

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2018-07ST  
July 22, 2019

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

## ISSUES

## Sales and Use Tax - Taxability of Records and Related Charges

Authority: [IC 6-2.5-1-1](#); [IC 6-2.5-1-5](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-1-28.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-6](#); [IC 6-2.5-4-15](#); [IC 6-2.5-4-16.4](#); [IC 6-2.5-4-16.7](#); [45 IAC 2.2-1-1](#); [45 IAC 2.2-4-2](#); *Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue*, 575 N.E.2d 718 (Ind. T.C. 1991).

A taxpayer ("Company") is seeking an opinion as to whether various revenue streams related to information management services are subject to sales tax.

## STATEMENT OF FACTS

Company is a corporation based in another state that provides information management services to healthcare providers, patients, insurers, and other entities involved in the health care industry. Company operates three service lines which provide independent service offerings for their clients depending on the needs of the client. Company provides the following information regarding its request, reproduced exactly as submitted in its request for a ruling with certain details redacted:

## [Product 1]

[Company]'s largest service line is [Product 1]. Through contracts established with medical service providers (e.g., hospitals, doctors' offices), the [Product 1] group operates the medical records departments of these providers across the nation. These service providers do not typically pay [Company] for operating these departments. Instead, [Company] utilizes this position to provide the service of medical records retrieval, for a fee, to others who request a copy of these records.

The requester could be a patient, other medical provider, insurance company, or third-party representative of a patient, such as legal counsel. The requester will pay a fee for the service of retrieving the record, which may be delivered one of three ways: 1) an electronic export from a records database 2) an electronic scan of the medical record; or 3) as a paper copy. The requester is seeking the information contained in the medical record, regardless of the medium via which this information is provided.

In most states, the fee that [Company] can charge for this service is regulated by law or by a government agency, or the service may be mandated to be free of charge. [Company]'s contract with the medical provider often includes a certain number of no-charge records. Once this threshold is met, [Company] may charge a fee to the facility to provide this service on their behalf. Under some contracts, the facility may request and be billed by [Company] for records retrieval for internal use at the facility as well.

## [Product 2]

[Company]'s [Product 2] business represents the second largest division by revenue. This group provides records retrieval services primarily to health plans and other requesters. These requesters electronically issue to [Company] a list of requested records, which [Company] then attempts to retrieve, wherever they may be located.

In some cases, these records are in a records department operated by [Company]'s [Product 1] division. When [Company] operates the records department of the care facility, [Company] representatives at that location will retrieve the record. In cases where [Company] does not operate the medical records department of the provider, [Company] will retrieve the record by remotely logging in the provider's [Electronic Medical

Record, or EMR], receiving a fax or mailed record from the provider, the provider dropping a file on [Company]'s online portal or sending a representative to that provider's medical records department to either scan or copy those records. The provider's office may require [Company] to pay for the records, in which case [Company] passes this cost on to its customer, with no mark up. Once the requested records are obtained, [Company] may also perform additional processing on the records such as specialized coding and data extraction before delivering the records to the requesting client. The records are delivered to the requesting client as electronic records.

### [Product 3]

The [Product 3] group at [Company] provides solutions for health care providers, and researchers for the collection, management, storage and use of healthcare data. [Product 3] also facilitates the extraction of actionable information from that data. The two primary service options in this area are medical records Coding Services, Scanning and Storage Services and Data Abstraction Services.

#### Coding Services

Coding Services involve translating medical information (e.g., diagnoses, procedures, treatments, etc.) into industry-standard codes for use in [EMR], risk adjustment services, insurance claim processing, and other uses. [Product 3]'s coding products & services include 1) providing coding outsourcing services, 2) coding audits (e.g., review of coding work done by others), and 3) a Software as a Service ("SaaS") version of [platform that allows training and practice scenarios] that allows referential and industry guidance data to be accessed from any device with an internet connection and web browser.

[Product 3] also offers a SaaS . . . tool which assists customers (health care providers and insurers) in managing their EMR audits which are conducted by various oversight agencies.

#### Scanning and Storage Services

Another service provided by [Product 3] is Data Processing, which involves converting and updating an [EMR] to a new EMR. These services may include combining several records and/or formatting records. [Product 3] also provides scanning services to convert paper records to electronic EMRs, and both physical and electronic records storage.

