February 4, 2020

Dakota S. Newton
HMB Legal Counsel
500 W. Madison
Suite 3700
Chicago, Illinois 60661

Re: ██████████████████████████████ - Private Letter Ruling

Dear ██████████:

I am writing in response to your letter dated January 10, 2020 ("Request") (copy attached), 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"), █████████████████████████ ████████████████████████████████████████████████████.

The Lease Tax ordinance defines a nonpossessory computer lease as "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). Based on the facts set forth in your Request, we agree that █████ does not constitute a "nonpossessory computer lease" within the meaning of the Lease Tax ordinance.

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. 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,

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: Elaine Herman, Department of Finance

Dakota S. Newton
Direct Dial: (606) 312-3203
Direct Fax: (606) 267-2206
Direct Email: dnewton@hmblaw.com

**HMB**
LEGAL COUNSEL

January 10, 2020

**BY E-MAIL (whanscom@cityofchicago.org)**
**and CERTIFIED MAIL (7019 1120 0000 9088 3467)**
**RETURN RECEIPT REQUESTED**

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 Letter Ruling Request**

Dear Wes:

     As counsel for and on behalf of ███████████████████████████████████████,
a ███████ corporation, we respectfully request, from the City of Chicago Department of Finance
("Department"), a Private Letter Ruling ("PLR") confirming the applicability of the Chicago
Personal Property Lease Transaction Tax ("Lease Transaction Tax") found at Chapter 3-32 of the
Municipal Code of Chicago ("MCC") to ███████ leases of certain software offerings within the
City of Chicago.

     ███████ is currently in the process of entering into a voluntary disclosure agreement with
the Department regarding its Chicago tax liabilities. As part of this process, Emily Kearney from
the Department advised ███████ to obtain a PLR regarding the taxability of certain software
offerings that ███████ currently leases and may lease in the future to Chicago subscribers.
Following your conversations with both Ms. Kearney and myself, you indicated that you
provisionally agreed with ███████ position that its software offering is not subject to the Lease
Transaction Tax and asked me to submit this written request to enable you to draft a formal PLR
to that effect. ███████ is not currently under audit by the Department and is unaware of any

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authority contrary to the views expressed in this request. Furthermore, we ask that ███████ name, address, and any other identifying information, including any exhibits attached hereto, be kept confidential and 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.

## FACTS

███████ is a ███████ software-as-a-service provider that leases ███████ ████████████████████████████████████████████████████████████ comprised of several software modules that fall into two categories. The first category is security and connectivity software that is referred to in this request generally as ██████ The second category is ███████████ a dashboard application designed to monitor and manage in-house network security and VPN connections. This request recognizes that ███████ is subject to the Lease Transaction Tax and accordingly focuses only on the first category of software. Please note that ███████ is not currently leased to any Chicago customers. If ███████ is leased to a Chicago customer in the future, the charges for that subscription will be separately stated on the customer's invoice. A customer can subscribe to █████ without subscribing to ███████.

███████ can function within several major cloud providers' ecosystems. We use ███████ ████████████ ecosystem as an example in this request, but the same analysis applies to ███████████████████████████████████. ██████ leases virtual computing capacity in "the cloud" to subscribers. This leased space is referred to as a "virtual machine". The computer hardware that supports the █████ cloud is stored in server farms outside of Chicago. When ███████ subscriber wants to access data stored in their virtual machine, their computer establishes a connection with the ██████ server. The security of this connection depends on several factors, one of which is data encryption as information travels between the subscriber's computer and the ██████ servers.

