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Julie S. Townsley
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Re: [REDACTED] - Private Letter Ruling

Dear Ms. Townsley:

I am writing in response to your letter dated August 18, 2020 ("Request") (copy attached), requesting a private letter ruling ("PLR") on behalf of [REDACTED]. Your Request concerns the application of the Chicago Personal Property Lease Transaction Tax ("Lease Tax"), Chapter 3-32 of the Municipal Code of Chicago ("Code"), to a service described in your Request (the "Service"), which is offered by [REDACTED]. According to your Request, [REDACTED] acquired [REDACTED] effective [REDACTED].

The Lease 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. Code Section 3-32-030(A). The term "lease or rental" includes a nonpossessory computer lease, which means "a nonpossessory lease in which the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information, in each case without the intervention (other than de minimis intervention) of personnel acting on behalf of the provider." Code Section 3-32-020(I).

Examples of transactions that are subject to Lease Tax include charges incurred to perform functions such as word processing, calculations, data processing, tax preparation, spreadsheet preparation, presentations and other applications available to a customer through access to a provider's computer and its software. These last examples are sometimes referred to as cloud computing, cloud services, hosted environment, software as a service, platform as a service, or infrastructure as a service. Lease Tax Ruling #12 paragraph 6(d).

Based on the facts set forth in your Request, it is our opinion that the Service is a nonpossessory computer lease subject to the Lease Tax. [REDACTED] customers access the Service by logging in through a web browser and thereafter use the computer and its software to input, modify or retrieve data or information, in each case without the intervention (other than de minimis intervention) of personnel acting on behalf of [REDACTED]. It is analogous to the examples noted above, which are listed in Lease Tax Ruling #12 paragraph 6(d).

We do not believe that the Service qualifies for Exemption 11. That provision exempts "the nonpossessory lease of a computer in which the customer's use or control of the provider's computer is de minimis and the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the computer, such as the nonpossessory lease of a computer to receive either current price quotations or other information having a

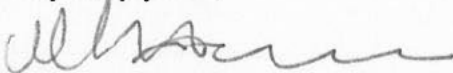
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fleeting or transitory character.” Code Section 3-32-050(A)(11). It appears that the customer’s use or control of [REDACTED] computer is more than de minimis, and the related charge is primarily for that use or control. [REDACTED] Service is a self-service application that customers use to facilitate their activities of planning, activating, optimizing and evaluating their advertising campaigns.

In the case of the nonpossessory lease of a computer primarily for the purpose of allowing the customer to use the provider’s computer and software to input, modify or retrieve data or information that is supplied by the customer, the rate of the tax is currently 7.25 percent of the lease or rental price. Code Section 3-32-030(B.1). In all other cases, the rate of the tax is currently 9.0 percent of the lease or rental price. Code Section 3-32-030(B). Based on the facts set forth in your Request, we agree that the Service qualifies for the rate set forth in Code Section 3-32-030(B.1).

This PLR is based on the law as of the date of this letter and the facts as represented in the Request. The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to Code Section 3-4-325. Please be advised, however, that pursuant to Uniform Revenue Procedures Ordinance Ruling #3, Section 12, reliance on written advice in a PLR that is ten or more years old shall be deemed not reasonable unless ratified in writing by the Corporation Counsel’s Office.

Very truly yours,



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of third-party and Customer-provided data. The Plan stage allows Customers to indicate their objectives in terms of target audience, media preferences, budgets, which Creatives to use, and any other criteria important to Customers. In response, the Service will help develop an advertising plan to optimize the Customer's advertising spend. The plan allocates the Customer's advertising spend across relevant platforms (television and/or social media, together the "Platforms") to maximize the effectiveness of the Customer's advertising budget. In the Activate stage, the Customer executes the plan developed during Planning. The Customer purchases the necessary ad space through the Platforms directly. Upon purchase, the advertising space is made available on the Service's application, allowing the Customer to upload the advertisement and make it live on the Platform. Once live, the Service allows the Customer to Optimize the advertising campaign by facilitating activities such as stopping or starting the ad in a particular demographic, modifying budgets, swapping Creatives, etc. Lastly, the Evaluate stage allows Customers to run reports after campaigns have finished to evaluate the effectiveness of each campaign relative to Customers' objectives.

Historically, especially as it relates to TV advertising, advertisers would have had to work with each Platform's internal team to negotiate and execute an advertising campaign specific to only that Platform. For example, an advertiser would work with a TV network's advertising team to create and execute a network-specific ad campaign. This process typically involved multiple meetings, calls, and emails and the use of multiple manual computer applications, like Excel, PowerPoint, and other inventory and catalog management software tools for advertisers to research, plan, and sell advertising campaigns. A similar process would be repeated at each network the advertiser wanted to use.

