

Cook County (Illinois) Enacts Use Tax on Non-Titled Tangible Personal Property

November 26, 2012

Overview

On November 9, 2012, the Cook County Board of Commissioners passed the Cook County Budget for fiscal year 2013.¹ The newly enacted budget contains an ordinance² providing that Cook County will impose a tax upon the privilege of using non-titled tangible personal property in the County (which was purchased outside of the County) at the rate of 1.25% of the property's value when first subject to use in the County.³

In this External Tax Alert, we summarize the provisions of the Budget relating to the tax on the use of non-titled tangible personal property. We also address potential challenges that the ordinance may create.

Cook County Non-Titled Tangible Personal Property Use Tax Ordinance

Background

On October 18, 2012, a proposed Cook County Use Tax on Non-Titled Personal Property Ordinance (the "ordinance") was introduced as part of the 2013 Cook County Budget package. Following a number of hearings conducted by the Cook County Board of Commissioners and a public comment period, the Budget (and the ordinance) was passed on November 9, 2012. Although the Budget goes into effect December 1, 2012, the ordinance and tax itself becomes effective April 1, 2013.⁴

The Use Tax on Non-Titled Personal Property (hereinafter, the "Tax") is imposed upon the privilege of using non-titled tangible personal property in Cook County that was purchased outside of Cook County.⁵ The Tax is imposed at a rate of 1.25% of the non-titled personal property's value when first subject to use in the County. Value is defined in the ordinance as "an accurate assessment or evaluation of a non-titled personal property's worth when first subject to use within the County."⁶

Section 5-1008 of the Illinois Counties Code (55 ILCS 5/5-1008) provides that a home rule county may impose a use tax on tangible personal property titled or registered to a person within the county. Cook County has had such a tax on titled tangible personal property for a number of years, at §74-270 - 74-283 of the Cook County Code.

The Tax and the obligation to pay the Tax are imposed upon the purchaser or user of non-titled tangible personal property. The Tax is payable whenever non-titled tangible personal property is

¹ Cook County, Illinois, is one of the most populous counties in the United States (5.2 million people per the 2011 U.S. Census) with its county seat in Chicago. There are over 130 incorporated municipalities in Cook County, the largest being Chicago. (United States Census Bureau, <http://quickfacts.census.gov/qfd/states/17/17031.html>)

² Article XIX Non-Titled Personal Property Use Tax, Chapter 74 Taxation, Sec. 74-650 through Sec. 74-662 Cook County Code.

³ Cook County Code Sec. 74-652.

⁴ Enactment clause to Cook County Use of Non-Titled Personal Property Tax Ordinance.

⁵ Cook County Code Sec. 74-652(a).

⁶ Cook County Code Sec. 74-651(a).

first subject to use in Cook County.⁷ Evidence that the purchaser resides or that property was delivered to a location in Cook County is prima facie evidence that the property is purchased for use in the County and first used in the County on the date of delivery.⁸

Every person in Cook County who, in the course of business, acquires non-titled personal property that is subject to the Tax must register with the Cook County Department of Revenue (the "Department") in the time, form, and manner required by the Department.⁹ However, the ordinance does not specifically limit the imposition of the Tax to property used in the course of business. The requirement that only persons who acquire taxable property in the course of business must register with the Department creates a possible implication that the County intends to limit the Tax to property acquired and used in business. However, there is no such express limitation in the ordinance, and as drafted, the Tax does appear to apply to non-titled tangible personal property used by individuals and not used in the course of business.¹⁰

The ordinance enumerates certain types of non-titled personal property that is considered to be exempt from the Tax,¹¹ including:

- Items of non-titled personal property which are exempt from tax under the provisions of the Illinois Use Tax Act;
- Food for human consumption which is to be consumed off the premises where it is sold, other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption within the County; and
- Prescription and non-prescription medicines, drugs, medical appliances used by persons who are public-aid recipients in nursing homes; and insulin, urine testing materials, syringes, and needles used by natural persons who are diabetics for personal use.

