



COLORADO

Department of Revenue

Taxation Division

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GIL-12-001

February 8, 2012

XXXXXXXXXXXXXXXXXXXX
ATTN:XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Medical review of pharmacy records

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXX ("Company") a request for guidance on the application of sales tax on a paid XXXXXXXXXXXXXXXXXXXX ("Report") of a patient's medication record by a Company's pharmacist. The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library> Rulings.

The Department will initially treat your request as one for a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law, are not a determination of the tax consequence of any particular action, and are not binding on the Department.

Issue

Whether a charge by the Company for a medical review of a patient's medication records by a Company pharmacist is subject to state or state-administered local sales tax?

Background

Company operates retail stores in Colorado and offers to its customers, among other things, a comprehensive review of medication records by a pharmacist. The Report includes a face to face consultation between the patient and pharmacist. The Report procedure is contained

under "Patient Request or Offer of Services" within the Company's Policy and Procedure. As part of the Report, a pharmacist completes a "Comprehensive Medication Action Plan" (Plan). The Plan includes the Report worksheet, any therapy changes that are initiated by the Report, any adherence issue encountered, any type of follow-up needed by the patient to their doctor, any type of follow-up needed by the pharmacist to the patient to monitor the new therapy and/or new administration. The Company's procedure states that the patient receives a copy of his/her personal medication chart as part of the Report. It is unclear from the Company's description of the Report procedure whether the patient actually receives a copy of the Report and/or the Report worksheet generated as part of the service or whether a patient can receive a copy of the personal medication chart without a charge.

Discussion

Colorado imposes sales tax on the sale of tangible personal property.¹ Colorado generally does not impose sales tax on sales of services. When a transaction involves both the performance of a service (or some other nontaxable *item*) and the transfer of tangible personal property, the Department will determine *if* the sale of service and tangible personal property are separable. When the service is readily separable and stated separately from the sale of goods (sometimes referred to as a mixed transaction²), then sales tax applies only to the price for the goods. For example, a dress retailer who also provides alteration service should not collect sales tax on the alteration service if the service charge is separately stated on the invoice. In such cases, the service *is* "separable" from the sale of the dress and, therefore, sales tax *is* applied only to the sale of the dress if the charge for the service *is* separately stated. *A.O. Stores v Department of Revenue*, 19 P.3rd 680 (Colo. 2001). In contrast, where the nontaxable service or *item* are separable but stated together in one price, the entire transaction *is* subject to sales tax.

If the service and the tangible personal property are inseparable, the Department will then examine the transaction for "true object" of the transaction. See, generally, Service Enterprise regulation SR-40. If the transaction's true object is the transfer of tangible personal property, then the total price paid by the buyer is subject to sales tax even though a portion of the price *is* for the performance of a service. If, on the other hand, the true object of the transaction *is* the sale of a service, then the charge is not subject to sales tax even though tangible personal property *is* transferred to the customer.

The Department considers a variety of factors in determining the true object of a transaction, including whether the transfer of tangible personal property is incidental to the service provided and the level of expertise provided in the transaction. In general, a service which involves a more sophisticated level of expertise suggests that the transaction is a sale of

¹ §39-26-104(1), C.R.S. It is not clear from the facts presented whether there is a transfer of tangible personal property for which a charge is made. If there is no transfer, then sales tax is clearly inapplicable. If the Report is transferred to the patient or if the Company charges a fee for the patient medication chart, then it becomes important to determine the "true object" of the transaction.

² Hellerstein, *State Taxation* (WG&L), ¶ 12.08[1][c] Services Coupled With a Transfer of Separate Property

service. For example, a transaction involving consultations and advice of professionals such as doctors, architects, dentists, accountants and lawyers are considered a sale of services even though the transaction may involve the transfer of tangible personal property, such as reports or summaries or even a will or tax return. When the property at issue is a report, the department will also consider whether the report is specific to a particular individual (e.g., a report or survey requested by and for a specific individual) or is intended for broader distribution (e.g., market surveys made generally available to the public). Colorado General Information Letter No. GIL-07-27, 12/04/2007. Other states have found the purchase of pharmaceutical consultations are a sale of services. See, e.g., Connecticut Legal Ruling No. 94-12, 06/24/1994 (a pharmaceutical consultation is not subject to sales tax because pharmacists are a providers of professional services, which are exempt in Connecticut); Missouri Private Letter Ruling No. LR 6956, 11/04/2011 (review of a patient's medication history for appropriateness and recommendations where pharmacist and patient complete a "plan" is not a sale of tangible personal property). Although the tests for the taxability vary, states that have reviewed this issue have concluded that the pharmacist is providing a service to the patient.

It is unclear from the information provided in your letter whether there is any transfer of personal property, such as a report, from the retailer to the patient. If transaction does involve a transfer of a report to the patient for which the Company typically charges a fee, and given the fact that there is no separately stated charge for such a report, then the Company should consider whether the "true object" of the transaction is the sale of the report or the sale of a service. As I mentioned earlier, the department does not provide in a general information letter such as this a determination with respect to a specific set of facts.

Miscellaneous

Pursuant to state law and Department regulation 24-35-103.5, noted above, the Department will make public a redacted version of this letter. Your letter requesting this general information is not made public. I enclosed a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments or objection concerning the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue