

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

TSB-A-09(12)S
Sales Tax
March 2, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S080530A

On May 30, 2008, the Department of Taxation and Finance received a Petition for Advisory Opinion from One Source Document Management, Inc., 2 Old Dock Road, Yaphank, NY 11980.

The issue raised by Petitioner is whether its charges for the services of providing medical records are subject to New York State and local sales and use taxes.

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

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

Petitioner enters into agreements with various medical facilities and insurers. These agreements require Petitioner to respond to all requests to the medical facility and insurer for medical and insurance records, data and information relating to particular patients and/or claimants that are made by or for patients/claimants, insurance companies, physicians, other health care providers, payers, attorneys, and others. Pursuant to such agreements, when the medical facilities/insurers receive requests for records they are obligated to refer the requestor(s) to Petitioner.

Petitioner employs Field Associates to respond to requests for medical/insurance records. The Field Associates digitally scan a copy of any requests for medical/insurance records that the requestor has submitted to the medical facility and insurer and electronically transmit the requests to Petitioner's main office located in Yaphank, New York where the requests are reviewed to ascertain that proper documentation has been submitted before processing any request.

Once a request has been approved, the Field Associates produce either an electronic file or a paper copy of the records for the requestor, depending on the preference of the requestor. These activities occur in either Petitioner's main office or at the medical facility/insurer's site. The medical/insurance records are then furnished directly to the requestor either by electronically transmitting the digital records or by mailing a printed copy of the records.

Billing is done by the main office and bills are mailed to the requestor. The amount charged to the requestor varies depending on factors such as the requesting party's status, quantity of medical/insurance records requested and the type of records being requested. For example, State law generally limits the amount that may be charged for medical records supplied to a patient, while the amount that can be charged to insurance companies typically is not limited.

All medical/insurance records that are collected, scanned, digitized, transmitted and/or printed by Petitioner are confidential and protected under the Health Insurance Portability and

Accountability Act (HIPAA). Each request for medical/insurance records relates to only one patient/claimant. The confidentiality and privacy laws, and the patient's/claimant's retention of all property rights to the medical/insurance records, preclude Petitioner from compiling any of the medical/insurance records. Applicable law also prohibits Petitioner from altering the medical/insurance records in any way. Each request for medical/insurance records and each response by Petitioner is unique and must be held in strict confidence.

Petitioner does not retain any medical/insurance records that it has collected, scanned, digitized, transmitted or printed. Petitioner regularly and systematically deletes all electronic files and destroys all paper copies immediately after furnishing the medical/insurance records to the requestor(s), or if requested records are not furnished because of non-payment, Petitioner automatically deletes all electronic files and all documents relating to the request after the specific number of days determined by the medical facility/insurer client.

Petitioner is prohibited from disclosing any medical/insurance records except pursuant to a specific, authorized request.

Petitioner makes no further use of and receives no further benefit from the medical/insurance records beyond the requestor's payment for the single request made. If the same medical/insurance records are subsequently requested by another requestor, Petitioner would need to again go through the entire process of obtaining and furnishing such medical/insurance records and fully charging the requestor for such services. Even if the request for medical/insurance records were from the same requestor that had made the initial request for such records, the same process and charge, as set forth above, would apply to the subsequent request.

Petitioner states that its document deletion policy virtually eliminates the risk of unauthorized disclosures or other violations of applicable laws. This protects Petitioner from the huge exposure for liability that otherwise could result from storing and retaining the medical/insurance records.

Applicable law and regulations

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 . . . 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, . . .

* * *

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

Opinion

To the extent that Petitioner is retrieving and providing specifically identified confidential records on behalf of the custodian of such records to an individual (or the authorized requestor on behalf of such individual), which records contain confidential information pertaining to the individual, Petitioner's services are not services subject to sales tax under section 1105(c)(1) of the Tax Law. See *SMART Business Advisory and Consulting, LLC* Adv Op Comm T & F, December 15, 2008, TSB-A-08(52)S; *Release of Information Solutions, Inc.*, Adv Op Comm T & F, April 5, 2007, TSB-A-07(10)S; *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 can only furnish the requested records upon presentation of the appropriate authorization forms signed by the individual whose records are being sought, or by the individual's representative. Similarly, it would appear that the administrative fee charged by the custodian of the individual's records, or charged by Petitioner on behalf of the custodian, for retrieval of such documents which are deposited, filed or maintained by the custodian, whether or not including a certification thereof, 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.

Petitioner is providing to the requestor specifically identified records containing confidential information pertaining to the requestor (if an individual) or the individual represented by the requestor. The fees paid to Petitioner as described in this Opinion, are not for the purchase of property or services subject to sales tax under section 1105. See *Smart Business Advisory and Consulting, LLC supra*, and *Weitz & Luxenberg, P.C., supra*.

Although the sale of general information, which does not identify specific individuals, transcribed from confidential files of medical practitioners, or the sale of analyses of statistical or

TSB-A-09(12)S
Sales Tax
March 2, 2009

generic (not requestor-specific) information gleaned from such files might be considered the sale of a taxable information service under section 1105(c)(1) of the Tax Law, obtaining such statistical database information is clearly distinguishable from the service of obtaining exact copies of an identified individual's confidential records. Likewise, 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. Petitioner is retrieving copies of individual confidential records for the requestor that specifically pertain to the requestor (if an individual) or the individual represented by the requestor. Petitioner is not obtaining or providing information that is generally available to the public. Moreover, under the facts as presented, the records disclosed are not maintained or retained for later sale and the records may not be and are not otherwise sold or provided by Petitioner to any other persons. A charge to the requestor for merely obtaining copies of confidential medical records or other confidential records from a medical practitioner or other custodian and for providing those records to the requestor is not subject to sales tax.

It is noted that Petitioner's service of retrieving copies of specific, individual records from medical practitioners and other sources and providing such copies to requestors does not rise to the level of a protective or detective service as described in section 1105(c)(8) of the Tax Law. Petitioner is furnished with all information needed to locate the particular records as well as the appropriate legal authorizations needed to retrieve such records. Petitioner is precluded from seeking records or providing records which it is not specifically authorized to retrieve or provide. Therefore, Petitioner is not performing detective activities. See *Weitz and Luxenburg, LLC, supra*.

However, any separately stated or additional charges by Petitioner for making additional copies of records constitute receipts from the sale of tangible personal property subject to sales tax under section 1105(a) of the Tax Law.

DATED: March 2, 2009

/s/
Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department 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. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.