

If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his or her activities. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

November 29, 2012

Dear:

This letter is in response to your letter dated July 31, 2012, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

COMPANY1, hereinafter ("COMPANY1") respectfully requests a Private Letter Ruling from the Illinois Department of Revenue as to the proper application of state and local sales and use taxes to the transactions identified below.

COMPANY1's Federal Employer Identification Number is XX. Our Sales Tax License account number is XXX.

STATEMENT OF FACTS

COMPANY1 processes and fulfills medical record requests (known in the healthcare industry as the release of information process). We partner with hospitals, health systems, physician practices, and clinics to process and fulfill medical record requests and maintain compliance related to releasing medical information to all types of requesters. COMPANY1, by agreement with the health facility, makes photocopies of the medical records, furnishes them directly to the requesting party, and bills the requesting party directly for the copies. The requesting parties typically are patients, attorneys, insurance companies, governmental entities, or hospitals, hereinafter ("Customers").

Here is how the process works. A trained specialist digitally captures the protected health information from the facility's electronic or paper medical records through our technology platform. The digital medical records are then electronically transmitted to our release of information processing center in CITY, STATE. COMPANY1 uses one of two methods to deliver the medical records to our customers. With Delivery Method One, paper copies of the medical records are printed, packaged, mailed and delivered by the United States Postal Service or shipped and delivered by COMPANY2. With

Delivery Method Two, we provide the customer access to the medical records electronically via our web portal or we “push” the records to our high volumes customer via File Transfer Protocol (FTP).

Due to the strict procedural and highly regulated steps involved in the release of information process there are associated costs. The fees for our services and/or products are normally based on rates regulated by state statutes, rules, or policies. If there is no governing state authority, then COMPANY1 sets reasonable fee for its services and/or products in accordance with Health Insurance Portability and Accountability Act of 1996 (HIPAA) guidelines.

DELIVERY METHOD ONE – INVOICE LINE ITEMS

When COMPANY1 is ready to mail or ship paper copies of the medical records to the customer, we invoice them, and then we release the records. Here are the various possible line items that could make up a typical invoice, and a short explanation of each line item.

1. Affidavit Fee: A separately stated flat fee charged for a [sic] written statement confirmed by oath or affirmation, for use as evidence in court.
2. Basic Fee: A separately stated flat unregulated fee for searching, retrieving, reviewing, and preparing copies [sic] medical records for delivery to the requester.
3. Certification Fee: A separately stated flat fee to certify the medical records.
4. Deposition Fee: A separately stated fee to affirm that the information is suitable to be utilized in a legal deposition.
5. Handling Fee: A separately stated flat fee distinct from the charge for postage, associated with mailing paper copies of the individual's medical record.
6. Labor Fee: A processing service fee (e.g.; an additional fee charged for retrieving records stored off-site).
7. No Records Found Fee: A flat fee for conducting a search and no medical records were found to provide to the requestor.
8. Notary Fee: A separately stated flat fee to notarize the medical records.
9. Photo Fee: A separately stated fee for each page of the medical record that is photocopied.
10. Per Page Fee: A separately stated fee for each page of the medical record that is captured by scanning or captured from microfilm.
11. Postage Fee: A separately stated fee for the actual postage cost associated with mailing paper copies of the medical record when it is mailed via the United States Postal Service or delivery fee for records shipped via COMPANY2. This fee does not contain a markup for profit.
12. Retrieval Fee: A separately stated flat regulated fee for searching, retrieving, reviewing, and preparing copies [sic] medical records for delivery to the requester.
13. Shipping and Handling Fee: A fee charged for postage or COMPANY2 shipping and handling. This fee does not contain a markup for profit.

14. Shipping (only) Fee: A fee charged for actual postage cost or COMPANY2 shipping cost. This fee does not contain a markup for profit.

DELIVERY METHOD TWO – INVOICE LINE ITEMS

When COMPANY1 is ready to electronically provide or deliver digital copies of the medical records to the customer, we invoice them, and then we release the records. Here are the various possible line items that could make up a typical invoice, and a short explanation of each line item.

1. Affidavit Fee: A separately stated flat fee charged for a written statement confirmed by oath or affirmation, for use as evidence in court.
2. Basic Fee: A separately stated flat unregulated fee for searching, retrieving, reviewing, and preparing copies [sic] medical records for delivery to the requester.
3. Certification Fee: A separately stated flat fee to certify the medical records.
4. Deposition Fee: A separately stated fee to affirm that the information is suitable to be utilized in a legal deposition.
5. Handling Fee: A separately stated flat fee distinct from the charge for postage, associated with mailing paper copies of the individual's medical record.
6. Labor Fee: A processing service fee (e.g.; an additional fee charged for retrieving records stored off-site).
7. No Records Found Fee: A flat fee for conducting a search and no medical records were found to provide to the requestor.
8. Notary Fee: A separately stated flat fee to notarize the medical records.
9. Photo Fee: A separately stated fee for each page of the medical record that is photocopied.
10. Per Page Fee: A separately state[sic] fee for each page of the medical record that is captured by scanning or captured from microfilm.
11. Quickview Delivery Fee: A separately stated flat fee to electronically access and view the contents of the delivered information via our web portal.
12. Electronic FTP Fee: A separately stated fee to electronically receive medical records pushed to the customer via FTP.
13. Retrieval Fee: A separately stated flat regulated fee for searching, retrieving, reviewing, and preparing copies [sic] medical records for delivery to the requester.

ISSUES

Since COMPANY1 employees perform the above services within Illinois, COMPANY1 has concluded that it has nexus for sales and use tax purposes. Consequently, COMPANY1 would like the state to provide specific tax advice concerning the following transactions:

Question One: Which of the aforementioned invoice component fees charged for services and/or products that COMPANY1 provides using Delivery Method One (mailing or shipping) are subject to Illinois sales or use tax?

Question Two: Which of the aforementioned invoice component fees charged for services and/or products that COMPANY1 provides using Delivery Method Two (electronic delivery) are subject to Illinois sales or use tax?

COMPANY1'S POSITION

When the medical record is transferred to a customer and no other tangible personal property is transferred to that customer, COMPANY1 incurs no tax on that service transaction.

If the medical record is delivered to a customer in a hardcopy version, COMPANY1 incurs Illinois Use Tax on the cost price of the documents delivered to its customers in Illinois.

If the Department has any questions or requires any additional information from COMPANY1 in order to provide the Illinois sales and use tax consequences of the above described situations, then please contact me at XXXX.

Thank you in advance for your cooperation and attention to this matter.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department declines to issue a Private Letter Ruling since its regulations are dispositive of the subject of your request.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of services. The transactions you have described appear to be service transactions. Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of

tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways:

- (1) separately stated selling price of tangible personal property transferred incident to service;
- (2) 50% of the servicemen's entire bill;
- (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or
- (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Note, the Department does not consider the viewing, downloading or electronically transmitting of video, text and other data over the internet to be the transfer of tangible personal property. However, if a company provides services that are accompanied with the transfer of tangible personal property (e.g., medical records delivered to a customer in a hardcopy version, rather than sent electronically),

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such service transactions are generally subject to tax liability under one of the four methods set forth above.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess
Associate Counsel