COLORADO
Department of Revenue
Taxation Division

Office of Tax Policy
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PLR-13-005

August 21, 2013

XXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Re: Private Letter Ruling

Dear XXXXXXXXX,

XXXXXXXXX submitted on behalf of XXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Regulation 24-35-103.5. This letter is the Department's private letter ruling.

Issue

1. Are Company's charges for the provision of medical records subject to sales tax when distributed in the following formats: printed copies, copy sent by fax, copy sent by PDF document electronically via email?
2. Is Company a dealer required to collect tax?
3. Are taxable charges, if any, limited to services and medical records distributed to customers within Colorado?
4. What is the proper application of local sales tax when the requesting party (such as an insurance company) has locations both in-state and out-of-state?

Conclusion

1. Company's charges for retrieval service and the provision of medical records are not subject to sales tax, regardless of whether distributed as printed copy, fax copy, or PDF copy sent electronically via email.
2. Company is a service provider and is not required to collect tax.
3. Charges are not taxable whether distributed within or outside Colorado because Company is a service provider.

4. Charges are not subject to state-administered local sales or use taxes because the charges are for non-taxable services.

Background

Company is incorporated in a state outside Colorado and has its headquarters located in that state. Company is in the business of providing copies of hospitals', physicians', and other healthcare facilities' medical records to parties requesting copies of such records, such as patients, insurance companies, physicians, attorneys, federal and state organizations, and others. A hospital or other healthcare provider will forward requests of medical records to Company. Company will first verify that the requesting party has the authority to receive such records. Company then pulls the healthcare provider's medical record files, which are typically maintained by the provider as paper files, electronic records, or on microfilm. Company either copies the records to paper or electronically scans the record and uploads it to the Company's storage system located at its corporate headquarters. Company makes the medical records available to requesting parties either as a paper copy, an electronic facsimile, a PDF document, or allows the requesting party to access the Company's secure electronic storage and download the medical records.

Company charges the requesting party three types of fees. The first and principal fee is assessed based on the number of pages of a medical record provided to the requesting party. Company also charges fees that reflect certain variable cost components. Specifically, Company charges a fee based on the number of years of medical records searched. For example, if the requesting party asks for a patient's medical records covering the last five years, a per year fee is multiplied by five. Company also charges a retrieval fee that applies to every transaction.

In some cases, the fees that Company can charge are limited by law. Where this occurs and the remuneration is not sufficient, Company will also charge the provider a fee which reflects that portion of the fee that Company was prohibited from collecting from the requesting party.

Discussion

The Department recently addressed the issues raised in this request for ruling. In Department Private Letter Ruling 13-002, the Department ruled that charges by a company which searches, retrieves, and copies medical records for third-parties are not subject to Colorado sales taxes. That ruling is based on the decision in *Treece, A/fey, Musat* & *Bosworth, P*.C. *v. Denver Dept. Finance, Colo. Ct. App., Dkt. No. 11CA0026, 11/23/2011,* in which Division II of the Colorado Court of Appeals concluded, based on facts substantially similar to those set forth in this ruling request, that the true object of the transactions in question is the sale of a service, not the sale of tangible personal property. Among other conclusions, the Court concluded that the dominant cost in this transaction is the labor and that the value of the paper was nominal. The Court also emphasized that the object of the

transaction was information (i.e., patient data), which it characterized as intangible, and that the use of the information was strictly controlled.

Cases involving bundled transactions and the "true object" test are typically difficult to resolve. One view is that the "true object" of these transactions is the documents themselves and that the service to find and copy them is secondary to that purpose. Moreover, simply because the true object of a transaction is information does not necessarily mean the transaction is not taxable. A book, particularly a scientific or historical reference book, is purchased for information but is nevertheless taxable. On the other hand, medical records are generally available to patients and their agents who could, if they choose, retrieve these records themselves. By engaging Company, patients and their agents have elected to pay Company for the service of retrieving, compiling, and copying the medical information for them. Therefore, the lawyer or insurance company who purchases the record is arguably interested in the service of compiling the medical information. Viewed in this light, this service is similar to companies that research and compile data to create custom reports for their customers, such as a market survey made at the direction of, and for the specific use of, a customer (as opposed to a market survey generally made available for public distribution).[1] The *Treece* decision is consistent with this latter approach.

As noted above, there are a variety of factors to consider in making these determinations and their application to any given set of facts is often debatable. The Department is neither bound by nor does it agree with the Court of Appeals' application of some of the factors identified in AD. *Stores* to the facts before the court in *Treece.* Nevertheless, the Department concedes that the issue is a close one and will not challenge the application of the *Treece* conclusion to the facts set forth in this ruling request. Therefore, we rule that Company's fees are for the provision of a service and, therefore, are not subject to sales tax.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/revenue/tax for more information about state and local sales taxes.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this

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Colorado General Information Letter GIL-07-27,12/04/2007. You can view this ruling at www.colorado.gov/revenue/tax > Tax Library> Rulings> Topic by Number.

ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue