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

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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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