

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition for)	
Redetermination Under the Sales)	DECISION AND RECOMMENDATION
And Use Tax Law of:)	
)	
REDACTED TEXT)	No. REDACTED TEXT
)	
<u>Petitioner</u>)	

The Appeals conference in the above-referenced matter was held by Paul O. Smith, Staff Counsel on January 12, 1994, in Fresno, California.

Appearing for Petitioner:	REDACTED TEXT
Appearing for the Sales and Use Tax Department:	Bud Jones District Principal Auditor
	Charlie Tavookjian Supervising Tax Auditor
	Ron Yoshimoto Senior Tax Auditor

<u>Protested Measure of Tax</u>	<u>Amount</u>
B. Taxable sales of copies of patient medical records.	\$REDACTED TEXT

Contentions

Petitioner contends: (1) that it is mandated by the California Public Records Act and Assembly Bill 610 to provide its patients a copy of their own medical records upon request, and such copies are not subject to tax; or alternatively, (2) the fee charged by petitioner for providing such copies is related to a government act, and is not a retail sale.

Summary

During the period in issue petitioner County of REDACTED TEXT dba REDACTED TEXT was engaged in providing health care services. Petitioner charged its patients \$2.50 to examine their medical records (inspection fee), and an additional fee when it was necessary to retrieve the medical record from an off-site location. Petitioner also levied a 20 cents per page copy charge to patients. The Sales and Use Tax Department (Department) conducted an audit of petitioner's records and determined, inter alia, that the fee charged patients for a copy of their

own medical records was taxable.¹ The Department argues that: (1) the exception from tax provided in Sales and Use Tax Regulation 1528, subdivision (a) (2) is inapplicable in the instant matter because a patient is not included in the term "general public"; that (2) petitioner's sale of photocopies is otherwise taxable because the California Public Records Act requires petitioner to give a patient "access" to his medical records, not photocopies; and because (3) the February 17, 1984 opinion written by Donald J. Hennessy, Tax Counsel (now Assistant Chief Counsel of the Appeals Section) establishes that photocopying cost are taxable. (Exhibit A). On October 30, 1991, the Department issued its Notice of Determination to petitioner. Petitioner paid the entire amount of the determination, and on November 27, 1991, timely filed a Petition for Redetermination.

Analysis and Conclusions

The California Public Records Act (Chapter 1473, Statutes of 1968) was enacted to safeguard the accountability of government to the public. (See Gov. Code, § 6250 et. seq.; see also San Gabriel Tribune v. Superior Court (1983) 143 Cal.App.3d 762, 771.)² Government Code section 6254 exempts from disclosure medical or similar files, the disclosure of which would constitute an unwarranted invasion of privacy. (Gov. Code, § 6254, subd. (c).) The purpose of the exemption embodied in subdivision (c) is to " ... protect information of a highly personal nature which is on file with a public agency " (*id* at 777; see also Register Div. of Freedom Newspaper, Inc. v. County of Orange (1984) 158 Cal.App.3d 893, 902.) Moreover, the act reflects a general policy of disclosure that can only be accomplished by narrow construction of the statutory exemptions. (See San Gabriel Tribune v. Superior Court, *supra*, 143 Cal.App.3d at 772-773.) The medical records, here, although private in nature, were copied at the request of the patient. Absent any justification for withholding disclosure of the record, the exemption provided in subdivision (c), of Government Code section 6254 is inapplicable.

Health & Safety Code section 1795, et seq. (Chapter 160, Statutes of 1988) was enacted to provide the public access to complete information respecting his or her condition and care provided. Health and Safety Code section 1795.12, subdivision (b) provides in relevant part that any patient shall be entitled to copies of all or any portion of the patient's records which he or she has a right to inspect. (See also Health & Saf. Code, § 1795.12, subd. (f), which imposes a fine upon a health care provider for wilfully failing to provide photocopies upon request.) Further, and most importantly, Sales and Use Tax Regulation 1528 provides in relevant part that tax applies to the production of photostatic copies of medical records, except copies which a public agency is by law required to provide to the general public. (Sales & Use Tax Reg., § 1528, subd. (a) (2).) Revenue and Taxation Code section 41006 provides in relevant part that "public agency" means any county located in whole or in part within this state which provides ambulance, medical, or other emergency services.

