

CITY OF CHICAGO
DEPARTMENT OF REVENUE
PERSONAL PROPERTY LEASE TRANSACTION TAX RULING

Personal Property Lease Transaction Tax Ruling #5
Subject: Usage of Computers and Computer Software
Effective date: June 1, 2004

Formerly Ruling #9
Original effective date: February 1, 1987
Amended: February 15, 1988

TIME-SHARING

Section 1. Pursuant to section 3-32-030(A) of the Chicago Municipal Code (“Code”), the Chicago Personal Property Lease Transaction Tax (the “lease tax” or “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. Leased time on a computer is subject to the tax. Section 3-32-020(H). This includes the time-sharing of a computer with other users. For time-sharing purposes (where the possession of the computer is not transferred), the user of the computer shall be deemed using the computer at the location of the user's access terminal to the computer. Therefore, if the user's terminal is within the City of Chicago, the lease tax will apply to all charges for the use of the computer and its software, which is accessed by the user at such terminal. However, charges for the storage of information on the computer by the user, which will be used at a later date by the user, and not in the immediate processing of information, shall be deemed a usage of the computer at the computer location and not at the access terminal; because this is not an actual use of the computer by means of an access terminal but instead is a charge for storage at the computer location. If at a later date, a charge is made for accessing the stored information from a terminal located in Chicago, such access charge would be taxable.

PRINTING

Section 2. Charges for printing services or other services, provided that such charges are not for the use of any personal property and are separately stated and optional, are not subject to the lease tax. See Chicago Personal Property Lease Transaction Tax Ruling #2004-3, which explains in general that a separately stated and optional charge for services is excluded from tax.

COMPUTERS

Section 3. Where the actual possession, but not title or ownership, of a computer is transferred to a user for use in the City of Chicago, for consideration, such a transaction is a lease subject to the lease tax. The tax will be due for all lease or rental charges associated with the usage of the computer and its software in the City of Chicago.

Separately stated optional charges not for the use of the computer, its software or other personal property used in the City shall not be subject to the lease tax. An example would be separately stated maintenance charges, if the charges are optional.

COMPUTER SOFTWARE

Section 4. The lease or rental of computer software in the City of Chicago is subject to the lease tax. The sale of computer software is not subject to the lease tax. To determine whether a lease or rental of software occurs, the test is whether the use or possession of such software is transferred for a consideration. This would include all agreements for the use or possession of such software including license agreements. If copyright licenses, waivers or releases are given along with the use of such software, this will not affect the taxability of the transfer because such copyright licenses, waivers or releases are a necessary part of the software being leased or rented. Software under copyright cannot be used without such licenses, waivers or releases. Therefore, the fact that a copyright license, waiver or release is given in a transaction will not affect its taxability. However, if title or ownership of the software passes in an agreement then a sale occurs and no lease tax would be due. (Note: (1) If optional charges for update services or other services are involved in the rental, and if these charges are not charges for the use of any personal property, these charges may be separately stated and excluded from the tax; (2) For time-sharing of software when no possession is transferred see Sections 1 and 2 above.)

Examples of the application of Section 4:

(a) A computer software owner (or licensor) and a Chicago user sign an agreement called a copyright license agreement which transfers the possession and use of certain software to the user, and allows such user to use such software on a month to month basis for a payment of a specific monthly fee. No other fees are charged the user. At the end of the contract term or upon cancellation by the parties, the software is either returned to the owner (or licensor) or erased. Only incidental training and a question answering service is provided and is a part of the monthly fee. In this case, the total monthly fee is taxable as a lease charge for the use of the software.

(b) Same facts as (a.) above, except that the agreement provides for an indefinite use of the software for a flat fee of \$2,000.00. The user does not have to return the software but can use the software for as long as he or she desires. In this case, an ownership interest in the software is transferred, so no tax is due.

(c) Same facts as (a.) above, except that update services such as monthly reports and the use of the owner's (or licensor's) personnel for training and possible modification of the software are provided. In such cases, if charges for such services are separately stated and optional and are not charges for the use of any additional personal property, such service charges are not taxable.

(d) Same facts as (a) above, except that in addition to the software being leased, the owner (or licensor) agrees to customize the software for a specific fee. The fee is a separately stated flat fee for the service of customizing the software, and the fee is paid either in lump sum payment or in installments. Accordingly, the monthly fee for the use of the software is not increased for the customizing charge. In such a case, the monthly fee for the use of the software is taxable, but the charge for the customizing is not. If the customizing charge were incorporated into the monthly fee or otherwise treated as part of the property being leased, in that the charge varies with the period of use of the property, then the entire customizing charge would be taxable.