



INSIGHTS & COMMENTARY

Jurisdiction: City of Chicago
Tax Type: Personal Property Lease Transaction Tax
Issue: Chicago Offers Voluntary Disclosure for Lease Transaction Tax
Date: May 10, 2016

SYNOPSIS:

In June 2015, the Chicago Department of Finance adopted Ruling #12 which sought to provide guidance on the taxability of “nonpossessory computer leases.” which the City interprets to include software as a service products and electronically delivered information services. An exemption exists for a nonpossessory computer lease where the customer’s use or control of the provider’s computer is de minimis to the information being provided. How the City defines de minimis has been an area of controversy. Ruling #12, seeking to provide clarification, expanded the scope of products subject to the lease transaction tax to include most online or electronically delivered products.

Upon issuance of Ruling #12, the City received a significant amount of criticism from taxpayers and tax advocates who claimed the City’s guidance was an expansion of the tax rather than a clarification of the ordinance. Others argued the complexity of the ruling would have a negative impact on small businesses. In October 2015, the City addressed the concerns regarding the impact on small businesses, defined as having under \$25 million in annual revenue and have been in operation for fewer than 60 months, by amending the ordinance to relieve these companies of the obligation to pay or collect. In November 2015, to address concerns of whether the ruling was an expansion of the tax, the City issued an Information Bulletin which stated because software and electronic goods have changed and evolved over the years, taxpayers may not have understood that these types of products could be subject to the lease transaction tax. The bulletin acknowledges that in certain situations Ruling #12 represents a change from its prior interpretations. Because of this, the City has offered a voluntary disclosure program for taxpayers to come forward and become compliant.

The voluntary disclosure program states that any taxpayer that files a voluntary disclosure application by June 30, 2016 and that qualifies for the City’s standard voluntary disclosure will receive the following terms:

- Charges for nonpossessory computer leases for which Ruling #12 represented a change in policy, there is no liability for periods prior to January 1, 2016.
- Charges for other nonpossessory computer leases which were taxable prior to the issuance of Ruling #12, taxpayer may pay tax due for the 1-year period of January 1, 2015 – December 31, 2015 and no penalty or interest will be due.
- Other products subject to the lease transaction tax, the standard 4-year voluntary disclosure period will apply.

INSIGHT:

Businesses impacted by this change include sellers of software as a service, electronic information services or similar products with customers in the City of Chicago and consumers of these products with employees in the City of Chicago. This is a great opportunity for businesses to become compliant with the City of Chicago and the personal property lease transaction tax as it may significantly minimize the historical liability.

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