

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-92 (7)S
Sales Tax
January 31, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910813A

On August 13, 1991 a Petition for Advisory Opinion was received from Immediate Medical Records, Inc., 55 Atlantic Avenue, Lynbrook, New York 11563.

The issues raised by Petitioner, Immediate Medical Records, Inc., are:

1. Whether Petitioner will be required to collect New York State and Local Sales Tax on receipts from charges to subscribers for the subscription price of its proposed medical records storage services or on other charges in connection therewith, regardless of the subscribers's place of residence, or

2. Whether Petitioner's service will qualify as an exempt information service whereby Petitioner's receipts will be excluded from sales tax.

Petitioner proposes to offer a service which will provide for the organization, updating, computer storage and prompt availability of a client's essential medical records along with rapid retrieval and transmission of such records to a requesting physician when medical care is required and medical records are not available.

Petitioner will store in a computer hospital discharge summaries, operative summaries, most recent EKG and laboratory reports, X-ray interpretations, CATSCANS, MRI's, ultrasound studies, angiographic studies, stress tests and other information specified for computer storage by the subscriber or by the subscriber's physician. Any additional medical records received by Petitioner will be stored in hard copy.

Upon order of the subscriber, Petitioner will first provide an index of what medical information is available and then copies of the items selected by the requesting physician. Petitioner will transmit the information by fax, modem or overnight delivery service, whichever is applicable.

Petitioner's receipts will be derived from annual subscription fees plus transmittal costs.

Petitioner will give subscribers forms for requesting particular records from physicians and hospitals and the physicians' primary and secondary diagnosis. Upon receipt of such records and diagnosis, Petitioner will examine the information submitted and will advise the subscriber if additional information is required.

Petitioner's personnel will comb, sort and consolidate the subscribers records and code them according to type: diagnostic tests, invasive and surgical procedures, hospitalizations, etc., and further subcategorize by nature and date of the record. Petitioner will generate a table of contents of

the records as a tool for selection by a requesting physician. The essential medical file will be scanned and recorded by an optical scanner and the remaining materials will be kept in hard copy.

The subscriber or the subscriber's physician may furnish Petitioner additional data through the year. Petitioner will integrate the new data with the previously submitted data, adding to or replacing information as required.

Petitioner will have control procedures which will assure that requests are either by or on behalf of the subscriber and based on a health care purpose and that the information provided to the subscriber or subscriber's designee will not be given to others for another purpose.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- . . .there is hereby imposed and there shall be paid a tax. . .upon:

(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 and individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons . . .

(4) Storing all tangible personal property not held for sale in the regular course of business. . .

Section 527.3 of the Sales and Use Tax Regulations states, in part:

(a) Imposition. (1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.

(b) Exclusions.

(2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially

incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information.

Section 527.6 of the Sales and Use Tax Regulations states, in part:

Storage of tangible personal property. [Tax Law. § 1105(c)(4)]

(a) Definition. Storage is the provision of a place for the safekeeping of goods, without regard to the manner of payment or length of time of the service.

(b) Imposition. (1) The tax is imposed on the sale, except for resale, of the service of storing tangible personal property. . . .

In the instant case, Petitioner will provide each subscriber with request forms for the purpose of obtaining certain medical records and diagnosis pertaining to the subscriber from hospitals and physicians. Such records and diagnosis are to be forwarded to Petitioner. Petitioner will computer store pertinent portions of the records and diagnoses, with the remainder being stored in hard copy. At the request of a subscriber or the subscriber's designee, Petitioner will forward pertinent data to the subscriber's attending physician by fax, modem or overnight delivery.

In Finserv Computer Corporation v. Tully, 94 AD2d 197, aff'd 475 NYS2d 279, the court stated, in part:

Special Term upheld petitioner's contention that the sales at issue are primarily services for the "furnishing of information" (Tax Law, §1105, subd. [c], par. [1]) and, therefore, since the information provided concededly is personal or individual in nature and may not be incorporated into reports furnished to other persons, no sales tax is applicable (id.). Section 1105 (subd. [c], par. [1]) of the Tax Law and its regulations (20 NYCRR 527.3) describe "furnishing of information" as "collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof". Respondent's determination concluded that "[p]etitioner did not furnish its customers with any information its customers did not previously have. Therefore, petitioner's sales were not of information services but rather the rearranging of its customers' information onto a different medium". Thus, respondent distinguished between (1) integrating or recasting the information received from the customer so that the customer is given back some new information, or some new significant intelligence, concerning the data furnished, and (2) converting the information received from the customer from one form or medium to another, without interpreting or recasting it, so that the form of the information changes but not the intelligence contained therein. Respondent's determination considered only the first of these two alternatives (i.e., providing new information or intelligence) to be "furnishing of information" within section 1105 (subd. [c], par. [1]) of the Tax Law (see, also, Technical Services Bureau Bulletin No. 1978-1 [S] [CCH, 2 NY Tax Rep, par. 66-001]; Technical Services Bureau Memorandum - 1981 [3]S). Respondent's interpretation seems to be consistent with the statutory language

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"collecting, compiling or analyzing". One cannot collect, compile or analyze the data of a customer without in some way significantly adding to the sum of knowledge of the customer with respect to that data. In thus distinguishing between furnishing new information to the customer and merely changing information already possessed from one format to another, the commissioner rationally interpreted the statute and that interpretation, therefore, must be upheld (see Matter of Howard v. Wyman, 28 N Y 2d 434, 438). . . .

Based on the determination reached by the court in Finserv Computer Corporation vs. Tully, supra, that one cannot collect, compile or analyze the data of a customer without in some way significantly adding to the sum of knowledge of the customer with respect to that data, so that the customer is given back some new information or some new significant intelligence, in the instant matter it must be concluded that Petitioner's sales will not be sales of information services since Petitioner will not be providing subscribers or subscribers' designees with new information or new significant intelligence. Accordingly, Petitioner's sales will not be considered as sales of the furnishing of information within the provisions of Section 1105(c)(1) of the Tax Law and likewise will not fall within the exception provided therein for being personal or individual in nature.

However, since Petitioner will computer store certain information submitted by or on behalf of a subscriber and also store any additional medical records in hard copy, for the purpose of transmitting, only upon request, any of the information on file to a subscriber or the subscriber's designee, Petitioner will be considered to be in the business of storing medical records and not in the business of selling information. Accordingly Petitioner will be considered to be selling the service of storing tangible personal property not held for sale in the regular course of business in accordance with the meaning and intent of Section 1105(c)(4) of the Tax Law and Section 527.6 of the Sales and Use Tax Regulations.

Where Petitioner's service occurs within New York State, Petitioner's receipts from all charges to subscribers will be subject to the combined New York State and local sales tax imposed under the provisions of Section 1105(c)(4) of the Tax Law regardless of the subscriber's place of residence. All receipts will be subject to the combined New York State and local tax rate in effect for the locality where Petitioner's place of business is to be located.

DATED: January 31, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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