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Department of Law

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August 27, 2020

Carrie Merickel
Miller, Cooper & Co., Ltd.
2 N. Riverside Pl.
Suite 900
Chicago, Illinois 60606

Re: [REDACTED] - Private Letter Ruling

Dear Ms. Merickel:

I am writing in response to your letter dated August 21, 2020 (“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 email service [REDACTED] offered by your client [REDACTED].

The Internet Tax Freedom Act (“ITFA”), 47 USC 151 note, prohibits the taxation of Internet access by state and local governments. The ITFA defines “Internet access” as “a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet.” Section 1105(5)(A). It “includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as ... electronic mail ... and personal electronic storage capacity.” Section 1105(5)(C). It also “includes ... electronic mail ... provided independently or not packaged with Internet access.” 1105(5)(E).

Based on the facts set forth in your Request, we agree that the [REDACTED] email service provided by [REDACTED] appears to fall within the ITFA’s definition of Internet access. We therefore agree that [REDACTED] will not be required to collect and remit Lease Tax on the amounts it charges to customers for the [REDACTED] email service. If this should change, it will be on a prospective basis, with notice to [REDACTED]. Because of this determination, we are not offering an opinion on whether the Lease Tax would otherwise apply to the [REDACTED] email service.

This PLR is based on the law 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. Please be advised, however, that pursuant to Uniform Revenue Procedures Ordinance Ruling #3, Section 12, reliance on written advice in a PLR that is ten or more years old shall be deemed not reasonable unless ratified in writing by the Corporation Counsel's Office.

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: Elaine Herman, Department of Finance

MILLER COOPER & Co., Ltd

ACCOUNTANTS AND CONSULTANTS

August 21, 2020

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

Re: City of Chicago Private Letter Ruling Request

[REDACTED]

Miller Cooper & Co., Ltd (“Miller Cooper” or “Representative”) is respectfully requesting a Private Letter Ruling from the City of Chicago Department of Finance (the “Department”). Our request is pursuant to the Department’s authority to issue written advice that may be relied upon under Section 3-4-325 of the Municipal Code of Chicago seeking clarification on the applicability of the Personal Property Lease Transaction Tax (“PPLTT”), Chapter 3-32 of the Municipal Code of Chicago, for nonpossessory computer interests with regards to our client’s new e-mail service offering.

To the best of our knowledge, our client, [REDACTED] is not under audit or investigation by the Department. We have enclosed the required Power of Attorney form.

Miller Cooper previously corresponded with the Department anonymously on behalf of our client to inquire about this issue. The Department verbally confirmed our understanding that the Company’s e-mail service would not be subject to the PPLTT because it is preempted by the Internet Tax Freedom Act. We are requesting that the Department issue a Private Letter Ruling to confirm our understanding with regards to the taxability of the Company’s e-mail service offering.

I. Statement of Facts

Company is an Illinois-based LLC that has developed several software products within the communication and collaboration space. Company is subject to the PPLTT on subscriptions for its primary collaboration platform service offering. For this subscription service, the Company collects and remits the PPLTT to the Department for applicable customers as required.

Company recently launched a new service offering, called [REDACTED] whereby it provides a paid e-mail service to subscribers. Upon payment of the annual fee, subscribers receive an e-mail address and access to Company’s e-mail portal. The e-mail portal can be accessed through a web browser or through Company’s optional apps (mobile and desktop). Company does not charge an additional fee for the optional apps, and the apps have no functionality independent of Company’s service. In addition to the provision of an e-mail address and access points, Company’s e-mail service also gives customers access to the enhancements listed below and further described on [REDACTED] marketing site: [REDACTED] and [REDACTED]

Subscribers to the e-mail service have access to the following e-mail enhancements:

- A newsfeed-like function where news and promotion related e-mails are filtered into a separate folder. The service will provide users a preview of the e-mails in a news-feed format. All the content shown on the feed is drawn directly from the user's e-mails.
- A folder to filter all receipts and transaction e-mails.
- Certain advance filtering/foldering options.
- Protection from spyware, viruses, malware, and transparent pixels designed to track information about the recipient that may be contained in e-mails.
- An option to filter out e-mails when received by a new sender the first time. No additional e-mails will be allowed by that sender without the user's consent.
- An option to merge e-mail threads and rename subject headings.
- An option for filter by attachments received.
- An option to save highlighted passages in an email for easier later reference.
- An option to add notes to an email without needing to send an email to yourself.
- The ability to quickly find attachments sent and received without needing to open individual emails.
- The ability to read multiple emails of your choosing together in a newsfeed-like view.
- The ability to send large files that typically in email services requires a separate third-party platform.

