July 29, 2016

William D. Bruno
Melissa Miller
Ernst & Young LLP
155 North Wacker Drive
Chicago, Illinois 60606

Re: ██████ Private Letter Ruling

Dear Dean and Melissa:

I am writing in response to your letters dated March 8, 2016 and June 30, 2016 (collectively "Request") (copies attached), requesting a private letter ruling ("PLR") concerning the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to the fees charged by ████████████. ("████").

Based on the facts set forth in your Request, along with our meeting of April 15, 2016, we are of the opinion that the fees charged by ████ are subject to the Lease Tax.

The Lease Tax ordinance defines a nonpossessory computer lease as "a nonpossessory lease in which the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information." See Code Section 3-32-020(I). In the case of ████ ████████████, the ████ customer obtains access to a ████ ████████ and uses the computer and its software to input, modify or retrieve data or information. Although the data or information may never reside or be stored on the ████████, the user who originates the data or information does send (i.e., "input") it to the ████████, and other users are then able to retrieve it from that same location. This falls within the definition of a taxable nonpossessory computer lease.[1]

We agree, however, that ████ qualifies for the low rate provided by Code Section 3-32-030(B.1) (5.25%), which applies to "the nonpossessory lease of a computer primarily for the purpose of allowing the customer to use the provider's computer and software to input, modify or retrieve data or information that is supplied by the customer …" The tax applies only to fees attributable to customer use in Chicago.

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[1] Although ████████ may be used ████████████████, charges for a nonpossessory computer lease are taxable unless they are solely for storage (and the storage takes place outside of the City). See Lease Tax Ruling #12 ("charges for storing a customer's data on the provider's computer are not subject to lease tax if the provider's computer is outside of the City, so long as the charges are solely for storage."). (emphasis added).

████ qualifies for the "category 2" voluntary disclosure agreement set forth in the Department of Finance ("Department") Information Bulletin of November 2015, by which all tax, interest and penalties are waived for periods prior to January 1, 2015. In this case, for the reasons discussed in your letter of June 30, 2016, the Department will also waive all interest and penalties for the period of January 1, 2015 through August 31, 2016. Tax for the period of January 1, 2015 through December 31, 2015 will be owed at the high rate (9%), as the low rate did not exist before January 1, 2016. Tax for periods on and after January 1, 2016 will be owed at the low rate.

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

Very truly yours,

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

Cc: Joel Flores, Department of Finance

March 8, 2016

Mr. Weston Hanscom
Deputy Corporation Counsel
City of Chicago, Law Department
Revenue Litigation Division
30 N. LaSalle, Suite 1020
Chicago, IL 60602

Dear Mr. Hanscom:

On behalf of ███████████████ ("██████" or the "Company"), Ernst & Young LLP ("EY") respectfully requests a private letter ruling ("PLR") regarding the applicability of the Chicago Personal Property Lease Transaction Tax ("Chicago Lease Tax") to the technology services described in this letter. Attached is the required power of attorney. To the best of the Company's knowledge and belief, █████ is not under audit or investigation by the City of Chicago. █████ believes that its services are not subject to the Chicago Lease Tax for the reasons stated below, but requests certainty by filing this PLR request. If, however, you determine that ██████services are subject to the Chicago Lease Tax, we respectfully request that the Company's services are not considered taxable until the month following issuance of this PLR as the Company reasonably believed that it was selling non-taxable services. Alternatively, in conjunction with this PLR request, █████ has applied for the voluntary disclosure offer provided in the City's November 2015 Informational Bulletin. The voluntary disclosure offer provides that liability shall only apply to periods beginning on or after January 1, 2016 (prospective treatment afforded in the Bulletin) or January 1, 2015 (one-year period afforded in the Bulletin).

Facts

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The Company sells various web-based services (collectively, "████████████") that enable subscribers to have remote computer access, attend and participate in meetings online, attend online webinars, hold online training sessions, and provide attended or unattended technical support to their internal and external customers. The Company does not sell or license software or other tangible personal property to its customers as a part of ███████████████. Instead, the Company utilizes its proprietary system ██████████████████ to provide the ████████ and charges for these web-based services on a per-user, subscription basis.[1]

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[1] For Illinois Corporate Income Tax purposes, all ███████████ are treated as services for purposes of calculating the Company's Illinois sales factor.

