

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-07(10)S
Sales Tax
April 5, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040330A

On March 30, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from Release of Information Solutions, Inc., 27 Mica Lane, Suite 208, Wellesley, MA 02481.

The issues raised by Petitioner, Release of Information Solutions, Inc., under the facts presented, are:

1. Whether Petitioner's charges for services and provision of medical records are subject to sales tax.
2. Whether Petitioner is a vendor required to collect sales tax.
3. Whether taxable charges, if any, are limited to services and medical records distributed to customers within New York State.
4. What is the proper application of sales tax when the requesting party (such as an insurance company) has locations both in-state and out-of-state.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner, a Delaware corporation, is engaged in the business of collecting and furnishing healthcare information.

Petitioner enters into agreements with various physicians, hospitals, and other healthcare facilities (collectively, "Healthcare Facilities"). These agreements require Petitioner to respond to all requests for medical records, data, and information relating to particular patients (collectively, "Medical Records") that are made by or for patients, insurance companies, physicians, other health care providers, payers, attorneys, and others (collectively, "Requesting Parties"). In turn, when Healthcare Facilities receive requests for Medical Records, they are obligated to refer the Requesting Parties to Petitioner. The Requesting Parties are Petitioner's customers.

Petitioner employs Site Coordinators to respond to requests for Medical Records. Each Site Coordinator has a regular group of Healthcare Facilities sites, located in New York, that he or she visits on a weekly basis. While at a Healthcare Facility, the Site Coordinator digitally scans a copy of any requests for Medical Records that a Requesting Party has submitted. Then Petitioner's Site Coordinators electronically transmit the requests to Petitioner's Massachusetts

office, where the request is read online and is either approved or rejected. A request may be rejected if, for example, fulfillment would violate federal or state laws.

If the request is approved, it is converted into a work order that is made available online to the Site Coordinator in New York. The Site Coordinator then follows up on the work order to fulfill the request. The work order may require the Site Coordinator to digitally scan the Medical Records that are responsive to the request. Alternatively, the work order may instruct the Site Coordinator to use the Healthcare Facility's own electronic medical records system. In either event, digitized Medical Records are electronically received by Petitioner's Massachusetts office. In some cases, Petitioner has its own record-access privileges and can directly download Medical Records from the Healthcare Facility without any onsite intervention of the Site Coordinator.

After obtaining a digital copy of a requested Medical Record, Petitioner produces whatever form – electronic file or paper copy – that the Requesting Party prefers. All of these activities occur in the Massachusetts office, which is Petitioner's only office location. Petitioner furnishes the Medical Records by electronically transmitting the digital records or mailing the printed copy. In both cases, Petitioner sends the Medical Records from its Massachusetts office directly to its customers. Petitioner's customers are located in all 50 states.

Billing is also done from Petitioner's Massachusetts office. This office is where Petitioner prepares invoices and sends them to customers. Customers may telephone their requests to Petitioner's Massachusetts office, which is where all work orders are either accepted or rejected. Petitioner has no New York office. Petitioner's New York activities are limited to the Site Coordinator's visits to Healthcare Facilities and their scans and transmissions of both digital requests and digitized Medical Records.

The amount charged varies depending upon the Requesting Party, the quantity of medical records requested, and the type of information requested. For example, state law generally limits the amount that may be charged for patient Medical Records supplied to the patient, while the amount that can be charged to insurance companies typically is not capped. State law may establish maximum charges for copying or duplicating certain items, but not others.

All of the Medical Records that Petitioner gathers, collects, scans, digitizes, transmits, and prints are confidential and protected under numerous privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA). Each response to a request for Medical Records relates to only one patient. The patient is the legal owner of the Medical Records. The confidentiality and privacy laws and the patient's retention of all property rights to Medical Records preclude Petitioner from compiling any of the Medical Records. Petitioner, therefore, does not (and cannot) make any such compilations. Applicable law likewise prohibits Petitioner from altering the Medical Records in any way. Each request for Medical Records and each response by Petitioner is unique and must be held in strict confidence.

Petitioner does not retain any Medical Records that it has gathered, collected, scanned, digitized, transmitted, or printed. Petitioner regularly and systematically deletes all electronic files and destroys all paper copies immediately after furnishing the medical records to the Requesting Parties. In the unusual case, when a New York facility's Medical Records are not furnished to a Requesting Party (e.g., because of non-payment), Petitioner automatically deletes all electronic files and all documents relating to the request after 30 days. Petitioner cannot later use any previously obtained and furnished Medical Records. Petitioner is prohibited from disclosing any Medical Records except pursuant to a specific, authorized request.

Petitioner makes no further use of and receives no further benefit from the Medical Records beyond the Requesting Party's payment for the single request made. If the Medical Records subsequently were requested by another Requesting Party, Petitioner would need to again go through the entire process of obtaining and furnishing such Medical Records and fully charging for such services. Even if the request for Medical Records were from the same Requesting Party that had made the initial request for such records, the same process and charge would apply to the subsequent request. In no case would Petitioner be able to merely open an old electronic file and send it again. Petitioner's document deletion policy virtually eliminates the risk of unauthorized disclosures or other violations of applicable laws. This protects Petitioner from the huge exposure to liability that otherwise could result from storing and retaining the Medical Records.