II. Applicable Law

1. Imposition of Tax

The City of Chicago imposes the Chicago Personal Property Lease Transaction Tax on the lease or rental in the city of personal property or the privilege of using in the city personal property that is leased or rented outside the city, pursuant to *Chicago Municipal Code Section 3-32-030(A)*

Chicago Municipal Code Section 3-32-020(I) states that the term "lease or rental" includes a "nonpossessory computer lease." The term "nonpossessory computer lease" means a lease or rental 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.

City of Chicago Information Bulletin – Nonpossessory Computer Leases, November 2015 (Revised July 1, 2020) provides that "The Lease Tax applies to any usage of remote computing or software, including but not limited to SaaS, IaaS and PaaS, such as (a) automated deployment of servers, processing power and networking, (b) software applications accessed remotely such as office suite software, project management software and customer relationship management (CRM) software, (c) web hosting, and (d) database search products.

City of Chicago Information Bulletin – Nonpossessory Computer Leases, November 2015 (Revised July 1, 2020) also provides that where the provider does not separate taxable and nontaxable charges, the entire fee will be subject to the Lease Tax unless the taxpayer can prove that 50% or more of the charge is for non-taxable items.

2. Preemption based on Federal Internet Tax Freedom Act

The Internet Tax Freedom Act (“ITFA”) provides that states may not impose taxes on internet access, which includes e-mail services. The relevant sections are included below:

Section 1101(a)(1) No state or political subdivision thereof may impose taxes on internet access.

Section 1106(A) If charges for internet access are aggregated with and not separately stated from charges for telecommunications or other charges that are subject to taxation, then the charges for internet access may be subject to taxation unless the internet access provider can reasonably identify the charges for Internet access from the books and records kept in the regular course of business.

3. Internet Access Definition

Section 1105(5)(A) The term ‘internet access’ means as a service that enables users to connect to the internet to access content, information, or other services offered over the internet;

Section 1105(5)(C) The term ‘internet access’ includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging...

Section 1105(5)(E) The term ‘internet access’ includes homepage, electronic mail and instant messaging...that are provided independently or not packaged with Internet access.

I. Discussion

Congress originally enacted ITFA in 1998 as a temporary moratorium; it has been extended many times and in February 2016 the moratorium became permanent. ITFA prohibits state and local governments from imposing any tax on Internet Access or Internet Access Services. The ITFA defines Internet Access as the following:

"(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

"(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-

"(i) to provide such service; or

"(ii) to otherwise enable users to access content, information or other services offered over the Internet;

"(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

"(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

"(E) includes a homepage, electronic mail and instant messaging (including voice- and video capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

Based on the definition of Internet Access listed above, it is our position that our client's e-mail service falls under the protection of ITFA. While Company's e-mail service does include the additional features/functionality noted above, the centerpiece of the subscription, and thus the primary purpose of the transaction, is the e-mail service itself. This is evidenced by the fact that all of the additional functionalities and features are useless if not for the underlying e-mail service.

The City's PPLTT rules dictate that, where there is a bundled transaction of taxable and nontaxable products or services, and where less than 50% of the value of the components are subject to tax, the entire transaction is nontaxable. Because e-mail, which makes up greater than 50% of the value of the underlying subscription, is not subject to tax under the ITFA and the entirety of the subscription would be exempt from tax under Chicago ordinance.

Additionally, the definition of 'internet access' in Section 1105(5)(E) of the ITFA specifically includes not only those e-mail services which are packaged with internet access, but also includes those e-mail services which are sold independently. As such, based on ITFA, the Company does not have any obligations to collect or remit the Chicago PPLTT on its subscription sales of the e-mail service.

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Re: City of Chicago Private Letter Ruling Request
[REDACTED]

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To the best of Miller Cooper's knowledge, there are no contrary authorities opposing our conclusion that Company's e-mail service is not subject to the Lease Transaction Tax.

II. Ruling Requested

We respectfully request a ruling from the Department confirming our understanding that Company's e-mail service is protected from PPLTT under the ITFA. If you disagree that Company is not required to collect and remit the Lease Transaction Tax, then we respectfully request the opportunity to discuss this in further detail. Please feel free to reach out if there are any questions or you require additional information. I can be reached at 312-344-2914 or by e-mail at CMerickel@millercooper.com. We appreciate your assistance with this matter.

Sincerely,

MILLER, COOPER & CO., LTD



Carrie Merickel, Tax Senior Manager

WP: TAX: [REDACTED]

Enclosures