

## **SALT Alert! 2015-16: Chicago Releases New Ruling on Lease Transaction Tax**

On June 9, 2015, the City of Chicago Department of Finance (CDOF) issued Revenue Ruling No. 12, effective July 1, 2015, addressing the application of the city's Personal Property Lease Transaction Tax. In particular, the ruling addresses the manner in which the tax will be applied to certain electronic services and applications as well as the sourcing of certain transactions involving hosted software, data base access, and electronic services. While the ruling had not been published on the Department's Web site as of June 15, 2015, the version obtained by KPMG was dated June 9, 2015 and signed by City Comptroller Dan Widawsky.

### **Background**

The City of Chicago imposes a personal property lease transaction tax on personal property that is leased or rented in the city, as well as on personal property that is leased or rented outside the City but used in the city. The tax, imposed at a 9 percent rate,<sup>1</sup> applies to leases or rentals where possession of the property is assumed by the lessee as well as to non-possessory leases where the lessee does not take possession but uses, the personal property in the city. The tax on non-possessory leases is imposed in part on "leased time on or use of . . . computers, computer software . . . and data processing equipment," which has been interpreted by the CDOF to impose tax on the use of remotely hosted software applications, access to online data bases, and certain other electronic transactions.

### **Exemption**

The lease transaction tax exempts transactions in which control of the customer's computer is de minimis and the charge is primarily for information transferred to the customer's computer. In adopting the exemption (Exemption 11) in 1995, the City Council provided examples, including that "certain so-called price quotation services and news services" where the information is of a "fleeting and transitory" nature would qualify for the exemption, but that "legal research and similar on-line data base searches" would not. Revenue Ruling No. 12 now provides that to be considered "fleeting and transitory" to qualify for the exemption, the receipt of the data must be "passive" in nature, such as in streaming stock quotations where interaction with the provider's computer is de minimis and there is no (or a very limited) search function. By contrast, charges for access to an interactive web site that provides an ability to search for information (e.g., a financial information web site) will be considered taxable even though most of the information provided is of a "transitory and fleeting" nature. In other words, to qualify

for an exemption under Exemption 11 requires meeting both parts of the test: (1) de minimis use of the provider's computer and (2) the information provided being of a transitory and fleeting nature. A product offering with a significant search function seemingly disqualifies the offering from Exemption 11 under Revenue Ruling No. 12.

### **Sourcing & Collection**

Under the lease transaction tax, a non-possessory lease of computer time or software is sourced to where the terminal or device used by the customer to access the shared computer resource is located. In the new ruling, the CDOF has clarified that if the customer has employees or other individuals using the shared computer or software that are located both within and outside the city, the tax on a charge that covers users both within and without Chicago should be apportioned based on the "principal office location" of the individual users.

If the provider of the shared computer or software service has no information that any use will occur in the city, the provider is not responsible for collecting the lease transaction tax. However, if the provider has information that some of a customer's usage will occur in Chicago, but insufficient information to allow a reasonable apportionment, the provider may rely on actual data or estimates from the customer to apportion tax to Chicago. If the customer does not provide such data, the provider shall assume that all use occurs in Chicago. Alternatively, the provider will not be required to collect the tax from the user-customer if the customer has ten or more employees or other individuals authorized to use the shared computer resource and the customer provides the seller with written confirmation from the CDOF that the seller is registered to pay the lease tax to the city.

### **Action Items**

The CDOF recognizes that the changes in the ruling will require changes in businesses' systems, and in its ruling noted that it will limit the effect of the ruling to the period on and after September 1, 2015.

The ruling makes clear the CDOF's position that businesses, including financial services firms, that purchase subscriptions to research databases that provide data such as price quotes, or any information that has generally been considered to be "of a fleeting and transitory nature," are subject to the lease transaction tax if the data is not received passively (e.g., a passive stream of information like a stock ticker). Both companies that buy and sell product offerings that include this type of data should review their taxability conclusions with respect to the Chicago personal property lease transaction tax.

Additionally, businesses that are providers of shared computer or software services may be relieved of their tax collection obligations if they collect the required documentation from their customers regarding usage within and without the City of Chicago. Businesses that consume these types of offerings should review the locations of their individual users to determine whether they can take advantage of apportioning the subscription charges among Chicago and the other usage locations.

KPMG SALT professionals are available to assist with reviewing and implementing the changes in the CDOF's ruling on the Personal

Property Lease Transaction Tax. For more information on Chicago Department of Finance Ruling No. 12 (June 9, 2015), please contact [Drew Olson](#) at 312-665-2897 or [Jill Nielsen](#) at (312) 665-2794.

<sup>1</sup> As of Jan. 1, 2015, the rate is 9 percent of receipts or charges; prior to Jan. 1, 2015, the rate was 8 percent of receipts or charges.

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