Applicable law and regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(8) Vendor. (i) The term "vendor" includes:

(A) A person making *sales of tangible personal property or services, the receipts from which are taxed by this article*; (Emphasis added)

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons,

* * *

(9)(i) The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under paragraph one of this subdivision), which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph.

Section 525.2 (a) of the Sales and Use Tax Regulations provides, in part:

(2) Except as specifically provided otherwise, the sales tax is a “transactions tax”, with the liability for the tax occurring at the time of the transaction. Generally, a taxed transaction is an act resulting in the receipt of consideration for the transfer of title to or possession of tangible personal property or for the rendition of an enumerated service. The time or method of payment is generally immaterial, since the tax becomes due at the time of transfer of title to or possession of (or both) the property or the rendition of such service

(3) Except as specifically provided otherwise, the sales tax is a “destination tax”. *The point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence and the tax rate.* (Emphasis added)

Opinion

Petitioner is engaged in the business of collecting and furnishing healthcare information in response to requests by patients, insurance companies, physicians, other health care providers and payers, attorneys, and others (Requesting Parties) for medical records, data, and information (Medical Records) relating to particular patients. Petitioner enters into agreements with various physicians, hospitals, and other healthcare facilities (Healthcare Facilities) to respond to all requests for Medical Records.

The records provided consist of confidential medical records and other confidential information that is not available from any publicly accessible source. Such records cannot be obtained by Petitioner unless the appropriate release authorizations have been signed by the person to whom the records pertain.

Petitioner employs Site Coordinators to respond to the requests for Medical Records. The requests are reviewed in Petitioner's Massachusetts office and are either approved or rejected by staff there. If a request is approved, it is converted into a work order that is made available online to the Site Coordinator. The Site Coordinator then follows up on the work order to fulfill the request. The Site Coordinator electronically transmits digitized Medical Records to Petitioner's Massachusetts office, where Petitioner furnishes the Medical Records to the Requesting Party by electronically transmitting digital records or mailing printed copies. Billing is also done from Petitioner's Massachusetts office, where Petitioner prepares invoices and sends them to Requesting Parties.

Petitioner does not alter or retain for further use any Medical Records that it has gathered, collected, scanned, digitized, transmitted, or printed. Petitioner regularly and systematically deletes all electronic files and destroys all paper copies immediately after furnishing them to the Requesting Parties.

Section 1105(c) of the Tax Law imposes sales tax on receipts from the sale, except for resale, of certain enumerated services. Sections 1105(c)(1) and 1105(c)(9) impose tax on information services unless the information furnished is personal or individual in nature and the information is not or may not be substantially incorporated in reports furnished to other persons.

Petitioner is retrieving specifically identified confidential records on behalf of a Requesting Party who has been authorized to receive the records by the person to whom the records pertain. Therefore, Petitioner's services are not services subject to sales tax under section 1105(c)(1) or 1105(c)(9) of the Tax Law. The retrieval and delivery of such confidential records constitutes neither the sale of tangible personal property taxable under section 1105(a) of the Tax Law nor the sale of a service taxable under section 1105(c) of the Tax Law. See *Weitz & Luxenberg, P.C.*, Adv Op Comm T & F, March 3, 2006, TSB-A-06(7)S; *Immediate Medical Records, Inc.*, Adv Op Comm T & F, January 31, 1992, TSB-A-92(7)S. Petitioner's sales of

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record retrieval services, therefore, as described in this Opinion, do not make Petitioner a vendor for sales tax purposes. See section 1101(b)(8)(i) of the Tax Law.

The sale of general information which does not identify specific patients, transcribed from files of medical practitioners, or the sale of analyses of statistical or generic (not patient-specific) information gleaned from medical files might be considered the sale of a taxable information service under section 1105(c)(1) of the Tax Law. However, obtaining such information is clearly distinguishable from Petitioner's service of providing to the patient (or designee) exact copies of an identified patient's confidential records. In addition, the sale of information derived from records that are generally available to the public is distinguishable from the present case. The sale of such public database information would be taxable under section 1105(c)(1) of the Tax Law. See *Matter of Hooper Holmes v Wetzler*, 152 AD2d 871, lv den, 75 NY2d 706; *State Farm Mutual Automobile Insurance Co.*, Adv Op Comm T & F, December 28, 2004, TSB-A-04(29)S. It should also be noted that a separately stated charge by Petitioner for making additional paper copies of records would constitute a receipt from the sale of tangible personal property subject to sales tax under section 1105(a) of the Tax Law when delivered in New York State and might require Petitioner to register as a vendor.

Since Petitioner's record retrieval services are not subject to sales tax, issues 3 and 4 are moot.

DATED: April 5, 2007

/s/
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NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.