The ■ Service streamlines this process by taking real-time information from the Platforms around available advertising space to purchase and incorporates such information into the Service's application so that Customers have a one-stop, integrated location to plan, execute, optimize, and evaluate their advertising campaigns. While advertisers can still work directly with the Platforms, it is an inefficient process that can create competitive disadvantages. It is becoming more common that advertisers use services like those ■ offers, where Customers streamline their advertising campaigns, and expand their reach across multiple social media platforms and TV networks using a single point of access.

a. Lines of Revenue

Customers can purchase the advertising services described above for TV, digital, or a combination of both (called ■). ■ also offers a higher-touch ■ service that gives Customers a higher level of customer service that can range from teaching a Customer's team how to use the Service's application to operating the Service's application for the Customer as the Customer's team gets familiar with the technology. The ■ service is usually short-term in nature.

b. Billing



■ has three main billing methods: percent of spend, flat fee, and flat fee + overage. Across all three billing methods, the Platform bills the actual cost of the ad to the Customer directly. No matter what billing method a Customer chooses, each Customer has the opportunity to derive the same value from the Service.

i. Percent of Spend

Customers are charged a percentage of the cost of placing the advertisement with the Platform. For example, if Customer purchases \$100,000 of advertising space from ■, ■ charges X% of \$100,000. As a result, this billing method is entirely based on how much the Customer actually spends to place advertisements using the Service. Thus, if a Percent of Spend Customer uses the Service to Plan an advertising plan but opts not to pursue that plan, ■ does not get paid. Only if the Customer activates does ■ receive compensation in the form of a percentage of the total amount spent with the Platforms. The Percent of Spend is reflected on a Customer invoice as a single fee. An example contract is attached and marked as "Attachment B". An example bill is attached and marked as "Attachment C".

ii. Flat Fee

Customers are charged a flat fee, which can vary based on the Customer, contract terms, service period, and number of advertisements projected to be purchased. ■ computes the flat fee by anticipating a Customer's total Platform advertising spend and applying a percentage against that predicted amount. Unlike the Percent of Spend model, the Flat Fee model ensures ■ receives revenue from a Customer, even if the Customers chooses not to Activate a campaign. The Flat Fee model is based on predicted percent of spend rather than actual percent of spend. The Flat Fee is reflected on a Customer invoice as a single fee. An example bill is attached and marked as "Attachment D".

iii. Flat Fee + Overage

This billing method is a hybrid between Flat Fee and Percent of Spend. The Customer pays a flat fee, as described above, and any defined "overage" beyond the predicted percent of spend is billed based on actual percent of spend. Both components of the Flat Fee + Overage, if applicable in a given month, are reflected on a Customer invoice. An example contract is attached and marked as "Attachment E". An example bill is attached and marked as "Attachment F".

III. **Statement of Authorities**

Chicago personal property lease 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 The tax rate is 9 percent of the lease or rental price, unless the lower rate applies.² A lower 7.25

¹ Chicago Municipal Code § 3-32

² Chicago Municipal Code § 3-32-030(B)



percent rate applies to the nonpossessory lease of a computer that primarily allows a customer to use the provider's computer and software to input, modify or retrieve data or information that the customer supplies.³

The term "nonpossessory computer lease" means a nonpossessory lease in which the customer obtains access to the provider's computer and uses the computer and its software to input, modify or retrieve data or information, in each case without the intervention (other than de minimis intervention) of personnel acting on behalf of the provider. The term "nonpossessory computer lease" includes, but is not limited to, time sharing or time or other use of a computer with other users. In the case of a nonpossessory computer lease, the location of the terminal or other device by which a user accesses the computer shall be deemed to be the place of lease or rental and the place of use of the computer for purposes of the tax imposed by this chapter.⁴

The nonpossessory lease of a computer in which the customer's use or control of the provider's computer is de minimis and the related charge is predominantly for information transferred to the customer rather than for the customer's use or control of the computer, such as the nonpossessory lease of a computer to receive either current price quotations or other information having a fleeting or transitory character is exempt pursuant to Exemption 11 of the Ordinance.⁵

Software that performs processing, calculations, data processing, and other applications available to a customer through access to a provider's computer and its software are taxable.⁶ This includes cloud computing, cloud services, hosted environments, software as a service, platform as a service, or infrastructure as a service.⁷

Where a charge is "bundled" by including both taxable and non-taxable/exempt elements for purposes of lease tax, the entire price charged 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.⁸ 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.⁹

IV. Analysis

³ Chicago Municipal Code § 3-32-030(B)(1)

⁴ Chicago Municipal Code § 3-32-020(I)

⁵ Chicago Municipal Code §3-32-050(A)(11)

⁶ Chicago Personal Property Lease Transaction Tax Ruling 12 § 6(d) (June 9, 2015)

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; Chicago Personal Property Lease Transaction Tax Ruling 3 § 6 (June 1, 2004)



The [REDACTED] Service is not subject to the CPPLTT because the true object of the Service is the provision of an advertising service, not the provision of hosted software. Alternatively, if the Service is deemed the use or control of hosted software, Exemption 11 should apply.

