



City of Chicago
Rahm Emanuel, Mayor

Department of Law

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June 28, 2016

Fred O. Marcus
Horwood Marcus & Berk Chartered
500 West Madison Street
Suite 3700
Chicago, Illinois 60661

Re: - Private Letter Ruling

Dear Fred:

I am writing in response to your letter dated April 29, 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 certain motor vehicle leases between _____ ("____") and certain transportation network drivers ("Drivers").

Based on the facts set forth in your Request, along with our subsequent communications, we are of the opinion that the leases described in the Request ("Leases") qualify for the exemption provided by Code Section 3-32-050(A)(6), which exempts "[t]he lease, rental or use of a ground transportation vehicle, as that term is defined by Chapter 3-46 of this Code, for the purpose of providing ground transportation, but only if the lessor is subject to the Chicago ground transportation tax with respect to such vehicle." Our opinion is subject to the following conditions and qualifications:

1. It is our understanding that _____, as lessor, will pay Chicago ground transportation tax with respect to the Vehicles.
2. It is our understanding that _____ will bill the Drivers on a weekly basis.
3. It is our understanding that _____ will, on a weekly basis, confirm that Drivers have used their Vehicles primarily for the purpose of providing ground transportation. For any week in which a Driver has not used the Vehicle primarily for the purpose of providing ground transportation, _____ will collect and remit the Lease Tax.
4. When _____ completes and submits its Lease Tax returns, we expect that _____ will provide the gross lease amounts, deductions for exemptions, and net lease amounts, as called for in the return form.



Letter to Fred O. Marcus
June 28, 2016
Page Two

As we have also discussed, the Motor Vehicle Lessor Tax ("MVLT"), Code Chapter 3-48, applies to "the privilege of leasing motor vehicles within the city to a lessee on a daily or weekly basis in the amount of \$2.75 per vehicle per rental period specified in the lease agreement." Code Section 3-48-030(A.) That tax, however, "shall not apply to ... any lessor of a ground transportation vehicle, as that term is defined by Chapter 3-46 of this code ... " Code Section 3-48-030(D).

For any week in which a Lease qualifies for the Lease Tax exemption provided by Code Section 3-32-050(A)(6), it will also be deemed to qualify for the MVLT exemption provided by Code Section 3-48-030(A). Conversely, for any week in which a Lease does not qualify for the Lease Tax exemption provided by Code Section 3-32-050(A)(6), it will be deemed not to qualify for the MVLT exemption provided by Code Section 3-48-030(A), and _____ will pay the MVLT for that week. In other words, either both exemptions will apply or both taxes will apply, depending on whether a Driver has used his or her Vehicle primarily for the purpose of providing ground transportation during a given week.

This PLR is based on the text of the Lease Tax Ordinance and the MVLT 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,



Wesley W. Hanscom
Deputy Corporation Counsel
City of Chicago, Law Department
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30 N. LaSalle, Suite 1020
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Cc: Joel Flores, Department of Finance

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April 29, 2016

**BY E-MAIL (whanscom@cityofchicago.org)
and FIRST CLASS MAIL**

Weston W. Hanscom, Esq.
Deputy Corporation Counsel
Revenue Litigation Division
City of Chicago Law Department
30 N. LaSalle Street, Room 1020
Chicago, IL 60602

Re: Private Ruling Request

Dear Wes:

As counsel for and on behalf of _____, a Delaware Limited Liability Company, we respectfully request, from the City of Chicago Department of Finance ("Department"), a Private Letter ruling ("PLR") confirming the applicability of the exemption from the Chicago Personal Property Lease Transaction Tax ("Lease Transaction Tax") found at Section 3-32-050(6) of the Municipal Code of Chicago ("MCC") to _____ rental of motor vehicles to transportation network drivers who will use the rented motor vehicles primarily in providing ground transportation services in connection with transportation network drivers' participation in _____ ("____") platform and service for matching transportation network drivers with passengers that request rides through _____ Application ("____ Program").

