



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 14, 2013

Account ID: [REDACTED]
FEIN: [REDACTED]

[REDACTED]

Attention: [REDACTED]

Re: Private Letter Ruling Request

Dear Mr. [REDACTED]:

We have your firm's NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, and letters dated March 21, 2012 and June 15, 2012. You have requested a ruling from the Department regarding your firm's North Carolina sales and use tax liability for particular transactions.

You advise that your firm, [REDACTED] ("[REDACTED]") "processes and fulfills medical record requests (known in the healthcare industry as the release of information process). [REDACTED] partner[s] with hospitals, health systems, physician practices, and clinics to process and fulfill medical record requests and maintain compliance related to releasing medical information to all types of requesters. [REDACTED] by agreement with the health facility, makes photocopies of the medical records, furnishes them directly to the requesting party, and bills the requesting party directly for the copies. The requesting parties typically are patients, attorneys, insurance companies, governmental entities, or hospitals. . . ."

To process and fulfill medical record requests "[a] trained specialist digitally captures the protected health information from the facility's electronic or paper medical records through [your] technology platform. The digital medical records are then electronically transmitted to [REDACTED] release of information processing center in [REDACTED]. [REDACTED] uses one of two methods to deliver the medical records to [its] customers. With Delivery Method One, paper copies of the medical records are printed, packaged, mailed and delivered by the United States Postal Service or shipped and delivered by FedEx. With Delivery Method Two, [REDACTED] provide[s] the customer access to the medical records electronically via [REDACTED]'s web portal or [REDACTED] pushes the records to [your] high volume customers via File Transfer Protocol (FTP)."

You have inquired whether any of the invoice component fees charged for services and/or products that [REDACTED] provides using Delivery Method One (mailing or shipping) or Delivery Method Two (electronic delivery) are subject to North Carolina sales or use tax. [REDACTED] invoices a customer prior to mailing or shipping paper copies of the medical records to a customer. When [REDACTED] is ready to electronically provide or deliver digital copies of the medical records to a customer, an invoice is issued, and then the records are released. The following fees may appear on a typical invoice:

1. Basic Fee: A separate, flat fee for services necessary to prepare medical records for delivery.
2. Affidavit Fee
3. Certification Fee
4. Deposition Fee
5. Electronic FTP Fee
6. Handling Fee
7. Labor Fee
8. No Records Found Fee
9. Notary Fee
10. Photo Fee
11. Per Page Fee
12. Postage Fee
13. Quickview Delivery Fee
14. Retrieval Fee
15. Shipping and Handling Fee
16. Shipping Fee

The basic fee is a "separately stated flat unregulated fee for searching, retrieving, reviewing, and preparing copies [of] medical records for delivery to the requester." The retrieval fee is a "separately stated flat regulated fee for searching, retrieving, reviewing, and preparing copies [of] medical records for delivery to the requester." The per page fee is "a separately stated fee for each page of the medical record that is captured by scanning or captured from microfilm." The other fees are invoiced depending on the nature of a particular request. Requests that are mailed or shipped are invoiced a shipping fee, and requests that are sent electronically are invoiced a Quickview delivery fee (fee to electronically access and view the contents of the delivered information via a web portal) or electronic FTP fee (fee to electronically receive medical records pushed to the customer via FTP).

N.C. Gen. Stat. § 105-164.4 imposes a sales tax on a retailer's net taxable sales or gross receipts of tangible personal property, certain digital property, certain services, and on other specified transactions such as rental of accommodations to transients. N. C. Gen. Stat. § 105-164.4(a)(6b) imposes sales tax on "digital property that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under [Article 5] if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. The tax does not apply to a service that is taxed under another subdivision of [N.C. Gen. Stat. § 105-164.4(a)] or to an information service. The following property is subject to tax under this subdivision:

- a. An audio work.
- b. An audiovisual work.
- c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card."

N.C. Gen. Stat. § 105-164.3(14a) defines "information service" as "[a] service that generates, acquires, sorts, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information."

Sales and Use Tax Technical Bulletin Section 28-3 D. states, in part, "[i]nformation services are commonly provided by data processing centers. An information service may consist of a data processing company using its own facilities to process its customer's data to record information. . . . Information services are not subject to tax when the output is personal or individual in nature to the purchaser and the object of the transaction is to obtain the information and not to obtain tangible personal property for use or consumption."

The gross receipts derived from processing and fulfillment of medical records are not subject to sales and use taxes. N.C. Gen. Stat. § 105-164.4 does not specifically impose sales tax on the gross receipts derived from such services. Additionally, while tangible copies of medical records are provided subsequent to receipt of requests for medical records of specific patients in conjunction with Delivery Option One, it appears that the receipts derived from such transactions are more akin to receipts derived from data processing, such services which are exempt from sales and use taxes. Additionally, charges for transactions where medical records are provided by Delivery Option Two constitute "information services," which are specifically exempt from sales and use taxes.

N.C. Gen. Stat. § 105-164.6(a) imposes an excise tax on tangible personal property or digital property purchases , leased, or rented inside or outside this State for storage, use, or consumption in this State. N. C. Gen. Stat. § 105-164.3(49) defines "use," in part, as "[t]he exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution . . . or consumption of the property or service by the owner or purchaser. [REDACTED] is liable for sales and use taxes on its purchases of tangible personal property, certain digital property, and taxable services for use in this State to provide services to customers.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

If you have any questions, you may reach me at the number listed below.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

[REDACTED]
cc: [REDACTED] Director of Sales and Use Tax Division