

SC PRIVATE LETTER RULING #05-2

SUBJECT: Charges for Copies of Medical Records  
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000; Supp. 2004)  
S. C. Code Ann. Section 12-36-1310 (2000; Supp. 2004)  
S. C. Code Ann. Section 12-36-60 (2000)  
S. C. Code Ann. Section 12-36-70 (2000)  
S. C. Code Ann. Section 12-36-90 (2000; Supp. 2004)  
S. C. Code Ann. Section 12-36-130 (2000; Supp. 2004)  
S. C. Code Ann. Section 44-115-80 (2002)  
S. C. Code Ann. Section 44-115-90 (2002)  
S. C. Code Ann. Section 44-115-100 (2002)  
SC Regulation 117-308 (Supp. 2004)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2004)  
SC Revenue Procedure #03-1

SCOPE: A Private Letter Ruling is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Letter Ruling is an advisory opinion; it does not have the force and effect of law and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. Is ABC, LLC, in its business as described in the Facts, selling tangible personal property subject to the sales and use tax or providing a non-taxable medical records processing service?
2. Are the charges by ABC, LLC, as described in the Facts, subject to the sales and use tax?

Conclusion:

1. ABC, LLC is in the business of selling tangible personal property subject to the sales and use tax under Code Sections 12-36-910 and 12-36-1310 (printed copies) and subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) (access to or use of the ABC database of medical records through Quickview).
2. The charges by ABC, LLC for various services (whether optional or mandatory), as described in the Facts, are made in conjunction with, or as part of, the sale of
  1. printed copies of medical records, or
  2. access to or use of the ABC database of medical records through Quickview,

and are includable in "gross proceeds of sales" or "sales price", and therefore, subject to the tax.

Facts:

ABC, LLC ("ABC") provides health and medical records to attorneys, insurance companies, governmental entities, patients, physicians, hospitals and others. ABC employees will visit hospitals, physician offices, and other locations and utilize laptop computers, scanners, and other equipment to gather the medical record information requested by a customer. The information will be gathered and provided to the customer in one of the two following methods:

Method One:

An ABC employee utilizes a laptop computer, scanner, or other similar electronic equipment to electronically "scan" and save the requested information. Upon securing the scanned information, the employee electronically transmits the scanned information to the ABC facility in Alpharetta, Georgia. When the information is received at the Georgia facility, the information is processed and, depending on the customer's election, either an electronic version of the information is provided to the customer via access to or use of the ABC database or a hardcopy version is printed and mailed to the customer.

Method Two:

An ABC employee will photocopy the requested information and then mail the requested information to the customer from the hospital, physician's office, or other location where the medical records and related information are located.

With respect to its business, ABC will charge its customers one or more of the following fees. Each fee will be separately stated on the bill to the customer.

Basic Retrieval Fee: A flat fee charged for locating the records

Quickview Delivery Fee: A fee to electronically access and view the contents of the delivered information via the Internet.

Per Page Fee: A fee for each page of the medical record that is either scanned or photocopied.

Postage Fee: A fee for the postage associated with mailing a printed copy of the individual's medical record.

Handling Fee: A fee, distinct from the fee for postage, associated with mailing a printed copy of the individual's medical record.

E-Disclose Fee: A fee to track and confirm the status of the information being delivered.

Certification Fee: A fee to certify the information.

Notarization Fee: A fee to notarize the information.

Deposition Fee: A fee to affirm that the information is suitable to be utilized in a legal deposition.

Docustore Fee: A fee to electronically store the information.

Discussion:

Code Section 12-36-910(A) imposes the sales tax and states:

A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310(A) imposes the use tax and states:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-60 defines the term "tangible personal property" and states:

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages,

or other evidences of debt. Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service. (Emphasis added.)

Based on the above, in order for the sales or use tax to apply, there must be a retail sale of tangible personal property.

SC Regulation 117-308, concerning professional, personal, and other services, states in part:

The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax, unless the sales and use tax is specifically imposed by statute on such services (i.e. accommodation services, communication services). (Emphasis added.)

The so-called “true object” test is generally used to delineate sales of services from sales of tangible personal property. Applying this test to the matter at hand, it must be determined whether the copies or the services of ABC are the true object of these transactions.

The “true object” test is best described in 9 Vanderbilt Law Review 231 (1956), wherein it is stated:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser's special need — a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company — this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of the contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting *Snite v. Department of Revenue*, 398 Ill. 41, 74 N.E. 2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays ... [is measured by the total cost of the article

and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issues at hand. Furthermore, a review of two prior Department advisory opinions (SC Revenue Ruling #04-5 and SC Revenue Ruling #92-15) indicates that charges for copies are subject to the tax.

