
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC PRIVATE LETTER RULING #04-1

SUBJECT: Data Processing
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000; Supp. 2002)
S. C. Code Ann. Section 12-36-1310 (Supp. 2000; Supp 2002)
S. C. Code Ann. Section 12-36-60 (2000)
S. C. Code Ann. Section 12-36-110 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2002)
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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate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.

Question:

Are the charges by ABC as described in the Facts subject to the sales and use tax?

Conclusion:

It is the Department's opinion that the charges by ABC for Electronic Patient Statements, Claims, Coded Data, Download Claims and the X Claims, as described in the Facts, are charges for "data processing" as defined in Code Section 12-36-910(C) and not subject to the tax since the information is (1) furnished and processed on a per customer basis; (2) the information (i.e. statements, reports) is sent (electronically, by diskette or tape, by hard copy statement or report, etc.), or accessible via ABC's network, to the customer who originally submitted this information or the information is sent to the patient of the customer who originally submitted this information and the patient is receiving at the direction of the customer, at no additional charge to the patient, a statement or invoice with respect to the services provided to the patient by the customer of ABC: and, (3) the information is not provided for a charge to an unrelated party (e.g., the information is not made a part of an online database where such information is available for a charge to other hospitals, doctors' offices, or insurance companies).

Furthermore, the charges for Network Connection Services, Y Users/Usage, and the Healthcare Compliance Software, as described in the facts, are charges for “data processing” as defined in Code Section 12-36-910(C) and not subject to the tax provided such constitute charges for use of or access to the information processed with respect to Electronic Patient Statements, Claims, Coded Data, Download Claims and the X Claims, as described in the Facts. However, such charges are subject to the tax under Code Section 12-36-910(B)(3) when the customer using or accessing the information is not the customer for whom the information was processed (see definition of “data processing”) or is not the patient of the customer who originally submitted this information.

It is important to note that if the transaction or the taxpayer’s method of operation is not the same as set forth in this advisory opinion, or if the transaction or the taxpayer’s method of operation changes (e.g. information is not furnished and processed on a per customer basis; the information is provided for a charge to an unrelated party, etc.), then the charges described in this advisory opinion may be subject to the sales and use tax as sales of tangible personal property at retail (i.e. statements, reports) or charges for the ways or means of communication (i.e. access to the taxpayer’s network). Any determination as to the taxability of such charges could only be made after a complete review of such new or revised facts.

Note: With respect to transaction excluded from the tax under Code Section 12-36-910(C), sales to, or purchases by, ABC of diskettes, tapes, paper, and other items of tangible personal property used to send the information to the customer are subject to the tax since ABC is the user or consumer of these items in providing its data processing service.

Facts:

ABC provides the following services for its customers:

Electronic Patient Statements

ABC’s customers transmit electronic statements through the ABC network to the ABC host computer. Once received, the data processing area expands, balances, summarizes, etc. the data. When completed, this data is sent electronically to XYZ in Iowa. XYZ produces hardcopy statements that are then folded, stuffed into envelopes, postage applied and subsequently mailed to the appropriate party.

ABC charges its customers a fee for each statement, which includes the cost of goods and services by XYZ and the postage cost of the mailing.

The statements are furnished and processed on a per customer basis, but the information is not sent to the customer who originally submitted the information. The information generally travels from the provider to XYZ via ABC to the patient.

All Claims

ABC's customers transmit individual documents, claims, explanations of benefits, detail bills, attachments, etc., electronically through the ABC network to the ABC host computer. These documents are expanded upon receipt, reformatted into a standard internal format, edited, and then stored in holding files if correct. If errors are encountered, these are returned and the customer is required to correct the document and resubmit. At periodic intervals, the holding files are processed. These documents are then passed into the processing system where bar coding for addresses is generated and dissimilar documents for the same service are joined. These documents are then printed and the resulting hard-copy forms are burst, decollated, stuffed into envelopes and mailed. ABC retains a back-up image of these documents for at least seven years.

ABC charges its customers a fee per transaction, based on the information content and the number of pages. This fee covers all of the ancillary costs of the document handling, such as stock, additional staff time and postage. These costs cannot be separated since, whenever possible, ABC mixes documents from various submitters into a single mailed entity and therefore cannot determine the precise allocations for all these costs.

All Claims are furnished and processed on a per customer basis, but the information is not sent to the customer who originally submitted the information. The information generally travels from the provider to the clearinghouse directly and/or via ABC, then to the payer or patient for payment.

Coded Data

ABC's customers submit large volumes of reports or other historically significant electronic information to ABC's host computer either through the ABC network, or by sending tapes to the ABC's data center. These data files are then reformatted and archived in optical storage media on the ABC's host computer. ABC creates balance reports that are then returned to the provider. Subsequently, ABC provides online transaction access, wherein the customer may request access to and view this information. The customer's access consists of electronic transactions that allow them to drill down to precisely the information they wish to view and/or print.

ABC charges its customers for the processing of the data into the archives, the storage costs, and access fees to retrieve and review or print the information.

Coded Data is furnished and processed on a per customer basis and the information is only sent or accessible via ABC's network, to the customer who originally submitted the information.

Download Claims

ABC's customers download print-image files of their Z1 and Z2 claims to the ABC Download system, which resides at the customer's site. The Download software translates, edits and batches the customer's claims for electronic transmission to the ABC network. The customer specific input data is translated and reformatted into ABC's common processing format. Data can be manipulated according to written specifications provided by the customer. After the data has been reformatted, it is edited and placed in claims batches for further processing. Data entry screens allow the customer to change and correct data errors reported during the edit process. Detail and summary reports can be printed to help the customer balance their batches back to their host system reports. Claims can be archived for later processing, including secondary billing. Once claims have been transmitted through ABC's network, they are distributed electronically to the appropriate payers. Payers not accepting electronic formats are mailed hard-copy claim forms.

In addition to claims processing, the Download systems have eligibility inquiry, claims status inquiry, check inquiry, and other inquiry functions. Additional per transaction fees are charged for inquiry only transactions.

Download Claims are furnished and processed on a per customer basis, but the information is not sent to the customer who originally submitted the information. The information generally travels from the provider to the clearinghouse directly and/or via ABC, then to the payor or patient for payment.

X Claims

ABC's customers submit individual claims electronically through the ABC network. These claims are expanded upon receipt, reformatted into a standard internal format, edited and balanced for content and then stored in holding files if correct. If errors are encountered, these are returned and the customer is required to correct the claim and resubmit. At periodic intervals, the holding files are processed. This data is then passed into a distribution system where the claims are separated into individually addressed files that are sent on to other parties where the claims are processed for payment. ABC retains a backup image of this claim-related information for at least seven years. ABC receives balancing information from the other parties, as well as message files for return to the customers. These are reformatted, stored and made available for retrieval through ABC's network upon customer request.

ABC charges its customers a per claim fee for the submission of the claims where it is charged a fee by the third parties to whom it sends this information.

X Claims are furnished and processed on a per customer basis, but the information is not sent to the customer who originally submitted the information. The information generally travels from the provider to the clearinghouse directly and/or via ABC, then to the payer or patient for payment.

Furthermore, ABC charges its customers the following fees:

Network Connection Services

ABC charges South Carolina providers for the ability to submit claims electronically to 123 of South Carolina.

Y Users/ Usage

Y customers are directly connected to ABC's host computer via a dedicated connection. Information requests are entered directly into screens programmed specifically for this activity. These request transactions are interpreted, archived for reporting and summary activity purposes, and then the interpreted, expanded requests are routed electronically to information providers within, or accessible to, the ABC network. The responses from these providers are received, reformatted, archived for reporting and summary activity purposes, and the reformatted answers are then returned to the requesting node.

ABC charges its customers for each request, successful or otherwise, and for each response returned to a request.

Healthcare Compliance Software

ABC Shared Hub customers have access to Healthcare Compliance Software, which is built into ABC's proprietary software. The purpose of the Healthcare Compliance Software is to comply with the Medicare Mandate, which requires sites to check claims prior to billing, in order to validate that the conditions being billed are valid for the services being rendered. The claims are validated against the rules database which houses the Local Medical Review Policies ("LMRP"). All Medicare claims are routed through the checker and if passed are transmitted.

ABC charges its customers for each claim validated against the Healthcare Compliance Software.

Discussion:

Code Section 12-36-910(A) reads:

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. (Emphasis added.)

Code Section 12-36-1310(A) imposes a use tax and reads:

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. (Emphasis added.)

Code Section 12-36-60 defines the term "tangible personal property" to mean:

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. (Emphasis added.)

Therefore, for the 5% sales or use taxes to apply, there must be a retail sale or retail purchase of tangible personal property.

Code Section 12-36-110 defines the terms "sale at retail" and "retail sale," in part, as follows:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

The sale or use of communications is also subject to tax under Chapter 36 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;
...

In reviewing various communication issues in the past, the department has concluded that charges for the ways or means of communication must be charges for access to, or use of, a communication system, whether this charge is based on a fee per a specific time period or per transmission.

Based on the above, the charges by ABC would be subject to the sales and use tax as sales of tangible personal property at retail (i.e. statements, reports) or charges for the ways or means of communication (i.e. access to the ABC network).

However, since July 1, 1995, Code Section 12-36-910(C) has excluded from taxation "the gross proceeds accruing or proceeding from the charges for or use of data processing." This section defines "data processing" to mean:

the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers. (Emphasis added.)

Based on the above, it is the Department's opinion that the charges by ABC for Electronic Patient Statements, Claims, Coded Data, Download Claims and the X Claims, as described in the facts, are charges for "data processing" as defined in Code Section 12-36-910(C) and not subject to the tax since the information is (1) furnished and processed on a per customer basis; (2) the information (i.e. statements, reports,) is sent (electronically, by diskette or tape, by hard copy statement or report, etc.), or accessible via ABC's network, to the customer who originally submitted this information or the information is sent to the patient of the customer who originally submitted this information and the patient is receiving at the direction of the customer, at no additional charge to the patient, a statement or invoice with respect to the services provided to the patient by the customer of ABC: and, (3) the information is not provided for a charge to an unrelated party (e.g., the information is not made a part of an online database where such information is available for a charge to other hospitals, doctors' offices, and insurance companies).

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SOUTH CAROLINA DEPARTMENT OF REVENUE

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

January 12, 2004
Columbia, South Carolina