



City of Chicago  
Rahm Emanuel, Mayor

Department of Law

Stephen R. Patton  
Corporation Counsel

Revenue Litigation Division  
30 North LaSalle Street  
Suite 1020  
Chicago, IL 60602-2580

(312) 744-5691  
(312) 744-6798 (Fax)

December 8, 2016

[Redacted]

Re: [Redacted] Private Letter Ruling

[Redacted]

I am writing in response to your letter dated September 28, 2016 ("Request") (copy attached without exhibits), requesting a private letter ruling ("PLR") concerning the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to [Redacted] and its products.

In your Request (at 4), you state that [Redacted] has two customers within the City of Chicago – [Redacted]. We agree that these two customers are exempt lessees under Section 3-32-040(B) of the Lease Tax Ordinance.

In light of this ruling, we do not reach the other issues raised in your Request. See Uniform Revenue Procedures Ordinance Ruling #3.<sup>1</sup>

This PLR is based on the text of the Lease Tax Ordinance as of the date of this letter and the facts as represented in the Request being true. The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to Code Section 3-4-325.

Very truly yours,

Weston W. Hanscom  
Deputy Corporation Counsel  
City of Chicago, Law Department  
Revenue Litigation Division  
30 N. LaSalle, Suite 1020  
Chicago, IL 60602  
312-744-9077

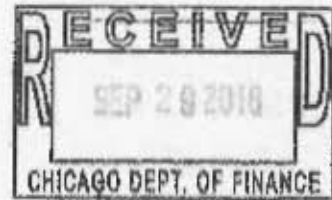
Cc: Joel Flores, Department of Finance

<sup>1</sup> The ruling is available at:

[https://www.cityofchicago.org/content/dam/city/depts/rev/supp\\_info/TaxRulingsandRegulations/URPORuling3.pdf](https://www.cityofchicago.org/content/dam/city/depts/rev/supp_info/TaxRulingsandRegulations/URPORuling3.pdf).



Tax Policy Section, City of Chicago  
Department of Revenue, Room 300  
DePaul Center  
333 South State Street  
Chicago, Illinois 60604-3977



September 28, 2016

Dear Sir or Madam:

Please accept this letter as our official request for a Private Letter Ruling concerning the Personal Property Lease Transaction Tax for [REDACTED].

General Information

[REDACTED] is located in [REDACTED] and is a services and technology provider to the publishing industry. [REDACTED] customers include [REDACTED].

[REDACTED] had an employee who lived in Chicago and worked from home from [REDACTED] through [REDACTED]. [REDACTED] employees visited Chicago twice in [REDACTED] for pre-sale meetings. There were no employees residing in or visiting Chicago in [REDACTED].

[REDACTED] has recently been acquired via a sale of assets by [REDACTED] and the transaction is expected to close [REDACTED]. [REDACTED], a new legal entity, will be managed as a separate business unit of [REDACTED] as of the date of the close. [REDACTED] will no longer be operational.

[REDACTED] Offering

Publishers outsource their online publishing initiatives to [REDACTED]. They engage [REDACTED] to provide the online hosting and delivery of all their content to their customers (researchers, doctors, academicians).

[REDACTED] is an online publishing platform upon which [REDACTED] provides the services to the publishers. Publishers use [REDACTED] to design and build their website in addition to hosting, maintaining, and operating the website. Publishers supply the content to be published as well as information about the publishers' paying subscribers as only paying subscribers will have access to the content on the website.

For new customers (publishers), [REDACTED] performs content migration as well as user data migration. The publisher provides content (articles, books, video, etc.) and [REDACTED] processes and transforms this content so it can be hosted and delivered over the internet to the publisher's customers who typically are researchers. [REDACTED] receives user data information from the publisher which then imports into the platform. The user data information is a list of paying subscribers who are authorized to access only the content they have paid for.

[REDACTED] staff (web designers and software developers) work with the publisher to define the website requirements and user interface and then proceed to implement the design and the website. Publishers are given many options and flexibility for the creation and design of a custom website that allows the publisher to create their own unique online brand.

Website hosting is maintained on [REDACTED] servers and the [REDACTED] staff is responsible for the daily operation and website availability 24 hours a day/7 days a week.

Publishers' websites powered by [REDACTED] have authentication and access control, search and personalization features, e-commerce capabilities and much more. [REDACTED] frequently updates its underlying software with bug fixes as well as implements custom enhancements that publishers have requested. [REDACTED] also provides a solution so that publishers' websites work on tablets as well as phones.

[REDACTED] customer are assigned an Account Manager who receives all customer requests, bugs, inquiries, enhancements and then works with the Internal engineering team to address all issues. All bug fixes and enhancements requested are coded by [REDACTED] engineers, incorporated into [REDACTED] and uploaded to the servers by [REDACTED] staff. Publishers have no control of the software, the system or the processes.

#### Revenue Types

[REDACTED] license – The fee that publishers pay for [REDACTED] to host, operate and maintain their website. This fee is for the basic service – operating the web site including fixing any defects, receiving customer support, managing traffic, providing 24x7 monitoring, hosting fees, and accessing an admin tool. Publishers typically submit content and data via a data feed. The admin tool allows publishers to perform certain administrative functions such as manually upload content and user data. The admin tool provides other capabilities as well such as give admins the ability to specify when content should go live on the web site, allow the admin to "push a button" to make content live, retrieve certain reports about the website content and usage, and more. In the newest version of the tool, the publisher's staff can make changes to the HTML of some parts of the pages, edit some snippets, and make the changes go live.

