



MULTISTATE INDIRECT TAX

City of Chicago – Nexus and safe harbor update

Tax Alert

Overview

On January 21, 2021, the City of Chicago (“City” or “Chicago”) issued an [information bulletin](#) regarding its analysis of the United States Supreme Court’s decision in *Wayfair v. South Dakota* (“*Wayfair*”),¹ and its application to whether a business is “purposefully availing itself” of the privilege of doing business in Chicago.² The information bulletin provides a stated safe harbor for certain City taxes under specific conditions. In summary, the City will provide a safe harbor for out-of-state entities with less than \$100,000 of revenue from Chicago customers during the most recent consecutive four calendar quarters for the following regularly imposed taxes:³

- Chicago’s amusement tax as applied to electronic delivery, such as video/audio streaming and online games; and
- Chicago’s personal property lease transaction tax as applied to nonpossessory computer leases.

This Tax Alert summarizes these enacted law changes.

City of Chicago nexus

The City is a home rule municipality granted under the Illinois Constitution which allows the City to exercise any power and perform any function unless prohibited from doing so by state law, including administer municipal taxes. The City stated that the *Wayfair* decision applies to state sales and use tax, not local home rule taxes,⁴ and it does not limit the analysis of what constitutes nexus for the purpose of determining whether the City can require an out of state entity to collect a tax imposed by the City. As a result, the City may consider other factors to establish nexus through an entity purposefully availing itself of the privilege of doing business within the City, including:⁵

- Agreements an entity has with other businesses in the City,
- Activities performed by entity’s employees in the City,
- Physical presence in the City,
- Advertising directed at Chicago customers, and

- Other factors showing the entity has purposely availed itself of the privilege of doing business in the City.

Safe harbor provisions

The City published an information bulletin which provides a safe harbor provision for vendors who would otherwise be required to collect (1) Chicago amusement tax as applied to electronic delivery, such as video/audio streaming and online games; and (2) Chicago personal property lease transaction tax as applied to nonpossessory computer leases.⁶ The safe harbor provision concerns only the issue of whether a provider has a duty to collect taxes from its customers; it does not affect whether a customer has a duty to pay those taxes.⁷

The safe harbor provision applies to out-of-state entities with less than \$100,000 in revenue from Chicago customers during the most recent consecutive four calendar quarters.⁸ The provision applies on a prospective basis beginning July 1, 2021.⁹ However, the provision also only applies to out-of-state entities that have no other significant contacts with the City.¹⁰ Any out-of-state entities without a physical connection with Chicago and annual revenue of less than \$100,000 relating to (1) electronically delivered amusements subject to the Chicago amusement tax, and (2) nonpossessory computer lease charges subject to the Chicago personal property lease transaction tax will not be required to register to collect and remit tax relating to the aforementioned transactions.

If an out-of-state business initially qualifies for the safe harbor provision but no longer does due to an increase of Chicago-based revenue, the entity must register with the City's Department of Finance within 60 days, and begin collecting the relevant Chicago taxes within 90 days, and continue collecting such taxes for a minimum of twelve months.¹¹

Get in touch

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Footnotes

¹ 585 U.S. ___, 138 S. Ct. 2080 (2018).

² City of Chicago, Information Bulletin – Nexus and Safe Harbor (January 21, 2021).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ City of Chicago Muni. Code, § 3-32-030(A), (B.1); § 4-156-020(A), (G), (G.1); City of Chicago, Information Bulletin – Nexus and Safe Harbor (January 21, 2021).

⁷ City of Chicago, Information Bulletin – Nexus and Safe Harbor (January 21, 2021).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

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