#### Data Abstraction Services

The Abstraction Services provided by [Product 3] include various data mining of clinical data in order to extract and summarize relevant data from a population of medical records. The service is performed by experienced professionals who review voluminous records to identify and extract the relevant information. These procedures assist [Company]'s clients with tasks such as reporting for government disease registries, extracting specific data from old medical records during electronic conversion, and extracting other information such as drug success rates, drug interactions, and health outcome data from medical records. The output of these abstraction services is a database of clinical data or modern electronic medical record, with summaries of specific data useful to the requesting client. For many data abstraction projects, the [Company] team develops the database tool for data collection and performs redaction of personal health information from the record.

Following is a complete listing and description of each of the pertinent revenue streams of the company.

Revenue Category	Description
Abstraction Services - Data Processing	Fee for services of employees reviewing and entering key clinical data into a clinical database or electronic medical records. Electronic reports of abstraction services and ODS/research services.
Abstraction Services Research and Oncology Data Services	Professional services associated with reviewing and entering clinical data to meet key markers for research projects and cancer registries.
Audit Services	Professional services to review prior coding determinations and correct or reclassify to more appropriate medical coding. Separate charge for a written report of audit services.
Audit Management Services	Fees for accessing a data base to manage Electronic Medical Records for audit review by various agencies.
Data Processing	Fee for converting and updating electronic medical record (EMR) to new EMR.

Data Storage - Electronic	Fee for storage of electronic records on [Company]'s servers.
Data Storage - Physical	Fee for physical storage of records (i.e. Paper, Media, CD, Roll Film, Micro fiche, VHS Tapes, X-Rays) on behalf of a customer by [Company].
Denial Management Services	Charges associated with appealing denials of charges and associated recoding of billings for resubmission.
Postage	United States Postal Service Postage.
Shipping	Shipping charges, may include FedEx, courier, etc.
Shipping and Handling	Shipping charges, may include FedEx, courier, etc., includes charges for handling.
Pass Through	Reimbursement of direct costs in obtaining medical records from other medical records providers.
Information Services	Fee for importation of data from provider to [Company]'s system and exportation of data out of [Company]'s system to provider. No additional services rendered.
Labor - Special Projects	Charges for special labor incurred conducting special projects where the work is directed by the customer typically on an hourly basis.
Labor - Department Outsource	Charges associated with the outsource and management of a facility records management function - work not directed by customer.
Photocopy Fees - Electronic	Charges for reproducing health records based on a per copy charge. Copies are electronic utilizing the method of fax or electronic delivery via FTP.
Photocopy Fees	Charges for reproducing health records based on a per copy charge. Copies are tangible.
Record Retrieval	Labor and other fees related to the search, retrieval and delivery of medical records including adding an item to a currently stored item, placing a retrieved item back into place and obtaining specific information from a retrieved item.
Scanning	Fee for paper charts and records scanned into repository or other storage/database solutions; set up fees, per keystroke cost and fees for indexing and burning records to CD or DVD's.
Software as a Service	Charges for subscription access to software and services not licensed to customers which allow facilitation of retrieval of records.
Software Training	Online support and training related to software that resides on [Company] servers. Implementation and integration services for customer systems to access [Company] systems.
Fees	Notary, Certification, Affidavit, Deposition separately stated on invoice.
Medical Records Coding	Labor to perform medical coding and providing quality and productivity reports monthly.
Coding Audit Report of Findings	A report that reviews the number of records reviewed, types of records and coding quality and documentation findings.
Late Fees	Fees for late payment.
Professional Services	Configuration of electronically delivered software.

## DISCUSSION

Based on the foregoing facts, Company requests a ruling as to whether its product service lines and other charges are subject to Indiana sales and use tax. Regarding the Product 1 service line, Company maintains that is responsible for providing information contained within a patient's medical records to the requesting entities, which may be hospitals, medical practices, individual physicians, or individual patients. Company explains that the Product 1 service line typically receives a request to retrieve and provide medical record information. This information is typically provided in the form of an EMR to healthcare providers and other non-patient requesters and in tangible form to individual patients.

Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), sales tax is imposed on retail transactions made in Indiana. [IC 6-2.5-4-1\(a\)](#) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." A retail transaction is defined in [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration. [IC 6-2.5-4-1\(c\)](#) goes on to provide in pertinent part:

For purposes of determining what constitutes selling at retail, it does not matter whether:

...  
(2) the property is transferred alone or in conjunction with other property or services . . .

"Tangible personal property" is defined in [IC 6-2.5-1-27](#) as:

. . . personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. [45 IAC 2.2-4-2](#) clarifies the taxability of services as follows:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

- (1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
- (2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
- (3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
- (4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in [subsection (a)], the gross retail tax shall not apply to such transaction.

[IC 6-2.5-1-1](#) states that a "'unitary transaction' includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated." A unitary transaction is clarified in [45 IAC 2.2-1-1\(a\)](#) as follows:

Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

[IC 6-2.5-4-15](#) provides that "[a] person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction." [IC 6-2.5-1-11.5](#) defines "bundled transaction" in pertinent part as follows:

(b) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, that are:

- (1) distinct;
- (2) identifiable; and
- (3) sold for one (1) nonitemized price.

(c) The term does not include a retail sale in which the sales price of a product varies, or is negotiable, based on other products that the purchaser selects for inclusion in the transaction.

(d) The term does not include a retail sale that:

- (1) is comprised of:
  - (A) a service that is the true object of the transaction; and
  - (B) tangible personal property that:
    - (i) is essential to the use of the service; and
    - (ii) is provided exclusively in connection with the service;

. . .

The requirements for determining the "true object" of a transaction are not defined in statute. In *Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue*, 575 N.E.2d 718 (Ind. T.C. 1991), the Indiana Tax Court held that the determination of whether a sale was a retail transaction hinged on whether the "true object" of the transaction was service or property. In *Cowden*, the taxpayer was a hauler who only on occasion sold stone at cost to his customers as a convenience, and therefore the Court concluded that the "true object" of the transaction was the provision of service rather than the sale of stone.

Under [IC 6-2.5-1-11.5\(d\)\(1\)](#), there is no percentage test to determine whether the cost of the tangible personal property needs to be at a certain percentage relative to the cost of the service in order to qualify as a bundled transaction. Instead, in order to not qualify as a bundled transaction, the transaction would have to be comprised of a service that is the true object of the transaction, as well as tangible personal property that is essential to the use of the service and which is provided exclusively in connection with the service.

Based upon a review of the four prong standard established by [45 IAC 2.2-4-2](#), Company maintains that it is primarily a service provider, who does not specifically charge for any paper transferred, and who pays sales or use tax on purchases of all tangible property transferred in the course of its service. Company also asserts that tangible personal property, such as paper records from other providers, or paper products for copying services, are all "used or consumed" during the performance of their services. While the services provided by the Product 1 service line may at times result in a transfer of tangible property in the form of a paper record, Company asserts that this transfer is incidental and should not cause this transaction to become a retail transaction as defined by [IC 6-2.5-1-2\(a\)](#). Company instead believes that the "true object" of customers purchasing these services is to obtain the intangible data contained in a patient's medical record, and that the Company is providing a professional service retrieving this medical information. Therefore, Company believes that these services are not subject to Indiana sales tax.

The department disagrees with that conclusion. What the customer pays for is the record, and what is received by the customer is the paper which contains that record. The fact that the customer wants the record and not the paper itself is immaterial. Whether data, media, or some other intangible collection of information, such information is often delivered through physical means. When delivered on a disc, a cassette, or in this case, paper, the customer receives tangible personal property. Additionally, regarding the argument that the true object is the service, while the act of record retrieval is important and the retrieval of the record is not always simple in some cases where Company does not operate a provider's record retention department, the true object in the transaction for a record is not the service - it is the record itself. Even if the service is part of the larger service of maintaining records, Company is normally not paid by the service providers for operating their record retention departments, but instead retrieves medical records for a fee to others who request a copy of these records. This point further illustrates that the main focus of the enterprise in maintaining and retrieving records is the fees for the records.