Customers can access the ███████████ via the Company's ████████ by downloading an applet that allows them to connect to the Company's proprietary system over the Internet and use the ████████████ via the user's computer. Unless connected to the ████████████, the applet has no functionality. Furthermore, the subscribers cannot access the Company's internal software for any functional purpose whatsoever. The customer cannot modify code, create documents, or manipulate files on the system. The Company does not license any software to its customers for their use as part of the ████████████.

The purpose of the applet is to enable a secure connection between the ████████████ and the user's computer. In this manner, the applet is incidental to the service subscription and there is no additional fee charged for the applet. The applet cannot be used without connecting to the Company's proprietary system over the Internet. Thus, it has no value in and of itself.

The ████████████ are used by subscribers, participants invited by any subscribers, and trial users. These users cannot alter or manipulate the applet at any time. The applet works with the Company's proprietary system to facilitate connections between the subscriber/user and the subscriber's/user's computer, and once a connection is established ███████████████████████ ██. The Company's infrastructure for the ████████████ includes ████████████████ distributed around the world. The ████████████ use end-to-end encryption for all data to ensure security.

The Company generally makes available a ████████████████ for each of its ████████████. The ██ ████████████ will provide the same functionality as the paid subscription and includes launching the applet. If the person decides to cancel the trial without purchasing a subscription, the non-functional, unusable applet remains on that person's computer. There is no charge for utilizing the applet and the potential customer is not required to remove the applet from his/her computer at any time. Similarly, even a paid subscriber cannot use the applet for any beneficial purpose unless connected to the ████████████.

To subscribe to the ████████████, a customer will create an account by either entering into a paper contract with the Company or registering online and creating a username and password.

Outlined below is an overview of the ████████████ offered by the Company:

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This web-based service allows a subscriber's designated customer service technicians and/or internal help desk to remotely assist and provide support to the subscriber's employees and/or customers.

This service does not entail the transfer of any Company software or data to the subscriber. Further, the service does not allow subscribers to access the Company software code or manipulate the software in any way. Rather, the Company uses its own equipment to provide the service. The Company's proprietary software is maintained in a hosted site, on its equipment, and the equipment and software are at all times under the control of the Company.

This service works by allowing a subscriber's employee to access an ██████████████████ and create a support request by ████████████ to allow access to his or her computer. The support request is then queued for the subscriber's next available technical support representative. With the employee's permission, the representative accesses the employee's device through the Internet and begins a remote-support session with the employee.

Alternatively, the employee can move directly from a phone call to a remote-support session. To do so, the representative provides the employee with the ████████████ and a unique connection code to begin the remote-support session. By utilizing this web-based service, a representative can immediately diagnose, troubleshoot, and resolve issues remotely. The Company charges its subscribers for this service on a per user basis. Alternatively, ████████████████████████ ████████████████████████████████. Subscribers can also purchase ████████████ ███.

Simply stated, the ████████ service provides subscribers with a tool that allows the subscriber's own technicians to gain remote access to their employees' or customers' computers, giving them the ability to view an employee's or customer's computer to fix the computer. All troubleshooting and support using the ████████ service is performed by the subscribers' own technicians. ████ does not provide any troubleshooting beyond ongoing support for the ████████ service itself.

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This service deploys a similar technology to Service 1, except that it allows a subscriber to access his or her own computer remotely. Again, the service does not entail the transfer of any Company software to the subscriber (other than an applet necessary to access the service) and does not allow subscribers to access the Company software code or manipulate the software in any way. Rather, the service is provided through the Company's own data centers on its proprietary equipment and software, which is at all times under the control of the Company.

This service allows a user access to a user's computer from any other Internet-connected computer in the world through a private, secure connection. In order to facilitate this ability, the service navigates through the user's firewalls to enable communication without compromising security. It is sold mainly to individuals who wish to access their office PC from home or vice versa. While it is possible that a subscriber could allow a third party to use this service to view the subscriber's computer records, this scenario is highly unlikely due to the potential breaches in confidentially and privacy that could occur. The third party viewer would receive unlimited access to the subscriber's computer (██ ████████████████).

This service encompasses four components: a remote (or client) computer, communication servers/brokers, any firewall, and permitted host computers. A subscriber can register up to a certain number of host computers, depending upon the level of service it purchases and can access these host computers remotely once the host computer is set up with an account name.

