

Date Issued: September 9, 2015
Georgia Letter Ruling: LR SUT-2015-11
Topic: Service Provider – Medical Records

This letter is in response to your letter ruling request, regarding the application of Georgia sales and use tax to certain transactions entered into by Taxpayer.

Facts as Presented by Taxpayer

Taxpayer performs the following services for Healthcare Providers:

- Receive and review incoming requests for Medical Records. Validate authorizations to release Medical Records from Requesting Parties for legal compliance, and/or request additional information, if necessary.
- Pull files and/or review electronic records and/or microfilm to locate Medical Records meeting the requests. Copy Medical Records to paper and/or scan and upload records to Taxpayer's Central Business Center located at its headquarters for the Requesting Party to download.
- Record pertinent information regarding the requests in Taxpayer's web-based information request management application software system to track the status of the requests.
- Mail and/or electronically deliver Medical Records to the Requesting Party.
- Invoice and collect payment from the Requesting Party.

Taxpayer may perform these functions onsite at the Healthcare Provider's facility or at Taxpayer's headquarters, depending on the scope of services selected by the particular Healthcare Provider. Typically Taxpayer identifies, pulls, copies, and scans the pertinent Medical Records onsite at the Healthcare Provider's facility. Taxpayer then either mails the Medical Records or uploads and makes the records available to the Requesting Party through Taxpayer's online e-delivery system. Taxpayer performs billing and payment collection activities at its headquarters. Taxpayer's primary compensation for performing services for the Healthcare Provider is the fees collected from Requesting Parties. In some instances, the Healthcare Provider may also pay Taxpayer directly for services.

The amount that Taxpayer charges varies depending upon the particular Requesting Party and the quantity and type of Medical Records requested. Certain federal and state laws may limit the amount that may be charged to certain Requesting Parties. In addition, when a request is submitted by certain Requesting Parties, the Healthcare Provider is required by law to provide the requested Medical Records within a certain per Taxpayer of time. Invoices for Medical Records delivered in a physical format include an itemized charge for "postage" or "postage and handling," depending on the transaction.

Taxpayer also offers a service that allows the Healthcare Provider to store records and other sensitive documents in a secure online database. The Healthcare Provider can access the stored information at any time using a username and a password. This service does not require the Healthcare Provider to install software, and no data is stored on the Healthcare Provider's own server.

Issues

- 1) Are Taxpayer's charges for furnishing Medical Records subject to sales or use tax when such records are distributed as printed copies? Facsimile copies? Emailed PDFs?
- 2) Are Taxpayer's charges for access to records stored in an online database subject to sales or use tax?
- 3) Are separately stated charges for "postage" or "postage and handling" subject to sales or use tax?
- 4) What is the proper application of state and local sales and use tax when the Requesting Party has locations both in-state and out-of-state?

Analysis

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services.¹ “Sale” means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner, or by any means of any kind of tangible personal property for a consideration.² The dealer making the taxable sale must collect the tax from the purchaser and remit the tax to the Department.³ A sale is sourced to the location where the purchaser takes possession of the tangible personal property or makes first use of the services.⁴

Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are not subject to the tax unless specifically designated as taxable. When a transaction involves both a transfer of tangible personal property and the provision of nontaxable services, the Department looks to the main purpose of the specific transaction to help determine taxability. In addition, O.C.G.A. § 48-8-3(22) provides that sales and use tax does not apply to “[p]rofessional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.”

In determining whether a particular transfer of tangible personal property falls under the exception in O.C.G.A. § 48-8-3(22), the main consideration is the purpose of the customer.⁵ Taxability turns on whether the customer is primarily interested in buying the services provided or the tangible personal property transferred in conjunction with the services. If a customer primarily wishes to purchase the skilled services of the service provider because the customer cannot perform such services for himself due to the lack of equipment, time, or skill, the sale or transfer of tangible personal property by the service provider is incidental to and but a means of providing the services that the customer wants, and the exception in O.C.G.A. § 48-8-3(22) would apply. On the other hand, if a customer is primarily interested in acquiring the tangible personal property, the sale is subject to sales and use tax.

Here, the Requesting Parties primarily wish to obtain Medical Records, either in a tangible medium or electronically, and, as a result, O.C.G.A. § 48-8-3(22) does not apply. The sale of printed or copied material delivered in a tangible medium is a sale of tangible personal property and thus subject to sales and use tax.⁶ The Department does not consider information or material delivered electronically to be a sale of tangible personal property when the customer does not receive tangible personal property or the rights to tangible personal property as part of the sale. As such, the sale of Medical Records delivered solely in an electronic format is not subject to the tax.

The sales price of personal property and services includes delivery charges.⁷ “Delivery charges” means “charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.”⁸ Delivery charges made by the seller must be included in the sales price and are subject to sales and use tax in the same manner as the sale of the associated tangible personal property.

¹ O.C.G.A. §§ 48-8-1, -30.

² O.C.G.A. § 48-8-2(33)(A).

³ O.C.G.A. § 48-8-30(b)(1).

⁴ O.C.G.A. § 48-8-77.

⁵ See *Craig-Tourial Leather Co. Inc. v. Reynolds*, 87 Ga. App. 360 at 365 (1952).

⁶ See generally Ga. Comp. R. & Regs. 560-12-2-.75(1)(a)-(b). The sale of custom printing is the sale of tangible personal property and is subject to sales tax on the total invoice charge made on the transaction. Custom printing is the production or fabrication of printed matter, in accordance with a customer's order or copy, for the customer's use or consumption.

⁷ O.C.G.A. § 48-8-2(34)(A)(iv).

⁸ O.C.G.A. § 48-8-2(10).

Rulings

- 1) Taxpayer's charges for Medical Records are subject to sales tax when such records are delivered in a tangible medium, such as paper copies or a computer disc. Charges for Medical Records delivered solely in an electronic medium, such as facsimile or an emailed PDF, are not subject to sales tax because there is no transfer of tangible personal property.
- 2) Charges made for accessing records stored in an online database are not subject to the tax because there is no transfer of tangible personal property.
- 3) Charges made for "postage" or "postage and handling" must be included in the sales price of Medical Records delivered in a tangible medium and are taxable in the same manner as the associated sale.
- 4) Only Medical Records delivered to a customer at a location in Georgia are subject to sales tax. Records sent outside of Georgia are not subject to Georgia sales tax, even if the records are shipped from a Georgia location. Records shipped from outside of Georgia to a location in Georgia are subject to the tax. If the Requesting Party has locations both in-state and out-of-state, the shipping destination, not the billing address, determines the imposition of the tax (both state and local).

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances, and Taxpayer in question. Should the circumstances regarding the transactions change or differ materially from those represented, this ruling may become invalid. Subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this ruling is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.