



City of Chicago
Rahm Emanuel, Mayor

Department of Law

Edward N. Siskel
Corporation Counsel

Revenue Litigation
30 North LaSalle Street
Suite 1020
Chicago, Illinois 60602-2580
(312) 744-5691
(312) 744-6798 (FAX)
(312) 744-5131 (TTY)
www.cityofchicago.org

March 29, 2017

Mary Pat Kohberger
Deloitte Tax LLP
111 S. Wacker Drive
Chicago, Illinois 60606

Re: [REDACTED]

Dear Ms. Kohberger:

I am writing in response to your letter of March 27, 2017 ("Request") (copy attached), requesting a private letter ruling ("PLR") concerning the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax" or "Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to the charges imposed by [REDACTED] ("[REDACTED]" for the use of the product described in the Request ("Product").

Based on the facts set forth in your Request, we are of the opinion that charges imposed for the use of the Product are not subject to the Lease Tax. A key consideration is your representation that the Product primarily consists of materials (training content) that are created by [REDACTED]

Lease Tax Ruling #12 concerns nonpossessory computer leases. The Ruling includes the following provision:


Access to materials that are primarily proprietary is ... an exempt use of the provider's computer. The customer may pay a subscription fee for the ability to download or otherwise access the desired information or data, and the subscription fee may allow the customer to use a search function to locate the information or data that the customer wishes to download or otherwise access, but the value of the search function is subordinate to the value of the information or data that the customer wishes to download or otherwise access (i.e., the charge is predominantly for the information or data). This will typically apply in the case of a web site or "app" that allows a subscriber to download or otherwise access materials that are primarily proprietary, such as copyrighted newspapers, newsletters or magazines, that the subscriber would have to purchase if the materials were acquired or accessed through other means, such as a purchase at a "bricks and mortar" store. ¶ 11.

As noted, you have represented that the Product consists of interactive training sessions containing content that is created and reviewed by [REDACTED] personnel based on years of experience in the [REDACTED] field and knowledge gained throughout the years.

Letter to Mary Pat Kohberger
March 29, 2017
Page 2

This opinion is based on the law as of the date of this letter and the facts as represented in your Request being accurate and complete. The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to Section 3-4-325 of the Code.

Very truly yours,



Weston W. Hanscom
Deputy Corporation Counsel
(312) 744-9077

cc: Joel Flores, Department of Finance



Deloitte Tax LLP
111 S. Wacker Drive
Chicago, IL 60606
USA
Tel: +1 312 486 1000
Fax: +1 312 486 1486
www.deloitte.com

March 27, 2017

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

Re: Private Letter Ruling Request – Chicago Personal Property Lease Transaction Tax

Dear Mr. Hanscom:

Per our prior discussions, please allow this letter to serve as a request for a Private Letter Ruling pursuant to City of Chicago Department of Revenue Uniform Revenue Procedures Ruling #3 (June 1, 2005), Section 6. The firm of Deloitte Tax LLP is authorized to request the Private Letter Ruling on behalf of [REDACTED]. An executed power of attorney is attached.

[REDACTED] identifying information is set out as follows:

[REDACTED]
[REDACTED]
[REDACTED]

Statement of Facts

[REDACTED] (" [REDACTED]) provides online education services for people in the [REDACTED] management industry.

[REDACTED] (" [REDACTED]) offers high-quality, interactive [REDACTED] education services in their [REDACTED] Management Learning Center. [REDACTED] provides its [REDACTED] management education services through: (1) subscriptions to training content, and (2) a license to a portal where the training content resides, along with tracking tools and customer/client specific content. The course content is created and reviewed by [REDACTED] personnel based on years of experience in the [REDACTED] management field and knowledge gained through the years. For the [REDACTED] management education services, there is no software or CD to install or download. The services are accessed remotely from locations outside of Illinois (servers are located outside of Illinois).

Customers access the formal courses of instruction anywhere there is high-speed internet access as the training courses are offered through the internet. Each course also comes with a pre-test check and knowledge challenge built to gauge the student's comprehension. Each knowledge challenge is different, as the exam is generated randomly from a database of questions.

Each student who achieves a 70% or higher score on the final knowledge challenge receives a course completion certificate. If the student achieves a perfect 100% score, they receive mastery certificate

indicating their perfect score. [REDACTED] also provides built-in tracking so both students and supervisors can monitor progress and performance in the online trainings.

