



Chicago Lease and Amusement Taxes Expanded to Additional Technology Based Transactions

Chicago issued new tax rulings regarding the Personal Property Lease Transaction Tax (Ruling #12) and the City Amusement Tax (Ruling #5). The rulings vastly broaden the taxability of various cloud computing applications and electronic services by re-interpretation of long-standing city statutes.

Both rulings report a July 1, 2015, effective date, but state that Chicago will limit the effect of the rulings to periods after August 31, 2015, to allow taxpayers time to update their systems. Consequently, the interaction of these two dates has caused some confusion as to which date the new rulings apply.

The rulings contain significant changes and can impact just about any type of business – vendors, especially technology companies, with Chicago nexus and users in Chicago in any industry (entity or individual) engaging in taxable transactions.

Chicago Personal Property Lease Transaction Tax ("Lease Tax")

Chicago imposes a 9 percent tax on tangible personal property leased in the city. In general, vendors with Chicago nexus should collect the tax from their customers and remit it to the city. However, Chicago users located in Chicago are required to remit the tax if not charged by the vendor.

Prior to Ruling #12, this tax was imposed on various types of technology-related transactions, such as for the perpetual license of canned software by users in Chicago that was exempt from Illinois sales tax. Additionally, Chicago users have been historically subject to the Chicago lease tax for charges to perform certain on-line database searches, such as legal and accounting research and obtaining consumer credit reports.

However, pursuant to Ruling #12, the Chicago lease tax will additionally apply to charges paid to obtain access to perform functions in a cloud computing, cloud service, or hosted environment. As such, software as a service, platform as a service and infrastructure as a service are all generally considered taxable cloud computing transactions under this ruling.

Ruling #12 provides guidance on how to source the tax, including the use of apportionment when a business has users engaging in taxable transactions within and outside Chicago. Further, Ruling #12 addresses the treatment of bundled transactions that contain taxable and nontaxable charges.

The city provides that certain technology-related transactions are not subject to the lease tax. For example, pursuant to Exemption 11, a lease is exempt where (1) the customer's use or control of the provider's computer is de minimis; and (2) the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the computer. Additionally, payments for preparation of custom reports where electronic access is incidental are not subject to tax. Further, charges paid for storage of information are not taxable, so long as the charges are solely for storage and the vendor's computer is located outside the city. However, information accessed by a user in Chicago could be subject to lease tax.

Chicago Amusement Tax

In general, the Chicago amusement tax is imposed at a 9 percent rate on the privilege of witnessing or viewing taxable entertainment in Chicago, and is collected and remitted by the vendor, including a reseller of taxable entertainment. The Chicago amusement tax has been historically applied to live performances, such as sporting and cultural events taking place in the City. However, pursuant to Ruling #5, charges for watching electronically delivered television shows or movies, listening to electronically delivered music and participating in games, on-line or otherwise, are subject to the amusement tax. Note the amusement tax applies only to the rentals and not the sales (i.e., permanent downloads) of shows, movies, music, games, etc.

The city will primarily source charges based on the customer's billing address, whether that be the business or residential street address. The city also provided guidance regarding the treatment of bundled transactions that contain taxable and non-taxable charges.

Many Chicago users of cloud services have expressed concern regarding the broad expansion of the lease tax. In response to these concerns, the city of Chicago has indicated that it will consider providing relief to smaller businesses. The city is expected to release the details of this relief later this month. Plante Moran will continue to monitor further developments.

If you have any questions on the application of the ruling changes to your business or possible solutions to mitigate underpayments for past transactions, please contact your tax advisor or:

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