IPT 2015 Sales Tax Symposium
Indian Wells, California

Healthcare Industry:
Trends, Technology, and
Navigating State
Requirements
Presenters

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Agenda

- Hot Topics, Trends and Recent Court Cases
- Exploring the Tax Base Beyond Medical Items
- Documentation and How to Properly Navigate through the Process
- Managing Technology to Comply with Sales/Use Tax Laws
Hot Topics, Trends and Recent Court Cases

- California Medical Facilities Memorandum January 2015
  - The AIS replied to the ADRS and outlined how health facilities can be both *consumers* and *retailers* depending on whether or not contract language exist that transfers title of the property to the resident or patient or *other consumer*
  - The ADRS believes that the United States government is the “other consumer” referenced in Reg. 1503(b)(2).
  - Hybrid treatment depending on type of patient
South Carolina Information Letter 14-4 (3/26/2014)
- Taxability of injectable medications / injectable biologics
  - Biologics means - ... products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms
- July 1, 2014 through June 30, 2015 – qualifying sales are taxed at 50% of the gross proceeds
- July 1, 2015 and after – qualifying sales are fully exempt from sales/use taxes
Hot Topics, Trends and Recent Court Cases

- **CareAlliance Health Services v. DOR, South Carolina Administrative Law Court (5/20/14)**
  - Little bit of history – *Home Medical Systems, Inc. v. SC DOR*
  - Three primary categories at issue: musculoskeletal prosthetics, trauma prosthetics, and cardiovascular products
  - Both parties agree that these are prescription devices but the disagreement arises as to whether these devices were *sold by prescription and* whether or not they replace a missing body part
Hot Topics, Trends and Recent Court Cases

- (CONTINUED) CareAlliance Health Services v. DOR, South Carolina Administrative Law Court (5/20/14)
  - Sold by Prescription
    - Definition of Sale by Prescription and how *Home Medical* comes into play
    - Application of the Definition and how it relates to this case
  - Replace a Missing Body Part
  - July 2014 Ruling – cardiovascular prosthetic device hearing is postponed until Appellate courts ruling on musculoskeletal devices is determined
Hot Topics, Trends and Recent Court Cases

  - No Charge Medical Equipment
    - Equipment provided on loan to hospitals to be used in conjunction with medical supplies (catheters) sold
    - Loaned equipment viewed as part of the total sales price for medical supplies (catheters) sold.
  - Taxability of Sales Price
    - Customer type
    - Exemption for medical supplies sold
Hot Topics, Trends and Recent Court Cases

- **Feeling Great, Inc. v. North Carolina Department of Revenue and Sleep Medical Center, Inc. v. North Carolina Department of Revenue (8/12/2014)**
  - Discussed whether a medical service provider could purchase, tax free, durable medical supplies (DMS) that were used in conjunction with durable medical equipment (DME)
  - Sold on Prescription
    - Timing of Prescription
    - Reimbursement Itemization
Hot Topics, Trends and Recent Court Cases

- **Mobility Medical, Inc., v. Mississippi Department of Revenue, Mississippi Supreme Court, No. 2011-CA-01780-SCT (6/6/2013)**
  - Held that a Mississippi law requiring a medical equipment retailer to pay sales tax on equipment sold to customers who were covered by the Federal Employees Health Benefits Plan (FEHBP) was not preempted by a federal law that prohibits states from levying a tax directly or indirectly on insurance carriers who participate in the FEHBP.
Hot Topics, Trends and Recent Court Cases

- **Georgia. Comp. R. & Regs. 560-12-2-.30 Amendment (11/19/2012)**
  - Updates definitions to conform to the predefined terms adopted under the Streamlined Sales Tax Agreement
  - Places limitations on multiple medical exemptions applicable to healthcare provider:
    - Prosthetic Devices
    - Durable Medical Equipment
    - Mobility Enhancing Equipment
Hot Topics, Trends and Recent Court Cases

- **Other Notable Law and/or Policy Changes**
  - North Carolina Service Contracts
    - N.C. Gen. Stat. § 105-164.4(a)(11)- general rate of tax applies to sales price of or the gross receipts derived from a service contract
  - Georgia Tax Tribunal Creation- 2013
    - Advantages are lower costs, no bond required, experienced tax attorney’s as judges, streamlined process and faster resolution
Hot Topics, Trends and Recent Court Cases

- Other Notable Law and/or Policy Changes
  - Connecticut Nonprescription Drugs
    - Effective April 1, 2015, sales of nonprescription drugs or medicines available for purchase for use in or on the body. Note, the DOR has placed certain restrictions as to what does not qualify as an exempt nonprescription drug that will remain taxable. (Special Notice 2015(1)).
  - California Audit Manual Revision
    - BOE Audit Manual Section 0421 was revised to provide auditors and/or audit offices greater autonomy in what evidence can be requested and considered to prove software was delivered electronically.
Exploring the Tax Base Beyond Medical Items

- What else is there besides medical items?
  - Services, services, services;
  - Software, cloud computing; and
  - Cafeteria and food services

- What’s important to you?