Traditional advertising services contain two elements: (1) the creation of the ad itself (“Ad Creation”) and (2) strategically placing the ad in circulation to reach a target audience (“Circulation Strategy”). The Ad Creation is meaningless without an accompanying Circulation Strategy, nor is a Circulation Strategy useful without Ad Creation. Developing a Circulation Strategy has traditionally been the role of in-house brand managers and/or Creatives, the latter including Circulation Strategy with its Ad Creation services.

Circulation Strategy is so important that most definitions of “advertising” assume the Ad Creation component of the service without needing to explicitly reference it. Advertising is not defined in the CPPLTT but courts and a well renowned legal dictionary have defined advertising services as follows: “Notice given in a manner designed to attract public attention; information communicated to the public, or to an individual concerned, by means of handbills or the newspaper.”¹⁰ These definitions are focused on the communicative aspect of advertising, and are, at their core, referring to the elements of Circulation Strategy (e.g., with whom to communicate, and how).

[REDACTED] main objective and value to Customers is the efficient development, implementation, and evaluation of a Customer’s Circulation Strategy, a process that was historically very labor-intensive with a focus on more manual methods. This allows Customers to more efficiently deploy their advertising resources, making the process less manual and thereby saving time and money. Although data analytics can be a component of the advertising process (e.g., Plan and Evaluate stages), Customers can use the Service to simply monitor available ad space and implement a strategy developed outside the Service (e.g., limiting use to only the Activate and Optimize stages). As a result, the data analytics component is unlikely the true object of the transaction. Rather, Customers predominately use the Service because they can purchase ad space across all Platforms and manage their Circulation Strategy in one place. As a result, [REDACTED] is providing services to its Customers, which are not subject to the PPLTT.

The companies acknowledge that the Service uses a hosted software tool to deliver its service. Nevertheless, the change in delivery method, from humans to automation, should not change the taxability conclusions of the underlying true object of the transaction. From the Customer’s perspective, the true object of the transaction is the ability to seamlessly develop a Circulation Strategy, implement that Strategy, and evaluate its efficacy from a single point of access. The software is merely a means to facilitate the provision of those advertising services.

¹⁰ Advertising Definition, Black’s Law Dictionary (2nd ed.), available at Westlaw or thelawdictionary.org; *Montford v. Allen*, 111 Ga. 18. 30 S. E. 305; *Haffner v. Barnard*, 123 Ind. 429. 24 N. E. 152; *Com. v. Johnson*, 3 Pa. Dist. R. 222.



Furthermore, ■ considers itself in the business of assisting Customers to plan and execute their purchase of advertising space. Consistent with that thinking, ■ bills Customers based on a percentage of advertisements purchased, not based on a defined profit percentage based on their software development costs.

When ■ bills a Customer, there is one lump sum fee that covers both the advertising service and the hosted software tool used to access that service. The City has ruled that when a “bundled” charge includes both taxable and non-taxable/exempt elements, the entire charge is deemed taxable if the charge is primarily, 50% or more, for the customer’s use or control of the provider’s computer. Therefore, the inverse should also be true; if a charge is primarily for exempt services, then the entire charge is not taxable. Because the charge is primarily for ■ Circulation Strategy services, the entire charge is likely non-taxable.

Alternatively, if the City believes a Customer’s use of the ■ Service is a nonpossessory computer lease, then the transaction should be exempt pursuant to Exemption 11 as a de minimis use.¹¹ A charge is de minimis if it is predominantly for information transferred to the customer rather than for the customer’s control of the computer. A Customer’s use of the ■ computer is de minimis relative to the value of the Service ■ provides its Customer. While ■ delivers the Service electronically, the Service is simply the automation of a traditionally manual advertising service. Historically, advertisers would have had to work with each Platform’s internal team to gather the necessary information to plan an advertising campaign (e.g., Platform rates, Platform space available, Platform demographics, etc.). Now, ■ has made that information accessible to Customers across all Platforms from a single point of access, allowing Customers to evaluate available ad space, demographics, and costs in real time.

While the City has not made their other Private Letter Rulings available, there is some publicly available data to illustrate how the City tends to think about nonpossessory computer leases and their taxation. For example, the City has previously ruled, and the Illinois courts agreed, that the remote access of a legal database is a taxable nonpossessory computer lease.¹² In that case, the true object of the transaction was the ability to access a comprehensive database of publicly available information through a simple search function. The City and the courts have deemed that functionality a taxable nonpossessory computer lease. In contrast, the City has previously ruled that the Multiple Listing Service (“MLS”), a real estate listing subscription service used by realtors located in Chicago, is exempt from the CPPLTT under Exemption 11 (the “Realtor Ruling”).¹³ The MLS compiles real estate listings in a searchable database that realtors can access for a fee. While the Realtor Ruling has not been made public, publicly available

¹¹ Chicago Personal Property Lease Transaction Tax Ruling 12 § 9 (June 9, 2015)

¹² Chicago Personal Property Lease Transaction Tax Ruling 12 § 6(a) (June 9, 2015); *Meites v. City of Chicago*, 184 Ill. App. 3d 887 (1989)

¹³ Chicago Personal Property Lease Transaction Tax Ruling 12 § 9 – 11; <https://chicagorealtor.com/cloud-tax-win-realtors/>



information about the Ruling indicates the City believes the MLS is predominantly transferring information to a user such that the use or control of the MLS computer/software is not the true object of the transaction.

These similar fact patterns that lead to such different results can be reconciled as follows. The MLS publishes listings online that were historically published in a different medium before the internet existed. Realtors would buy and sell properties through “listings” that were made available to realtors in a paper format before electronic access was available. With the advent of the internet, the delivery method for this content changed – it became electronically available through a subscription. Further, realtors use the MLS to post and search for home listings, the true value of which is facilitating a real estate service and advertising homes for sale, not the software used to post and find these homes.

In contrast, the Lexis Nexis database was the creation of a new database that users could access and search electronically, first from specific computer terminals that customers paid to have on-site, and later through hosted software subscriptions. Because the Lexis Nexis service was always the provision of a searchable database, and thus always subject to the CPPLTT, the online access to that database was similarly taxable.

The ■ Service is more similar to the MLS model than it is to a Lexis-Nexis database. As noted above, Circulation Strategy services have been historically performed by individuals in conjunction with each individual Platform. ■ has simply automated and digitized this service, delivering the service electronically in lieu of more manual methods. Like the MLS, this function is simply a different delivery mechanism for information that has historically been available through person-to-person communications. Like the MLS, ■ Service allows Customers to post and search data to locate the most appropriate Platform to reach a targeted demographic, but the true value of the Service is facilitating ad placement and efficiently executing ad campaigns. Both the MLS and the ■ Service use software to aid in the true object of the transaction, sales and advertising, both of which are traditional services.

As it relates to the Lexis Nexis database, the value of Lexis Nexis is the searchable catalog of publicly available information. Although this does save attorney time in providing legal services, similar to the time savings ■ Service provides its Customer, the true object of a legal database subscription is the accumulation of searchable information. In contrast, the true object of ■ Service is to place advertisements. Although there is a software component, ■ Service is predominantly a non-taxable advertising service and more akin to the MLS example, and, therefore, is likely not subject to the CPPLTT.

Alternatively, in the event that a Chicago customer’s use of ■ services is taxable, the applicable tax rate on the fees would likely be 7.25 percent rather than 9 percent. If not the exempt provision of a service, the Customer uses the tool to input and retrieve data the Customer supplied (e.g., the ad itself, target



demographics, other objectives, etc.) As a result, the 7.25 percent rate would likely apply given the ordinance provides “[t]he rate is 7.25% in the case of a nonpossessory lease primarily used for the purpose of allowing the customer to use the provider’s computer and software to input, modify, or retrieve data supplied by the customer.”¹⁴

V. Conclusion

██████████ and ██████ respectfully request a private letter ruling indicating ██████ Service is not subject to CPPLTT because the underlying characterization and true object of ██████ Service is an advertising service, or, in the alternative, the nonpossessory computer lease is exempt as an information service under Exemption 11. Ruling 12 says that if bundled charges are primarily taxable, the entire charge is taxable, so the inverse should be true as well. If bundled charges are primarily not taxable, then the entire charge should not be taxable.

In the alternative, if the City rules that the ██████ service is subject to the CPPLTT, ██████ service fees that are not separately stated professional services should only be subject to the lower rate of 7.25% because at most, this is an example of a nonpossessory lease that primarily allows a customer to use ██████ Service to input, modify or retrieve data or information that the customer supplies in order to make more informed advertising decisions in the first and last stage of the advertising process.

Thank you for your consideration.

Julie S. Townsley

Taxpayer Representative Name

Taxpayer Representative Signature

¹⁴ Chicago Municipal Code § 3-32-030(B)(1)