



August 5, 2015

City of Chicago
Rahm Emanuel,
Mayor

Department of Law

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Re: *Request for Reconsideration of March 25, 2015 Private Letter Ruling*

Dear Mr.

Thank you for your letter of May 28, 2015 (copy attached). Your letter asks the City of Chicago ("City") to reconsider its March 25, 2015 private letter ruling, which determined that "fraud detection and risk assessment" product ("Product"), when provided to customers in Chicago, is subject to the Chicago Non-titled Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Chicago Municipal Code ("Code"). After careful consideration, the City affirms its determination.

As explained in my letter of March 25, 2015, the Lease Tax applies to the nonpossessory lease of a computer, which the Code defines as a lease wherein "the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information." See § 3-32-020(I). The City's determination that the Product is a taxable lease of computer was based on your description of how the Product works. According to your letter, each device in the database is coded in one of three ways: (1) as having a clean record; (2) as having a bad record (meaning that it has been involved in a known fraudulent transaction); or (3) in some cases, as unclear. The customer enters the identification code for a given device, and the customer is informed of the result. The speed at which the Product responds indicates that employees are not providing any direct customer service in response to the customer's inquiry. Instead, the customer is retrieving data that is stored in the database, making the charge for the Product a taxable transaction.

Very truly yours,

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

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

May 28, 2015

Mr. Weston Hanscom
Deputy Corporation Counsel
City of Chicago
Revenue Litigation Division
30 North LaSalle Street
Suite 1020
Chicago, Illinois 60602

Private Letter Ruling Request

Dear Mr. Hanscom:

We are submitting this request for redetermination pursuant to your letter dated March 25, 2015 (attached). Also attached is our original letter ruling request dated February 17, 2015. We are not presenting any facts herein in contradiction to our initial letter ruling request. Instead, we wish to make a point of clarification and request a reconsideration of the facts.

As stated previously, this issue is not currently under consideration by the Chicago Department of Revenue in connection with any audit, refund request, voluntary disclosure, administrative hearing or litigation as it relates to [redacted] or any related entity.

Point of Clarification

In your determination letter, you explained that the Chicago Non-titled Personal Property Lease Transaction Tax ("Lease Tax") applies to "nonpossessory leases". Chicago defines a nonpossessory computer lease as a lease wherein "the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information."

We wish to clarify that [redacted]'s customer does not obtain access to any computer of [redacted], nor does the customer use any computer or software owned by [redacted] is performing a professional/information service for its customer using technology. Similar to a CPA preparing a tax return for a client who sends data electronically, [redacted] provides a risk assessment to its customers based on data sent electronically to [redacted].

There is no software downloaded or accessed by the customer of [redacted]. The customer sends information to [redacted] on which [redacted] provides an opinion relative to the trustworthiness of the information.

Chicago Private Letter Ruling Request

We respectfully request a redetermination of the taxability of these services based upon both the original facts as presented along with the clarification provided above.

Question

1. *Are the services provided by [redacted] as described above subject to Chicago Non-titled Personal Property Lease Transaction tax?*

Thank you in advance for your assistance in determining the taxability of these services. Should you have any questions regarding the attached or need additional information, please call me at [redacted]. Thank you for your assistance in this matter.

Very truly yours,



City of Chicago
Rahm Emanuel, Mayor

Department of Law

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March 25, 2015

Re: Private Letter Ruling

Dear Mr. _____,

I am responding to your letter dated February 17, 2015 (copy attached). You ask whether the "fraud detection and risk assessment services" described in your letter (hereafter "the products") are subject to any Chicago sales, use or transaction tax. As explained below, we believe that the products, when used by customers in Chicago, are subject to the Chicago Non-titled Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code").

The Lease Tax is imposed on: (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." See Code § 3-32-030(A). The Lease Tax applies to "nonpossessory leases," which are leases or rentals wherein the use but not the possession of the personal property is transferred. See Code § 3-32-020(1). A nonpossessory computer lease is a lease wherein "the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information." Id.

Based on your letter, it appears that the _____ customer (ordinarily a retailer or other business) obtains access to the _____ computer and uses it to input and retrieve data or information. The _____ computer contains a large database of devices, the device generally being a computer, smart phone or tablet from which the retailer's customer is placing an order. In the database are some devices that have been flagged as suspect. It appears that any given device is marked in one of three ways: (1) clean record (green light - order allowed); (2) bad record (red light - order denied); or (3) unclear (yellow light - for review). The identification code for the device being investigated is sent from the retailer's computer to the _____ computer and automatically run through the _____ database. Based on these facts, we believe that the products, when used by customers in Chicago, are a nonpossessory lease of _____'s computer, and the charges for the products are subject to the Lease Tax.

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
Kim Cook, Department of Law



February 17, 2015

Chicago Department of Revenue

Private Letter Ruling Request

Dear Sir or Madame,

We are writing on behalf of our client (hereafter referred to as " ") to request a ruling on the applicability of Chicago sales, use, or transactions tax of any kind on the sale of fraud detection and risk assessment services.

This issue is not currently under consideration by the Chicago Department of Revenue in connection with any audit, refund request, voluntary disclosure, administrative hearing or litigation as it relates to or any related entity.

Description of Service

provides real-time online fraud detection and risk assessment services to companies throughout the United States and worldwide. Via an electronic interface, receives attributes from the devices conducting online transactions with its customers. These attributes are analyzed against's extensive database of attributes compiled from transactions conducted in the past throughout the world.

The process works as follows: 's customer, Company Z, has a website that provides a number of services. integrates to all types of interactions where Company Z wants to watch for fraudulent behavior, such as registering, logging in, making purchases, updating account information, and applying for credit. This example will focus on an online store where customers can make purchases. Once a purchase has been made, a payment transaction is performed to satisfy payment of the goods. Experience shows that fraud is typically conducted more than once from the same device (computer, tablet, smart phone, game console, etc.). Each time a device is used to conduct a transaction, Company Z uses an application from that is initiated through their online interaction with their customer to collect attributes from the device and pass them to for analysis. compares these attributes to a database of attributes from other transactions, both with Company Z as well as with other online companies. determines whether the device has been involved in any known fraudulent transactions, or whether any other devices involved in known fraud are associated with the device. One customer may own multiple devices, such as a computer and a smart phone, and use them with the same websites. Those devices are then associated with each other within's database.

Chicago Private Letter Ruling Request

returns a recommendation to Company Z, whether to allow, deny, or review the transaction. This result is based on analysis of the device attributes, and risk assessment based on business rules fully configurable by Company Z. An Allow result suggests that the device is trustworthy and represents a low level of risk. A Deny result represents a high level of risk. All of this happens within the time it takes to process an online payment. 's services are configured to best meet the business needs of each customer.

When Company Z is the victim of fraud, it applies information about the type of fraud to the device that was used to perpetrate the fraud. This is called "evidence." For example, if the device was used to take over another user's account, Company Z applies account takeover "evidence" to the device. Other users of service can see this evidence, ensuring that this device will be unable to carry out further fraudulent activity with any other of customers. The device's attributes also influence the risk assessments that processes for all of its users.

Company Z is charged transaction fees and support fees for this service by . The fee includes the real-time analysis of all online credit card transactions, periodic electronically delivered reports summarizing the transactions processed, and online access to reports as needed by Company Z. At no point does tangible personal property transfer from to Company Z.

Questions

- 1. Are the services provided by as described above subject to Chicago tax?

Thank you in advance for your assistance in determining the taxability of these services. Should you have any questions regarding the attached or need additional information, please call me at . Thank you for your assistance in this matter.

Very truly yours,