City of Chicago
Rahm Emanuel, Mayor

Department of Law

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August 4, 2015

Stanley R. Kaminski, Esq.
Duane Morris
190 South LaSalle Street
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Chicago, IL 60603
SRKaminski@duanemorris.com

Re: [redacted]

Dear Stan:

I am writing in response to your letter of April 6, 2015 (copy attached), requesting a private letter ruling on behalf of [redacted] ("[redacted]"), under Uniform Revenue Procedures Ordinance Ruling #3.

Your letter concerns the application of the Chicago Personal Property Lease Transaction Tax ("CTT") and raises two issues in the alternative. Specifically, you request that the City confirm either: (a) that the use by [redacted] of [redacted] software is not subject to the CTT; or (b) that only 7.8% of the charge imposed for use of the [redacted] software is subject to the CTT, representing that portion of use that involves the additional "interactive" functionality of the [redacted] software.

As the facts are presented in your letter, it is our understanding that despite the additional functionality of the [redacted] software (as compared to the earlier [redacted] software), there is no additional charge imposed. On this basis, we confirm that the charge imposed on [redacted] for the use of the [redacted] software is not subject to the CTT.

This opinion is based on the text of the CTT as of the date of this letter and the facts as represented in your letter.

Please let us know if you have questions or need anything further.

Very truly yours,

Weston Hanscom
Deputy Corporation Counsel
Revenue Litigation Division
Department of Law
312-744-9077

cc: Joel Flores, Department of Finance
Kim Cook, Department of Law

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April 6, 2015

City of Chicago Department of Finance
Attn: Tax Policy Section
Room 300, DePaul Center
333 South State Street
Chicago, Illinois 60604

Re: [redacted] – **Follow-up Letter Ruling Request**

Dear Sir or Madam:

This is a follow-up letter to the recent audit of [redacted] ("[redacted]") for Chicago Transaction Tax ("CTT"), Chapter 3-32 of the Chicago Municipal Code. In that audit, it was concluded by the City of Chicago ("City") that [redacted]'s purchase of [redacted] Services ("[redacted] Services") provided by [redacted]. ("[redacted]") was not a taxable transaction under the CTT.

At the conclusion of that audit, [redacted] mentioned that it would still be purchasing the [redacted] Services in the future, except that the software utilized as part of that service was being upgraded to [redacted] ("[redacted]") software. As a result, [redacted] discussed with the City's Law Department a possible request for a private letter ruling from the City on the taxability of the [redacted] Services under the CTT, when this enhanced [redacted] software replaces the current [redacted] ("[redacted] software.

This letter is a request for such a private letter ruling from the City on [redacted]'s purchase of the [redacted] Services where [redacted] software is now utilized. This request for a private letter ruling is being made pursuant to Uniform Revenue Procedures Ruling #3. My power of attorney is enclosed.

Background

[redacted]'s administrative office is located at [redacted], [redacted], Chicago, Illinois [redacted]. One of [redacted]'s business activities is management and operation of the [redacted] located within the City of Chicago. To effectively handle its [redacted]

[redacted] operations, [redacted] purchases [redacted] from [redacted] and hires [redacted] to perform remote monitoring and backroom services related to the [redacted] [redacted] including communication with the [redacted], collecting data, routing credit card information, handling alarms, changing configurations of [redacted], and other monitoring and backroom functions related to the [redacted]. In performing this [redacted] service, [redacted] utilizes its [redacted] software.

As part of its [redacted] Services, [redacted] prepares reports accessible by [redacted] on [redacted]'s website. Prior to February 2015, [redacted] accessed these reports online on [redacted]'s website that runs [redacted] software. Since [redacted]'s use of the [redacted] computer system and [redacted] software on [redacted]'s computer system was basically limited to accessing and reviewing reports and data prepared by [redacted] as part of its [redacted] Services, it was incidental to the [redacted] Services provided, so no CTT was due on charges paid for the [redacted] Services.

With the enhancement of the [redacted] Services by the replacement of the [redacted] software with [redacted] software, [redacted] can now access and use the [redacted] software on [redacted]'s website to perform some limited functions in addition to reviewing [redacted] reports. These additional functions are outlined in the enclosed March 17, 2015 letter from [redacted]. As the letter explains, [redacted] can now access the [redacted] software to "input data and provide its own reports on the [redacted] payments due to or from the City of Chicago." [redacted] letter signed by [redacted] [redacted] Managing Director, [redacted] (dated 3/17/15) (enclosed).

[redacted] notes in its letter that it believes that this additional function is "incidental" to the overall services it is providing. However, [redacted] did provide a breakdown of what portion of the [redacted] system involved the independent access of the [redacted] software by [redacted] for this additional function. This percentage of use of [redacted] software and computer system was calculated to be 7.8% of the overall [redacted] and system use being used to provide [redacted] Services. Notably, [redacted] did not change or increase its charges for its [redacted] Services as a result of enhancing its services with [redacted] software, nor did [redacted] impose an additional charge on [redacted] to have this additional limited access to its computer system to perform this [redacted] function.