When a user attempts to access a host computer remotely from a client computer, the user visits the service website, enters a username and password, and clicks on a connect button for the desired host computer. The user is then authenticated through the ████████████ operated separately from the user's computer. This ██████, located at the Company's server site and part of the Company's proprietary system, acts as an authorizer/traffic controller and grants permission for the users to access the service/host computers based on a verified user name and password. For network address and firewall independence, the remote user initiates all communication with the broker ████████. All transmissions are encrypted and only those subscriber computers previously configured will be displayed and accessed remotely.

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These services utilize a similar technical infrastructure as previously described to allow multiple users to view a presenter's computer screen. The Company does not transfer any software (other than an applet necessary to access the service), and subscribers/users cannot access the Company software code or manipulate the software resident on the Company's equipment in any way. Once a connection is made, the service is provided by the Company through one of its data centers.

This service makes it easy for subscribers (individuals and organizations) to meet with anyone and ████████████ securely online. Subscribers are able to present an unlimited number of Internet meetings for a flat monthly or annual fee and invite anyone (up to a certain number of meeting participants) to attend and view the meeting material displayed during the meeting. This service also enables individuals and organizations to easily, securely, and cost-effectively ████████████ online to a broader audience. Subscribers may hold unlimited seminars ("webinars") on the Internet. There is no charge to the meeting, webcast, or webinar attendees and they do not have to be registered users

To participate, organizers send participants a ████, which enables them to launch a separate applet to support the connection which allows them to view the organizer's computer. There is no charge to the participants and they do not have to be registered users or subscribers. They are only required to enter the access code provided by the organizer. The online presentation is viewed by the participant from the participant's computer, but the content and application used to display the content remain resident on the presenter's computer at all times. The Company does not provide or transmit any application software used by the presenter.

This service offering has a ████████████ by which the organizer has sole authority to initiate ████████. The ████████ is generally saved to the organizers' desktop; therefore, the Company does not have access to these ████████. Also, the organizer can post the webinar to a web server and can email a URL designation to participants/others for review.

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This service enables subscribers to conduct online training sessions with their respective invited attendees. This service utilizes a similar technical infrastructure as previously described to allow

multiple users to view a presenter's computer screen. The service allows online training sessions, distribution of the subscriber's course materials, testing and assessments, publishing upcoming courses to a catalog, and maintaining a reusable content library.

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████████ is a ███████████████ service ("████"), which consists of an Internet portal that allows electronic documents to be posted and stored online and allows parties around the world to access the documents online in an easy and secure manner. The ████ service allows users to create a password-protected space where they can upload and store computer files easily and securely. The service also allows users to perform other functions such as sending large files by email and conducting a secure file transfer. All subscriptions to the ████████ services are based on a simple, flat price. The amount of storage space available, the maximum file size allowed, and the number of ancillary services included increase in proportion with the subscription fee.

████████ runs in data centers operated by third parties. The data centers are located in ███████ ███████████. All uploaded data from each customer is backed up to a disaster recovery data center ███. ████████ provides several optional, downloadable software applications that are included in the price of various ███ subscription packages, such as the following:

- ████████████ The ██████ is a small desktop tool that allows the user to easily drag and drop files and entire folder structures into the user's data room from the user's desktop.
- ████████████ The ██████ is used with one-time secure transfers of files through email. The ████████████ allows the user to click a button to send files securely via ████████ instead of attaching them to the user's email.
- ██████ – This tool allows users to automatically synchronize a local folder on the user's computer with folders in the ████████ account in real time.

████████ also provides an optional ██████████████████████ for each user for an additional fee. The user can purchase ██████████████████████ of the user's data mailed to the user for archive purposes (each user pays for this additional service). The fee for the backup is separately itemized on a separate invoice (not included with the initial sale of product).

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███████████ service provides a web-based, collaborative work platform for its customers. ████████ allows customers to store and share documents and information and organize projects in one central location, as well as communicate with other project team members concerning ongoing projects. This service includes the following primary features:

- Unlimited file storage for project and team files, tasks, and communications;
- Real-time communication with other ██████ users (ex. ██████████████████████);
- Custom web-based workspaces for departments, teams, and projects;
- Workflows and task management for project management;

- The ability to view updates from all workspaces that the customer is a member of; and
- Calendar integration with third party software.