However, when the records are transferred electronically, [IC 6-2.5-4-16.4\(b\)](#) provides that a person engages in making a retail transaction when the person (1) electronically transfers specified digital products to an end user and (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser. "Specified digital products," as currently defined by [IC 6-2.5-1-26.5](#), include only digital audio works (e.g., songs, spoken word recordings, ringtones), digital audiovisual works (e.g., movies), and digital books. Products "transferred electronically" are defined at [IC 6-2.5-1-28.5](#) to mean products that are "obtained by a purchaser by means other than tangible storage media." As these records do not fit within any category of specified digital products, a fee for a digital record would not be subject to sales tax.

Regarding the Product 2 service line, Company states that this service line is similar in nature to the Product 1 service line, with the primary difference being that the Product 2 group deals with high volume records retrieval services. These services are often requested by insurance companies and/or law firms, and Company maintains that most of the records and information developed by this group are transmitted electronically, with no transfer of tangible personal property. As with the Product 1 line, Company contends that it is providing a professional service of record retrieval that is not subject to Indiana sales tax. For the same reasons listed above, the department concludes that the fee for the records is taxable if the record is not delivered electronically.

Regarding the Product 3 service line, Company states that services provided by the Product 3 service line are targeted to four distinct areas: 1) medical information coding services, 2) medical coding review and correction, 3) abstraction services and reports, and 4) audit management. Company claims that all of these services, described in more detail in the facts above, are provided to customers seeking specialized skills and knowledge to produce information and/or further provide a value added service. As such, Company believes that these transactions are services, and furthermore not taxable retail transactions.

The department would agree. The services involved, including remote storage of data and data processing, are exempt from sales tax. Regarding the latter, while transactions involving "telecommunication services" are subject to sales tax pursuant to [IC 6-2.5-4-6](#), the term "telecommunication services" does not include the following:

Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.

[IC 6-2.5-1-27.5](#)(c)(1). Since data processing is not considered a telecommunication service, it is not subject to sales tax.

Furthermore, while "SaaS" involves both the rendering of services and the provision of software, [IC 6-2.5-4-16.7](#) provides that prewritten computer software sold, rented, leased, or licensed for consideration that is remotely accessed over the Internet, over private or public networks, or through wireless media, is not considered an electronic transfer of computer software and is not considered a retail transaction. Therefore the purchase, rental, lease, or license of that software is not subject to Indiana sales or use tax.

Finally, regarding the revenue categories in the table above, Company concludes that none of the charges are subject to Indiana sales and use tax. Company maintains that these charges are all for nontaxable services that relate to what they consider to be the overall nontaxable services in the different Product Lines. For instance, the Product 1 division may perform and separately bill for charges such as Data Storage, Photocopying, Scanning, Record Retrieval, and Provision of Information. Product 2 service line may also perform, and separately bill for, Data Storage, Photocopying, Scanning, Record Retrieval, Provision of Information, and Report services.

Company believes these transactions to be outside the scope of retail transactions as defined by [IC 6-2.5-1-2](#)(a), and therefore, are not be subject to Indiana sales tax. Company further states that the reason why these aspects of the service fee may sometimes be separately billed is due to certain invoicing and fee regulations applicable to the medical industry which require itemization of the overall service in order to apply mandated fee level caps. Company contends that being required to separate charges for these immaterial aspects of the non-taxable service does not convert these items to taxable sales of tangible personal property. However, the department disagrees that all of these charges are exempt. The department believes that the following itemized charges would be taxable:

- Concerning the photocopying fees, even though there is a physical output, Company believes the true object of the transaction is a non-taxable service, and the photocopying is provided merely as one of several methods via which the service may be delivered. As explained above, this is not correct, so this charge would be subject to sales tax. However, the photocopying fees for when the record is faxed or is otherwise electronically delivered are not subject to sales tax.
- Regarding the shipping (and shipping and handling) charges, [IC 6-2.5-1-5](#) provides that "delivery charges," whether separately stated or not, are considered part of the gross retail income upon which a merchant is required to assess sales tax. Company argues that the shipping and handling charges should be exempt in this instance as they relate to the delivery of the aforementioned tangible photocopies which are incidental to what they consider the provision of a non-taxable service. As explained above, the provision of tangible photocopies is taxable, so the delivery charges would be subject to sales tax as well.

## RULING

When Company provides paper records, the fees for such records are subject to Indiana sales tax. However, if the records are transferred electronically, they are not subject to sales tax. Further, fees for the delivery of paper records or for photocopying paper records are subject to Indiana sales tax.

## CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling



will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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