

SC PRIVATE LETTER RULING #07-2

**SUBJECT:** Healthcare Communications Network  
(Sales and Use Tax)

**REFERENCES:** S. C. Code Ann. Section 12-36-910 (2000; Supp. 2005)  
S. C. Code Ann. Section 12-36-1310 (2000, Supp. 2005)  
S. C. Code Ann. Section 12-36-60 (2000; Supp. 2005)  
S. C. Code Ann. Section 12-36-1910 (2005)  
S. C. Code Ann. Section 12-36-1920 (2005)  
S. C. Code Ann. Section 12-36-1930 (2005)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #05-2

**SCOPE:** A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is 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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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. Are charges by JKL, Inc. to members of the healthcare industry for providing access to and use of the JKL Network, as described in the Facts, subject to the sales and use tax?
2. Is the one-time charge by JKL, Inc. to members of the healthcare industry for Implementation and Training, as described in the Facts, subject to the sales and use tax?
3. If the charges by JKL, Inc. to members of the healthcare are subject to the sales and use tax, how are such charges sourced for purposes of sales and use taxes?

Conclusions:

1. The charges by JKL, Inc. to members of the healthcare industry for providing access to and use of the JKL Network, as described in the Facts, are subject to the sales and use tax as charges for access to and use of a communication system or service under Code Sections 12-36-910(B)(3) and 12-36-1310(b)(3).
2. The one-time charge by JKL, Inc. to members of the healthcare industry for Implementation and Training, as described in the Facts, is subject to the sales and use tax as part of the “gross proceeds of sale” of the communication service.
3. For purposes of the sales and use tax, charges by JKL Inc. to members of the healthcare industry, as described in the Facts, are sourced to the primary business street address of the end user. In other words, the charges by JKL, Inc. should be sourced to the business location where the end user who accesses or uses the JKL Network is primarily located.

Facts:

ABC (“ABC”), a Michigan corporation, recently acquired JKL, Inc. (“JKL”). Under ABC’s organizational structure, JKL’s business activity will be to provide a private communications management network to members of the healthcare industry (“Users”), allowing such Users to provide information amongst themselves via the JKL Application (“Application”).

Prior to use of the Application, all Users are required to accept the terms of an Enterprise License and User Agreement (“Agreement”), which only allows the User the right to access and use the Application. All fees are set forth in the Agreement.

The User is responsible for procuring the necessary equipment to access and use the Application, including computer hardware and equipment, Internet access, and fax machines.

JKL owns and/or leases computer equipment in North Carolina for purposes of providing the service. Any exchange of data between the Users occurs, via the Internet and/or fax lines, through JKL’s network facility in XYZ (“Network”).

The Application is a secure and private paperless transport for any electronic data and it works with the User’s existing Internet Service Provider (“ISP”)/Network. It is designed to help manage information requests and request fulfillments regardless of the format that the information is in or what communications transport each User employs. JKL does not maintain a universal patient record database. Each User has a separate private database and JKL maintains the associations for each User.

The Application is a paperless transport for any data being requested and uses a uses a document container technology for managing forms and their related content as well as viewing patient histories. The Application provides a single interface for viewing whom the User has requested information from and viewing who owes the User information. Requests sent through the Application automatically get routed to the appropriate destination as defined by the User defined routing rules. All requests and replies are kept in an unalterable, time-stamped audit trail that both Users can view. Hard copy documents can be scanned using any common fax machine using a fax imaging process. All replies are automatically matched up to their original request. All images are stored online indefinitely and can be retrieved, downloaded or printed at will.

Data that can be viewed on a User's computer screen can be instantly sent to any other User on the JKL network using Virtual Internet Printers ("VIP"). This allows for most items to be imaged, by printing the document to a virtual printer. The image can then be shared with other Users and/or associated with a patient or open issue as a totally paperless process.

If the document is only available in paper hard copy, it can be imaged using Virtual Fax Service ("VFS"). The User can forward their existing fax lines to the Network, which transforms incoming faxes to an e-document and stores the document in an online repository. VFS can be customized to handle any type of communication.

VFS also allows for bi-directional faxing, which provides that when a request message or image is sent to an organization not already a ProviderLink User, the system automatically converts the transmission into a fax and logs its successful delivery just as it does with electronic images between Users. The off-line organization then faxes back the reply using a fax-back coversheet with a bar code that is scanned by the Application. The reply is automatically imaged and matched up with the original request on the User's screen and is stored with the patient files. Fax back processes are useful for collecting physician signatures, form completion requests, and referral management.