████ is sold on a subscription basis and all plans are priced per employee per month. ████ also offers a free version to users, which allows ██████ employees and ███ external members across workspaces. For paid versions of █████, a customer is allowed to provide access to an unlimited number of external users. While all █████ plans offer file storage, only ██████████████ plans for corporate customers offer users the option of large file storage and encrypted file sharing.

In the case of each service described above ██████████████████████, the Company's servers and hardware used to provide these services are exclusively located outside the City of Chicago.

Requested Ruling

█████ respectfully requests that the City confirm that ██████ customers are not subject to the Chicago Lease Tax with respect to the fees paid by customers for ██████████████ ██████ and █████ therefore has no obligation to collect and remit Chicago Lease Tax with respect to sales of those services.

Authority

In general, the Chicago Lease Tax is imposed on the lessee with respect to the lease or rental of personal property, whether tangible or intangible.[2] In other words, tax applies with respect to the lease of any property other than real property in Chicago.

The Chicago Personal Property Lease Transaction Tax Ordinance (the "Ordinance") defines the words "lease" and "rental" to mean, "any transfer of the possession or use of personal property, but not title or ownership ... and includes a 'nonpossessory lease.'"[3] The term "nonpossessory lease" means a "lease or rental wherein use but not possession of the personal property is transferred and includes ... leased time on or use of ... computers [and] computer software ... and specifically includes a 'nonpossessory computer lease.'"[4]

The Ordinance defines a "nonpossessory computer lease as a lease in which the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information, in each case without the intervention (other than de minimis intervention) of personnel action on behalf of the provider....."[5] 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 [the Ordinance]."[6] The "lease price" or "rental price" means

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[2] Mun. Code Secs. 3-32-030(A) and 3-32-020(Q).
[3] Mun. Code Sec. 3-32-020(I).
[4] Id.
[5] Id.
[6] Id.

the consideration for the lease or rental of personal property and in the case of a nonpossessory computer lease includes all charges for the use of the computer's hardware, software, programs, and databases for any purpose.[7]

An example of a taxable nonpossessory computer lease is the use of a provider's computer, through a terminal located in Chicago, to perform "legal research or similar on-line database searches." See *Meites v. City of Chicago*, 184 Ill. App. 3d 887, 540 N.E.2d 973 (1989); see *also* Pg. 59138 of the Chicago City Council Journal (11/10/1994) (finding that the Chicago Lease Tax should continue to apply to such transactions). The *Meites* case dealt, in relevant part, with whether the Chicago Lease Tax should apply to fees paid to access a searchable legal database provided by Lexis/Nexis.[8] The court in *Meites* held that the Chicago Lease Tax properly applied to the fees paid by consumers to access Lexis/Nexis' legal database, because Lexis/Nexis was not performing a service and generating its own content, but, rather transferring a nonpossessory interest in its legal database to its customer.[9]

Section 3-32-050(A)(11) of the Ordinance, enacted after the *Meites* case, provides an exemption for information services, specifically:

> ... the nonpossessory lease of a computer in which the subscriber's use or control of the provider's computer is *de minimis and the related charge is predominantly for information transferred to the subscriber rather than for the subscriber'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. (emphasis added).

On June 9, 2015 (effective July 1, 2015), the City issued Ruling 12 explaining its view of Exemption 11. The Department also issued an Information Bulletin in November 2015 explaining and clarifying, among other things, Ruling 12. Question 9 and the Department's answer provide some guidance regarding the Department's view of the breadth of Exemption 11.

> 9. Q: There is an exemption for usage that is de minimis where the charge is predominantly for information rather than usage (Exemption 11). What is this exemption for, what does de minimis mean, and how does a taxpayer determine whether the charge is predominantly for information?
>
> A: ... As discussed in Ruling #12, de minimis usage means that the information is delivered passively, with a minimum of search or other functionality, except in certain circumstances where the information is predominantly (i.e., primarily) proprietary (see Question #10 below).
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> ... Determining whether a charge is predominantly for information, or whether the information is predominately proprietary, is necessarily a fact and circumstances

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[7] Mun. Code Sec. 3-32-020(K).
[8] *Meites v. City of Chicago*, 184 Ill. App. 3d 887, 540 N.E.2d 973 (1989).
[9] Id.

test, and it requires an assessment of the relative value of the information versus the search or other functionality. In most cases, information that is in the public domain will not have a sufficient independent value to meet this test whereas, as explained in Ruling #12 and Question #10, proprietary information will.