Chapter 115 of Title 44, the Physicians' Patient Records Act, contains the following provisions:

Code Section 44-115-80:

A physician, or other owner of medical records as provided for in Section 44-115-130, may charge a fee for the search and duplication of a medical record, but the fee may not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages, and a clerical fee for searching and handling not to exceed fifteen dollars per request plus actual postage and applicable sales tax. A physician, health care provider, or other owner of medical records must provide a patient's medical records at no charge when the patient is referred by the physician, health care provider, or an employee, agent, or contractor of the owner of the record to another physician or health care provider for continuation of treatment for a specific condition or conditions. The physician may charge a patient or the patient's representative no more than the actual cost of reproduction of an X-ray. Actual cost means the cost of materials and supplies used to duplicate the X-ray and the labor and overhead costs associated with the duplication. (Emphasis added.)

Code Section 44-115-90:

When a request for medical information involves more than making copies of existing documents, a physician may charge reasonable fees, exclusive of those fees charged for copying the medical record, for providing this service.

Code Section 44-115-100:

The provisions of Sections 44-115-80 and 44-115-90 do not apply to requests for medical information necessary to process a health insurance claim made by a patient or on behalf of the patient by a health insurance carrier or health insurance administrator for services rendered by the physician from whom the information is requested.

Also, Code Section 12-36-70(1)(a) defines the term "retailer" or "seller" to include every person "selling or auctioning tangible personal property whether owned by the person or others."

Based on the above, it is the opinion of the Department that ABC is engaged in the business of selling tangible personal property - copies of medical records – owned by others.

The next issue concerns the issue of “electronic” copies of medical records. The ABC website describes the delivery of the electronic copies to the customers as follows:

QuickView – the most widely used electronic document delivery tool in the healthcare industry – gives you instant online access to your documents. Your documents are digitally captured at the source, indexed for easy retrieval, and delivered to a secure, online, paperless environment. Once your account has been established you can enjoy benefits such as printing your own records, assigning roles and permissions to users, and accessing all payment information including invoice number, date of remittance and more. QuickView offers the flexibility of having access to your documents anywhere 24 hours a day. In addition, QuickView offers an online storage option and meets HIPAA regulations.

Communications are subject to sales and use taxes under Chapter 36 of Title 12 pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the:

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. Gross proceeds from the sale of prepaid wireless calling arrangements subject to tax at retail pursuant to item (5) of this subsection are not subject to tax pursuant to this item. Effective for bills rendered after August 1, 2002, charges for mobile telecommunications services subject to the tax under this item must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code. The term “charges for mobile telecommunications services” is defined for purposes of this section the same as it is defined in the Mobile Telecommunications Sourcing Act. All other definitions and provisions of the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code are adopted; (Emphasis added.)

In addition, communication services subject to the tax are, by definition, tangible personal property. See Code Section 12-36-60 (cited above).

In an advisory opinion, SC Revenue Ruling #04-15, the Department listed various communication services subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), including “Database Access Transmission Services (On-Line Information Services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc.”

Based on the above, it is the opinion of the Department that ABC is engaged in the business of selling a communication service - the Quickview service – that is subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) as a charge to access or use a communication service.

The final issue concerns the application of the tax to the various charges associated with the sale of the copies.

The sales tax is imposed upon a retailer's "gross proceeds of sales" which is defined at Code Section 12-36-90, in part, as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property... without any deduction for... the cost of materials, labor, or service... [or] any other expenses....

The use tax is based upon the "sales price" of tangible personal property. The term "sales price" is defined at Code Section 12-36-130, in part, as:

... the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

- (a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise; ....

In Meyers Arnold, Inc. v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E.2d 920, 923 (1985), the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

... But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax. With respect to the issue at hand, but for the sale of the copies, ABC would not receive the various other separately stated fees.

In Commission Decision #90-38, the Commission held that charges for engraving services, even though optional, were a part of the sale of plaques and trophies by the retailer and includible in gross proceeds of sales. The decision states, in part:

...We find and conclude that here the "engraving charges" are part of the sale of tangible personal property since the customer is not seeking a professional service but is seeking an engraved trophy or plaque....

\* \* \* \*

...The Courts have held that although the amount of materials used may be inconsequential with respect to the labor involved where the customer seeks to purchase custom made or designed tangible personal property, the artistic skill of the craftsman is a part of the sales price of the product and is inextricably linked ....

In summary, charges by ABC for various services (whether optional or mandatory), as described in the Facts, are made in conjunction with, or as part of, the sale of

1. printed copies of medical records, or
2. access to or use of the ABC database of medical records through Quickview,

and are includable in "gross proceeds of sales" or "sales price", and therefore, subject to the tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
Burnet R. Maybank III, Director

April 15, 2005  
Columbia, South Carolina