

City of Chicago Rahm Emanuel, Mayor

Department of Law

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http://www.cityofchicago.org

August 28, 2013



Re: Opinion Request –

Dear

I am writing in response to the letter dated April 15, 2013 (copy attached). In this letter, requests that the City of Chicago (the "City") issue a ruling on the taxability of subscription fees for access to its publications under the Chicago Personal Property Lease Transaction Tax ("CTT"), chapter 3-32 of the Municipal Code of Chicago (the "Code"). Based on the information provided in the April 15, 2013 letter, its attachments, additional explanations provided during our meeting on July 9, 2013, and your correspondence on August 13, 2013, we provide the following opinion.

's charges for its online subscription service are not subject to CTT.

Code Section 3-32-030(A) provides: "Except as otherwise provided in this chapter, a tax is imposed 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." Code Section 3-32-020(I) provides that the term "lease or rental" includes a includes a "nonpossessory lease" and that the term "nonpossessory lease" means "a lease or rental wherein use but not possession of the personal property is transferred and includes, but is not limited to, leased time on or use of any and all personal property not otherwise itself rented, such as leased time on or for the use of addressing machines, billboards, calculators, computers, computer software, copying equipment or data processing equipment, whether the time is fully or partially utilized, and specifically includes a 'nonpossessory computer lease."

Code Section 3-32-050(A)(11) ("Exemption 11") provides an exemption for certain nonpossessory leases. Exemption 11 exempts the following types of leases: "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, such as the nonpossessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character."

's subscribers use or control software to obtain access to
's Research Notes and Research Studies. Although
function, "s "library" is relatively small when compared to a data base such as one kept
by Nexis/Lexis (see Meites v. City of Chicago, 184 Ill.App.3d 887 (1st Dist 1989)). Moreover,
all of the information on the website consists of materials that
under copyright, and charges are for that information, as well as for conferences with
employees and for admission to sponsored conferences. Thus, the subscription charges
are paid primarily for the ability to access the copyrighted and a second primarily for the ability to access the copyrighted
newsletters that publishes, plus the personal services performed by employees.
The portion of the subscription charge that could be viewed as paying for the ability to perform
searches is de minimis in comparison with the overall charge and its purpose.

The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to Code section 3-4-325.

If we may be of further assistance, please call me at (312) 744-1436 or email me.

Very truly yours,

Kim Edward Cook

Chief Assistant Corporation Counsel

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Department of Law

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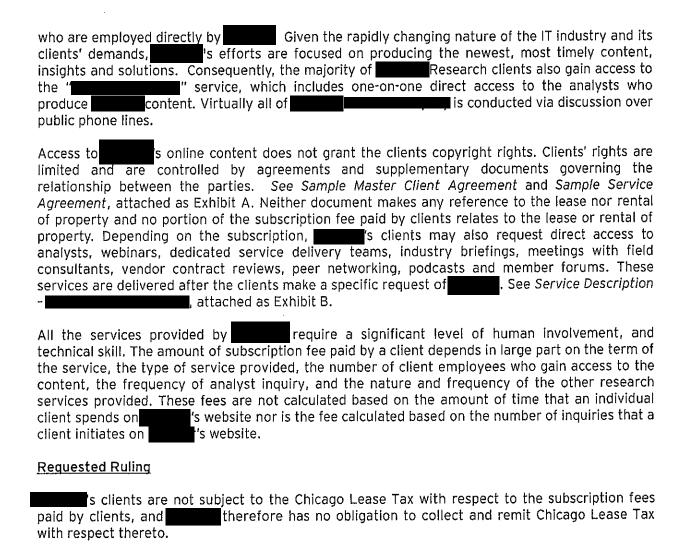
Encl.

