
Opinion of the Tax Commissioner

Date Issued: October 8, 1991

Opinion No: 91-0017

Tax: Sales/Use

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Subject: Medical Records

This request for an opinion of the Tax Commissioner was received on July 23, 1991. Specifically, it concerns whether or not Ohio sales or use tax is applicable to transactions in which XXXX, a XXXX limited partnership (Taxpayer), provides copies of patients' hospital medical records to third party requestors.

Taxpayer contracts with various hospitals throughout the United States, including Ohio, for the purpose of providing copies of medical records to third-party requestors such as attorneys representing personal injury clients, insurance companies and other third-party requestors who are authorized to review patient medical records.

Third-party requestors specify the particular aspects of treatment for which they wish to receive records. Taxpayer's personnel are trained in medical terminology, confidentiality issues, and laws governing the release of information. They examine hospital records and copy the appropriate portions. The copies are then shipped to Taxpayer's regional office, where the copies and the authorizations for release are reviewed to assure that the appropriate records have been retrieved and that legal requirements have been complied with. The copies are then shipped to the requestors.

An invoice accompanies the copies shipped to a requestor. Taxpayer has provided sample invoices for the Commissioner's examination. Invoices itemize a flat fee per request ("retrieval fee"), a "copy/clerk fee" which Taxpayer describes as a per-page charge for the copies provided, and a fee for "shipping/handling," which Taxpayer says is a percentage of the total of other charges. Two of the sample invoices also included an item called "microfilm fee," for which no explanation was given. Taxpayer wants to know whether or not it should add sales tax to its invoices.

R.C. 5739.01((B)(5) says, in part: "Other than as provided in this section, 'sale' and 'selling' do not include professional, insurance, or personal service transactions which involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made." "Personal service" was defined by the Court in Emery Industries, Inc. v. Limbach (1989), 43 Ohio St. 3d 134, as "any intellectual or manual act involving a recognized skill performed by a person who is specifically engaged by the purchaser to perform the act." The Taxpayer believes its research activities come within that definition, describes the copies it furnishes as inconsequential, and therefore believes it should not be required to collect sales tax. However, the Court in Emery also said that to determine whether or not the property furnished

was consequential one must inquire into the overriding purpose of the customer. Here, the tangible personal property is not inconsequential because the overriding purpose of the requestors is to obtain copies of specific medical records. Emery dealt with a situation where charges for services and for tangible personal property were not separately stated. In that situation, the Court said, if the property was consequential the total charged would be taxable. Thus, under Emery, if the Taxpayer did not itemize its invoices, the total amount would be subject to tax. Since the invoices in question here are itemized, the tax status of each category of charges can be determined separately.

The "retrieval fee" appears to be a charge for the service of searching out the records to be copied, and as such is deemed not to be subject to tax. Assuming that the "microfilm fee," when charged, represents extra effort involved in researching older hospital records, that item is deemed to be a service not subject to tax.

The "copy/clerical fee" is described by the Taxpayer as a per-page charge. In other words, this charge is dependent on the amount of tangible personal property actually delivered to the requestor. As such, it is deemed to be a charge for the property furnished, and therefore it is subject to tax.

A separately stated charge for delivery of tangible personal property to the purchaser is not subject to sales tax. However, the Taxpayer's "shipping/handling" fee represents more than mere delivery of sold copies. It is said to be determined as a percentage of the other charges. According to the information provided by the Taxpayer, copies are first shipped to the regional office, examined, invoiced, and finally shipped to the requestors. Since "shipping/handling" covers all of these items, it is deemed to be primarily an overhead cost of production of the property sold, and is thus subject to sales tax.

This opinion applies to the Taxpayer and its products and services only. It may not be transferred or assigned.

In addition, the tax consequences stated in this opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the Taxpayer to be aware of such changes.

Roger W. Tracy
Tax Commissioner