

SC REVENUE RULING #04-5

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

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-910(A) (2000)
S. C. Code Ann. Section 12-36-1310(A) (2000)
S. C. Code Ann. Section 12-36-60 (2000)
SC Regulation 117-308
SC Regulation 117-322

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling is an advisory opinion; it does not have the force or effect of law and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Questions:

1. If a medical professional charges a patient for a copy of the patient's records for any of the following purposes, are such charges subject to the sales and use tax?
 - a) The patient wishes to maintain copies of all his medical records.

b) The medical professional must make copies of the patient's records for purposes of sending the patient to a specialist for further diagnosis and treatment.

c) The medical professional must make copies of the patient's records because the patient has requested such copies for purposes of seeking the opinion of another medical professional.

2. If a medical professional charges a third party (not the patient) for a copy of a patient's records for any of the following purposes, are such charges subject to the sales and use tax?

a) The medical professional charges a personal injury attorney for copies of a patient's records the attorney has requested for purposes having such records reviewed by another medical professional who may testify in court as an expert witness.

b) A medical professional leaves a medical practice and as a result of the termination of his relationship with that practice, the medical professional is charged for copies of patient files of those patients who will remain the patient of the departing medical professional.

Conclusions:

1. If a medical professional charges a patient for a copy of the patient's records for any of the following purposes, then such charges are not subject to the sales and use tax since providing the copies is incidental to, and a part of, the medical services rendered by the medical professional.

a) The patient wishes to maintain copies of all his medical records.

b) The medical professional must make copies of the patient's records for purposes of sending the patient to a specialist for further diagnosis and treatment.

c) The medical professional must make copies of the patient's records because the patient has requested such copies for purposes of seeking the opinion of another medical professional.

2. If a medical professional charges a third party (not the patient) for a copy of a patient's records for any of the following purposes, then such charges are not subject to the sales and use tax only if the sale of the copy of the patient's records by the medical professional constitutes a casual or isolated sale as defined in SC Regulation 117-322.

a) The medical professional charges a personal injury attorney for copies of a patient's records the attorney has requested for purposes having such records reviewed by another medical professional who may testify in court as an expert witness.

b) A medical professional leaves a medical practice and as a result of the termination of his relationship with that practice, the medical professional is charged for copies of patient files of those patients who will remain the patient of the departing medical professional.

If a medical professional charges a third party (not the patient) for a copy of a patient's records for any of the above purposes, then such charges are subject to the sales and use tax if the sale of the copy of the patient's records by the medical professional does not constitute a casual or isolated sale as defined in SC Regulation 117-322.

The determination as to whether a medical professional is regularly engaged in selling such copies or other tangible personal property must be determined on a case-by-case basis. This determination does not only require a review of the sale of copies of patient records by the medical professional, but requires a review of all sales of tangible personal property (if any) by the medical professional (e.g. sales of medical information booklets and pamphlets, sales of juices and soft drinks, sales of medicines, nutritional supplements, vitamins, medical supplies, and medical devices when such sales are not incidental to, and a part of, the medical services rendered by the medical professional).

For a definition of a "casual or isolated sale," see SC Regulation 117-322 in the "Discussion" portion of this advisory opinion.

Note: For purposes of this document, the term "medical professional" includes medical practices organized as partnerships, limited liability companies, and corporations. In addition, the above conclusions only apply to charges for copies by a medical professional and do not apply to charges by separate businesses hired by the medical professional to provide copies, and various other products and services, to the medical professional, his patients, and others.

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.

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 professional services of a physician 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.

SC Regulation 117-308.1 concerns professional services and states:

Receipts from the performance of professional services are not subject to the sales tax.

The property used incidental to the performance of such services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, lawyers, accountants, civil engineers, and other licensed professional men is subject to tax on its sale to such persons.

Note however, that a doctor, etc., may in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines.

In those cases where professional men are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.

SC Regulation 117-308.3, concerns physicians specifically, and states:

Doctors are the consumers of the supplies, medicines, office furniture and fixtures and special tools and equipment they use in the practice of their profession. Sales of such supplies and equipment to doctors are retail sales and subject to the sales tax.

It is only when a doctor has a stock of drugs from which he makes numerous and substantial retail sales that he is required to have a retail license and to remit sales tax directly to the department.

A review of the SC Regulations 117-308 and various Department advisory opinions (SC Revenue Ruling #91-20, SC Private Letter Ruling #90-4 and SC Revenue Ruling #92-15) indicates that charges for copies and other tangible personal property by a professional, and other person generally thought of as a service provider, are subject to the sales tax if such person is not providing the copies as part of services rendered and the sale of the copy of the patient's records by the medical professional does not constitute a casual or isolated sale.

SC Regulation 117-322, concerns casual and isolated sales, and states:

Casual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.

For purposes of administering this regulation, the term "casual" means occurring, encountered, acting or performed without regularity or at random. The term "occasional" and the term "isolated" mean occurring alone or once, an incident not likely to recur, sporadic.

Finally, 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.

Based on the above, charges for copies by a medical professional are not subject to the sales tax if such medical professional is providing the copies as part of medical services rendered. If the copies are not being provided as part of the medical services rendered, then the charges for such copies are subject to the sales tax if the sale of the copy of the patient's records by the medical professional does not constitute a casual or isolated sale as defined in SC Regulation 117-322.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank, III

Burnet R. Maybank III, Director

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Columbia, South Carolina