The ordinance also defines certain exempt uses of non-titled personal property,¹² including:

- The use in the County of non-titled personal property acquired outside the County by a nonresident natural person if the property is brought into the County by the person for his or her own use while temporarily in the County or while passing through the County;
- Certain qualified use of rolling stock by an interstate carrier for hire in interstate commerce;
- The use by an owner, lessor, or shipper of non-titled personal property which is utilized by interstate carriers for hire as rolling stock moving in interstate commerce as so used by interstate carriers for hire;
- The temporary storage in the County of non-titled personal property which is acquired outside the County and which, after being brought into the County and stored temporarily in the County is (1) used solely outside the County; (2) physically attached to, or incorporated into, other tangible personal property which is used solely outside the County; or (3) is altered by converting, fabricating, manufacturing, printing, processing, or shaping and, as altered, is used solely outside the County;
- The temporary storage in the County of building materials and fixtures by a combination retailer and construction contractor registered with the state, but only if the contractor thereafter incorporates the building materials and fixtures into real estate located outside the County;
- The purchase or use of non-titled personal property by a common carrier by rail which receives possession of the property in the County and which transports the property, or shares with another common carrier in the transportation of the property, out of the County on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of the property to a destination outside the County, for use outside the County;

⁷ Cook County Code Sec. 74-652(c).

⁸ *Id.*

⁹ Cook County Code Sec. 74-653.

¹⁰ Many of the exemptions contained in the ordinance seem relevant to individual taxpayers as opposed to businesses, and there is no specific language limiting the application of the ordinance to only businesses.

¹¹ Cook County Code Sec. 74-655.

¹² Cook County Code Sec. 74-656.

- The personal use in the County of non-titled personal property acquired outside the County by a natural person who, at the time of acquisition, was not a resident of the County, and who used the property outside the County for at least three months prior to bringing the property into the County; and
- The use in the county of non-titled personal property by a person who uses said property in the course of business and who relocates to the County, or opens an office, plant, or other facility in the County, if the property has been used at least three months outside the County by the person before being moved into the County.

Annual Tax Credit

Any taxpayer under the ordinance shall receive an annual credit against the Tax (in the form and manner as prescribed by the Department) for the first non-titled tangible personal property purchased outside of and used in Cook County with a value of \$3,500. The credit shall be applied against the taxpayer's aggregate Tax liability for each taxable year. The annual credit is nonrefundable and may not be applied to another taxable year.¹³

Persons liable for the Tax in an amount greater than the annual credit shall file with and remit to the Department, on or before the 20th day of the month, a Tax remittance return and the corresponding Tax due from any transaction that occurred in the immediately preceding month.¹⁴ Penalties will be assessed to such persons who fail to register, file, and/or pay the Tax when due.¹⁵

Potential Challenges

Various concerns have been raised by at least one taxpayer advocacy group regarding the validity of the ordinance without the explicit authorization by the Illinois General Assembly.¹⁶ The ordinance also lacks a mechanism to allow a credit for taxes paid to other jurisdictions to avoid multiple taxation (whether that includes jurisdictions in Illinois or other states).

Contacts

If you have questions regarding the new Cook County Use Tax on Non-Titled Personal Property Ordinance or pertaining to other Illinois tax matters, please contact any of the following Deloitte Tax LLP professionals or the Multistate Tax Professional Team providing services to your account.

Dominic Greco
Director
Deloitte Tax LLP, Chicago
dgreco@deloitte.com
(312) 486-9271

Brian Walsh
Director
Deloitte Tax LLP, Chicago
bwalsh@deloitte.com
(312) 486-3728

Mary Pat Kohberger
Director
Deloitte Tax LLP, Chicago
mkohberger@deloitte.com
(312) 486-3825

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.

Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2012 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

¹³ Cook County Code Sec. 74-654.

¹⁴ Cook County Code Sec. 74-657.

¹⁵ Cook County Code Sec. 74-659.

¹⁶ See [Analysis of proposed Cook County Use of Non-titled Personal Property Tax Ordinance](#), Taxpayers' Federation of Illinois, October 2012.