



State of Vermont  
Department of Taxes  
133 State Street  
Montpelier, VT 05633-1401

Agency of Administration

July 25, 2011

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Formal Ruling 2011-11

Dear [REDACTED]

This is a formal ruling for [REDACTED] regarding the applicability of sales and use tax to its medical records business. This ruling is based upon representations in your letter of [REDACTED]

FACTS

Upon request from its customers, [REDACTED] obtains health and medical records and delivers these records to the customer, and upon request will also certify or notarize the records and electronically store them for the customer.

[REDACTED] employees use one of two methods to obtain the requested records for the customer. First, using [REDACTED]'s own equipment, the employee can electronically scan the records and then electronically transmit, or copy and mail, the records to the customer. Second, the employee can photocopy the records and mail the photocopies to the customer.

[REDACTED] provides its employees with scanners and computers to perform their document retrieval and delivery services.

[REDACTED] sends an invoice to the customer for any of several applicable charges:

1. Basic/Retrieval fee: a flat fee for locating the records.

2. Quickview delivery fee: for customer's electronic access to the records obtained
3. Per page fee: charge for each page scanned or photocopied
4. Postage fee: for mailing paper copy; contains no profit markup from postage cost
5. Handling fee: for mailing paper copy
6. E-disclose fee: to track and confirm the status of the information retrieved
7. Certification fee: to certify the information
8. Notarization-fee: to notarize the information
9. Deposition fee: to affirm that the information is suitable for use in a legal deposition
10. ██████████ to electronically store the information for the customer

██████████ has asked for a ruling on twelve issues related to these fees, and these are each discussed below.

### BRIEF SUMMARY

The activities you describe are services and not subject to Vermont's sales tax, with the exception of the provision of paper copies, which constitute taxable sales of tangible personal property, as discussed below.

### DISCUSSION AND RULING

Vermont's sales tax applies to retail sales of tangible personal property unless specifically exempted; to amusement charges; and to retail sales of specified services: public utility services, fabrication services, telecommunications services and directory assistance. 32 V.S.A. § 9771. The service HealthPort provides is a retrieval and transmission of medical records, and this is not a taxable service in Vermont.

Sales of certain documents are exempted from the sales and use tax: Charges for documents, the sole purpose of which is to record or memorialize professional services rendered, such as, but not limited to, charges for briefs, memoranda, agreements . . . ." 32 V.S.A. § 9741(37). The documents which HealthPort retrieves and transmits are not a record or memorialization of HealthPort's services; they are records of a third party. As a result, the documents are not exempt from the sales tax under subsection (37); though they will only be taxable when delivered in tangible form.

The Vermont Supreme Court has found that an item may be taxable when delivered in tangible form, even if it would have been non-taxable if delivered in electronic form. Chittenden Trust Co. v. King, 143 Vt. 271 (1983) (Non-custom software purchased on a magnetic tape by the bank for bookkeeping purposes was taxable tangible personal property. The fact that the bank could have chosen to receive the information in electronic, nontangible, form was irrelevant.) As a result, when HealthPort transmits the retrieved records in tangible hard copy, it is selling tangible personal property subject to the sales tax.

"Sales price" is defined to include "delivery charges". 32 V.S.A. §9701(4)(A)(iv). "Delivery charges" is defined in the Vermont regulations in the same manner as the definition in the Streamlined Sales and Use Tax Agreement as "including, but not limited to, transportation,

shipping, postage, handling, crating, and packing” of the taxable item sold. Reg. § 1.9701(4) - 1. When HealthPort transmits hard copy documents, the delivery charges are part of the taxable sales price.

Vermont’s sales tax laws exempt “machinery and equipment for use or consumption directly and exclusively, except for isolated or occasional uses, in the manufacture of tangible personal property for sale. 32 V.S.A. § 9741(14). “Isolated or occasional use” means 4 percent or less of the time the equipment is operated. *Id.* “Manufacturing” includes “information processing”, which in turn includes “an integrated series of operations in which information or images are produced and sold as tangible personal property.” Reg. § 1.9741(14) - 2B.4., F. An item of equipment which HealthPort purchases to create hard copies of the documents retrieved, either by photocopying or scanning, will be exempt “manufacturing equipment” so long as that use constitutes 96 percent or more of the total operating time of that item of equipment.

Based on these sections of Vermont’s sales and use tax law, the answers to your questions are as follows:

1) Are the separately stated “Basic/Retrieval Fees”, as defined above, subject to sales tax?

Answer: No. This fee is charged for the service HealthPort performs in locating and retrieving the health and medical records requested by the customer. A retrieval service is not a taxable service in Vermont

2) Are the separately stated “Quickview Delivery Fees”, as defined above, subject to sales tax?

Answer: No. Delivery charges are taxable only when charged for delivery of taxable items; and in this case, only the hard copy documents are taxable items. The delivery charges for electronic delivery of records is not subject to sales tax.

3) Are the separately stated “Per Page Fees”, calculated on a per page basis for photocopying information, subject to sales tax?

Answer: Yes. This fee is for the tangible page sent to the customer, and since it is not exempt as a record memorializing a service, it is taxable as a sale of tangible personal property.

4) Are the separately stated “Per Page Fees”, calculated on a per page basis for scanning information, subject to sales tax?

Answer: No. This fee is for the service of creating an electronic record.

5) Are the separately stated “Postage Fees”, as defined above, subject to sales tax?

Answer: Yes. Postage is included in “delivery charges”, and when related to the sale of tangible documents, it is taxable.

6) Are the separately stated “Handling Fees”, as defined above, subject to sales tax?

Answer: Yes. Handling is included in "delivery charges", and when related to the sale of tangible documents, it is taxable.

7) Are the separately stated "E-Disclose Fees", as defined above, subject to sales tax?

Answer: No. This fee is for a tracking and confirmation service and is not taxable.

8) Are the separately stated "Certification Fees", as defined above, subject to sales tax?

Answer: No. This fee is for a certification service and is not taxable.

9) Are the separately stated "Notarization Fees", as defined above, subject to sales tax?

Answer: No. This fee is for a notary service and is not taxable.

10) Are the separately stated "Deposition Fees", as defined above, subject to sales tax?

Answer: No. This fee is for rendering an opinion as to the suitability of documents for use in a legal deposition, and is not taxable.

11) Are the separately stated "Docustore Fees", as defined above, subject to sales tax?

Answer: No. This fee is for an electronic storage service and is not taxable.

12) Are the scanners, laptop computers, and similar electronic media utilized in Method One and/or Method Two services deemed processing equipment so as to be exempt from sales and use tax when purchased?

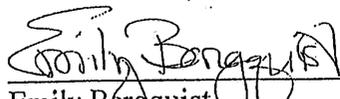
Answer: Whether an item of equipment is exempt will depend upon the percentage of total operating time devoted to creating the paper copies. An item of equipment which HealthPort purchases to create hard copies of the documents retrieved, for sale to the customer, either by photocopying or scanning, will be exempt "manufacturing equipment" so long as that use constitutes 96 percent or more of the total operating time of that item of equipment.

### **GENERAL PROVISIONS**

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to your firm and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to determine the department's general approach, but the Department will

not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

  
\_\_\_\_\_  
Emily Bergquist

August 10, 2011  
Date

Approved:

  
\_\_\_\_\_  
Mary N. Peterson  
Commissioner of Taxes

8/8/11  
Date