



**State of New Jersey  
Division of Taxation  
Regulatory Services Branch**

**LR: 2011-2-SUT  
Sales and Use Tax  
May 3, 2011**

### LETTER RULING

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to the services of collecting and furnishing healthcare information to requestors who wish to obtain copies of medical records.

#### **Facts**

Taxpayer, a Wisconsin corporation, enters into agreements with various physicians, hospitals and other healthcare facilities (collectively, "Healthcare Providers"). These agreements require Taxpayer to respond on behalf of the Healthcare Providers 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, Federal and State organizations, and others (collectively, "Requesting Parties" and individually the "Requesting Party"). In turn, when Healthcare Providers receive requests for Medical Records, they are obligated to refer the Requesting Parties to Petitioner.

Depending upon the scope of services being provided to a particular Healthcare Provider, Taxpayer may:

- Receive and review all incoming requests for Medical Records and validate authorizations for release of medical records from Requesting Parties for HIPAA and state law compliance and/or request follow up information as necessary to validate an invalid authorization. A request may be rejected if, for example, fulfillment would violate federal or state laws.
- Pull files and/or review electronic records and/or microfilm for Medical Records meeting the authorization request and either copy the Medical Records to paper, scan and upload records to Taxpayer's Central Business Center (CBC) located at its corporate headquarters in Wisconsin, and then copy same to paper, or scan and upload to Taxpayer's CBC and make the Medical Records available through its e-delivery system online for the Requesting Party to download via a confidential pass code and print.
- Log in and record pertinent information regarding the requests in Taxpayer's web-based information request management application software system in order to provide a tracking of the status of the processing of the requests.
- Mail records and/or make the records available through Taxpayer's e-delivery system online.

- Invoice the Requestor for copies made in accordance with relevant state and federal regulations, and collect payment of the invoices.

Some of the above services may be performed by Taxpayer's employees onsite at the local Healthcare Provider facility in New Jersey and some of the services may be provided from Taxpayer's corporate headquarters located in Wisconsin, again depending on the scope of services chosen by the particular Healthcare Provider. Typically, the pertinent Medical Records are identified and pulled by Taxpayer's employee onsite at the Healthcare Provider, where they are copied and/or scanned at the facility, and then either mailed or made available at the Healthcare Provider location or Taxpayer's headquarters. The billing and collections are done from Taxpayer's Wisconsin office. The fees collected from the Requesting Parties by Taxpayer are retained by Taxpayer as its primary compensation for performing the services for the Healthcare Provider, although there are instances where the Healthcare Provider may also pay compensation to Taxpayer for its services.

The amount charged varies depending upon the Requesting Party, the quantity of Medical Records requested, and the type of information requested. Certain state and federal law may limit the amount that may be charged to certain requestors, but not others. In addition, when a proper request is submitted to the Healthcare Provider by certain Requesting Parties, the Healthcare Provider is required by law to provide a copy of the records requested within a reasonable period of time and upon payment of the mandated charge.

### **Issues**

1. Whether Taxpayer's charges for services and the provision of medical records are subject to sales tax when distributed in the following formats:
  - a. Printed copy?
  - b. Copy sent by fax?
  - c. Copy sent in a PDF document electronically via email?
2. Whether Taxpayer is a dealer required to collect sales tax?
3. Whether taxable charges, if any, are limited to services and medical records distributed to customers within New Jersey?
4. What is the proper application of state and local sales tax when the requesting party (such as an insurance company) has locations both in-state and out-of-state?

### **Discussion**

1. Professional service transactions which involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made, are not "retail sales", and are therefore not subject to tax. N.J.S.A. 54:32B-2(e)(4)(A). The

service of retrieving and photocopying medical records for current or former patients or their representatives is not subject to sales or use tax. N.J.S.A. 54:32B-2(e)(4)(A). If the retrieval service provides more than one hard copy as part of the service, the additional copies will be treated as the sale of tangible personal property which is subject to sales tax. N.J.S.A. 54:32B-3(a). This would be similar to copying or printing services provided by a copy service.

2. Sellers are charged with collecting sales tax from the customer when collecting the sales price, as trustee for and on account of the State. N.J.S.A. 54:32B-2(w) (defining “persons required to collect tax” to include sellers). See N.J.S.A. 54:32B-12(a). The term “seller” is defined in N.J.S.A. 54:32B-2(i) as:

“Seller” means a person making sales, leases or rentals of personal property or services.

(1) The term "seller" includes:

(A) A person making sales, leases or rentals of tangible personal property, digital property or services, the receipts from which are taxed by this act;

(B) A person maintaining a place of business in the State or having an agent maintaining a place of business in the State and making sales, whether at such place of business or elsewhere, to persons within the State of tangible personal property, digital property or services, the use of which is taxed by this act;

(C) A person who solicits business either by employees, independent contractors, agents or other representatives or by distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the State of tangible personal property, digital property or services, the use of which is taxed by this act;

(D) Any other person making sales to persons within the State of tangible personal property, digital property or services, the use of which is taxed by this act, who may be authorized by the director to collect the tax imposed by this act;

....

[N.J.S.A. 54:32B-2(i)].

Sellers who sell taxable items or services must collect and remit New Jersey sales tax whenever such sales are completed by delivery of the item(s) to a New Jersey location or performance of the service within this State.

An out-of-State company with a physical presence in New Jersey is required to register as a seller and collect and remit New Jersey sales tax on the sale of taxable goods and services. The presence of a New Jersey place of business, warehouse, showroom, or employees in the state is sufficient nexus to require registration; the term “employees” includes salespersons, consultants, customer service representatives, service or repair technicians, instructors and delivery persons, as well as independent representatives and solicitors acting as agents.

3. If the retrieval service provides more than one hard copy as part of the service, the additional copies will be treated as the sale of tangible personal property which is subject to sales tax if delivered to a location in New Jersey. N.J.S.A. 54:32B-3(a).

4. Since the service of retrieving medical records for patients or their representatives is exempt from sales tax it is irrelevant where the requesting party is located. N.J.S.A. 54:32B-2(e)(4)(A). If the retrieval service provides more than one hard copy as part of the service, the additional copies will be treated as the sale of tangible personal property which is subject to sales tax if delivered to a location in New Jersey. N.J.S.A. 54:32B-3(a).

### **Conclusions**

1. a. Sales tax is not due on a charge for the provision of paper medical records assuming only one hard copy is provided as part of the service.

1.b. Sales tax is not due on a charge for the provision of faxed medical records assuming only one copy is provided as part of the service.

1.c. Sales tax is not due on a charge for the provision of medical records delivered electronically in a PDF document.

2. Taxpayer is a seller of taxable tangible personal property if more than one hard copy of medical records is provided as part of the service.

3. If more than one hard copy of medical records is delivered to a New Jersey location, New Jersey sales tax is due on the transaction. Medical records delivered to an out-of-State location are not subject to New Jersey sales tax since this is an out-of-State transaction.

4. Sales tax is not due on a charge for medical records assuming only one hard copy is provided as part of the service. If more than one copy of medical records is delivered to a New Jersey location, New Jersey sales tax is due on the transaction. The State sales tax rate is 7%. New Jersey does not impose a local sales tax.

Finally, much of the above information may also be found in the Division's State Tax News, Summer 1995, found at:

<http://www.state.nj.us/treasury/taxation/pdf/pubs/stn/summer95.pdf>.

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A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.