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Chicago Lease Transaction Tax Rate Increase for "Cloud" Software Products

DECEMBER 16, 2020 Written by Samantha K. Breslow

On November 16, 2020, the City Council for the City of Chicago ("City Council") amended the Chicago Personal Property Lease Transaction Tax Ordinance ("Ordinance"), eliminating the lower rate of tax on a nonpossessory lease of a computer, which includes "cloud" software products.

As background, the Chicago Personal Property Lease Transaction Tax ("Transaction 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.[1] A "lease" or "rental" is defined as including a "nonpossessory lease." [2] Currently, the rate varies based upon the type of transaction: 9 percent on receipts or charges for leases or 7.25% on charges for the nonpossessory lease of a computer to input, modify or retrieve data or information that is supplied by the customer.[3] However, effective January 1, 2021, the Transaction Tax will apply at a flat rate of 9 percent, regardless of the type of lease or rental at issue.

Although the gradual rate increase is not surprising due to the City's projected $1.2 billion gap in the 2021 fiscal year budget, which is in part caused by the COVID-19 pandemic, it does signal a shift from the special treatment historically afforded to "cloud" software products. [4] For example, when the Chicago Department of Finance ("Department") issued Transaction Tax Ruling No. 12 (" Ruling No. 12") in June 2015, clarifying that a "nonpossessory computer lease" includes "cloud computing, cloud services, hosted environment, software as a service, platform as a service, and infrastructure as a service," the Ordinance did not include a separate rate for a nonpossessory computer lease.[5] As a result, in October 2015, the City Council amended the Ordinance to include a lower Transaction Tax rate of 5.25% for "the nonpossessory computer lease of a computer," effective January 1, 2016. As the City has sought to generate tax revenue, the lower rate for a nonpossessory computer lease has gradually increased, first to 7.25% on January 1, 2020, and, now, to 9% on January 1, 2021.

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[1] Municipal Code of Chicago ("M.C.C.") § 3-32-030.

[2] M.C.C. § 3-32-030(I).

[3] *Id.*

[4] Press Release, Office of the Mayor, *City of Chicago Projects $1.2 Billion Gap in 2021 Fiscal Year Budget* (Aug. 31, 2020).

[5] City of Chicago Department of Finance Personal Property Lease Transaction Tax Ruling No. 12 (July 1, 2015).

Related People



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