_____ has recently commenced renting motor vehicles to transportation network drivers and is not currently under audit by the Department regarding this issue. In addition, _____ is unaware of any authority contrary to the views expressed in this request. Furthermore, we ask that _____ and _____ names, addresses and any other identifying information, including any exhibits attached hereto be kept confidential and be deleted from any public dissemination of the requested and/or issued PLR. A Power of Attorney authorizing us to represent _____ before the Department in connection with this PLR request is attached and marked Exhibit A.

Weston W. Hanscom, Esq.

April 29, 2016

Page 2

FACTS

_____ will enter into a Rental Agreement ("Agreement") with transportation network drivers pursuant to which _____ will rent motor vehicles directly to transportation network drivers, _____ independent contractor drivers, for their use in providing transportation services to the public through the _____ Application. A copy of the Agreement is attached and marked Exhibit B.

The Agreement, in its relevant part, provides, at Paragraph 3, ELIGIBILITY - Renter represents ... More than 50% of the miles driven over the Rental Period will be for permitted Commercial Use. The Agreement, at Paragraph 7, further provides that transportation network drivers who do not utilize their rented motor vehicles primarily in providing transportation network services, will be assessed Lease Transactions Tax. It is anticipated that the Rental Period will be for an eight (8) week period ("Rental Period"). A transportation network driver may, however, return a rented motor vehicle after the first week of the Rental Period. Renters will be charged weekly during the Rental Period. (Rental Agreement, Paragraph 7.)

Each rented vehicle will be equipped with _____ which will enable _____ to obtain information describing the Renter's use of the rented motor vehicle, including the vehicle's location, speed, heading and total miles driven. Information obtained by _____ through its Application will enable _____ to monitor miles driven while on or connected to the _____ Application. We have assumed, for purposes of this PLR request that _____ is and is licensed as a transportation network service provider.

APPLICABLE LAW

THE LEASE TRANSACTION TAX

The City of Chicago imposes its Lease Transaction Tax at the rate of 9% upon (1) the lease or rental of personal property or (2) the privilege of using in the City personal property that is leased or rented outside the City. MCC Sec. 3-32-030(A). The incidence of the tax and the obligation to pay the tax are upon the lessee of the personal property. MCC Sec. 3-32-030(A). For purposes of the Lease Transactions Tax, the terms "lease" or "rental" are defined as "any transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or some other term " MMC Sec. 3-32-020(1). The phrase "lease or rental payment period" means the length of time or period of use that is covered by a single lease or rental payment as agreed to under the terms of the lease or rental agreement. MMC Sec. 3-32-020(J). The terms "lease price" or "rental price" mean the consideration for the lease or rental of personal property, valued in money, whether received in money or otherwise, including cash, credits, property and services, determined without any deduction for costs or expenses, but not including charges that are added to the price

Weston W. Hanscom, Esq.
April 29, 2016
Page3

by the lessor on account of the tax imposed or on account of any other tax imposed on the lessee for the lease or rental of personal property but excluding separately stated optional charges not for the use of personal property. MMC Sec. 3-32-020(K).

The lease or rental of personal property is deemed to take place at the location where the lessee takes possession or delivery of the personal property. MMC Sec. 3-32-030(C). A lessee of personal property leased or rented in the City is not be required to pay tax for any lease or rental payment period in which the personal property used solely outside the City. MMC Sec. 3-32-030(D). However, the exemption provided for in MMC Sec. 3-32-030(D) does not apply to a lease or rental payment period in which the lessee takes possession or delivery of the personal property at a location in the City. Code sec. 3-32-030(D).

The Lease Transaction Tax ordinance, in its relevant part, provides that the following leases, rentals or uses are exempt from the Lease Transaction Tax:

1. The use in the City of personal property that is leased or rented outside the City if the property is primarily used (more than 50%) outside the City. MMC Sec. 3-32-050(A)(1).

2. The lease, rental or use of a ground transportation vehicle, as that ___ is defined by MMC Sec. 3-46, for purposes of providing ground transportation but only if the lessor is subject to the Chicago ground transportation tax with respect to such vehicle. MMC Sec. 3-32-050(A)(6).

For purposes of applying these exemptions, every lease or rental payment period is deemed a separate transaction. MMC Sec. 3-32-050(B).

THE GROUND TRANSPORTATION TAX

The Chicago Ground Transportation Tax ("GTT") is imposed on all persons engaged in the occupation of providing ground transportation vehicles for use in the city. MCC Sec. 3-46-030(A). The incidence of the tax and the obligation to pay the tax are on the license holder or on any person who is required to be, but is not, a license holder. MCC Sec. 3-46-030(A). A "license holder" or "any person required to be . . . a license holder" includes "any person who has registered or titled a vehicle with any state or the District of Columbia if the vehicle is used to provide ground transportation to passengers. MCC 3-46-030(E). The phrase "person who has registered or titled a vehicle with any state or the District of Columbia if the vehicle is used to provide ground transportation to passengers" includes a transportation network vehicle owner. MCC 3-46-020(E). A "transportation network vehicle owner" is any person who has registered or titled a vehicle with any state or the District of Columbia if the vehicle is used to provide transportation network service. MCC 3-46-020(J).

Weston W. Hanscom, Esq.

April 29, 2016

Page 4

A "ground transportation vehicle" is, among other things, a "transportation network vehicle" that is used to provide transportation for a charge or other consideration to passengers, regardless of whether the consideration is paid by the passengers or any other person..... " MCC Sec. 3-46-020(0). A "transportation network provider" is any person that offers or provides a transportation network service. MCC 9-115-010. "Transportation network service" means a prearranged transportation service offered or provided for compensation using an Internet-enabled application or digital platform to connect potential passengers with transportation network drivers. MCC 9-115-010. A "transportation network driver" is an individual affiliated with a transportation network provider or with a person who is affiliated with a provider to provide to transport passengers for compensation using a transportation network vehicle. MCC 9-115-010.

CONCLUSION

The GTT is imposed on all persons engaged in the occupation of providing ground transportation vehicles for use in the city. The incidence of the tax and the obligation to pay the tax are on the license holder or on any person who is required to be, but is not, a license holder. MCC Sec. 3-46-030(A). _____, through its rental of motor vehicles to transportation _____ drivers who will use the rental vehicles in providing ground transportation services for _____ a transportation network provider, is engaged in the occupation of providing ground transportation vehicles for use in the city, is subject to the GTT. Because _____ as the owner of ground transportation vehicles that will be leased or rented to transportation network drivers who will use the vehicles primarily to provide ground transportation services for _____ a transportation network service provider, is subject to the OTT, its lease or rental of ground transportation vehicles to transportation network drivers primarily for their use in providing ground transportation is exempt from the Lease Transaction Tax. MMC Sec. 3-32-050(A)(6).

REQUEST FOR RULING

On behalf of _____, we respectfully request that the Department issue a PLR declaring that _____ who will rent motor vehicles to transportation network drivers who will use the rental vehicles primarily in providing ground transportation services for _____ a transportation network provider, is engaged in the occupation of providing ground transportation vehicles for use in the city and is, therefore, subject to the OTT. We further respectfully request that the Department, in its PLR, declare that because _____ as the owner of ground transportation vehicles that will be leased or rented to transportation network drivers who will use the vehicles primarily to provide ground transportation _____ a transportation network service provider, is subject to the GIT, its lease or rental receipts from its lease or rental of ground transportation vehicles to transportation network drivers primarily for their use in providing ground transportation is exempt from the Lease Transaction Tax. MMC Sec. 3-32-050(A)(6).

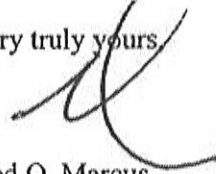
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Weston W. Hanscom, Esq.
April 29, 2016
Page 5

* * * * *

Thank you for your consideration of our request. Should you have any questions or require further information, please do not hesitate to contact the undersigned. Further, we respectfully request a conference prior to any formal denial ruling requested herein.

Very truly yours,



Fred O. Marcus

FOM:mla
Enclosures

cc: Ms. _____
Mr. _____