

CITY OF CHICAGO
DEPARTMENT OF REVENUE
PERSONAL PROPERTY LEASE TRANSACTION TAX RULING

Personal Property Lease Transaction Tax Ruling #3
Subject: Personal Property subject to tax and computation of tax
Effective date: June 1, 2004

Formerly Ruling #7
Original effective date: November 15, 1974
Revised: July 1, 1984
Revised: April 7, 1985

Section 1. Pursuant to section 3-32-030(A) of the Chicago Municipal Code (“Code”), the Chicago Personal Property Lease Transaction Tax (the “lease tax” or “tax”) is imposed upon (1) the lease or rental in the City of personal property, or (2) the privilege of using in the City personal property that is leased or rented outside the City. Section 3-32-030(A) does not limit the application of the tax to any specific types of personal property. Therefore, unless expressly exempted, the tax applies to the lease or rental of any type of personal property.

Section 2. Under Section 3-32-030(A), the lease or rental of personal property includes lease time on personal property not itself rented, such as usage time on a computer, data processing equipment, copying machines, etc. Therefore, the use of a computer for a fee by a computer operator/lessee is subject to tax even though physical possession of the computer does not transfer to the lessee. Likewise, the rental of or usage time on the computer software is also subject to tax.

Section 3. A lease or rental of personal property occurs under the ordinance when there is a transfer of the possession or use of personal property or the right to the possession or use of personal property, but not the title or ownership thereof, for a valuable consideration.

Section 4. The lease tax is calculated on the lease or rental price. Lease or rental price means consideration paid for the lease or rental of personal property, but excluding any separately-stated charges not for the use of personal property. See also Section 5 below. A primary factor in determining whether a separately-stated charge is for the use of personal property is whether or not the charge is optional.

Section 5. For contracts which involve both a sale of a service and a lease of personal property, the lessor shall be required to separate the lease or rental portion from the sale portion, as provided in Section 4 above. If the lessor fails to separate the lease or rental portion of the price from the non-lease or non-rental portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for the use of any personal property. If this occurs, then the portion not representing the use of personal property would be non-taxable. Neither Section 4 nor

this section is intended to allow a lessor to treat normal overhead costs, such as maintenance, as non-taxable sales of services unless the lease agreement clearly indicates that these costs are being charged separately to the lessee and are optional.

Section 6. A transaction involving the transfer of the possession or use of personal property shall be taxable even though only a small portion of the transaction involves the transfer of the possession or use of such property. However, the amount subject to tax shall be determined as provided in this ruling. If the transfer of personal property is incidental to the service provided, in that the use of the personal property has little or no value without the accompanying service and the cost of the personal property is *de minimis* (i.e., nominal) compared to the price charged for the total transaction, then no lease or rental shall be deemed to have occurred, and no portion of the price shall be taxable. Furthermore, if the lessor or lessor's agent furnishes the services of operating equipment for a lessee, so that only the lessor or lessor's agent uses the equipment, and so that the lessor or lessor's agent remains both in total possession and in total control of the equipment, then no lease or rental shall be deemed to have occurred, and no portion of the price shall be taxable. However, a person who operates a terminal to use a computer is considered the user of that computer, and such use is subject to the tax, even though the physical possession of the computer remains in the hands of the computer owner; and in such a case the location of the terminal used by the operator shall be deemed the location of the use of the computer by such operator for purposes of the tax.