Requested Ruling

[REDACTED] requests a private letter ruling to confirm that charges for its [REDACTED] management education services are not subject to the Chicago Personal Property Lease Transaction Tax ("CPPLTT") as a nonpossessory computer lease because the services provide materials that are primarily proprietary in nature.

Authorities in Support of Requested Ruling

Statutes and Rules:

Chicago, Ill. Code § 3-32-020; 3-32-030; 3-32-050

Chicago, Ill. Department of Finance Personal Property Lease Transaction Tax Ruling #12, effective July 1, 2015.

Explanation of Grounds for Requested Ruling

We have examined the City of Chicago municipal code, and City of Chicago Department of Finance rulings to determine the taxability of [REDACTED] management education services.

Chicago Personal Property Lease Transaction Tax

The City of Chicago imposes the Chicago Personal Property Lease Transaction Tax upon: (1) the lease or rental in the city of personal property, or (2) the privilege of using in the city personal property that is leased or rented outside the city.¹ The incidence of the tax and the obligation to pay the tax are upon the lessee of the personal property.²

The City of Chicago specifically defines a "lease" or "rental" to include "nonpossessory computer leases" not limited to leased time on or use of computers and computer software.³ The term "nonpossessory computer lease" is defined by the Chicago municipal code to mean 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, in each case without the intervention (other than de minimis intervention) of personnel acting on behalf of the provider."⁴ 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 this chapter.⁵ Thus, remotely accessed software or software-as-a-service ("SaaS") is typically subject to the CPPLTT unless an exemption is met.

However, the Chicago municipal code provides an exemption from the CPPLTT for charges relating to 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.⁶ The City of Chicago Department of Finance

¹ Chicago, Ill. Code § 3-32-030(A).

² *Id.*

³ Chicago, Ill. Code § 3-32-020(I).

⁴ *Id.*

⁵ *Id.*

⁶ Chicago, Ill. Code § 3-32-050(11).

materials that are "primarily proprietary" is also an exempt use of the provider's computer.⁷ Despite the fact that a customer may pay a subscription fee for the ability to access desired information or data, and search within a system for such information, the value of the search function is "subordinate to the value of the information or data that the customer wishes to download or otherwise access." Thus, the charge is predominantly for the information or data and not subject to the CPPLTT.⁸

Chicago Private Letter Rulings Analysis

While the CPPLTT imposes tax on nonpossessory computer leases, charges that are primarily for access to proprietary information are deemed a service and the remote access/SaaS platform used to access such information is merely incidental to the primary purpose of the purchase.

Customers who purchase [REDACTED] management education services procure the service to engage in online interactive training sessions. The customer does not merely purchase access to the proprietary training content, but the customer participates in interactive training sessions where they are tested on their understanding and knowledge gained throughout the course. Each training course culminates in an exam where the customer must achieve a score of 70% or higher to obtain a course completion certificate, or a mastery certificate if the customer achieves a perfect score of 100%. Access to the online systems and the ancillary built-in tracking facilitate the education experience and allow students and supervisors to monitor progress and performance in the online trainings.

Under this reasoning, [REDACTED] believes that the charges for its [REDACTED] management education services are primarily for access to the proprietary information provided and thus are exempt from the CPPLTT under "Exemption 11."⁹

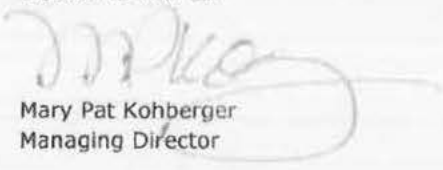
Authorities Contrary to Requested Ruling

[REDACTED] has reviewed the City of Chicago municipal code, and City of Chicago Department of Finance rulings but was unable to locate a definitive contrary authority on this issue.

We respectfully request a letter ruling on the issues presented in this letter. Thank you for your time and consideration in this matter. If you have any questions, or require additional information, please feel free to contact me at mkohberger@deloitte.com or (312) 486-3825.

Respectfully,

DELOITTE TAX LLP



Mary Pat Kohberger
Managing Director

Enclosures: Executed Power of Attorney

⁷ Chicago, Ill. Department of Finance Personal Property Lease Transaction Tax Ruling #12, effective July 1, 2015, Page 4.

⁸ *Id.*

⁹ Chicago, Ill. Code § 3-32-050(11); Chicago, Ill. Department of Finance Personal Property Lease Transaction Tax Ruling #12, effective July 1, 2015, Page 4.