be accessed at the physical location of where the software has been installed or remotely by ██████████ employees.

██████████ also purchases some time-sharing access or cloud computing services via the internet. For these internet-accessed time-sharing or cloud computing services, no possession of said software is transferred to ██████████. Rather, ██████████ employees remotely access and use such computers and software through ██████████ computer terminals (desktops/laptops) located both inside and outside of Chicago.

ISSUES

1. Please confirm that a license of computer software acquired by ██████████ is not subject to CTT, where the possession of the software is delivered (by download over the internet or otherwise) outside of Chicago to ██████████ and remains on ██████████ data servers and mainframes located outside of Chicago for its entire license period, no matter where remote access, if any, of such software may occur.

2. Please confirm that a license of computer software acquired by ██████████ is subject to CTT, where the possession of the software is delivered (by download over the internet or otherwise) inside of Chicago to ██████████ desktop/laptop computers or computer servers located in Chicago and remain on such desktop/laptop computers or computer servers inside Chicago for its entire license period, no matter where remote access, if any, of such software may occur.

3. Please confirm that where ██████████ acquires multiple licenses of the same software for use by its employees and such software is delivered (by download over the internet or otherwise) to ██████████ for use in its desktop/laptop computers both inside and outside of Chicago, that the CTT is only due on the portion of the license fees for such software that is located on such computers inside of Chicago during the license period, no matter where remote access, if any, of such software may occur.

4. Please confirm that when ██████████ pays for the non-possessory use of computer hardware and software programs or databases (accessed over the internet or otherwise), such as time-sharing or cloud computing, that CTT is only due on the charges paid by ██████████ for the non-possessory use of such software:

- a. at ██████████ terminals located inside the City of Chicago and not at ██████████ terminals located outside the City of Chicago, when terminal use locations can be identified or reasonably estimated by ██████████; or
- b. at the primary location of terminal use by ██████████ when actual terminal use cannot be identified or reasonably estimated between Chicago and non-Chicago terminal locations; or
- c. at the billing location for such service, when neither the actual nor primary (nor reasonably estimated) terminal use can be identified.

LAW

Under the CTT, a tax is imposed upon the lease or rental in the City of Chicago of personal property, or the privilege of using in the City of Chicago personal property that is leased or rented outside of the City of Chicago. Chgo. Muni. Code, § 3-32-030.A.

The CTT is imposed on both (a) "possessory" leases of personal property, and (b) "non-possessory" leases of personal property. Chgo. Muni. Code, § 3-32-020.I.

Possessory Leases: A possessory lease of personal property is a classic lease or rental situation when the physical possession of the property is transferred. When possession of the property is transferred, the actual possession of such software is the use of such property since possession is the exercise of power over such property. See Chgo. Muni. Code, § 3-32-020.I and 020.R; see also, CTT Ruling Number 8 ("garaging, storing or keeping of the property constitutes use".) Therefore, when a possessory lease of the property occurs, the location of the property while it is being used or operated by the lessee is the location that determines its taxability under the CTT. See similarly, e.g., *Square D Company v. Johnson*, 233 Ill. App. 3d 1070 (1st Dist. 1992) ("use" occurs "where the jet was actually located" and not where corporation could control its use). For example, a leased vehicle garaged in Chicago for 13 hours a day and then operated outside of Chicago by the lessee for 11 hours a day is considered primarily used in Chicago and

subject to the CTT. Similarly, a leased computer solely located in Chicago during the lease period is considered used 100% in Chicago and entirely taxable under the CTT. In such a situation, it is irrelevant that the lessee could also remotely use the computer from his or her home while outside of Chicago. Likewise, a leased printer located solely in Chicago is considered 100% subject to the CTT, even if it can be accessed remotely from outside Chicago to print documents.

Non-possessory Lease: A non-possessory lease of computers or computer software is a special creation of the CTT. Chgo. Muni. Code, § 3-32-020.I. A non-possessory lease expands the reach of the CTT beyond classic leases or rentals. A non-possessory lease occurs where use, but not possession, of personal property transfers to the lessee. Chgo. Muni. Code, § 3-32-020.I. Therefore, this special provision only applies when possession of the leased property stays in the hands of the lessor. As a result, the DOF has established a special rule for determining where "use" occurs for imposing the CTT on such non-possessory leases. Chgo. Muni. Code, § 3-32-020.I. The special rule is quite straightforward and clearly provides that 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" for CTT purposes. *Id.*; CTT Amended Ruling Number 5, § 2 ("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"); *see similarly*, CTT Ruling Number 9, § 3.

ANALYSIS

Issue 1.

