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Letter Ruling 03-11: Sales Tax Consequences of Document Processing Services

November 7, 2003

You have requested a letter ruling on behalf of your client, ***** (the Company), regarding the application of the Massachusetts sales and use taxes to the fees charged by your client for the transactions described below. Moreover, you have asked for a ruling regarding whether the equipment used by the Company's employees is exempt from the Massachusetts sales and use taxes when purchased.

I. FACTS

The Company retrieves health and medical records for its customers who consist of attorneys, insurance companies, governmental entities, patients, physicians, hospitals, and other requesting parties. In practice, upon receiving a request from a customer for a copy of a patient's health and medical records, the Company's employees will visit the hospital, physician's office, or similar location where the particular information is located, and will complete the customer's request by one of two methods.

Under one method, the Company's employee uses a laptop computer, scanner, or other similar electronic medium to electronically "scan" and save the requested information. Upon securing the scanned information, the employee electronically transmits the scanned information to the Company's facility in *****. When the information is received at the Company's ***** facility, the information is processed and, depending on the customer's election, either an electronic version of the information is transmitted to the customer or a hardcopy version is printed and mailed to the customer.

Under the other method, the Company's employee visits a hospital, physician's office, or other location where the medical records and related information are located to physically photocopy the requested information. After photocopying the requested information, the employee will subsequently mail the information to the customer from the location where the information is found.

Upon furnishing the customer the requested records, the Company invoices the customer. Below is a list of the various possible components of a typical transaction and an explanation of each component:

- basic/retrieval fee: a separately stated flat fee charged for locating records;
- quickview delivery fee: a separately stated fee to electronically access and view the contents of the delivered information via the Internet;

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- per page fee: a separately stated fee for each page of the medical record that is either scanned or photocopied;
- postage fee: a separately stated fee for the postage associated with mailing a hardcopy of the individual's medical record;
- handling fee: a separately stated charge, distinct from the charge for postage, associated with mailing a hardcopy of the individual's medical record;
- e-disclose fee: a separately stated fee to track and confirm the status of the information being delivered;
- certification fee: a separately stated fee to certify the information;
- notarization fee: a separately stated fee to notarize the information;
- deposition fee: a separately stated fee to affirm that the information is suitable to be utilized in a legal deposition;
- docustore fee: a separately stated fee to electronically store the information.

II. DISCUSSION

An excise is imposed upon retail sales in the Commonwealth by any vendor of tangible personal property at the rate of five percent of the vendor's gross receipts from such sales. G.L. c. 64H, § 2. A complementary use tax is imposed upon the storage, use or other consumption in the Commonwealth of tangible personal property purchased from any vendor for use within the Commonwealth at the rate of five percent of the sales price of the property. G.L. c. 64I, § 2. For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in the Commonwealth is sold for storage, use or other consumption in the Commonwealth; the burden of proving the contrary is upon the person who makes the sale. G.L. c. 64I, § 8.

Gross receipts is defined as the total sales price received by a vendor as consideration for a retail sale. G.L. c. 64H, § 1; G.L. c. 64I, § 1. When determining the "sales price," no deduction shall be taken on account of the cost of transportation of the property prior to its sale at retail, but separately stated transportation charges are excluded from the sales price, if the transportation occurs after the sale of the property.

A. No Sales Tax for Transactions That Involve Reports Transmitted Electronically or That Involve Reports Furnishing Personal Individual Information.

A "sale" includes "the 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 into reports furnished to other persons.*" G.L. c. 64H, § 1 (emphasis added). Charges for transmitting reports of any type by telephone lines, microwaves, or other electronic modes of transmission are not taxable, unless the vendor transfers an otherwise taxable storage medium imprinted with the reports as part of the same transaction. 830 CMR 64H.1.3(12).

If the customer is sent a report in tangible form whether or not such report is taxable depends on whether a "sale" has occurred. A sale does not include the furnishing of personal or individual information that is not or may not be substantially incorporated in reports furnished to other persons. *Commissioner of Revenue v. McGraw-Hill, Inc.*, 383 Mass. 397 (1981). In public written statements on this issue, the Department has concluded that transactions involving similar information were outside the statutory definition of sale. In Letter Ruling 85-31, the Department ruled that reports verifying payees' identification numbers are personal and individual information that was not substantially incorporated in reports furnished to other persons. In Letter Ruling 87-13, the Department ruled that patient medication schedules are personal and individual information that was not substantially incorporated in reports furnished to other persons.

The medical records gathered and compiled by the Company are personal and individual information. The information is not incorporated in reports furnished to others. Therefore, the transfer of the information in tangible form is not included in the definition of sale and as such is not subject to the sales tax.

Based on the above, all reports sent to a customer through electronic means or in tangible form are exempt from taxation. Thus, the following charges associated with those reports are not subject to tax:

- basic/retrieval fee;
- per page fee; and
- quickview delivery fee.

B. No Sales Tax for Charges Associated with the Transactions Not Subject to the Sales Tax.

Because the transactions listed above do not constitute taxable sales, the charges associated with the transactions are not taxable. Thus, the following fees are not subject to tax:

- e-disclose fee;
- certification fee;
- notarization fee;
- deposition fee;
- docustore fee;
- postage fee; and
- handling fee.

C. Sales/Use Tax on the Purchase of Scanners, Laptops and Similar Electronic Media Used by the Company's Employees

A sales and use tax exemption exists for the sales of machinery used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. G.L. c. 64H, § 6(s); G.L. c. 64I, § 7(b). For the section 6(s) exemption to apply, the taxpayer must demonstrate all the requirements contained in section 6(s), *i.e.*, machinery was used (1) directly and exclusively (2) in an industrial plant (3) in the actual manufacture (4) of tangible personal property (5) to be sold. *Associated Testing Laboratories, Inc. v. Commissioner of Revenue*, 429 Mass. 628 (1999). If one of the requirements for receiving the exemption is lacking, the taxpayer is not entitled to the exemption.

The requirement that the machinery must be used in an industrial plant is not met. For the purposes of section 6(s) exemption, the term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business. You state that the Company's employees use the scanners, laptop computers and other electronic equipment in hospitals, physicians' offices, or employees' home offices. None of those locations qualify as an industrial plant^[1]. Therefore, the equipment used by the Company's employees is not exempt from the sales tax under G.L. c. 64H, § 6(s).

III. CONCLUSION

Based on the above discussion, we rule that none of the fees charged for the various transactions described above are subject to Massachusetts sales and use taxes. We also rule that the scanners, laptop computers, and similar electronic media used by the Company's employees are not exempt from the Massachusetts sales and use tax when purchased.

Very truly yours,

/s/Alan LeBovidge

Alan LeBovidge
Commissioner of Revenue

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[\[1\]](#) Because we find that the requirement to use the machinery in an industrial plant is not met, we do not address the other requirements contained in section 6(s).