- How do you evaluate the non-medical spend?
Exploring the Tax Base Beyond Medical Items

- **Services, services, services**
  - Repair and maintenance to tangible personal property ("TPP")
    - Exempt Item, Separately States, Required by Law
  - Applications for repair/maintenance of TPP
    - Wheelchairs, dialysis machines, surgical instruments;
    - Services to diagnostic imaging equipment
      - Texas: Labor to qualifying modalities exempt per Texas Tax Code 151.338
      - Utah: Personal property permanently attached to real property
Exploring the Tax Base Beyond Medical Items

- **(CONTINUED) Services, services, services**
  - Automation of services
    - Medical transcription;
    - Medical coding; or
    - Medical billing.
  - Database/Information services
    - Accessing online information
    - Electronic journals and/or publications
    - Payroll processing
Exploring the Tax Base Beyond Medical Items

● (CONTINUED) Services, services, services
  – Are these purchases of services or software?
  – Observed Taxability Trends
    ● Texas: Medical transcription services may be considered taxable data processing services (see STARS 201004665L) at 80% of the purchase price. Transcription services were provided over the internet using software voice recognition services. Digital speech was converted into a written format. Manual transcription services are still excluded from the definition of taxable data processing services.
(CONTINUED) Services, services, services

- Observed Taxability Trends
  - Colorado: Healthcare coding services, medical information abstraction services and online database storage services (where no software was installed) were viewed as non-taxable service because there was no sale of tangible personal property. (General Information Letter 15-009)
  - Other States: New Jersey, Washington, Michigan
Exploring the Tax Base Beyond Medical Items

- **TN Revenue Modernization Act of 2015**
  - Idea to level the playing field for out-of-state companies and in-state companies
  - Remotely Accessed Software
    - Exemptions still exist for data processing, billing/collection, internet access, storage of computer software, and other transaction processing services
  - Click-Through Nexus
Exploring the Tax Base Beyond Medical Items

- Cafeteria Operations and Other Ancillary Operations
  - Cafeteria Sales vs. Non-Cafeteria Sales and the Methods of Calculating Tax Due
    - Contract language
    - Invoice layout
  - Rental of TPP and Real Property
    - Compliance and responsibilities
    - Planning opportunities
Exploring the Tax Base Beyond Medical Items

(CONTINUED) Cafeteria Operations and Other Ancillary Operations

- Cloud Computing and Maintenance Agreements
- Non-Sales Tax Related Issues to Weigh and Factor
  - Business taxes
  - Federal medical excise tax
  - Property tax filings resulting in sales tax consequences
Documentation and How to Properly Navigate through the Process

- **Streamline Sales Tax States**
  - Healthcare Item Listings: Appendices L & M
    - Complexities still exist – Pre-mounted stents vs. Pre-loadable stapler
    - What happens when new medical devices come to the market?
    - Issue Papers found on website
    - Are states following product classification found on L&M?
Documentation and How to Properly Navigate through the Process

- **Bundled Transaction Applications**
  - What is a bundled transaction?
    - Standardized Definitions & Tax Treatment
      - Streamline Sales Tax states
        - Medical KPT’s that include a drug, prosthetic, DME, or MEE are NOT a bundled transaction BUT are subject to predominant cost analysis
      - All Other States
        - Texas
        - Illinois
        - California
Documentation and How to Properly Navigate through the Process

- **(CONTINUED) Bundled Transaction Applications**
  - Is everything a medical KPT?
    - Where do you draw the line?
    - How are State auditor’s attacking this category?
      - Stapling Units
      - Stents
  - Costing Analysis
    - What cost do you use? retail, cost of acquisition, historical, current
    - Challenges
Documentation and How to Properly Navigate through the Process

