

Georgia Letter Ruling: LR SUT-2019-04  
Topic: Medical Information Management Services  
Date Issued: June 20, 2019

This letter is in response to your request for guidance on the application of Georgia sales and use tax to charges for maintaining and distributing medical records.

### **Facts Presented by Taxpayer**

Taxpayer is a provider of information management services to healthcare providers, patients, insurers, and other entities involved in the health care industry. The basic operations of each of the lines of business are described below.

#### *Release of Information Services*

Through contracts established with medical service providers (e.g., hospitals, doctors' offices), the Taxpayer operates the medical records departments of these providers. These service providers do not typically pay Taxpayer for operating these departments. Instead, Taxpayer utilizes this position to provide the service of medical records retrieval, for a fee, to others who request a copy of these records.

The requester of the medical records could be a patient, other medical provider, insurance company, or third-party representative of a patient, such as legal counsel. The requester will pay a fee for Taxpayer to retrieve the record, which may be delivered one of three ways: 1) an electronic export from a records database, 2) an electronic scan of the medical record, or 3) as a paper copy. The requester is seeking the information contained in the medical record, regardless of the medium via which this information is provided.

In most states, the fee Taxpayer can charge for this service is regulated by law or by a government agency, or the service may be mandated to be free of charge. Taxpayer's contract with the medical provider often includes a certain number of no-charge records. Once this threshold is met, Taxpayer may charge a fee to the facility to provide this service on their behalf. Under some contracts, the facility may request and be billed by Taxpayer for records retrieval for internal use at the facility as well.

In this service line, Taxpayer makes the following charges<sup>1</sup>:

- Data Storage-Electronic
- Postage
- Shipping
- Shipping and Handling
- Information Services
- Labor-Special Projects
- Labor-Department Outsource
- Photocopy Fees-Electronic
- Photocopy Fees
- Record Retrieval
- Software as a Service
- Software Training
- Fees
- Late Fees
- Professional Services

#### *Clinical Data*

This group provides records retrieval services primarily to health plans and other requesters. These requesters

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<sup>1</sup> All of the revenue categories (charges) referenced in this ruling are listed in Exhibit A [Redacted] with descriptions provided by Taxpayer.

electronically issue to Taxpayer a list of requested records, which Taxpayer then attempts to retrieve, wherever they may be located. In some cases, these records are in a records department operated by Taxpayer. When Taxpayer operates the records department of the care facility, Taxpayer representatives at that location will retrieve the record. In cases where Taxpayer does not operate the medical records department of the provider, Taxpayer will retrieve the record by remotely logging in the provider's electronic medical records (EMRs), by receiving a fax or mailed record from the provider, by the provider dropping a file on an online portal, or by sending a representative to that provider's medical records department to either scan or copy those records. The provider's office may require Taxpayer to pay for the records, in which case Taxpayer passes this cost on to its customer, with no mark up. Once the requested records are obtained, Taxpayer may also perform additional processing on the records such as specialized coding and data extraction before delivering the records to the requesting client.

Taxpayer currently delivers records to the requesting client in an electronic format. In this service line, Taxpayer makes the following charges:

- Abstraction Services-Data Processing
- Abstraction Services Research and Oncology Data services
- Data Storage Electronic
- Pass Through
- Labor-Special Projects
- Record Retrieval
- Software as a Service
- Software Training
- Medical Records Coding
- Coding Audit Report of Findings
- Late Fees
- Professional Services

In the future, there may be instances where the records are delivered in tangible form based on the customer request. If there is delivery in tangible format, the billing invoice will include a specific product item category (including any photocopying, shipping, etc.) to distinguish between records that are delivered in electronic format.

### Information Management

Taxpayer provides solutions for healthcare providers and researchers for the collection, management, storage, and use of healthcare data. This group also facilitates the extraction of actionable information from that data. The primary service options in this area are medical records Coding Services, Scanning and Storage Services, and Data Abstraction Services.

#### *Coding Services*

Coding Services involve translating medical information (e.g., diagnoses, procedures, treatments, etc.) into industry-standard codes for use in EMRs, risk adjustment services, insurance claim processing, and other uses. Taxpayer's coding products & services include 1) providing coding outsourcing services, 2) coding audits (e.g., review of coding work done by others), and 3) a Software as a Service (SaaS) that allows referential and industry guidance data to be accessed from any device with an internet connection and web browser. HIM also offers a SaaS tool which assists customers (health care providers and insurers) in managing their EMR audits which are conducted by various oversight agencies.

#### *Scanning and Storage Services*

Another service provided is Data Processing, which involves converting and updating an EMR to a new EMR. These services may include combining several records and/or formatting records. Taxpayer also provides scanning services to convert paper records to EMRs, and both physical and electronic records storage.

*Data Abstraction Services*

The Abstraction Services provided by Taxpayer include various data mining of clinical data in order to extract and summarize relevant data from a population of medical records. The service is performed by experienced professionals who review voluminous records to identify and extract the relevant information. These procedures assist Taxpayer's clients with tasks such as reporting for government disease registries, extracting specific data from old medical records during electronic conversion, and extracting other information such as drug success rates, drug interactions, and health outcome data from medical records. The output of these abstraction services is a database of clinical data or modern electronic medical record, with summaries of specific data useful to the requesting client. For many data abstraction projects, the Taxpayer team develops the database tool for data collection and performs redaction of personal health information from the record.

In this service line, Taxpayer makes the following charges:

- Abstraction Services-Data Processing
- Abstraction Services Research and Oncology Data services
- Audit Services
- Audit Management Services
- Data Processing
- Data Storage Electronic
- Data Storage Physical
- Denial Management Services
- Information Services
- Labor-Special Projects
- Labor-Department Outsource
- Scanning
- Software as a Service
- Software Training
- Medical Records Coding
- Coding Audit Report of Findings
- Late Fees
- Professional Services

**Issues**

1. Are Taxpayer's charges made in its Release of Information line of business subject to Georgia sales and use tax?
2. Are Taxpayer's charges made in its Clinical Data line of business subject to Georgia sales and use tax?
3. Are Taxpayer's charges made in its Information Management line of business subject to Georgia sales and use tax?

**Analysis**

*Taxability*

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities.<sup>2</sup> The dealer making the

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<sup>2</sup> O.C.G.A. §§ 48-8-1, 48-8-2(31), and 48-8-30(a).

taxable sale sourced to Georgia must generally collect the tax from the purchaser and remit the tax to the Department.<sup>3</sup>

“Sale” means any transfer of title or possession, exchange, barter, lease, or rental, in any manner or by any means, of any kind of tangible personal property for a consideration.<sup>4</sup> For example, the sale of custom printing (i.e., the production of printed material, in accordance with a customer’s order, for the customer’s use or consumption) is the sale of tangible personal property and is subject to sales tax on the total invoice charge made on the transaction.<sup>5</sup>

Unlike sales of tangible personal property, which are generally presumed taxable, sales of information or material delivered electronically are typically not considered taxable sales of tangible personal property.<sup>6</sup>

In addition, services are not subject to the tax unless specifically designated as taxable. Moreover, Georgia law provides an exemption from sales and use taxes for “professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.”<sup>7</sup> In other words, if during the performance of a nontaxable personal or professional service transaction, a service provider transfers tangible personal property as an inconsequential element of the service transaction, the transfer of that tangible personal property is not subject to sales and use tax.

When a transaction involves both a transfer of tangible personal property and the provision of nontaxable services, the taxability turns on the purpose of the customer: whether the customer is primarily interested in buying the services provided or the tangible personal property transferred in conjunction with the services.<sup>8</sup> If a customer is primarily interested in acquiring the tangible personal property, the sale (including the cost of the associated services such as shipping/handling, labor, and notary fees) is subject to sales and use tax.

#### *Sales Price*

“Sales price” is the measure subject to sales tax and means the total amount of consideration for which personal property or services are sold, leased, or rented. Sales price includes the seller’s cost of the property sold; the cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; charges by the seller for any services necessary to complete the sale; and delivery charges.<sup>9</sup>

“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.”<sup>10</sup> 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.

Sales price does not include interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.<sup>11</sup>

#### *Release of Information Charges*

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<sup>3</sup> O.C.G.A. § 48-8-30(b)(1).

<sup>4</sup> O.C.G.A. § 48-8-2(33)(A).

<sup>5</sup> Ga. Comp. R. & Regs. r. 560-12-2-.75(1). The design and production of printed material falls within the scope of custom printing.

<sup>6</sup> See e.g., Ga. Comp. R. & Regs. r. 560-12-2-.111(4)(a) (explaining that computer software delivered electronically is not a sale of tangible personal property and therefore is not subject to sales or use tax.)

<sup>7</sup> O.C.G.A. § 48-8-3(22).

<sup>8</sup> See *Craig-Tourial Leather Co. v. Reynolds*, 87 Ga. App. 360 (1952).

<sup>9</sup> O.C.G.A. § 48-8-2(34).

<sup>10</sup> O.C.G.A. § 48-8-2(10).

<sup>11</sup> O.C.G.A. § 48-8-2(34).

In this line of business, the requesting parties' paramount concern is to acquire printed medical records or an electronic document containing such records. Taxpayer charges requesting parties for the retrieval and delivery of these medical records. Since the sale of tangible personal property, including the sale of printed or copied material delivered in a tangible medium, is subject to sales and use tax, Taxpayer's charges for printed medical records are subject to the tax. In such sales, the amount subject to tax will include delivery charges and any other charges for services that are necessary to complete those particular sales, including retrieval, photocopying, handling, certification, and scanning.

Taxpayer also charges for records that are delivered solely in an electronic format. If the requesting party does not receive tangible personal property or the right to tangible personal property as part of the sale, such sale is not subject to sales and use tax.

In addition to charging those who request medical records, Taxpayer may charge facilities where Taxpayer provides the facility's record retrieval program. When a facility pays Taxpayer, in essence, for operating a records department, the facility is purchasing Taxpayer's professional experience and skill (i.e., non-taxable services).

#### *Clinical Data Charges*

Taxpayer obtains records from medical records departments, regardless of whether Taxpayer operates the department. At the client's option, Taxpayer may perform additional coding or data processing. Like in the Release of Information line of business, the requesting party is primarily interested in obtaining medical records.

Charges for furnishing medical records, when such records are delivered in a tangible medium, are subject to the tax. However, the sale of medical records that are delivered electronically is not taxable because there is no transfer of tangible personal property.

#### *Information Management Charges*

Customers seek Taxpayer's knowledge, specialized skills, and expertise. Because coding, formatting, and abstraction services are not explicitly identified as taxable services under Georgia law, charges made for these services are not subject to the tax.

### **Rulings**

1. In Taxpayer's Release of Information line of business, charges that are part of Taxpayer's production of paper medical records or medical records delivered in any other tangible format are subject to sales and use tax. These charges include charges for postage, shipping, shipping and handling, information services, labor – special projects, photocopy fees, record retrieval, and fees.

Late fees, which are akin to interest or carrying charges, are not subject to sales and use tax so long as they are separately stated on any documentation provided to the requestor.

Charges that are made for the production of records that are delivered only in electronic format (including charges for information services, labor – special projects, photocopy fees – electronic, record retrieval, software as a service, software training, fees, and professional services) are not subject to sales and use tax because no tangible personal property is sold.

In addition, Taxpayer charges facilities for the provision of the facility's record retrieval program. Such charges (including charges for data storage – electronic and for labor – department outsource) are not for the sale of tangible personal property or for a taxable service and, thus, are not subject to sales and use tax.

2. Charges for medical records in Taxpayer's Clinical Data line of business are comparable to charges for medical records in Taxpayer's Release of Information line of business. Georgia sales and use tax does not apply to the sale of records that Taxpayer, in this line of business, delivers or provides access to electronically. If such records were delivered in a tangible format, the production and sale of the records would be subject to sales and use tax, and the amount subject to tax will include delivery charges and any other charges for services that are necessary

to complete the particular sale.

3. Based on the facts presented, Taxpayer performs nontaxable services in the Information Management line of business. Taxpayer's charges for coding, formatting, and abstraction services are not subject to sales and use tax. However, Taxpayer must pay sales or use tax on the purchase price of tangible personal property used to perform these services.

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. The facts herein are those presented by the taxpayer and the Department accepts them as true for this ruling. If the facts presented herein change, are not true, are different, or material facts have been omitted, the conclusions reached in this ruling may change. In addition, subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.



