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Letter Ruling 87-13: Individualized Patient Medication Schedules

September 28, 1987

You asked for a ruling on the sales tax treatment of a program that provides patients with individualized medication schedules. This program is offered by ("Company"). You state that a hospital, nursing home, physician, or the patient provides information on the patient's prescriptions to the Company. The Company processes the information with a computer program that organizes and prints out the medication schedule. Each patient receives a medication schedule for the entire day, listing which medicines to be taken during the course of the day and whether a particular medicine should be taken with or without food. Each patient's package also includes a face sheet of pertinent information concerning the patient (name, address, physician, drug allergies, next-of-kin), leaflets describing the patient's prescriptions (drug name, purpose, side effects), and a directory of sponsors of the Company's program.

The Company does not charge the patients for participation in the program. The Company receives compensation from the sponsors who pay the Company to list goods and services in the directory provided to each patient. Each patient enters into a written agreement with the Company that spells out the terms of the patient's participation in the Company's program at no charge to the patient. Each sponsor enters into a written agreement with the Company that states the terms of compensation to the Company and the amount of advertising space in the directories to be purchased by the sponsor. We conclude that under the facts presented the Company's furnishing of individualized patient medication schedules and other information to patients is not taxable, and that the sponsors' purchases of advertising in directories published by the Company are also not taxable.

Massachusetts imposes a five percent sales tax on retail sales of tangible personal property in Massachusetts. A sale is defined, inter alia, as [a]ny transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property for a consideration, in any manner or by any means whatsoever.

[t]he furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news.

G.L. c. 64H, § 1(12)(a),(f).

In *Commissioner of Revenue v. McGraw-Hill, Inc.*, 383 mass. 393 (1981), the Supreme Judicial Court held that the furnishing of information bulletins to subscribers in the construction industry was not within the definition of a "sale." The bulletins were comprised of individual slips of paper containing information about single construction projects. The slips were periodically assembled, collated, and sent to subscribers based on each subscriber's "Market Profile." *Id.* at 398-99. The

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Court held that the furnished information was individual to each subscriber, only valuable after the selection process. Id. at 402. The Court also held that the information furnished to subscribers was not substantially incorporated in reports furnished to other subscribers because no subscriber received the same reports as any other subscriber over a long period of time. Id. at 403.

Each medication schedule is individually compiled by the Company's computer. If two patients had identical health histories and prescriptions, they might have similar medication schedules. Patients using the same medication will receive the same leaflets describing that particular medication. But patient medication schedules are prepared separately for each patient, and over a period of time it is unlikely that any two patients would continue to receive the same set of leaflets. The facts described are analogous to McGraw-Hill. we conclude that the Company's furnishing of patient medication schedules and other information is not taxable. The Company is providing information personal and individual in nature that is not substantially incorporated in reports furnished to other persons. The definition of sale under the Massachusetts sales tax law excludes advertising services from the application of the sales tax. See G.L. c. 64H, § 1(12)(f). Charges for placing advertisements in any medium are not taxable. See 830 CMR 64H.05(2)(i). The Company's charges to each sponsor for listing the sponsor's goods and services in a directory is a charge for advertising services and is not taxable.

Very truly yours,
Stephen W. Kidder
Commissioner of Revenue
September 28, 1987
LR 87-13