

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-06(7)S  
Sales Tax  
March 3, 2006

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S050214B

On February 14, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from Weitz & Luxenberg, P.C., 180 Maiden Lane, 17th Floor, New York, New York, 10038. Petitioner, Weitz & Luxenberg, P.C., provided additional information pertaining to the Petition on March 24, 2005.

The issue raised by Petitioner is whether the record-retrieval services purchased by Petitioner, as described below, are subject to sales and use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a law firm located in New York City with offices throughout the United States. Petitioner is a mass torts, product liability, and personal injury law firm involved in state and national litigation involving asbestos, breast and hip implants, drug recalls, personal injury, and medical malpractice.

Petitioner hires a record-retrieval service (RRS) to obtain medical records, psychological records and other confidential personal information of Petitioner's clients for Petitioner's use in conducting its legal activities on behalf of its clients. The information provided consists of protected medical records and other confidential information that is not available from any publicly accessible source. RRS performs no investigatory services for Petitioner. RRS merely requests copies of records from medical institutions or other organizations selected by Petitioner and provides such institutions and organizations with the appropriate release authorizations from Petitioner's clients. RRS then provides Petitioner with copies of retrieved records.

Most of Petitioner's clients claim to be injured in some way. Many also claim a loss of wages, earnings, and income as a result of their injuries. In order to develop a client's case, Petitioner needs access to the client's medical history, records, and other medical information and may also need copies of medical bills, tax returns or similar information. If Petitioner's client does not have copies of all needed records, Petitioner hires RRS to obtain these documents on behalf of Petitioner's clients. The only services purchased by Petitioner from RRS are record-retrieval services. In no event is Petitioner charged by RRS for compiling, studying, reviewing, or analyzing the requested records.

Generally, RRS is hired to obtain copies of medical or psychological records of Petitioner's clients. Occasionally, RRS is also hired to obtain copies of confidential financial information from taxing authorities (i.e., tax returns) or the Social Security Administration. RRS only requests records from sources selected by Petitioner.

In order to obtain medical records on behalf of Petitioner's clients, RRS is required to follow federal regulations which specify that medical institutions are prohibited from disclosing a patient's medical records unless Petitioner's client signs a medical authorization form that complies with the requirements set forth in the federal regulations. The medical authorization forms used by Petitioner and RRS authorize RRS to obtain copies of all "protected medical information" specified on the form on behalf of the client, including the following:

- records relating to any inpatient, outpatient or emergency room treatment;
- clinical charts, reports, correspondence, test results, hand-written notes, etc.;
- copies of all radiology films, mammograms, CT Scans, MRIs and bone scans;
- any and all pharmacy or prescription information or records;
- information related to the client's history of alcohol or substance abuse, psychiatric treatment, HIV/AIDS testing records, etc.; and
- copies of all medical bills.

Once the medical authorization form is obtained by RRS from Petitioner, RRS will approach the various medical institutions or other sources selected by Petitioner to obtain copies of the client's records on behalf of the client.

Petitioner's client may also be required to provide authorization to RRS to enable RRS to obtain copies of the client's tax returns from the IRS or state tax departments. RRS cannot obtain copies of the client's tax returns unless the client (or spouse, if a joint return was filed) signs a form authorizing the IRS or a state tax department to release copies of the client's tax documents or transcripts of such documents to RRS. Once this form is completed, RRS requests copies of the client's filed tax returns from the IRS or state tax department. A similar authorization form is required in order to allow RRS to obtain a copy of a client's confidential Social Security Statement from the Social Security Administration.

If RRS is successful in obtaining records from the sources requested by Petitioner, copies are provided to Petitioner. Petitioner is charged a flat record request preparation fee for the preparation of the request by RRS whether or not RRS actually retrieves any records, a record custodian fee, a shipping and handling fee, a record received fee based on the number of pages copied by RRS, and, where applicable, a long distance or contact charge, a correspondence fee, courier charges, and a pathology or radiology fee based on the number of these documents copied. If no records are obtained by RRS, Petitioner is still charged the flat record request preparation fee, applicable long distance and shipping and handling fees and a "no record" statement fee by RRS for its attempt to obtain the records. Petitioner is separately billed by RRS for each record request. Each bill references the particular client or case to which Petitioner's request refers.