The City has also established rules related to bundled charges for taxable and nontaxable or exempt items. Where a charge is bundled by including both taxable and nontaxable/exempt elements for purposes of lease tax, the rules set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004) will apply. That ruling states that "[i]f 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."

Discussion

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The Company believes its sales of ███████ are exempt from the Chicago Lease Tax, because the customer's use of these services does not fit within the definition of a taxable "nonpossessory computer lease" as that term is defined in Mun. Code Sec. 3-32-020(I). Specifically, the Ordinance defines a "nonpossessory computer lease as a lease in which the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information, in each case without the intervention (other than de minimis intervention) of personnel action on behalf of the provider. In Ruling 12 (focusing on Exemption 11) and the aforementioned Information Bulletin, the City confirmed that usage is considered de minimis when: (1) the information is delivered passively, with a minimum of search or other functionality; or (2) the information is predominantly (i.e., primarily) proprietary.

███████ merely provide a temporary web-based connection with one or more other users (or in the case of ██████ the customer's own remote computer) solely for the purpose of passively displaying information to the other users. █████ subscribers cannot access the Company's internal software for any functional purpose whatsoever. They cannot modify code, create documents, or manipulate files on the system. The Company does not license any software to its customers for their use as part of the ███████. The ███████ do not include search functionality, and █████ customers do not use the Company's computers to search for information contained on █████ servers; rather, the ███████ are specifically designed to allow only the passive transmission of information to each customer.

The ███████ are dissimilar to the examples of taxable nonpossessory computer leases described in the City's ordinances and rulings. In contrast to the ███████, the City's examples typically involve the active use of a provider's computer to search for, and interact with, requested content needed by the customer. Examples of taxable transactions include:

- performing legal research or similar on-line database searches (see *Meites v. City of Chicago*, 184 111. App. 3d 887 (1989));

- obtaining consumer credit reports (see Personal Property Lease Transaction Tax Ruling # 9 (June 1, 2004)); and
- obtaining real estate listings and prices, car prices, stock prices, economic statistics, weather statistics, job listings, resumes, company profiles, consumer profiles, marketing data, and similar information or data that has been compiled, entered and stored on the provider's computer.

In addition, the Company's ███████████ are predominantly used for access to information that should be considered proprietary pursuant to Section 3-32-050(A)(11) of the City Ordinance. The Department has opined that the determination whether information is predominately proprietary is necessarily a fact and circumstances test, requiring an assessment of the relative value of the information versus the search or other functionality. As noted, there is no search functionality present in the ███████████.

The information received by ██████ customers is typically created and owned exclusively by the subscriber, is inherently proprietary content and is of substantial value to the subscriber. Examples would include investment advisors using ███████████ to share proprietary investment research with potential investors and technology firms using ███████████ to conduct web-based training sessions related to use of their proprietary software. As noted in Ruling #12, proprietary information typically consists of content that would be purchased for a fee if acquired by means other than sharing in an online environment, and this is exactly the type of information that is often accessed and shared by subscribers through the use of the ███████████.

The Company believes that because the ███████████ are dissimilar from the products described in the City's ordinances and rulings, the City did not intend to impose the Chicago Lease Tax on services with the unique characteristics of the ███████████. Further, even if the City determines that the ███████████ are nonpossessory computer leases, the Company believes that the ██████████████ qualify for the de minimis usage exemption because the information is delivered passively. The services would also qualify for the proprietary information exemption because the service provides access to information that is predominantly proprietary.

If the City determines that ███████████████ are taxable sales of nonpossessory computer leases, the Company asserts that its sales of such services should only be treated as taxable on a prospective basis. Prior to the issuance of Ruling #12, the Company believes that it was not evident from a plain reading of the City's ordinances, rulings, and the examples of taxable nonpossessory computer leases contained therein that ████████████████ would be subject to the Chicago Lease Tax.

