

**Revenue Ruling
No. 07- 006
October 15, 2007
Sales and Use Tax**

Taxability of Transactions Involving the Copying of Medical Records

The purpose of this revenue ruling is to discuss the sales and use taxability of services which include the copying of medical records.

Facts

Typical fact patterns concerning copying services include the following scenarios:

1. A Louisiana medical provider who renders medical services in Louisiana has a member of his or her staff make copies of medical records to fulfill the requests of the patient or someone whom the patient has granted the right to obtain such copies.
2. A provider of health care information management services contracts with a hospital or other medical provider to make all copies of medical records for a certain fee over a period of time. Some of the copies made are solely for the internal use of the hospital and never leave the premises. Other copies are produced to fulfill the requests of patients or others with the authority to request such medical records and are sent offsite to the requestor and billed in accordance with current statutory rates provided in La. Rev. Stat. Ann. 40:1299.96.

Applicable Law

Louisiana imposes a tax upon the sale at retail or use in this state of each item or article of tangible personal property pursuant to La. Rev. Stat. Ann. § 47:302(A), § 47:321(A), and § 47:331(A). La. Rev. Stat. Ann. § 47:301(12) defines sale as “any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration...”

Retail sale is defined by La. Rev. Stat. Ann. § 47:301(10)(a)(i) as “a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property...” The Department clarified the term “retail sale” in its regulation LAC 61:I.4301(C) that provides that “the intent of the law is to classify every sale made to the final user or consumer for any imaginable purpose, other than for resale, as a retail sale or a sale at retail.” The regulation also provides, “For purposes of La. Rev. Stat. Ann. § 47:301(10), whether a transaction is exempt from taxation by statute, jurisprudence, or by constitution has no bearing on classification of the transaction.”

Under La. Rev. Stat. Ann. § 47:301(16)(e), an exclusion is allowed from the definition of tangible personal property for “work products which are written on paper, stored on magnetic or optical media, or transmitted by electronic device, when such work products are created in the normal course of business by any person licensed or regulated by the provisions of Title 37 of the Louisiana Revised Statutes of 1950, unless such work products are duplicated without modification for sale to multiple purchasers.”

Title 37 includes these medically-related occupations whose work products may be excluded from “tangible personal property”: podiatrists, dentists, nurses, optometrists, mental health

counselors, pharmacists, physicians, surgeons, midwives, psychologists, physical therapists, hearing aid dealers, nursing facility administrators, speech-language pathologists, audiologists, chiropractors, occupational therapists, dieticians, nutritionists, licensed radiologic technologists, and respiratory therapists.

La. Rev. Stats. Ann. § 47:302(C), §47:321(C), and §47:331(C) provide that sales of services are taxable. La. Rev. Stat. Ann. § 47:301(14) defines what the term “sales of services” means and includes. La. Rev. Stat. Ann. § 47:301(14) (d) includes in “sales of services” the “furnishing of printing or overprinting, lithographic, multilith, blue printing, photostating or other similar services of reproducing written or graphic matter.”

Ruling

Where a patient requests the making of copies of certain identifiable medical records and fills out necessary forms agreeing to pay the associated costs, there is a contract of sale between the parties. The requestor is not interested in the process of making the copies so much as he is receiving the actual copies for which he must pay. Paper copies, copies saved on disk, copies saved on film, and copies scanned and sent electronically are tangible personal property under the Civil Code definition of the term and the jurisprudence.¹ Upon the delivery of the copies, sales tax should be remitted according to the rates of the destination unless an exemption or exclusion applies.

In Scenario 1, where the medical provider actually provides the requested copy to the patient or his agent, no sales tax is due because the work product exclusion in La. Rev. Stat. Ann. § 47:301(16)(e) applies. In that case, the patient is the customer and is not required to pay sales tax because the records requested are from one who is in the business of rendering professional medical services licensed or regulated by the provisions of Title 37 of the Louisiana Revised Statutes of 1950 and are not duplicated without modification to be sold to multiple purchasers. The records are merely incidental to the nontaxable services provided.

In Scenario 2, the medical provider is not making copies for requestors so the work product exclusion is not applicable. Here, the medical provider has hired an outside party to provide the taxable service of “reproducing written matter” under La. R.S. Ann. § 47:301(14)(d) so that it does not have to do so.

Should the medical provider utilize the services of an outside party to make copies on its behalf for a flat fee (where the copies stay in-house or where the healthcare provider is obligated to provide those copies to another party without billing), then a sale of personal property does not take place. In this situation, the outside party is providing a taxable service to the provider. This service should be sourced to where the service is rendered, usually the location where the images are reproduced.

By contrast, if in Scenario 2 the copies are invoiced with fees charged per copy/reproduced image, the transaction will be treated as the sale of tangible personal property whether made at the request of the medical provider or another requestor (the patient or another party who can legally obtain the copies).

¹ See *South Central Bell Telephone Co. v. Barthelemy*, 643 So.2d 1240, (La., 1994).

When a third party contracts to sell copies of medical records, the transaction between that company and its customer is a taxable transaction since the third party is not a medical provider under Title 37 and makes the copies with a profit motive. Despite the fact that in most cases, third parties who copy medical records have a “business associate” agreement with the custodian of the records for purposes of not violating the privacy provisions of Health Insurance Portability and Accountability Act of 1996, (“HIPAA”), the fact that the third party has entered into this agreement whereby it must comply with the privacy standards of HIPAA is not enough to grant the third party status as a medical provider under Title 37 so that its work product would be excluded from the definition of tangible personal property.

