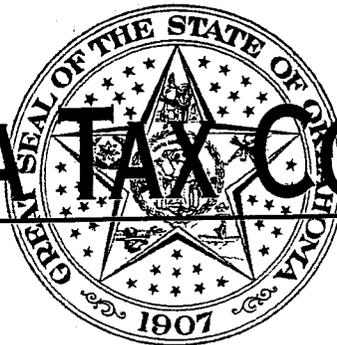


OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

May 15, 2013

RE: LR-12-055 (Sales Tax Inquiry)

Dear

This letter is in response to your request regarding Oklahoma sales tax. Set forth verbatim are the facts presented along with the responses thereto.

Facts:

processes and fulfills medical record requests (known in the healthcare industry as the release of information process). We partner with hospitals, health systems, physician practices, and clinics to process and fulfill medical record requests and maintain compliance related to releasing medical information to all types of requesters. HealthPort, by agreement with the health facility, makes photocopies of the medical records, furnishes them directly to the requesting party, and bills the requesting party directly for the copies. The requesting parties typically are patients, attorneys, insurance companies, governmental entities, or hospitals, hereinafter ("Customers").

Here is how the process works. A trained specialist digitally captures the protected health information from the facility's electronic or paper medical records through our technology platform. The digital medical records are then electronically transmitted to our release of information processing center in GA. uses one of two methods to deliver the medical records to our customers. With Delivery Method One, paper copies of the medical records are printed, packaged, mailed and delivered by the United States Postal Service or shipped and delivered by FedEx. With Delivery Method Two, we provide the customer access to the medical records electronically via our web portal or we "push" the records to our high volumes customer via File Transfer Protocol (FTP).

Due to the strict procedural and highly regulated steps involved in the release of information process there are associated costs. The fees for our services and/or products are normally based on rates regulated by state statutes, rules, or policies. If there is no governing state authority, then _____ sets a reasonable fee for its services and/or products in accordance with Health Insurance Portability and Accountability Act of 1996 (HIPPA) guidelines.

Deliver Method One – Invoice Line Items

When HealthPort is ready to mail or ship paper copies of the medical records to the customer, we invoice them, and then we release the records. Here are the various possible line items that could make up a typical invoice, and a short explanation of each line item.

1. Affidavit Fee: A separately stated flat fee charged for a written statement confirmed by oath or affirmation, for use as evidence in court.
2. Basic Fee: A separately stated flat unregulated fee for searching, retrieving, reviewing, and preparing copied medical records for delivery to the requester.
3. Certification Fee: A separately stated flat fee to certify the medical records.
4. Deposition Fee: A separately stated fee to affirm that the information is suitable to be utilized in a legal deposition.
5. Handling Fee: A separately stated flat fee distinct from the charge for postage, associated with mailing paper copies of the individual's medical record.
6. Labor Fee: A processing service fee (e.g.; an additional fee charged for retrieving records stored off-site).
7. No Records Found Fee: A flat fee for conducting a search and no medical records were found to provide to the requester.
8. Notary Fee: A separately stated flat fee to notarize the medial records.
9. Photo Fee: A separately stated fee for each page for the medical record that is photocopied.
10. Per Page Fee: A separately stated fee for each page of the medical record that is captured by scanning or captured from microfilm.
11. Postage Fee: A separately stated fee for the actual postage cost associated with mailing paper copies of the medical record when it is mailed via the United States Postal Service or delivery fee for records shipped via FedEx. This fee does not contain a markup for profit.
12. Retrieval Fee: A separately stated flat regulated fee for searching, retrieving, reviewing, and preparing copies of medical records for delivery to the requester.
13. Shipping and Handling Fee: a fee charged for postage or FedEx shipping and Handling. This fee does not contain a markup for profit.
14. Shipping (only) Fee: A fee charged for actual postage cost or FedEx shipping cost. This fee does not contain a markup for profit.

Delivery Method Two – Invoice Line Items

When _____ is ready to electronically provide or deliver digital copies of the medical records to the customer, we invoice them, and then we release the records. Here are the various possible line items that could make up a typical invoice, and a short explanation of each line item.

1. Affidavit Fee: A separately stated flat fee charged for a written statement confirmed by oat or affirmation, for use as evidence in court.

2. Basic Fee: A separately stated flat unregulated fee for searching, retrieving, reviewing, and preparing copied medical records for delivery to the requester.
3. Certification Fee: A separately stated flat fee to certify the medical records.
4. Deposition Fee: A separately stated fee to affirm that the information is suitable to be utilized in a legal deposition.
5. Handling Fee: A separately stated flat fee distinct from the charge for postage, associated with mailing paper copies of the individual's medical record.
6. Labor Fee: A processing service fee (e.g.; an additional fee charged for retrieving records stored off-site).
7. No Records Found Fee: A flat fee for conducting a search and no medical records were found to provide to the requester.
8. Notary Fee: A separately stated flat fee to notarize the medial records.
9. Photo Fee: A separately stated fee for each page for the medical record that is photocopied.
10. Per Page Fee: A separately stated fee for each page of the medical record that is captured by scanning or captured from microfilm.
11. Quickview Deliver Fee: A separately stated flat fee to electronically access and view the contents of the delivered information via our web portal.
12. Electronic FTP Fee: A separately stated fee to electronically receive medical records pushed to the customer via FTP.
13. Retrieval Fee: A separately stated flat regulated fee for searching, retrieving, reviewing, and preparing copies medical records for delivery to the requester.

Question:

Which of the aforementioned invoice component fees charged for services and or products that HealthPort provides using Delivery Method One and Two are subject to Oklahoma sales or use tax?

Response:

Method One

68 O.S. 1354 provides as follows:

A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

1. Tangible personal property, except newspapers and periodicals;

* * *

6. Printing or printed matter of all types, kinds, or character. . .any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner

* * *

Gross receipts, gross proceeds, or sales price is the base upon which sales tax is calculated. The terms are synonymous and are defined as "the total amount of consideration . . . for which personal property or services are sold . . . whether received in money or otherwise. . . ." 68 O.S. § 1352(12)(a). In accordance with Section 1352(12)(a) of Title 68 no deduction from gross receipts is allowed for the following:

- (1) the seller's cost of the property sold,
- (2) the cost of materials used, labor or service cost,
- (3) interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller,
- (4) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges,
- (5) delivery charges and installation charges, unless separately stated on the invoice, billing or similar document given to the purchaser, and
- (6) credit for any trade-in.

Delivery charges include charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. OAC 710:65-19-70(a).

Charges described in invoice line items 1, 2, 3, 4, 6, 8, 9, 10, & 12 are part of gross receipts received for the sale of tangible copies of medical records and as such are subject to sales tax. Since no sale of a taxable service or tangible personal property occurs in relation to invoice line item 7, the no record found fee is not subject to sales tax.

Invoice line items 5, 11, 13, & 14 constitute delivery charges, which when separately stated, are not subject to sales tax.

Method Two

Sales of copies delivered electronically are not subject to sales tax in Oklahoma. Therefore, the charges associated with the electronic delivery of copies would not be subject to tax.

This response applies only to the circumstances discussed in your written request of June 22, 2012. Pursuant to Oklahoma Administrative Code 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION



Marc Morrison
Tax Policy Analyst