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The Company believes its sales of ███████ services are exempt from Chicago Lease Tax because the customer's use of ████████ is not an actual use or control of a Citrix computer by means of an access terminal. Instead, ████████ charges are for storage of documents at a computer located outside of Chicago. Personal Property Lease Transaction Tax Ruling # 5 (June 1, 2004), and as continued in Amended Ruling # 5 (September 1, 2013), provides the following:

> [C]harges for the storage of information on the [provider's] computer by the user, which will be used at a later date by the user, and not in the immediate processing of information, shall be deemed a usage of the computer at the computer location and not at the access terminal; because this is not an actual use of the computer by means of an access terminal but instead is a charge for storage at the computer location. If at a later date, a charge is made for accessing the stored information from a terminal located in Chicago, such access charge would be taxable.[10]

Charges for storing a customer's data on a provider's computer are not subject to the Chicago Lease Tax if the provider's computer is located outside of the City and the provider's charges are solely for storage and not for the immediate processing of information. Customers purchase ████████ services from Citrix for the purpose of storing documents and information to be accessed at a later time. This usage of ████████ for storage purposes is supported by the relationship between the price of ████████ subscription plans and the amount of storage provided in each plan. Because the ████████ services are used for the storage of documents and information and not for the immediate processing of information, charges for the service are not for use of the Company's computer by means of the customer's access terminal, but for storage at the computer location outside of Chicago. Accordingly, ██████ sales of ████████ subscriptions are not subject to the Chicago Lease Tax.

Furthermore, the information stored and accessed via the ████████ service is exclusively content created and owned by the subscriber and is inherently proprietary in nature. Examples would include a law firm's use of ████████ to store and access client documents created by the firm, or a retailer's use of ████████ to store and access marketing materials created by the company's marketing department. As such, the services also qualify for the proprietary information exemption because the service provides access to information that is predominantly proprietary.

If the City determines that ████████████ services are taxable sales of nonpossessory computer leases, the Company asserts that its sales of such services should only be treated as taxable on a prospective basis. Prior to the issuance of Ruling #12, the Company believes that it was not evident from a plain reading of the City's ordinances, rulings, and the examples of taxable nonpossessory computer leases contained therein that ████████████ services would be subject to the Chicago Lease Tax.

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The Company believes its sales of █████ services are exempt from Chicago Lease Tax, because the customer's use of █████ is primarily for storage of documents and information in a collaborative workspace. Mun. Code Sec. 3-32-020(I) defines a "nonpossessory computer lease" as a nonpossessory lease in which the subscriber obtains access to the provider's computer and uses the computer and its software to input, modify, or retrieve data or information. Further, Personal

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[10] See also Question 8 of Personal Property Lease Transaction Tax Ruling # 12 (June 9, 2015).

Property Lease Transaction Tax Ruling # 5 (June 1, 2004), and as continued in Amended Ruling # 5 (September 1, 2013), provides the following:

> [C]harges for the storage of information on the [provider's] computer by the user, which will be used at a later date by the user, *and not in the immediate processing of information*, shall be deemed a usage of the computer at the computer location and not at the access terminal; because this is not an actual use of the computer by means of an access terminal but instead is a charge for storage at the computer location. If at a later date, a charge is made for accessing the stored information from a terminal located in Chicago, such access charge would be taxable. (emphasis supplied).[11]

█████ is a service that serves two primary functions: the storage of documents and information in a collaborative workspace and the creation and viewing of project tasks. As noted above, charges for storing a customer's data on a provider's computer are not subject to the Chicago Lease Tax if the provider's computer is located outside of the City and the provider's charges are solely for storage and not the immediate processing of information. While ██████ charges for █████ are for both the storage of information and access to the information, the Company's business model and pricing establish that charges are primarily for storage of information in a workspace. While all █████ plans provide customers with storage, only ██████████████ plans with higher custom pricing provide customers with large file storage.

Furthermore, the information stored and accessed via the █████ service is exclusively subscriber-created content and is inherently proprietary in nature. The service is specifically designed to enable the storage of and access to a company's ongoing projects by project team members.