When copies are sold as tangible personal property, the transactions should be sourced to where the copies are delivered, since the requesters are not picking up the copies at a brick-and-mortar location. In the event that the copies are delivered electronically, it would be proper for the sale to be sourced to the billing address.

Taxability of Invoice Components

Sales price is the total amount for which tangible personal property is sold, including any services that are part of the sale valued in money and the cost of materials used, labor, or service cost.² LAC 61:I.4103.C.14.a. states that “[a]ny part of the *sales price* that is related to costs incurred by the vendor to bring the product to market or make the product available to customers becomes part of the tax base and is subject to sales tax even if a separate charge is made on the invoice.” That regulation further states that in certain instances freight, shipping, and delivery charges from the vendor to customer are not considered part of the sales price because they are not related to costs incurred by the vendor to bring the product to market.³

In the transactions identified as sales of copies above, typically numerous items have been included on invoices for these transactions including the following components: basic/retrieval fee, quickview (online) delivery fee, per page fee, postage fee, handling fee, e-disclose fee, certification/notarization/deposition fee, and docustore (online storage) fees.

Basic /Retrieval Fee A basic/retrieval fee is a separately stated mandatory flat fee charged for locating the records. Because the requested records cannot be copied until after they are found, the retrieval is necessarily related to the production of the copies; therefore, the retrieval fee is included in the sales price.

Quickview Delivery Fee The quickview delivery fee is a separately stated fee to electronically access and view the contents of the delivered information via the Internet. This fee is mandatory when the customer opts to receive the copies requested electronically. Here, since the existence of the copy is only manifested in physical form upon its being delivered online to the requestor, the sale is not complete without this element, and no other company could deliver the copied images in the same media, this fee is part of the sales price.

Per Page Fee The per-page fee is a separately-stated, mandatory fee for each page of the medical record that is either scanned or photocopied. This fee is clearly included in the tax basis.

² La. Rev. Stat. 47:301(13)

³ Subject to certain requirements stated LAC 61:I.4103.C.14.a.ii.(a).(i). and (ii).

Postage Fee The postage fee is a separately stated fee for the postage associated with mailing a hardcopy of the individual's medical report. This fee does not contain a markup for profit. The postage fee is mandatory if the copies are printed and mailed to the requester. Generally, freight, shipping and delivery charges are not considered part of the sales price of tangible personal property when the delivery occurs after the sale has taken place and two conditions are met: 1) the seller separately states the charges for actual delivery or transportation of the sold property from the place of the sale to the destination designated by the purchaser, and 2) the place of the sale of the property and the fact that the transportation is rendered subsequent to the sale and purchase and for the buyer's account must be clearly determinable from the invoices for the sale and transportation of tangible personal property.

Handling Fee The handling fee is a separately stated charge, distinct from the charge for postage, associated with the mailing of a hardcopy of the individual's medical record. The Department's regulation provides that handling charges are considered service costs and are included in the sales price. Since this is a fee charged by the seller not actually for transportation cost, this amount is properly taxable as amounts paid or charged for the service.

E-Disclose Fee The e-disclose fee is a separately stated fee to track and confirm the status of the information being delivered. This service is optional and is only applicable where the copies are delivered electronically. In order for the requesting party to be able to use this tracking service, the requesting party has to hold software that enables them to access this information. This fee is not part of the sales price.

Certification Fee, Notarization Fee, and Deposition Fee The certification fee is a separately stated fee to certify the information. The notarization fee is a separately stated fee to notarize the information. The deposition fee is a separately stated fee to affirm that the information is suitable to be utilized in a legal deposition. These services are optional professional services and are not part of the sales price.

Docustore Fee The docustore fee is a separately stated fee to electronically store the information. This fee relates to the provision of an optional service where the third party holds electronic copies of previously scanned documents. The benefit of selecting this option is that if the requester needs additional copies of records previously scanned, the third party will not have to physically go back and scan in the documents a second time, thereby, reducing total fees charged for the making of copies. Because this fee is optional, is not necessary to produce the copies, and is separately stated, it is not part of the sales price. In addition, the on-line storage of documents is not a taxable service under the provisions of La. Rev. Stat. §47:301 (14)(a)-(g).

Where the actions of the third party are found to be taxable copying/reproducing services, the entire amount charged to the customer is taxable if billed in a lump sum under LAC 61:I.4103.C.15.b.

Conclusion

When a medical provider makes copies of medical records for patients or others authorized to receive the copies requested, the copies are excluded from the definition of tangible personal property so no sales tax is due when the copies are sold. When a third-party entity makes copies for a hospital on a flat fee, this arrangement indicates that the third party is providing the taxable

service of reproducing written or graphic matter. The fact that the third party is a business associate of the medical provider for purposes of federal privacy provisions is of no consideration. When a third party fills requests for copies for a fee based on the number of images reproduced and delivered to the requestor either via electronic means or in hardcopy, the transaction is a taxable sale of tangible personal property.

Please direct any questions or comments concerning this Revenue Ruling to the department's Policy Services Division at 225.219.2780.

Cynthia Bridges
Secretary

A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is issued under Section 61:III.101.C of the Louisiana Administrative Code to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.