● Limitations to Service Providers
  – Numerous states have enacted Rules and Regulations that prohibit and limit the exemptions that are available to healthcare providers.
    ● Georgia, North Carolina, Oklahoma, Indiana, South Carolina, Virginia
  – State’s reason’s for limitations
    ● Prescription requirements
    ● End user, title transfer
  – Recent Trends
Documentation and How to Properly Navigate through the Process

- **Product-based Exemptions vs Use-based Exemptions**
  - Internet research and FDA 510K reports to determine function
  - Use-based require additional resources/insight
    - VA prosthetic example – was the purchase made on behalf of an individual?
    - KS DME
Documentation and How to Properly Navigate through the Process

- (CONTINUED) Product-based Exemptions vs Use-based Exemptions

<table>
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<tr>
<th>Number</th>
<th>Durable medical equipment (indicate how the options are treated in your state)</th>
<th>Taxable</th>
<th>Exempt</th>
<th>Statute/Rule</th>
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<td>NA; KSA 79</td>
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Documentation and How to Properly Navigate through the Process

(CONTINUED) Product-based Exemptions vs Use-based Exemptions

- Patient Specific Request (HIPAA)
  - VA prosthetic exemption - patient identifier needed
  - Medicare / Medicaid
- Could States Shift More to Use-based vs Product-based?
Documentation and How to Properly Navigate through the Process

- **Keys to Determining Item Taxability & Proper Documentation**
  - What are the item’s characteristics?
  - Who is purchasing the item?
  - How is the item covered or reimbursed?
  - How is the item purchased?
  - How is the item going to be used?
Documentation and How to Properly Navigate through the Process

- What are the item’s characteristics?
  - Physical properties
    - Is it worn on or in the body?
    - Is it sold as part of a medical KPT?
  - Chemical composition
    - Does the item contain a drug or medicine?
  - Labeling requirements
    - Is it labeled with federal legend or is it a prescribed device per FDA?
Documentation and How to Properly Navigate through the Process

- **Who is purchasing the item?**
  - Hospital or physician purchase
  - Non-profit hospital or clinic
  - For-profit hospital or clinic

- **How is the item covered or reimbursed?**
  - Medicare/Medicaid
Documentation and How to Properly Navigate through the Process

- **How is the item purchased?**
  - Bulk purchase and inventoried prior to use
  - Patient specific purchase
    - Is the patient identified prior to purchase; or
    - Was there a prescription issued to the seller?
  - Item resold to patient
    - Is there separate charge on patient’s bill; or
    - Does title/possession transfer to patient?
  - Resale certificate
    - Requirement for exempt purchases?
Documentation and How to Properly Navigate through the Process

- **How is the item used?**
  - Home use or institutional purchaser- “home use” exemption applicability in many SST states
  - Single patient use or reusable- FL and LA offer exemptions for single patient use items
  - Is it comparable to the definition of exempt item (e.g. prosthetic, orthopedic, drug)?
  - Is it a related supply or replacement part used in conjunction with exempt item?
Managing Technology to Comply with Sales/Use Tax Laws

- System Automation
  - Human Interactions/Decisions vs Computer Interactions/Decisions
    - Fixed assets and other non-routine purchases/sales
    - What tools/resources are in place to better assist
  - Retroactive Application vs. Proactive Application
    - Tax short pays vs. pay all the tax and pursue through refund claims
      - Internal resources
      - Use of consultants
Managing Technology to Comply with Sales/Use Tax Laws

● (CONTINUED) System Automation
  – Retroactive Application vs. Proactive Application
    ● Tax discrepancies – who resolves the issue at hand
      – AP and AR teams
      – Tax departments
    ● How to manage for potential time restraints
    ● Team training experience: pros / cons
Managing Technology to Comply with Sales/Use Tax Laws

- **Vendors / Consumers – How to Meet in the Middle?**
  - Exemption / Direct Pay Certificates
    - Product exemption vs. account exemption
    - What happens in home-rule areas where there are different taxing jurisdictions?
  - Periodic Reviews of Sales / Purchases
    - Volume analysis vs. spend analysis
    - Global review vs. targeted review
Managing Technology to Comply with Sales/Use Tax Laws

- (CONTINUED) Vendors / Consumers – How to Meet in the Middle?
  - Match up Tax Settings Between Vendor and Consumer
  - Threshold / Tolerance Settings
    - What amount would reduce workload and not have a significant impact on the financial statements
    - System capabilities
Question & Answer

- Questions?
- Comments?