The rules set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004) apply where a charge is bundled by including both non-taxable/exempt elements (storage of documents and information in a workspace) and taxable elements (entry of project tasks). The ruling states that if a provider fails to separate the taxable lease portion of the price from the non-lease 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 a bundled charge is not primarily for the customer's use or control of the provider's computer, then only the portion of the charge attributable to use or control of the computer is taxable.[12] █████ charges are primarily for the passive storage of documents and information on a computer located outside of Chicago and not for use or control of the computer. Accordingly, the portion of the Company's charges for █████ related to such storage of documents and information are not subject to the Chicago Lease Tax.

If the City determines that ██████████ services are taxable in full as sales of nonpossessory computer leases, the Company asserts that its sales of such services should only be treated as taxable on a prospective basis. Prior to the issuance of Ruling #12, the Company believes that it was not evident from a plain reading of the City's ordinances, rulings, and the examples of taxable

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[11] See also Question 8 of Personal Property Lease Transaction Tax Ruling # 12 (June 9, 2015).
[12] Section 6, Personal Property Lease Transaction Tax Ruling # 3 (June 1, 2004).

nonpossessory computer leases contained therein that ███████ services would be subject to the Chicago Lease Tax.

Conference requested

Should you have any questions or reservations about issuing the requested rulings, we would respectfully request an in-person conference with you before any ruling is issued.

If you have any questions or need any additional information, please contact me at (312) 879-2125 or, in my absence, Melissa Miller at 312-879-2372.

Sincerely,

William Dean Bruno

William D. Bruno
Executive Director, Indirect Tax

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Tax Advisor/Client Communication
Privileged and Confidential

June 30, 2016

Mr. Weston Hanscom
Deputy Corporation Counsel
City of Chicago, Law Department
Revenue Litigation Division
30 N. LaSalle, Suite 1020
Chicago, IL 60602

Dear Mr. Hanscom:

On March 8, 2016, Ernst & Young LLP ("EY"), on behalf of ███████████████ ("█████" or the "Company"), requested a private letter ruling ("PLR") regarding the applicability of the Chicago Personal Property Lease Transaction Tax ("Chicago Lease Tax") to the services provider by the Company. In response to the City of Chicago's (the "City") request for additional information regarding the services provided by █████, below is supplemental information to address certain questions posed by the City during telephone discussions related to the PLR request. For the reasons stated in the original PLR request and this letter, █████ believes that its services are not subject to the Chicago Lease Tax. If, however, you determine that one or more of █████ services are subject to the Chicago Lease Tax, we respectfully request that the Company's services are not considered taxable until the month following issuance of this PLR as the Company reasonably believed that it was selling nontaxable services. Alternatively, in conjunction with this PLR request, █████ has applied for the voluntary disclosure offer provided in the City's November 2015 Informational Bulletin. The voluntary disclosure offer provides that liability shall only apply to periods beginning on or after January 1, 2016 (prospective treatment afforded in the Bulletin) or January 1, 2015 (one-year period afforded in the Bulletin).

Supplemental Information

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During telephone conversations between EY, █████ and the City, the ███████████ were at one point referred to as providing users a █████████ when addressing how information is transmitted during a session. The use of the word █████████ did not accurately depict the nature of the service provided and was used in this context only in relation to the security of the information as it passes through the service, not as describing a physical location. To clarify, the █████████████ allow users to establish a virtual ███████████ session during which users (hereinafter referred to as "users" or "participants") can view information displayed on another's user's computer or interact with other users directly through such other participant's

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computer. The ████████ do not provide a mechanism for a user to input information onto (or store information on) a ████████ during the session. All information viewed by participants during a session strictly resides on the computer of a user, and the function of ████████ and software is to passively transmit signals between the participants' computers.

When a session is established and a user begins sharing a visual of the user's local computer screen with other participants, ████████ replicating the images on the user's computer screen are transferred through the Company's data centers. None of these data centers are located in the City of Chicago.

In this respect, the ████████ are substantially similar in nature to a conference bridging service, providing customers with a web-based means to connect to and then interact with their own computer, another participant or a participant computer from a remote location. Although ████████ pass through the Company's infrastructure to facilitate the sharing of the images from a user's computer screen, similar to an ancillary bridging service, these ████████ never reside on a ████ computer.

