

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

# BDO KNOWS:

## SALT



### SUBJECT

## CHICAGO ENACTS AMENDMENTS TO THE PERSONAL PROPERTY LEASE TRANSACTION TAX CODE THAT REDUCE THE RATE ON CERTAIN NONPOSSESSORY COMPUTER LEASES AND PROVIDE RELIEF TO QUALIFYING SMALL NEW BUSINESSES

### SUMMARY

On October 28, 2015, the City of Chicago passed the Revenue Ordinance for Fiscal Year 2016 (the "Fiscal Year 2016 Budget"), which amends the Personal Property Lease Transaction Tax (the "Lease Tax") Code to reflect a reduced 5.25-percent tax applied to certain nonpossessory computer leases, as well as provide relief from the tax on nonpossessory computer leases to qualifying small new businesses. These amendments to the Code are a response to Lease Tax Ruling #12 issued by the Department of Finance on June 9, 2015, and are intended to mitigate the negative reaction in the business community resulting from the imposition of Lease Tax on cloud-based services as provided in that ruling. See BDO SALT Alert that discusses Lease Tax Ruling #12 [here](#).

### DETAILS

#### *Background*

Lease Tax Ruling #12, among other things, amended the definition of a "nonpossessory computer lease" to apply the generally 9-percent tax to a charge:

- ▶ To obtain information or data that has been compiled, entered, and stored on a provider's computer, provided that it is not for access to information or data which is entirely passive without interactive use (e.g., streaming data), or materials that are primarily proprietary (e.g., copyrighted newspapers); and

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- ▶ For services such as cloud computing, cloud services, a hosted environment, software as a service (SaaS), platform as a service (PaaS), and infrastructure as a service (IaaS).

The Department has postponed the effective date of Ruling #12 until January 1, 2016.

### *Amendments to the Lease Tax on a Nonpossessory Computer Lease*

The Fiscal Year 2016 Budget makes the following amendments to the Lease Tax as it applies to a nonpossessory computer lease:

- ▶ Provides for a reduced 5.25-percent rate where the customer's use of the provider's computer and software is limited to inputting, modifying, or retrieving data or information that is supplied by the customer.
- ▶ Exempts the lessor in a nonpossessory computer lease arrangement from collecting tax, and the lessee from payment of the tax, if the lessor or lessee meets the following criteria: (i) holds a valid, current business license issued by the City or another jurisdiction; (ii) has under \$25 million in gross receipts or sales during the most recent full calendar year prior to the current year for which the exemption is sought; and (iii) has operated for fewer than 60 months. For these purposes, gross receipts or sales has the same definition as for federal income tax purposes and the \$25 million dollar limit is based upon gross receipts or sales of a unitary business group as defined for Illinois Income Tax purposes. The 60-month limit begins with the month in which the taxpayer first receives receipts, and the 60-month limit is calculated to include a predecessor business and a member of the same unitary business group even if that member is no longer in operation.
- ▶ Expands the definition of lessor to include "any person . . . who, directly or *indirectly*, receives or collects the consideration for the lease or rental of personal property." (Emphasis added.)

Codifies the use of the Illinois Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, as amended, for purposes of ascertaining which customers and charges are subject to tax where the customer accesses the provider's computer from a mobile device.

## BDO INSIGHTS

- ▶ Taxpayers that have not already done so will need to adopt procedures and/or set-up their systems to collect, report, and remit Lease Tax on a charge for a nonpossessory computer lease in accordance with Lease Tax Ruling #12 and the Fiscal Year 2016 Budget beginning on January 1, 2016. Due to the expanded definition of lessor, taxpayer for this purpose includes those that *indirectly* receive or collect consideration for the lease or rental of personal property.
- ▶ A lessor, including one that *indirectly* receives or collects consideration for the lease or rental of personal property, must obtain and retain an exemption certificate from a lessee claiming exemption from the tax on a nonpossessory computer lease.
- ▶ Taxpayers that engage in a nonpossessory computer lease with a lessor that is an exempt small new business will be required to self-assess and remit the applicable tax.

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