I first address the Department's argument that the exception from tax provided in Sales and Use Tax Regulation section 1528, subdivision (a) (2) is inapplicable in the instant matter because a patient is not included in the term "general public". This argument must fail because Government Code section 6252, subdivision (f) provides that a "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency

¹ At the Appeals Conference the parties agreed that the taxable measure includes only the inspection fee and the 20 cents per page copy charge. Also during the conference petitioner was advised by the Department that it considered the inspection fee taxable when it was coupled with the 20 cents per page copy fee. Petitioner was given an opportunity to brief this issue, which petitioner declined. (See Petitioner Corres., Jan. 20, 1994).

² Hereinafter all references are to the statutes, regulations, and annotations in effect during the years in issue, unless otherwise stated.

acting within the scope of his or her membership, agency, office, or employment. Under this definition a patient is clearly a member of the general public.

I next address the Department's argument that petitioner's sale of photocopies is otherwise taxable because the California Public Records Act requires petitioner to give a patient "access" to his medical records, not photocopies. Government Code section 6257 states in relevant part that except with respect to public records exempt by express provisions of law from disclosure, upon request and payment of applicable fees covering direct cost of duplication, or a statutory fee, a reasonably segregable portion of a medical record shall be provided to any person requesting such record. (See also Gov. Code, § 6253.1 which provides in relevant part that a local agency may adopt requirements for itself which allow greater access to records than prescribed by the minimum standards; and Gov. Code, § 6256 which provides in relevant part that, upon request, an exact copy shall be provided unless impracticable to do so.) Moreover, to limit the term "access" to merely inspection of records would severely limit the accessibility of public records to the public, and would clearly be in contravention of the intent of the act. (Gov. Code, § 6250.) Thus, petitioner was required, when requested, to provide a patient with a copy of his or her own medical records.

With respect to the Department's argument that the opinion written by Mr. Hennessy establishes that photocopying cost are taxable, I consider this opinion distinguishable from the instant matter. While this opinion sets forth the basic rule that sales tax applies to charges for photocopies of medical records, the opinion is directed to and discusses in great detail the exception from tax provided a hospital or other person or entity which is required to furnish copies of records in response to a written authorization by an attorney or his representative, or in response to a subpoena duces tecum, and imposition of the copy fees pursuant to sections 1158 and 1563 of the California Evidence Code.

In view of above, petitioner, a "public agency" doing business as a health care provider, was required by the California Public Records Act (Gov. Code, § 6250 et. seq.) to, upon request, provide the patient, a member of the general public, with a copy of his or her medical records; and by Health & Safety Code section 1795, et seq., to provide a patient with copies of all or any portion of the patient's records which he or she has a right to inspect.

Further, petitioner correctly argues that the Department is bound by its own Annotations: Sales and Use Tax Annotation 515.0195 (November 22, 1976) provides that sales tax does not apply to charges made for copies of documents which are made available to the public as required by the California Public Records Act; and Sales and Use Tax Annotation 515.0120 (October 2, 1964) provides that if a city is required by law to furnish copies of a particular document, the tax does not apply. (See also Sales and Use Tax Annot. 515.0180 (Jan. 9, 1959); Sales and Use Tax Annot. 515.0140 (Aug. 4, 1964).) Accordingly, the copies of patient medical records sold by petitioner are not subject to tax. Since I have made this decision, I need not address petitioner's other contention that the fee charged by petitioner for providing such copies is related to a government act and is not a retail sale.

Recommendation

Grant the petition.

Paul O. Smith, Staff Counsel
W/Exhibit A

2/9/94
Date