As noted in the original PLR request, the Chicago Lease Tax is generally imposed on the lessee with respect to the lease or rental of personal property, whether tangible or intangible. In other words, tax applies with respect to the lease of any property other than real property in Chicago. The Chicago Personal Property Lease Transaction Tax Ordinance (the "Ordinance") defines the words "lease" and "rental" to mean, "any transfer of the possession or use of personal property, but not title or ownership ... and includes a 'nonpossessory lease.'"[1] The term "nonpossessory lease" means a "lease or rental wherein use but not possession of the personal property is transferred and includes ... leased time on or use of ... computers [and] computer software ... and specifically includes a 'nonpossessory computer lease.'"[2]

The Ordinance defines a "nonpossessory computer lease" as a lease in which the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information, in each case without the intervention (other than de minimis intervention) of personnel action on behalf of the provider....."[3] 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 [the Ordinance]."[4]

As noted in the original PLR request and in the supplemental facts above, the ████████ do not provide users in a web-based session with the ability to user a ████ computer to input, modify or retrieve data or information. The service merely provides participants with the ability

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[1] Mun. Code Sec. 3-32-020(I).
[2] Id.
[3] Id.
[4] Id.

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to connect and interact with other participants, their own computers or other participant's computers during the course of an online session. Accordingly, the ██████████ cannot be considered a taxable nonpossessory computer lease as defined in Mun. Code Sec. 3-32-020. Further, the ██████████ would not be subject to the Chicago Lease Tax as a nonpossessory lease of a computer because customers do not gain the right to use a specific ████ computer. Moreover, any use of software is purely incidental to the underlying bridging type service being sought and received. Even if the City considered the ██████████ to be a nonpossessory lease of a computer, the Company's infrastructure used to provide the ██████████ is not located within the City and thus the purported lease of a computer could not be sourced to Chicago.

The true nature of the ██████████ is the provision of an ancillary value added service to telecommunications which is not subject to the Chicago Lease Tax or the Chicago Simplified Telecommunications Tax ("Chicago Telecom Tax") under Mun. Code Sec. 3-73-030. These ancillary communication services are not subject to the Chicago Telecom Tax because the ordinance states that "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission.[5] Support for this position is found in the General Information Letter issued to ████ by the Illinois Department of Revenue on September 11, 2013, stating that the Company's ██████████ are not subject to the state's Telecommunications Excise Tax ("TET") under ILCS Chapter 35 § 630/1. The tax base for the TET is the same as the tax base for the Chicago Telecom Tax with a few exceptions that are unrelated to the Company's ██████████. Therefore, because the ██████████ are not subject to the state TET, they are also not subject to the Chicago Telecom Tax.

As explained above, the ██████████ are not leases of property by customers, but services akin to conference bridging services. Illinois law is clear that the City does not have the power to tax a transaction that is predominantly an otherwise nontaxable service transaction, even if some aspects of the transaction may be something else. *Chi. Health Clubs v. Picur*, 124 Ill. 2d 1 (1988) (Amusement Tax on health club membership fees that provided access to substantial services was held invalid); *Commc'ns & Cable of Chicago, Inc. v. City of Chi.*, 275 Ill. App. 3d 680 *(1st Dist. 1995)* (Chicago Transportation Tax imposed on cable box and remote control rental was improper since it did not change the "nature of the transaction" as being a cable TV service); *Stasko v. City of Chi.*, 2013 IL App. (1st) 120265 (receipt of intangible license did not change the "true substance" of the transaction as being an amusement fee). The true nature of the transaction here is a service that allows participants to join an online session and interact with other participants via their own computer screens. For the reasons explained in this letter, ████ believes the service is akin to a nontaxable bridging or web conferencing service and is not a lease of property subject to the Chicago Lease Tax.

If the City determines that ██████████ are taxable sales of nonpossessory computer leases, the Company asserts that its sales of such services should only be treated as taxable on a prospective basis. Prior to the issuance of Ruling #12, the Company asserts that it was not

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[5] Mun. Code Sec. 3-73-020(Q)(2)

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evident from a plain reading of the City's ordinances, rulings, and the examples of taxable nonpossessory computer leases contained therein that ████████████ would be subject to the Chicago Lease Tax.

Additional conference requested

Should you have any questions concerning the information included above, we respectfully request a follow-up conference with you before any ruling is issued.

If you have any questions or need any additional information, please contact me at 312-879-2372 or, in my absence, Dean Bruno at 312-879-2125.

Sincerely,

Melissa A. Miller
Manager, Indirect Tax