

## Chicago Update—Personal Property Lease Tax ruling implementation delayed

August 14, 2015

A Tax Alert released on July 7, 2015 (below) summarizes two rulings issued by the City of Chicago (City) Department of Finance (Department): one involving the City's Personal Property Lease Transaction Tax (Lease Tax), and another involving the City's Amusement Tax (Amusement Tax). In these rulings, the Department provided guidance to help clarify various aspects of the Lease Tax as applied to cloud computing and the Amusement Tax as applied to electronically delivered amusements.

On August 7 the Department delayed implementation of the Lease Tax ruling until January 1, 2016, noting that it made the decision in response "to numerous requests from providers and customers." The ruling was originally effective as of July 1, 2015. Per the announcement, the delay will allow businesses time to seek more guidance regarding application of the law, and time to change their billing systems and other procedures to help facilitate compliance. In addition, the Department will use the additional time to consider possible ordinance changes to address some of the concerns that have been raised by various Chicago businesses about the effect of the Lease Tax on their operations. The Department confirmed that any changes to the ordinances will require approval from the City Council. Finally, the Department indicated it may issue additional guidance in the form of an information bulletin to answer specific questions.

The Department did not, however, delay the effective date of the Amusement Tax ruling, which became effective as of July 1, 2015.

### Contacts

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## Chicago Personal Property Lease Transaction Tax and Amusement Tax rulings

July 7, 2015

### Overview

On June 9, the City of Chicago (City) Department of Finance (Department) issued two new rulings related to the City's Personal Property Lease Transaction Tax (Lease Tax)<sup>1</sup> and the City's Amusement Tax (Amusement Tax).<sup>2</sup> With these rulings (LT Ruling No. 12 and AT Ruling No. 5, respectively), the Department provides guidance to help clarify various aspects of the Lease Tax as applied to cloud computing (*i.e.*, nonpossessory use computer leases) and the Amusement Tax as applied to electronically delivered amusements.

In this Tax Alert we summarize these rulings and provide some taxpayer considerations.

### Taxability

The 9 percent Lease Tax applies to charges for the use of personal property, including charges paid pursuant to a nonpossessory computer lease, unless such charges are exempt under "Exemption 11."<sup>3</sup> The term "nonpossessory lease" means a lease where the customer accesses the provider's computer and uses it and its software to input, modify or retrieve data or information without the intervention of personnel acting on the provider's behalf.<sup>4</sup> Pursuant to the City ordinance, Exemption 11 provides that "the nonpossessory lease of a computer in which the customer's use or control of the provider's computer is de minimis and the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the computer" is exempt from the Lease Tax.<sup>5</sup>

LT Ruling No. 12 provides examples of which types of online activity the Department considers subject to the Lease Tax. More specifically, LT Ruling No. 12 identifies the following charges as being subject to the Lease Tax: access to legal research or similar on-line database searches; obtaining consumer credit reports, real estate listings and prices, car prices, stock prices and similar information that has been compiled, entered and stored on the provider's computer; and the ability of a customer to perform functions such as word processing, calculations, data processing through access to a provider's computer and its software (*i.e.*, cloud computing).

Reports or similar documents consisting primarily of the provider's own opinions and charges for the storage of a customer's data on a provider's computer, however, are noted as some examples of what the Department deems *not* subject to the Lease Tax. Further, entertainment materials, such as copyrighted books, musicals or other sound recordings are not viewed as taxable "data or information" as defined within the underlying City ordinance, and as such, are not included as items subject to the Lease Tax.<sup>6</sup> However, LT Ruling No. 12 does indicate that charges not subject to the Lease Tax may be subject to another City-imposed tax, such as the Amusement Tax.

LT Ruling No. 12 also focuses on other issues that have been posed and challenged by City taxpayers such as those involving bundled charges, sourcing, and nexus. Additionally, LT Ruling No. 12 addresses a common question around the exemption provided for personal property leased or rented outside the City when the property is primarily used (*i.e.*, more than 50 percent) outside the City.<sup>7</sup> That is, pursuant to LT Ruling No. 12, this Lease Tax exemption does *not* apply to nonpossessory computer leases. However, LT Ruling No. 12 does discuss how a business having some employees who use computers from terminals or devices in Chicago and some employees who use them from outside Chicago should have the underlying use charge apportioned when the charge covers both Chicago and non-Chicago use. LT Ruling No. 12 also provides sourcing guidance when a computer services provider does not have information that allows it to perform a reasonable apportionment.

<sup>1</sup> Personal Property Lease Transaction Tax Ruling No. 12, City of Chicago Dept. of Fin. (June 9, 2015).

<sup>2</sup> Amusement Tax Ruling No. 5, City of Chicago Dept. of Fin. (June 9, 2015).

<sup>3</sup> Chicago, Ill. Code §§ 3-32-030(A); 3-32-020(I); 3-32-050(A)(11) (2015).

<sup>4</sup> Chicago, Ill. Code § 3-32-020(I) (2015).

<sup>5</sup> Chicago, Ill. Code § 3-32-050(A)(11) (2015).

<sup>6</sup> Chicago, Ill. Code § 3-32-020(I) (2015).

<sup>7</sup> Chicago, Ill. Code § 3-32-050(A)(1) (2015).

Finally, because the Lease Tax is imposed upon the customer and only applies to activities that take place within the City, LT Ruling No. 12 alludes to the fact that when the lessor fails to collect any required Lease Tax due, the lessee must file its own Lease Tax return and pay the tax directly to the City.

The 9 percent Amusement Tax applies to charges paid to witness, view or to participate, in an “amusement,” which has been defined by the City to include not only charges to witness, view, or to participate in amusements in person, but also charges paid for the privilege to witness, view, or participate in amusements that are delivered electronically.<sup>8</sup>

AT Ruling No. 5 provides various examples of which charges the City deems subject to the Amusement Tax, including charges paid for the privilege of watching electronically delivered television shows, movies, or videos if the shows are delivered to the patron (*i.e.*, customer) in the City. Further, electronically delivered music and games—delivered online or otherwise—are subject to the Amusement Tax if delivered to customers in the City.

AT Ruling No. 5 explains that the Amusement Tax does *not* apply to the *sale* of shows, movies, music, or games because *sales* of electronic products are generally documented and/or accomplished by a permanent download, as compared to a temporary streaming or tentative download.

AT Ruling No. 5 also includes some discussion on the bundling of services, nexus, and sourcing. For instance, for Amusement Tax purposes, the Department explains that it will utilize the rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, applying the tax to customers whose residential street address or primary business street address is in Chicago as reflected in their credit card billing addresses.

### Additional considerations

While both LT Ruling No. 12 and AT Ruling No. 5 are listed as effective as of July 1, 2015, the Department states that it will limit the effect of these rulings to periods on and after September 1, 2015 “to allow affected businesses sufficient time to make required system changes.” However, the Department notes that this delayed imposition, does not release or otherwise affect the liability of any business that failed to comply with existing law prior to the effective date of these rulings.

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If you have questions regarding LT Ruling No. 12 and AT Ruling No. 5, or any other Illinois tax matters, please contact any of the following Deloitte Tax LLP professionals.

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<sup>8</sup> Chicago, Ill. Code § 4-156-010 (2015).