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Rahm Emanuel, Mayor

Department of Law

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August 28, 2013



Re: Opinion Request – [REDACTED]

Dear [REDACTED]:

I am writing in response to the letter dated April 15, 2013 (copy attached). In this letter, [REDACTED] requests that the City of Chicago (the “City”) issue a ruling on the taxability of [REDACTED] 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.

[REDACTED]’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 “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.”

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██████████'s subscribers use or control ██████████'s computers and software to obtain access to ██████████'s Research Notes and Research Studies. Although ██████████'s web site includes a search 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 ██████████ itself publishes 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 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  
Revenue Litigation Division  
Department of Law  
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Encl.

cc: Weston W. Hanscom  
Department of Finance

[REDACTED]

[REDACTED]

Dear [REDACTED]:

On behalf of [REDACTED], [REDACTED] respectfully requests a private 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 [REDACTED]'s knowledge and belief, [REDACTED] is not under audit or investigation by the City of Chicago. [REDACTED] believes 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 [REDACTED]'s service transactions are subject to the Chicago Lease Tax, we respectfully request that its services are not considered taxable until the month following issuance of this PLR as [REDACTED] reasonably believed that it was providing a non-taxable service. If [REDACTED] is determined liable for collecting the Chicago Lease Tax on its service transactions and if prospective-only relief is not available, [REDACTED] herewith submits a Voluntary Disclosure Agreement application. Please note, however, that [REDACTED] 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.

#### Facts

[REDACTED] 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 [REDACTED] provides is produced internally. [REDACTED]'s technology-related insight is targeted at CIOs and senior IT leaders in industries that include government agencies, high-tech and telecom enterprises, professional services firms, and technology investors, among others.

[REDACTED]'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 [REDACTED]'s services is influenced by rapidly changing needs for information and up-to-the-minute analysis on the IT industry. To that end, [REDACTED] 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

[REDACTED]

who are employed directly by [REDACTED]. Given the rapidly changing nature of the IT industry and its clients' demands, [REDACTED]'s efforts are focused on producing the newest, most timely content, insights and solutions. Consequently, the majority of [REDACTED] Research clients also gain access to the "[REDACTED]" service, which includes one-on-one direct access to the analysts who produce [REDACTED] content. Virtually all of [REDACTED] is conducted via discussion over public phone lines.

Access to [REDACTED]'s online content does not grant the clients copyright rights. Clients' rights are limited and are controlled by agreements and supplementary documents governing the relationship between the parties. See *Sample Master Client Agreement* and *Sample Service Agreement*, attached as Exhibit A. Neither document makes any reference to the lease nor rental of property and no portion of the subscription fee paid by clients relates to the lease or rental of property. Depending on the subscription, [REDACTED]'s clients may also request direct access to analysts, webinars, dedicated service delivery teams, industry briefings, meetings with field consultants, vendor contract reviews, peer networking, podcasts and member forums. These services are delivered after the clients make a specific request of [REDACTED]. See *Service Description - [REDACTED]*, attached as Exhibit B.

All the services provided by [REDACTED] require a significant level of human involvement, and technical skill. The amount of subscription fee paid by a client depends in large part on the term of the service, the type of service provided, the number of client employees who gain access to the content, the frequency of analyst inquiry, and the nature and frequency of the other research services provided. These fees are not calculated based on the amount of time that an individual client spends on [REDACTED]'s website nor is the fee calculated based on the number of inquiries that a client initiates on [REDACTED]'s website.

#### Requested Ruling

[REDACTED]'s clients are not subject to the Chicago Lease Tax with respect to the subscription fees paid by clients, and [REDACTED] therefore has no obligation to collect and remit Chicago Lease Tax with respect thereto.

#### Authority

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(I). 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.'" Id.

[REDACTED]

The Ordinance states that a "non-possessory computer lease" "is a 'non-possessory lease' in which the subscriber 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 intervention (other than *de minimis* intervention) of personnel acting on behalf of the provider..." *Id.* In the case of a non-possessory 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 [the Ordinance]." *Id.* The "lease price" or "rental price" means the consideration for the lease or rental of personal property and in the case of a non-possessory computer lease includes all charges for the use of the computer's hardware, software, programs and databases for any purpose. Mun. Code Sec. 3-32-020(K).

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 Ill. 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 1<sup>st</sup> 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 [REDACTED] 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 [REDACTED]'s computer system via the internet has little value without access to [REDACTED]'s exclusive self-created and copyrighted content. Instead, with the subscription fee, every client is paying for access to [REDACTED]'s proprietary 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*.

[REDACTED] provides internally generated, often time sensitive, IT content that assists its clients in navigating the ever-changing landscape of the IT industry. While a portion of [REDACTED]'s content may seem similar to a search engine or online database, the services [REDACTED] is providing are quite dissimilar. The content that [REDACTED] is providing is proprietary and a product of the Company's 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. [REDACTED] also provides a wide variety of additional services that are only available via specific client request and consultation. Moreover, the non-possessory interest in [REDACTED]'s computer system transferred with the service has little value without [REDACTED]'s content; clients are paying the subscription fee for access to [REDACTED]'s IT insights as well as other consultative services upon request. Thus, the services that [REDACTED] provides fall squarely within the exemption to the Chicago Lease Tax elaborated in Section 3-32-050(A)(11) and Lease Transaction Tax Ruling #3.

Additionally, the services that [REDACTED] provides differ from those provided in the *Meites* case in that ultimately [REDACTED] is providing the services of its IT experts. [REDACTED]'s 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. [REDACTED]'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 [REDACTED] is providing self-created content, the holding in the *Meites* case should be inapplicable to [REDACTED]'s IT services. As a result, the Chicago Lease Tax should not apply to fees charged by [REDACTED] to access its IT 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 [REDACTED] or, in my absence, [REDACTED]

Sincerely,

[REDACTED]

[REDACTED]