cc: W

Weston W. Hanscom Department of Finance

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	On behalf of letter ruling ("PLR") regarding the applicability of the Chicago Personal Property Lease Transaction Tax ("Chicago Lease Tax") to the technology research services described in this letter. Attached is the required power of attorney. To the best of sknowledge and belief, is not under audit or investigation by the City of Chicago. Services that its services are not subject to the Chicago Lease Tax for the reasons stated below, but requests certainty by filing this PLR request. If, however, you determine that services are not considered taxable until the month following issuance of this PLR as reasonably believed that it was providing a non-taxable service. If several is determined liable for collecting the Chicago Lease Tax on its service transactions and if prospective-only relief is not available, herewith submits a Voluntary Disclosure Agreement application. Please note, however, that believes it provides a non-taxable service, thus the request for prospective-only relief or participation under a Voluntary Disclosure Agreement are only precautionary measures.
	<u>Facts</u>
	is an information technology ("IT") and research services firm which produces proprietary content for its clients, which is accessed electronically via the Internet in exchange for a subscription fee. At the end of the subscription term, the client no longer has access to any online content. To the extent a client downloads or prints content, the client is required to destroy the downloaded or printed version. All of the content that provides is produced internally. It is technology-related insight is targeted at ClOs and senior IT leaders in industries that include government agencies, high-tech and telecom enterprises, professional services firms, and technology investors, among others.
	s business model is dependent on its ability to provide high quality and timely IT proprietary research, insights, analysis and solutions to its clients. The market for services is influenced by rapidly changing needs for information and up-to-the-minute analysis on the IT industry. To that end, employs approximately 900 analysts who conduct continuous analysis and studies, and who make projections and/or forecasts about the industry. This proprietary information is created through effort, skill, knowledge, and experience of the analysts

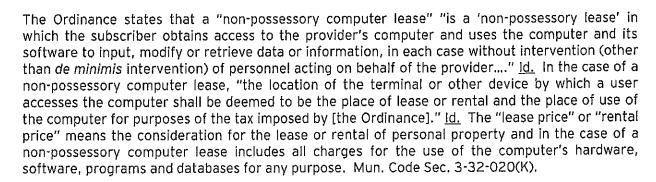
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<u>Authority</u>

In general, the Chicago Lease Tax is imposed on the lessee with respect to the *lease* or *rental* of personal property, whether tangible or intangible. Mun. Code Secs. 3-32-030(A) and 3-32-020(Q) (emphasis added). In other words, tax applies with respect to the lease of any property other than real property in Chicago.

The Chicago Personal Property Lease Transaction Tax Ordinance (the "Ordinance") defines the words "lease" and "rental" to mean, "any transfer of the possession or use of personal property, but not title or ownership ... and includes a 'non-possessory lease." Mun. Code Sec. 3-32-020(l). The term "non-possessory lease" means a "lease or rental wherein use but not possession of the personal property is transferred and includes ... leased time on or use of ... computers [and] computer software ... and specifically includes a 'non-possessory computer lease." <u>Id.</u>



An example of a taxable non-possessory computer lease is the use of a provider's computer, through a terminal located in Chicago, to perform "legal research or similar on-line database searches." See Meites v. City of Chicago, 184 III. App. 3d 887, 540 N.E.2d 973 (1989); see also Pg. 59138 of the Chicago City Council Journal (11/10/1994) (finding that the Chicago Lease Tax should continue to apply to such transactions). The Meites case dealt, in relevant part, with whether the Chicago Lease Tax should apply to fees paid to access a searchable legal database provided by Lexis/Nexis. Id. The court in Meites held that the Chicago Lease Tax properly applied to the fees paid by consumers to access Lexis/Nexis' legal database because Lexis/Nexis was not performing a service and generating its own content, but, rather transferring a non-possessory interest in its legal database to its customer.

Section 3-32-050(A)(11) of the Ordinance, enacted after the *Meites* case, provides an exemption for information services, specifically:

the non-possessory lease of a computer in which the subscriber's use or control of the provider's computer is de minimis and the related charge is predominantly for information transferred to the subscriber rather than for the subscriber's use or control of the computer, such as the non-possessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character. (emphasis added).

As part of the ordinance adopting the information service exemption, the City Council stated that, "beginning July 1, 1995, the non-possessory lease of a computer in which the customer's use or control of the computer is *de minimis*, such as certain ... news services, should be exempt from the [Chicago Lease Tax]." Pg. 59138 of the Chicago City Council Journal (11/10/1994) (emphasis added).

