

(Date)

Texas Comptroller of Public Accounts  
Tax Policy Division  
P.O. Box 13528  
Austin, Texas 78711-3528

Re: Private Letter Ruling Request  
Texas Sales and Use Tax

Please allow this letter to serve as a request for a Private Letter Ruling pursuant to Texas Administrative Code Section 3.1. The firm of ABC, LLP is authorized to request the private letter ruling on behalf of Seller Incorporated. An executed power of attorney is attached hereto as Exhibit "A."

Taxpayer Incorporated's identifying information is set out as follows:

Seller Incorporated  
123 Main Street  
Best City, Texas 78700  
Texas Taxpayer No.: 32100012300  
Federal ID No.: 74-1111111  
Formed in Texas

**Statement of Relevant Facts**

Seller Incorporated ("Seller") is engaged in the business of credentialing individuals in order to be given access to secured areas of hospitals or healthcare institutes. The credentialing process requires the individuals to submit certain personal information and accreditations to the Seller electronically. If an individual is unable to submit the documents electronically, hard copies will be sent to the Seller who will scan the documentation into its system. Seller does not verify the authenticity of the documentation, only that the documents have the appropriate signatures. For example, confirmation of immunizations must be signed by a qualified health care professional. Seller will search government watch lists for felonies and sex offenders using individual's name and driver license only. A fee is charged to the individual (e.g., a pharmaceutical representative) or to an individual's employer (e.g., a pharmaceutical company employing several representatives) for this service. Once credentialed, the individual will receive a badge to enter location. The cost of the badge is inconsequential to the service being provided and the badge is not required to be returned to Seller. Neither the individual nor the individual's employer has open access to the database. An individual has access to his or her information. If an employer is involved, an account manager will be identified and that person will have access to the information of its employees only. Seller does not and cannot resell this information to the public.

Hospitals that require vendors to be credentialed prior to entering into certain areas can contract with Seller to have access to the information on the servers. Seller does not receive any consideration from the hospital for accessing the database. Hospitals will contract with one vendor for these credentialing services and individuals wishing to enter into those hospitals will have to use the service provider that the hospital has contracted with for access. Once an individual has registered with Seller, the individual's badge is valid at any hospital using Seller's database.

Seller earns its revenue by charging a fee for credentialing an individual. Credentialing is renewed annually.

### **Documents**

Power of Attorney  
Vendor Terms and Conditions Sheet

### **Statements Relating to Request**

This issue is not under consideration by the Texas Comptroller of Public Accounts in connection with an audit examination of any type, a refund request, a voluntary disclosure agreement, an administrative hearing, or litigation for Taxpayer Incorporated.

Seller has not made a similar request from a taxing jurisdiction of another state. Should Seller offer services in another state, it may make a request depending on the laws and regulations of that state.

### **Requested Ruling**

Seller requests a private letter ruling that a charge for credentialing is a charge for a nontaxable service.

### **Authorities in Support of Requested Ruling**

#### **Statute(s) and Rule(s):**

Tax Code Sections 151.0101, 151.0035, 151.0038 and 151.0075  
34 TAC Sec. 3.330 relating to data processing services  
34 TAC Sec. 3.342 relating to information services  
34 TAC Sec. 3.333 relating to security services

#### **Other Authorities:**

State Tax Automated Research System (STAR) Accession No. 200212661L (Taxability Letter dated December 23, 2002)

### **Explanation of Grounds for Requested Ruling**

Only services enumerated in Tax Code Section 151.0101 are subject to sales tax.

We examined the Texas Administrative Code and agency rules to determine the possible enumerated services that Seller's activities could potentially fall under. We reviewed Data Processing Services, Information Services and Security Services.

**Data Processing – 34 TAC Sec. 3.330 and Tax Code Section 151.0035**

34 TAC Sec. 3.330(a)(1) defines data processing services in part as the processing of information for the purpose of compiling and producing records of transactions, maintaining information and entering and retrieving information. Data processing does not include the use of a computer by a provider of other services when the computer is used to facilitate the performance of the service.

34 TAC Sec. 3.330(a)(1) also defines data processing as processing, reformatting, or manipulating data provided by the customer.

Seller is not compiling and producing records of transactions. As part of its service, Seller compiles and stores data, and makes that data available to its customers only as a means of providing its actual service, which is to credential the individual to allow that individual access into otherwise restricted areas of a hospital. To fulfill its service, Seller must receive the necessary documents and verify, via name and DL#, that the individual is not a felon or a sex offender based on the government watch list. As such, we do not think Seller's services meet the definition of data processing services.

**Information Services – 34 TAC Sec. 3.342 and Tax Code Section 151.0038**

34 TAC 3.342(a)(2) defines information services in part as furnishing general or specialized news or other current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or which may be devised, and electronic data retrieval or research.

34 TAC 3.342(a)(6)(A) defines taxable information service as information that is gathered, maintained, or compiled and made available by the provider of the information service to the public or to a specific segment of industry for a consideration.

34 TAC 3.342(a)(5)(A) defines nontaxable proprietary information services as the sale of information that is gathered or compiled on behalf of a particular client that is proprietary in nature to that client and may not be sold to others by the person who gathered or compiled the information.

Seller is gathering information electronically on behalf of the individuals to determine if the individual has the appropriate credentials to be allowed access to restricted areas in a hospital. Some of the information is provided by the individual (such as vaccination records) and some is gathered or verified by the Seller from public databases (e.g., government watch lists.) The service is for the individual about whom the information is

gathered. The individual does not purchase information. The individual pays for certification that he or she meets standards to be allowed access to otherwise restricted areas of contracting hospitals. Seller cannot reuse the information to credential another individual. The information cannot be reused. Finally, the hospitals do not give any consideration for accessing Seller's servers to verify the individual wishing to enter the hospital.

We believe if the Seller's services meet the definition of information services, that the services would be nontaxable information services based on the definition in 34 TAC Sec. 3.342(a)(5)(A). The data is not made available to the public or a specific segment of industry for consideration. Nor can Seller sell the information to others.

Security Services – 34 TAC Sec. 3.333 and Tax Code Section 151.0075

34 TAC Sec. 3.333(a) defines security service Security service means any service for which a license is required under Occupations Code, §1702.101 or §1702.102, Private Security Chapter, and includes any service provided within the scope of the required license as an investigations company, guard company, alarm systems company, armored car company, courier company, guard dog company, security services contractor, private security officer, detective service, private investigator, locksmith company, or private security consultant company.

Seller is not required to be licensed under the Occupations Code sections mentioned above. Therefore, we do not think Seller's services meet the definition of security services.

In addition, STAR letter 200212661L states that services similar to those described in this ruling request are not taxable.

**Authorities Contrary to Requested Ruling**

Seller reviewed the Texas Tax Code and the rules of the Comptroller of Public Accounts but was unable to locate a definitive authority on this issue.

In the performance of its service, Seller is required to gather and store data which data is made available to the customer upon request. Thus, the Comptroller may conclude that Seller performs data processing, although it is our opinion that any data processing performed is a service used by Seller in the performance of its true service.

With regard to information services, although the individuals or their employers pay for the credentialing service, the information gathered may be provided to Hospitals granting access. Certain similar services such as pre-employment background checks have been found by the Comptroller to be taxable services. For example, criminal background checks have been found to be taxable information services in STAR documents: 200401398P; 9508L1365B06; 9311L1267D09 and 9512L1392B01.

Sincerely,

Abigail B. Smith.  
Attorney, ABC, LLP

Enclosures

Sample PLR Request