Ruling Requested

1. It is requested that the City confirm that the limited access and use by [redacted] of [redacted] [redacted] software and computer system as noted herein is incidental to the overall [redacted] Services being provided by [redacted], as a result the entire charge for the [redacted] Services is still non-taxable.

2. Alternatively, if the City determines that this limited access and use of [redacted]'s computer system and [redacted] software is significant enough to be taxable under the CTT, then it is requested that the City confirm that CTT is limited to the 7.8% independent access and use of the [redacted] software and computer system by [redacted] noted herein, when such access occurs at a terminal location within the City.

Analysis

The CTT is imposed upon the lease or rental in the City of personal property, or the privilege of using in the City personal property leased or rented outside of the City. Chgo. Mun. Code, ch. 3-32, Section 3-32-030(A). For non-possessory leases of computer software and hardware, the CTT is also due if the Chicago user is charged for the remote access and use of the software and hardware. *See Meites v. City of Chicago*, 184 Ill. App. 3d 887 (1st Dist. 1989).

On the other hand, charges for services are not subject to the CTT. *See Comm'n & Cable of Chicago v. Dep't of Rev.*, 275 Ill. App. 3d 680 (1st Dist. 1995). Moreover, under Illinois law, when the transaction is predominantly a service transaction, the City does not have the home rule power to tax the transaction. *See Chicago Health Clubs v. Picur*, 124 Ill. 2d 1 (1988).

In the recent audit of , it was concluded by the City that the Services provided by were not subject to the CTT. A significant reason for this non-taxable determination was the fact that the activity was purchasing was the provision of the monitoring and backroom services by and not the access and use of 's computer system. Any use of the system, including the software, was simply to obtain access to reports supplied by in electronic form, and was thus incidental to the Services being provided. Therefore, no CTT was due. *See also* Section 3-32-050A.(11)("*de minimis*" use of computers when charge is "predominantly" for information transferred, is not subject to CTT).

With the conversion to the software, has now the ability to access and use 's computer system to independently perform an additional, but limited, function beyond the accessing and reviewing of reports and data compiled by as part of its Services. This function is limited accessing and using the software on 's computer system to independently input data and make reports on the payments due to or from the City. However, and believe that this use of the software is incidental to the overall use of 's computer system and the Services provided by .

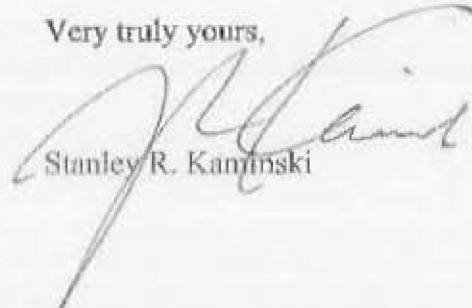
Moreover, in addition to merely being a minor function or activity compared to the overall monitoring and backroom services performed by , adding this function did not increase the Services charges bills . This alone indicates that such access and use is an incidental to the Services being provided. The incidental nature of this additional function is also demonstrated by 's determination that only 7.8% of the computer system use involves this additional function. Or, stated in another fashion, that 92.2% of the software and computer system (*i.e.*, the vast majority of the system) is used by to provide its Services. Consequently, the fact that did not increase its Services charges for this minor added function, and that only 7.8% of computer system is even impacted by this added function, demonstrates that it is incidental to the Services being provided and that the total Services charge should continue to be non-taxable under the CTT.

Alternatively, even if the City believes that some of the [redacted] Services charges should be allocated to [redacted]'s access and use of the additional function noted herein, only a small portion of the charge would be taxable. As provided in CTT Ruling #3, where a transaction involves the provision of a service and a lease of personal property, and "50% of the price is not for the use of personal property," then the "portion not representing the use of personal property would be non-taxable." CTT Ruling No. 3, § 5.

As a result, if the City concludes that CTT is owed, because the City believes that the added [redacted] function is not incidental to the [redacted] Services being provided, then a determination of what part of the charge is taxable needs to be made. In that regard, [redacted] has indicated in its letter that if it was forced to break down its charge between [redacted] monitoring and backroom services and the [redacted] software and system independently accessed and used by [redacted], the charge for the [redacted] software and system access and use would only be 7.8% of the [redacted] Services charge based on such use. Therefore, this would be the amount taxable, if any, under the CTT. This assumes, of course, that the access and use of [redacted] software and computer software continues to occur from a terminal in the City.

We ask that the City issue a private letter ruling addressing the issues herein. If you have any questions, please do not hesitate to call.

Very truly yours,



Stanley R. Kaminski

SRK/rlc
Enclosures
cc: Mr. Weston Hanscom (w/enclosure)
Mr. Jason Rubin (w/enclosure)