Once a User enters into an Agreement with JKL, the User will be charged a monthly service fee based on two factors – (1) the number of concurrent logins (simultaneous users) and (2) the number of faxes the User anticipates sending through the Network during a month. The price includes unlimited online transactions, online document storage and up to a fixed limit of fax pages per month.

New Users are charged a one-time Implementation and Training fee based on the size and need of the User. The fees are mandatory; however, they can vary based on the length of the training and can range from web-based implementation to five days of on-site configuration, electronic form design, consultation on workflow integration, and product training.

Discussion:

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

A sales tax, equal to five<sup>1</sup> 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) 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<sup>2</sup> 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, the term tangible personal property includes the sale or use of intangibles, including communications, that are subject to South Carolina sales or use taxes under Chapter 36 of Title 12.

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)<sup>3</sup>, which impose the tax on the:

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<sup>1</sup> At the time this document was issued, the total state sales and use tax rate was 5%. Beginning June 1, 2007, the total state sales and use tax rate will be 6%. Code Section 12-36-1110, which increases the sales and use tax rate by 1% beginning June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

<sup>2</sup> See footnote #1.

<sup>3</sup> See SC Revenue Ruling #06-8 for other statutes concerning communications subject to the sales and use tax. These other communications statutes are not relevant to this discussion.

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 .... (Emphasis added.)

The Department has long held that the literal meaning of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) imposes the sales and use tax on the total amount of money derived, exclusive of deductions, from a commercial venture and accruing or proceeding from charges for the manner, method or instruments for sending a signal of the voice or of messages is subject to the sales and use tax. See SC Revenue Ruling #89-14, SC Revenue Ruling #04-15 and SC Revenue Ruling #06-8.

Furthermore, the definition of tangible personal property, as defined in Code Section 12-36-60, includes services and intangibles "the sale or use of which is subject to tax under [Chapter 36]," such as "communications." The Second College Edition of the American Heritage Dictionary defines "communication," in part, as "[t]he exchange of thoughts, messages or information, as by speech, signals or writing." "Communications" is defined, in part, as, "a means of communicating esp.: a system of sending and receiving messages, such as mail, telephone and television." The Department has long used the definition found in the Second College Edition of the American Heritage Dictionary for the term "communications."

Based on the above discussion, it is the Department's position that charges for the ways or means of communication include charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether this charge is based on a fee per a specific time period or per transmission. This is further supported by the definition of the terms "sale" and "purchase," which are defined in Code Section 12-36-100 to include "a license to use or consume." See SC Revenue Ruling #89-14, SC Revenue Ruling #04-15 and SC Revenue Ruling #06-8.

The Department of Revenue has taxed communication services such as telephone services, paging services, answering services, cable television services, satellite programming services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website.

Based on the above, the charges by JKL, Inc. to members of the healthcare industry for providing access to and use of the JKL Network, as described in the Facts, are subject to the sales and use tax as charges for access to, and use of, a communication system or service.

Code Section 12-36-90 defines the term “gross proceeds,” the basis for sales and use tax on communication services, 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....

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, which includes communication services, is subject to the tax.

Based on the above, the one-time charge by JKL, Inc. to members of the healthcare industry for Implementation and Training, as described in the Facts, is subject to the sales and use tax as part of the “gross proceeds of sale” of the communication service.

Finally, Code Section 12-36-1920 states:

For the purposes of telecommunications sourcing:

(1) Except for the defined telecommunication services in item (3), the sale of telecommunication service sold on a call-by-call basis must be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunication services in item (3), a sale of telecommunications services on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sale of the following telecommunication services must be sourced to each level of taxing jurisdiction:

(a) A sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

(b) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

(c) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(ii) Service in which all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and the segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and the segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

Code Section 12-36-1900(9) defines the term “place of primary use” as

the street address representative of the customer's primary use of the telecommunications service, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

Code Section 12-36-1900(4) defines the term “customer” as

the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this provision applies only for the purpose of sourcing sales of telecommunications services pursuant to Section 12-36-1920. "Customer" does not include a reseller of telecommunications service or a mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area. (Emphasis added.)

Code Section 12-36-1930 states:

Notwithstanding another provision of law, this article applies to local sales and use taxes on telecommunication services collected and administered by the Department of Revenue on behalf of the local jurisdictions.

Based on the above, for purposes of the sales and use tax, charges by JKL, Inc. to members of the healthcare industry, as described in the Facts, are sourced to the primary business street address of the end user. In other words, the charges by JKL, Inc. should be sourced to the business location where the end user who accesses or uses the JKL Network is primarily located.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
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Ray N. Stevens, Director

March 13 \_\_\_\_\_, 2007  
Columbia, South Carolina