**Applicable law**

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

(1) 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 in reports furnished to other persons . . . .

\* \* \*

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

**Opinion**

Petitioner is a law firm that, in the course of conducting its legal activities on behalf of its clients, hires a record-retrieval service (RRS) to obtain its clients' medical records, psychological records and other confidential personal information. The records provided consist of protected medical records and other confidential information that is not available from any publicly accessible source. Such records cannot be obtained by RRS unless the appropriate release authorizations have been signed by the person to whom the records pertain. The authorization forms are provided by RRS to the medical institutions or other sources selected by Petitioner to enable RRS to obtain copies of the client's records on behalf of the client and Petitioner.

The service of obtaining copies of specific, individual records from medical practitioners and other sources and providing such copies to Petitioner does not rise to the level of a protective or detective service as described in section 1105(c)(8) of the Tax Law since Petitioner and its client furnish RRS with all information needed to locate the particular records as well as the appropriate legal authorizations RRS needs to retrieve such records. RRS is precluded from seeking records which Petitioner's client has not specifically authorized RRS to retrieve. Therefore, RRS is not performing detective activities for Petitioner. Rather, this activity constitutes the service of retrieving and delivering client-specific records.

To the extent that RRS is retrieving specifically identified confidential records on behalf of Petitioner's client, which records contain confidential information pertaining to the client, RRS's services are not services subject to sales tax under section 1105(c)(1) of the Tax Law. See *Immediate Medical Records, Inc.*, Adv Op Comm T & F, January 31, 1992, TSB-A-92(7)S. RRS can only get these records by approaching the specific medical institutions where Petitioner's client has obtained medical treatment, or by approaching other institutions maintaining client records, and presenting the appropriate authorization forms signed by the client whose records are being sought. If a medical practitioner or other source provides RRS with copies of specific confidential records at no charge or for an administrative fee, the service provided by RRS to Petitioner of retrieving such records is not subject to sales tax under section 1105(c) of the Tax Law. Similarly, it would appear that an administrative fee charged by the custodian of the client records for retrieval of such documents which are deposited, filed or maintained by the custodian, whether or not including a certification thereof, constitutes neither the sale of tangible personal property taxable under section 1105(a) of the Tax Law nor the sale of a service taxable under section 1105(c) of the Tax Law.

Although the sale of general information, which does not identify specific patients, transcribed from files of medical practitioners, or the sale of analyses of statistical or generic (not patient-specific) information gleaned from medical files might be considered the sale of a taxable information service under section 1105(c)(1) of the Tax Law, obtaining such information is clearly distinguishable from the service of obtaining exact copies of an identified patient's confidential records. In addition, the sale of information derived from records that are generally available to the public is distinguishable from the present case. The sale of such public database information would be taxable under section 1105(c)(1) of the Tax Law. See *Matter of Hooper Holmes v Wetzler*, 152 AD2d 871, lv den, 75 NY2d 706; *State Farm Mutual Automobile Insurance Co.*, Adv Op Comm T & F, December 28, 2004, TSB-A-04(29)S. However, under the facts of this Advisory Opinion, RRS is retrieving copies of identified client-specific confidential records on behalf of Petitioner's client for delivery to Petitioner and is not obtaining information that is generally available to the public. A charge to Petitioner by RRS for merely obtaining copies of confidential medical records or other confidential records from a medical practitioner or other custodian and furnishing those records to Petitioner's place of business on behalf of Petitioner's client is not subject to sales tax.

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However, a separately stated charge by RRS for making additional copies of records constitutes a receipt from the sale of tangible personal property subject to sales tax under section 1105(a) of the Tax Law.

DATED: March 3, 2006

/s/  
Jonathan Pessen  
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Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.