
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC PRIVATE LETTER RULING #14-5

SUBJECT: 123 System for Insurance Claims
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000; Supp. 2013)
S. C. Code Ann. Section 12-36-1310 (2000; Supp. 2013)
S. C. Code Ann. Section 12-36-1110 (Supp. 2013)
S. C. Code Ann. Section 12-36-60 (2000)
S. C. Code Ann. Section 12-36-100 (2000)
SC Regulation 117-329.4 (Supp. 2013)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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.

Question:

Are charges by MNO, Inc. for its 123 System, a web-based application, subject to the sales and use tax?

Conclusion:

The charges by MNO, Inc. for its 123 System, a web-based application, are not subject to the sales and use tax.

The transaction is the sale of a nontaxable data processing service as defined in Code Section 12-36-910(C) since (1) the 123 Information System is a service where information furnished by the customer, or the customer's insurance carriers on behalf of the customer, is manipulated by MNO, Inc. through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers; (2) the insurance claims information on the 123 System is the result of the "data processing" performed by MNO, Inc. as part of its service; (3) "data processing" includes "the electronic transfer of or access to that information;" and (4) the 123 System is the means through which the customer has access to the "data processing" performed by MNO, Inc.

Note: As stated above and as described in the facts, MNO, Inc. is providing a nontaxable data processing service. If, however, MNO, Inc. did not manipulate the customer's insurance claims information and only provided a service that allowed the customer to access a website to use software to enter its own claims information, to keep track of such claims information, to create various reports, and to otherwise do its own data processing of its information, then the service would be subject to the sales and use tax as a communications service (An Application Service Provider) under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). See SC Revenue Ruling #03-5 and SC Regulation 117-329.4(k).

Facts:

MNO, Inc. ("MNO") offers a 123 system that provides a 456 system to a variety of customers. The customer's own data is consolidated and reported in a customer web based application.

Every year large companies are subject to numerous insurance claims. The types of claims also vary considerably, especially for companies that deal directly with the general public (i.e., fast food chains). The companies experience customer accidents which result in claims such as product liability claims, worker's claims, fleet cars or trucks being involved in accidents, etc. Claims can take years to be settled with events to be tracked for each one. These claims are needed for accounting purposes, liability estimates, and other reasons related to the company's finances. It is required that companies know the up to date status of all their pending claims. This can be difficult to manage because a company may have several different insurance carriers; and for each line of business the different insurance carriers may have their own methods of reporting claims and updating the claims.

The service provided by MNO is designed to solve these problems. MNO's staff performs the services of collecting all the claims information from each commercial insurance carrier, checking the information for completeness and for errors and transforming it into a standardized electronic format. If something is missing, MNO will reach out to the insurance company for more information. Once the staff has obtained all necessary information, the confidential claim information is then loaded into a computer database and delivered to each customer through an internet connection. Each customer pays a fee to use the 123 System to login through a browser with an identification and password, so the customer can only see its own private information. Customers pay for the service provided by MNO based on the number of claims being managed, the number of insurance carriers sources needed to be combined for the customer, the number of accesses needed, and the amount of time/effort needed to perform the services described in this section.

With the report module screen that MNO provides, the final output can become thousands of different reports which include output in multiple formats. The customers can e-mail the report to anyone by using the browser's e-mail functionality.

Further, there is also a risk dashboard where a customer can access information and details behind the problems or success within the customer's company. The different reports that are accessible from the risk dashboard are loss runs, loss prevention reports lag analysis, exposure and policy reporting, etc., based exclusively on the customer's own data. Claims against the customer may also be entered into the system via screens available through the same system access and either handled internally by the customer's own adjusters or sent on to the customer's insurance carrier for handling and settlement. In all cases, the system services pertain only to customer owned and personal data for use by the customer in running its own business. The customer's own employees often reside in many different states that need access to the system. The system access is given only to a limited number of employees that have a need to access the system for the business of the company, as opposed to all employees within the customer's organization.

In addition to the 123 System, MNO provides account services such as support, training and consulting with respect to reports and information relevant to the 123 System.

Discussion:

Code Section 12-36-910(A) imposes a sales tax, equal to 6% of the gross proceeds of sales, 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 a use tax, equal to 6% of the sales price of the property, 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.

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 pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3)¹, 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

(emphasis added).

The Department has long held that Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) impose 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. 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 has taxed communication services such as telephone services, paging services, cable television services, satellite programming services (including, but not limited to, emergency communication services and television, radio, music or other programming services), fax transmission 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.

¹ 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.

In SC Revenue Ruling #03-5, the Department held that a charge by a ABC Service Provider (ABC) that allows a customer to access the ABC website and use the software on that website is subject to the sales and use tax. The Department further held that such charges by an ABC are similar to charges by database access services and are therefore subject to the sales and use tax under the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). In addition, SC Regulation 117-329.4 states in part:

The following are examples of communication services that are subject to the sales and use tax (unless otherwise listed as non-taxable in 117-329.5 or otherwise exempt or excluded under the law):

* * *

(k) Database Access Transmission Services or On-Line Information Services, including, but not limited to, legal research services, credit reporting/research services, and charges to access an individual website (including Application Service Providers)

(emphasis added).

However, Code Section 12-36-910(C) provides a specific exclusion from the tax for “data processing” as defined in the code section, and states:

Notwithstanding other provisions in this article or Article 13, Chapter 36, of this title, the sales or use tax imposed by those articles does not apply to the gross proceeds accruing or proceeding from charges for or use of data processing. As used in this subsection, “data processing” means 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.

Based on the above, charges by MNO for its 123 System, a web-based application, are not subject to the sales and use tax as a communication service under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

The transaction is the sale of a nontaxable data processing service as defined in Code Section 12-36-910(C) since (1) the 123 System is a service where information furnished by the customer, or the customer’s insurance carriers on behalf of the customer, is manipulated by MNO through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers; (2) the insurance claims information on the 123 System is the result of the “data processing” performed by MNO as part of its service; (3) “data processing” includes “the electronic transfer of or access to that information;” and (4) the 123 System is the means through which the customer has access to the “data processing” performed by MNO.

Note: As stated above and as described in the facts, MNO is providing a nontaxable data processing service. If, however, MNO did not manipulate the customer's insurance claims information and only provided a service that allowed the customer to access a website to use software to enter its own claims information, to keep track of such claims information, to create various reports, and to otherwise do its own data processing of its information, then the service would be subject to the sales and use tax as a communications service (An Application Service Provider) under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). See SC Revenue Ruling #03-5 and SC Regulation 117-329.4(k).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

December 10, 2014
Columbia, South Carolina