In a transaction tax ruling issued by the Chicago Department of Finance, Tax Division in June 2004, the Department provided guidance as to the scope and meaning of the information service exemption, as follows:

A transaction involving the transfer of the possession or use of personal property shall be taxable even though only a small portion of the transaction involves the

transfer of the possession or use of such property...If the transfer of personal property is incidental to the service provided, in that the use of the personal property has little or no value without the accompanying service and the cost of the personal property is *de minimis* (i.e., nominal) compared to the price charged for the total transaction, then no lease or rental shall be deemed to have occurred, and no portion of the price shall be taxable. Personal Property Lease Transaction Tax Ruling #3. Sec 6 (June 1st 2004).

In sum, the City of Chicago imposes a tax on all leases of property, other than real property transacted within the City. This tax is also imposed on fees charged for the transfer of a non-possessory interest in a computer terminal within the City. However, a) if an interest in personal property is transferred in conjunction with a service, b) the use of such personal property has little or no value without the accompanying service, and c) the cost of the personal property is de minimis compared to the price charged for the total transaction, then the Chicago Lease Tax shall not apply.

Discussion

The IT research services provided by are exempt from Chicago Lease Tax pursuant to the information service exemption of Section 3-32-050(A)(11) because the client's use of computer system via the internet has little value without access to sexclusive self-created and copyrighted content. Instead, with the subscription fee, every client is paying for access to sproprietary content, which addresses the continuously evolving IT industry.

As discussed above, the City of Chicago imposes a tax on all leases of personal property transacted within the City and non-possessory interests in computers are included within the definition of personal property. However, Section 3-32-050(A)(11) provides an exemption for non-possessory computer leases in which the value of the use of the computer is *de minimis* and the fee charged is primarily in exchange for the information transferred, such as information that is fleeting or transitory in nature. However, the Chicago City Council has also stated that the Chicago Lease Tax will still apply to leases of a computer to perform legal research and *similar online database* searches.

provides internally generated, often time sensitive, IT content that assists its clients in navigating the ever-changing landscape of the IT industry. While a <u>portion</u> of may seem similar to a search engine or online database, the services is providing are quite is providing is proprietary and a product of the Company's dissimilar. The content that analysts' effort and expertise whereas the content provided by a company maintaining an online database is generally not proprietary and is typically not generated by that company. provides a wide variety of additional services that are only available via specific client request and consultation. Moreover, the non-possessory interest in 's computer system transferred with the service has little value without scontent; clients are paying the subscription fee s IT insights as well as other consultative services upon request. Thus, the for access to provides fall squarely within the exemption to the Chicago Lease Tax services that elaborated in Section 3-32-050(A)(11) and Lease Transaction Tax Ruling #3.

Additionally, the services that provides differ from those provided in the Meites case in
that ultimately is providing the services of its IT experts. It is analysts are
functioning like professional service personnel, such as lawyers or doctors whose real function is
the unique service they are able to individually render because of their level of skill and expertise.
s clients are willing to pay a premium price for the content, not because it contains basic
facts and figures, or because it is delivered in an easily searchable database but because the
content was produced by a group of industry specialists who possess a unique understanding of
the needs of their clients. In Meites, Lexis/Nexis did not provide access to content generated
internally though the skill and expertise of its employees; rather, Lexis/Nexis provided access to
publicly available legal content. Therefore, the value Lexis/Nexis provided to its customers was
not for the content, since customers could find the same content in other sources, but for the
customer's ability to quickly and easily access that content using the Lexis/Nexis software.
Because is providing self-created content, the holding in the Meites case should be
inapplicable to state of the st
charged by to access its IT content.
to access its if content.

Conference requested.

Should you have any questions or reservations about issuing the requested rulings, we would respectfully request an in-person conference with you before any ruling is issued.

If you have any questions or	need any	additional	information,	please	contact	me	at
or, in my absence,							

Sincerely.