STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

<u>ADVISORY OPINION</u>   <u>PETITION NO. S141209B</u>

The Department of Taxation and Finance received a Petition for Advisory Opinion from ███ ("Petitioner"). Petitioner asks whether its various services related to the provision of healthcare information are subject to sales and use tax in New York. We conclude that most of these services are not taxable. However, Petitioner's coding service would be taxable if it is provided to someone other than its healthcare provider customer or an authorized requester.

Facts

Petitioner is engaged in the business of collecting and furnishing healthcare information to persons requesting copies of medical records. Petitioner enters into agreements with various healthcare provider customers (e.g., medical practices and hospitals). These agreements require Petitioner to respond on behalf of the healthcare provider customer to all requests for medical records, data, and information relating to particular patients (collectively, "Medical Records") that are made by or for patients, insurance companies, physicians, other healthcare providers, federal and state organizations, and others. In turn, when a healthcare provider customer receives a request for Medical Records, the customer is obligated to refer the requester to Petitioner. Currently, Petitioner has operations at various medical facilities in New York and collects sales tax on its charges for retrieving and furnishing medical records.

Petitioner's employees at the healthcare provider customer's medical facilities perform the following duties:

- Receive and review all incoming requests for Medical Records and validate authorizations for release of medical records from requesters for compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state law and/or request follow-up information as necessary to validate an invalid authorization. Petitioner may reject a request, for example, if fulfillment would violate federal or state laws.
- Make the medical record available to the requester, either by mailing a hard copy, or by giving the requester password access to the record on Petitioner's online e-delivery system.
- Record pertinent information regarding the requests in Petitioner's web-based information request management system in order to track the status of the processing of requests.

The amount Petitioner charges the requester varies depending upon the quantity of medical records requested, the type of information requested, and the form in which it is to be delivered. When tangible records are mailed to a requester, Petitioner bills the requester for separately-stated postage charges, which are invoiced as "postage and handling charges." Another factor affecting the

amount of the charge is the identity of the requester, because certain state and federal laws limit the amount that may be charged to certain categories of requesters.

In addition, Petitioner performs the following services:

- **Coding**.
  Coding is the transformation of narrative descriptions of diseases, injuries, and healthcare procedures into numeric or alphanumeric designations (i.e., codes) that are returned along with the Medical Records to the healthcare provider. The codes are detailed in order to accurately describe the diagnoses and the procedures performed to test or correct these diagnoses. Coding health-related data permits access to health records according to diagnoses and procedures for use in clinical care, research, and education.
- **Abstraction**.
  This service involves taking important medical information from handwritten and typed reports and physically entering that information into an electronic medical record. Petitioner hires nurses and other credentialed health information management people to do this type of work.
- **Training and education for coding**.
  Training and education is provided for all levels of coders, including physicians and ancillary hospital personnel. Petitioner's wide range of education services includes documentation improvement, inpatient and outpatient coding assessments and training, and revenue cycle management.
- **Data Storage**.
  Petitioner provides customers secure, online storage space in which the customer can store and access patient records and other sensitive documentation at any time. The customer uses a username and password to access the stored files. The customer does not install any software and does not store any data on its own server.

Analysis

Petitioner retrieves and furnishes specifically identified confidential medical records for its customers. Petitioner provides the records to an authorized requester. This service is not subject to sales tax. *See* TSB-A-08(52)S; TSB-A-07(10)S; TSB-A-06(7)S; and TSB-A-92(7)S. Thus, payments made to Petitioner by the medical practitioner customer or payments made by the requester for this service are not subject to sales tax, including Petitioner's delivery charges. The method of transferring copies of the records to the requester, whether by mailing a printed copy or by electronic means, does not change this result. *See* TSB-A-09(12)S.

Petitioner's Coding Service adds additional information to the healthcare providers' medical records that the providers then can use and analyze. Accordingly, Petitioner's coding service is an information service because it includes analyzing, compiling, and organizing information by categorizing the original records and enabling searches within like diagnoses. *See* Tax Law § 1105(c)(1); 20 NYCRR § 527.3; s*ee also Matter of ADP Automotive Claims Service Inc.,* Tax

Appeals Tribunal, August 8, 1991, *aff'd* 188 AD2d 245 (3d Dep't 1993). However, the codes themselves are uniquely personal in nature because they reflect the diagnosis and treatment of a particular patient. *Cf. Matter of Allstate Ins. Co. v. Tax Commn. of the State of New York*, 115 AD2d 831, 834 (3d Dep't 1985), *aff'd* 67 NY2d 999 (1986). When Petitioner's coding service is provided solely to its healthcare provider customer or an authorized requestor, the service would be excluded from sales tax as an information service that is "personal or individual in nature." However, if the coded information is provided to third parties, e.g., for research and education purposes, the charge for the coding service would be taxable, because it would not satisfy the requirement that the information "is not or may not be substantially incorporated in reports furnished to other persons." *See* Tax Law § 1105(c)(1).

Petitioner's abstraction service does not qualify as an information service because Petitioner is merely converting the customer's handwritten or typed information into an electronic medical record without adding any information or intelligence. *See Finserv Computer Corporation v. Tully*, 94 AD2d 197 (3d Dep't 1984). This service is not taxable, whether the abstracted information is delivered to the customer as tangible personal property or electronically. *See* TSB-A-10(20)S.

Any charges for the training provided by Petitioner to the coders, physicians or ancillary hospital personnel are not taxable, because education services are not among the enumerated taxable services. *See* Tax Law § 1105(c); TSB-A-15(7)S.

Finally, Petitioner's data storage service is not subject to sales and use tax because the records are stored in electronic form. *See* TSB-A-05(40)S.

DATED: December 2, 2016

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.