███████ subscribers have the option of adding services such as ██████ to their █████ subscription. When ███████ subscriber adds █████ to its █████ subscription, that subscriber's virtual machine gains access to software stored on the █████ virtual machine in the █████ server farm. ██████ encrypts data as it travels from the █████ server to the subscriber's computer terminal and back again ("End-to-End Encryption") using multi-layered pre-shared keys ("PSKs"), the high-tech equivalent of a prearranged decoder key to decipher encrypted messages. There is no ███████ program that subscribers need to launch on their computers when using ██████ In fact, subscribers themselves have no interaction with ███████ software after adding it to their██████
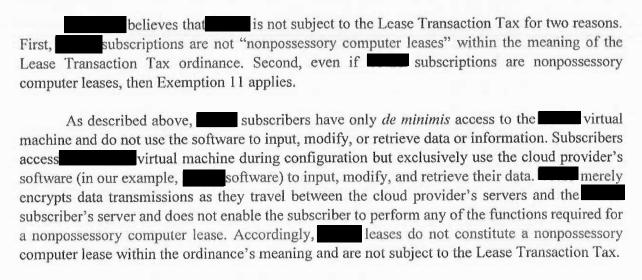
subscription. ███ simply functions in the background as data transmissions travel securely back and forth between the subscriber's computer terminal and the ███ servers.

## APPLICABLE LAW

Chicago imposes its Lease Transaction Tax 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. MCC § 3-32-030(A). Included in the definition of "lease or rental" are nonpossessory computer leases. MCC § 3-32-020(I). Chicago defines a "nonpossessory computer lease" to mean 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. *Id.*

The Lease Transaction Tax ordinance provides several exemptions to the Tax. Exemption 11 provides that the Lease Transaction Tax does not apply to nonpossessory computer leases where (a) the customer's use or control of the provider's computer is *de minimis* and (b) 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 information having a fleeting or transitory character. MCC § 3-32-050(A)(11).

## DISCUSSION

███ believes that ███ is not subject to the Lease Transaction Tax for two reasons. First, ███ subscriptions are not "nonpossessory computer leases" within the meaning of the Lease Transaction Tax ordinance. Second, even if ███ subscriptions are nonpossessory computer leases, then Exemption 11 applies.

As described above, ███ subscribers have only *de minimis* access to the ███ virtual machine and do not use the software to input, modify, or retrieve data or information. Subscribers access ███ virtual machine during configuration but exclusively use the cloud provider's software (in our example, ███ software) to input, modify, and retrieve their data. ███ merely encrypts data transmissions as they travel between the cloud provider's servers and the ███ subscriber's server and does not enable the subscriber to perform any of the functions required for a nonpossessory computer lease. Accordingly, ███ leases do not constitute a nonpossessory computer lease within the ordinance's meaning and are not subject to the Lease Transaction Tax.

Alternatively, even if ███ leases constitute nonpossessory computer leases, then Exemption 11 applies. ███ subscribers access the ███ virtual machine only when configuring their own virtual machine to access the ███ software. Furthermore, ███ subscribers have no right to control or possess the ███ virtual machine. Subscribers' use of ███ virtual machine is therefore *de minimis.* The charges for ███ are based on "runtime", the amount of time a subscriber spends sending data back and forth between their computer and their virtual machine. As discussed above, ███ provides End-to-End Encryption using ███ This is accomplished by sharing a decryption code with the subscriber's computer that deciphers each encrypted data transmission. This entire process occurs in the background and subscribers does not interact with any ███ programs on their computer. ███ subscribers are therefore paying for the information required to secure their data while it is in transit rather than for the use of ███ virtual computer. This information is fleeting and transitory because the encryption only lasts for the transit time of the data. ███ leases are therefore exempted from the Lease Transaction Tax under Exemption 11 because the subscriber is paying predominantly for information rather than for the use of ███ virtual machine.

## REQUEST FOR RULING

On behalf of ███, we respectfully request that the Department issue a PLR declaring that:

1. Where ███ leases ███ in Chicago, such lease does not constitute a "nonpossessory computer lease" within the meaning of the Lease Transaction Tax.
2. Alternatively, if the Department determines that the lease of ███ is a nonpossessory computer lease within the meaning of the Lease Transaction Tax, that Exemption 11 applies and ███ is not subject to the Lease Transaction Tax.

\* \* \* \*\*

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 of the ruling requested herein.

Best regards,

Dakota S. Newton

DSN:mla
Attachment

cc:

David A. Hughes, Esq.
Jeffrey A. Hechtman, Esq.

# Exhibit A

**Power of Attorney and**
**Declaration of Representative**

## PART I. - Power of Attorney

Taxpayer(s) name, identifying number, and address including ZIP code (Please type or print)

███████████████████████████████████████████████████

hereby appoints [name(s), address(es), including ZIP code(s), and telephone number(s) of individual(s)]*

David A. Hughes
dhughes@hmblaw.com
(312) 606-3212
500 W. Madison St., Suite 3700
Chicago, IL 60661

Dakota S. Newton
dnewton@hmblaw.com
(312) 606-3203
500 W. Madison St., Suite 3700
Chicago, IL 60661

as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Chicago Department of Finance for the following tax matter(s). Specify the type(s) of tax and year(s) or period(s).

| Type of Tax | Year(s) or Period(s) |
| --- | --- |
| Personal Property Lease Transaction Tax | July 2015 - July 2019 |
| | |

The attorney(s)-in-fact (or either of them) are authorized, subject to revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters (excluding the power to receive refund checks, and the power to sign the return, unless specifically granted below).

Send copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

    1 |X| the appointee first named above, or
    2 |   | (names of not more than two of the above named appointees)...........................................................................

Initial here ➡ ..........if you are granting the power to receive, but not to endorse or cash, refund checks for the above tax matters to:
    3 |   | the appointee first named above, or
    4 |   | (name of one of the above designated appointees)...................................................................

This power of attorney revokes all earlier powers of attorney and tax information authorizations on file with the Department of Finance for the same tax matters and years or periods covered by this power of attorney, except for the following:

...........................................................................................................................................................................

...........................................................................................................................................................................

(Specify to whom granted, date, and address including ZIP code, or refer to attached copies of earlier powers and authorizations.)

## Signature of or for taxpayers(s)

(If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.)

| ████████████ | CFO | 08/01/2019 |
| --- | --- | --- |
| (Signature) | (Title, if applicable) | (Date) |

(Also type or print your name below if signing for a taxpayer who is not an individual.)

| ████████████ | Compliance Officer | 08/01/2019 |
| --- | --- | --- |
| (Signature) | (Title, if applicable) | (Date) |

*You must authorize an organization, firm, or partnership to receive confidential information, but your representative must be an individual who must complete part II

If the power of attorney is granted to a person other than an attorney or certified public accountant, the taxpayer(s) signature must be witnessed or notarized below. (The representative must complete Part II. Only representatives listed there are recognized to practice before the Chicago Department of Finance.)

The person(s) signing as or for the taxpayer(s): (Check and complete one.)

[ ] is/are known to and signed in the presence of the two disinterested witnesses whose signatures appear here:

....................................................................................    ................................
(Signature of Witness)                                                            (Date)

....................................................................................    ................................
(Signature of Witness)                                                            (Date)

[ ] appeared this day before a notary public and acknowledged this power of attorney as a voluntary act or deed.

NOTARIAL SEAL

Witness:................................................................    ..............................
(Signature of Notary)                                                (Date)           (If required by State Law)

## PART II. - Declaration of Representative

I declare that I am not currently under suspension or disbarment from practice before any court or tribunal and that I am one of the following:

1 a member in good standing of the bar of the highest court of the jurisdiction indicated below;

2 a bona fide officer of the taxpayer organization;
3 a full-time employee of the taxpayer;
4 a member of the taxpayer's immediate family (spouse, parent, child, brother, or sister);
5 Director's special authorization
6 Certified Public Accountants.

and that I am authorized to represent the taxpayer identified in Part I for the tax matters there specified.

| Designation (insert appropriate number from above list) | Jurisdiction (State, etc.) | Signature | Date |
|---|---|---|---|
| 1 | IL | ███████████ | 8/1/19 |
| 1 | IL | ███████████ | 8/1/19 |
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