Because the CTT only taxes possessory leases of personal property based on where such property is located when it is used, ██████████ licenses of computer software where the software is delivered outside of Chicago and possession of the software remains on ██████████ computer servers and mainframes located outside of Chicago, are not be taxable under the CTT. This software is always possessed and located, and thus used, by ██████████ on its mainframes and servers located outside of Chicago, so no taxable use of such software ever occurs in Chicago. Simply put, when the CTT taxes normal "possessory" leases of personal property, the determination of the taxable use in the City is based on the physical possession and use of the property in the City during the lease or rental period. Therefore, for possessory leases (unlike non-possessory leases) any possible remote use of such property, by a remote terminal or otherwise, is irrelevant to this inquiry, since remote terminal use only applies to "non-possessory leases". See Chgo. Muni. Code, § 3-32-020.I. ("In the case of a non-possessory computer lease, the location of the terminal or the device . . . shall be deemed . . . the place of use."). Accordingly, ██████████ receipt, exclusive possession and use of the licensed infrastructure and business application computer software at ██████████ servers and mainframes located outside of Chicago is not subject to CTT.

Issue 2.

The CTT applies to the possessory lease of computer software delivered and used by ██████████ on its desktop/laptop computers and servers located in Chicago. Chgo. Muni. Code, § 3-32-020.I. If delivered into Chicago, such software is taxable under the CTT, (§ 3-32-030.C), unless after the first payment period, the software is removed from Chicago with only incidental use in Chicago. If that occurs, then no CTT will be due for such subsequent payment periods. Chgo. Muni. Code, § 3-32-050.B.

On the other hand, software delivered to ██████████ computers and servers located outside of Chicago and that remains outside of Chicago by ██████████ on such computers and servers is not subject to the CTT. However, if such software subsequently is moved into the City and used 50% or more within the City during any payment period, such as in the repositioning of a desktop computer or server into the City, or the renewal of a software license where the software covered by the license has moved into the City, the CTT will be due for the payment period such software is present 50% or more of the time in Chicago. Chgo. Muni. Code, § 3-32-050.A:(1) and B.

As in the analysis of Issue 1; any remote terminal use of computers or software acquired in a "possessory lease" is irrelevant to the taxability of the computer or software under the CTT. Chgo. Muni. Code, § 3-32-020.I.

Issue 3.

The CTT is imposed on the lease or rental of computer software in Chicago, or the use of such computer software in Chicago. Chgo. Muni. Code, § 3-32-030.A. When multiple licenses of software are acquired for software to be physically delivered and used both on desktops and laptops located inside and outside of Chicago, the CTT would only apply to the software actually present and used in Chicago. For example, if ██████████ obtains a license for up to 200 copies of the software (i.e., 200 licenses), in determining the CTT due, only the software downloaded or otherwise installed on computers located in Chicago would be taxable under the CTT. Chgo. Muni. Code, § 3-32-030A; 3-32-050A. and B.

As a result, the CTT would only be due on that the portion of the license fee (i.e., portion of the 200 licenses) for software that is present on such computers in Chicago. Again, since this is a possessory lease of software, any possible remote access to such software is irrelevant to its taxability under the CTT. Chicago Muni. Code, § 3-32-020.I.

Issue 4.

Non-possessory leases of computers and computer software are not taxable at their physical locations, rather such leases are taxable at the terminal locations the lessee uses to access and manipulate such hardware and software. Chgo. Muni. Code, § 3-32-020.I. *See*

similarly, CTT Amended Ruling Number 5; CTT Ruling Number 9. As a result (unlike possessory leases of computers and software) in a non-possessory lease of computers and software, the physical location of the computer and software is irrelevant to the determination of the taxability of the transaction under the CTT.

Here, ██████████ enters into agreements for the remote use of computers and computer software applications, sometimes referred to as time-sharing or cloud computer services. ██████████ does not obtain possession of such hardware or software, but rather remotely accesses such equipment and software through terminals (*e.g.*, desktops and laptops) located both inside and outside of Chicago.

██████████ requests a ruling that if it can specifically determine or reasonably estimate the terminal use inside of Chicago, it should use such calculation to determine the CTT due and the DOF will accept any reasonable estimation. On the other hand, if ██████████ cannot specifically identify terminal use or reasonably estimate such use in Chicago, then it can determine the CTT based on where the terminals that primarily use the server are located. And, if the terminal use is so diffused that no reasonable estimation is possible, and it cannot be determined or tracked where the use occurs, then billing location can be used as long as it is clear that the primary use is not at another location. ██████████ requests that the DOF confirm that this is an acceptable application of the CTT to such services.

CONCLUSION

██████████ respectfully requests that the DOF issue a private letter ruling confirming ██████████ understanding of the application of the CTT to its licenses of computer software discussed herein.

If you have any questions, please do not hesitate to call me.

Very truly yours,


Stanley R. Kaminski

SRK:dmb