Additionally, [REDACTED] provides services at a fixed fee or on an hourly basis. They include the following:

1. Custom enhancements – When a publisher requests a change to the web site, the customizations are quoted separately and billed separately. The [REDACTED] team develops the changes and also uploads the changes to the [REDACTED] servers. These services are performed for a fixed fee or hourly basis.
2. Content processing – Publishers occasionally request a "back content" project. [REDACTED] processes additional content and uploads it to the web site. [REDACTED] converts and processes the content into the appropriate formats, then uploads the articles onto the servers to be available to the end users. [REDACTED] indexes the content so content is discoverable through the search functionality. These services are performed for a fixed fee or hourly basis.
3. Dedicated resources – Staffing resources (engineering, solution architects, operations, project management, support) that are committed and dedicated to the publisher's need before and after the launching of the publisher's website. These services are performed for a fixed fee or hourly basis. Dedicated resources are generally used by larger publishers.

#### [REDACTED] Request for a Private Letter Ruling

1. Nexus: [REDACTED] formally requests a ruling and confirmation regarding whether, and for which periods, [REDACTED] had nexus and a filing requirement in the City of Chicago based upon the following facts:

██████████ had an employee who lived in Chicago and worked from home from ██████████ through ██████████. ██████████ employees visited Chicago twice in ██████████ or pre-sale meetings. There were no employees residing in or visiting Chicago in ██████████.

2. Taxability of Offering: ██████████ formally requests a ruling and confirmation of our analysis regarding the taxability in the City of Chicago of its offering, ██████████.

The ██████████ license fee is bundled and does not itemize the admin tool. The admin tool is incidental to the ██████████ services which are the designing, building, content processing and hosting of the publisher's website. Publishers have no use or need for the admin tool if they are not using ██████████ services. Please see above for a detailed description of the admin tool.

Personal Property Lease Transaction Tax Ruling #12, effective date July 1, 2015, (14) Bundled Charges states the following:

Where a charge is "bundled" by including both taxable and non-taxable or exempt elements for purposes of lease tax, the rules set forth in the Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004) will apply. The ruling states, among other things, that "if the lessor fails to separate the lease or rental portion of the price from the non-lease or non-rental portion, the entire price shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for the use of any personal property." (See also Code Section 3-32-020(K) providing that the taxable "lease price" does not include charges that are not for the use of personal property, but only if those charges are separately stated and optional). Therefore, if a bundled charge is primarily for the customer's use or control of the provider's computer, then the entire charge is taxable.

Personal Property Lease Transaction Tax Ruling #3, effective June 1, 2004, Section 6, states the following:

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. However, the amount subject to tax shall be determined as provided in this ruling. 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. (Emphasis added). Furthermore, if the lessor or lessor's agent furnishes the services of operating equipment for a lessee, so that only the lessor or lessor's agent uses the equipment, and so that the lessor or lessor's agent remains both in total possession and in total control of the equipment, then no lease or rental shall be deemed to have occurred, and no portion of the price shall be taxable. However, a person who operates a terminal to use a computer is considered the user of that computer, and such use is subject to the tax, even though the physical possession of the computer remains in the hands of the computer owner; and in such a case the location of the terminal used by the operator shall be deemed the location of the use of the computer by such operator for purposes of the tax.

In order to illustrate the minimal online usage and access of the admin tool by the publisher's staff, ██████████ analyzed the ratio of admin tool website log on sessions as

compared to total website log on sessions. Total sessions are all sessions created by any user or subscriber and excludes robots, crawlers, and [REDACTED] staff. Admin tool sessions are sessions created by the publisher's authorized users who are allowed to perform administrative functions on behalf of the publisher.

Based upon data analysis companywide for all sales in the United States, the [REDACTED] admin tool sessions on average represent less than 0.5% of the total [REDACTED] sessions which is well below the 50% threshold of Personal Property Lease Transaction Tax Ruling #12, effective date July 1, 2015, (14) Bundled Charges and meets the de minimis requirements of Personal Property Lease Transaction Tax Ruling #3, effective June 1, 2004, Section 6.

The [REDACTED] admin tool sessions in the State of Illinois and in the City of Chicago on average represent 0.08% of the total [REDACTED] sessions which is well below the 50% threshold of Personal Property Lease Transaction Tax Ruling #12, effective date July 1, 2015, (14) Bundled Charges and meets the de minimis requirements of Personal Property Lease Transaction Tax Ruling #3, effective June 1, 2004, Section 6.

For example, in the City of Chicago for the month of [REDACTED] one publisher's website had 304,834 total sessions including 114 admin tool sessions. The percentage of admin sessions in this example is 0.04% of total sessions.

The data and analysis for all the above is available upon request.

3. [REDACTED] customers: [REDACTED] has two customers within the City of Chicago; [REDACTED] [REDACTED] formally requests confirmation whether the two customers fall within the definition of classes of exempt lessees, including Charitable, Educational and Religious Organizations pursuant to Chicago Municipal Code 3-32.

Should you have any questions or require any additional information, please contact [REDACTED] at [REDACTED]

Regards,

[REDACTED]

Enclosures:

[REDACTED] contracts and sample invoices  
[REDACTED] contracts and sample invoices