



Memorandum

To : Mr. Tim Cornforth
Staff Attorney
Department of Health Services
714 P Street, Room 1216
Sacramento, CA 95814

Date : July 7, 1989

From : Richard H. Ochsner

Subject : Exemption of Medi-Cal Provider Claim Forms

This is in response to your request that I review your memorandum opinion, dated December 19, 1988, which concludes that the inventory of Medi-Cal Provider Claim Forms held by Electronic Data Systems under the cost reimbursement provisions of the Medi-Cal Fiscal Intermediary Contract are not subject to local property taxation because the claim forms are State-owned property. You ask that I review your opinion and the applicable contract provisions included with it and that I reconsider the views expressed in my April 14, 1988, letter to the Sacramento County Assessor's office relating to the taxability of the Medi-Cal claim forms used by Computer Science Corporation under its fiscal intermediary contract as the predecessor of Electronic Data Systems.

As discussed with you via phone on July 5, after reviewing your opinion and the applicable contract provisions, I am unable to agree with your conclusion that the Medi-Cal claim forms constitute State-owned property or are otherwise exempt.

The contract provisions you furnished indicate that the contractor is required to operate and maintain the CA-MMIS and other designated operational claim's processing systems. (§ 3.0.) CA-MMIS is defined as the claim's processing and related systems that are currently operated by Computer Sciences Corporation for the Department of Health Services and the Child Health and Disability Prevention Program, currently operated by Electronic Data Systems. The definition also specifically provides that if other claim's processing systems are transferred to this contract, they will be incorporated into the CA-MMIS once the enhancement is completed. (§3.1.) A definition of the Medi-Cal claims processing system states that the system was designed by Computer Sciences Corporation pursuant to its 1977 fiscal intermediary contract and consists of computer programs, manual procedures, system files, job control language, change orders and operating instruction letters, and implemented system development notices. This description continues in further detail but in no case does the description refer to stocks of unused claim forms. (§3.1.1.)

The contract states that the State of California owns the CA-MMIS and that these ownership rights extend but are not limited to all computer programs, all data files and form designs, and all user and operation manuals or other documentation. (§ 6.6.) My reading of these and other related provisions does not support your conclusion that the supplies of claim forms are part of the CA-MMIS. This is best illustrated by the specific reference in section 6.6 to State ownership of not only the computer programs and data files but the form designs. Clearly, the format or the design of the Medi-Cal provider claim forms is the property of the State. Electronic Data Systems is permitted to use these form designs in performing its services under the contract but ownership of the designs remains with the State. Ownership of the form design does not, in my view, constitute ownership of the actual claim form inventory which was purchased by the fiscal intermediary from third-party vendors for its own account.

A new provision included in the contract with Electronic Data Systems which was not included in the earlier contract provides:

"Title to all property furnished by the Department or furnished under the cost reimbursement provisions of the contract shall remain with the Department." (§ 6.48.)

You state that since the contractor's cost of procuring the claim forms is reimbursable under the contract these claim forms must be deemed to be "furnished" to the contractor by the State within the meaning of section 6.48. Your interpretation ignores the portion of section 6.48 which provides that title to property furnished shall "remain with the Department." The quoted phrase implies that the Department has title to the property being discussed when it is furnished to the contractor. Your theory fails to explain how the State receives title to property prior to its being furnished to the contractor when that property is purchased by the contractor from a third-party vendor for its own account. Your argument that your interpretation must be accepted because otherwise the portion of section 6.48 referring to property furnished under the cost reimbursement provisions of the contract has no meaning may or may not be correct. For example, an other claims processing system could be transferred to the contractor pursuant to this contract and the system enhanced on a cost reimbursable basis for purposes of incorporation into CA-MMIS, in accordance with the first paragraph of section 3.1. In any case, I do not find your argument convincing.

As we discussed, express contract clauses transferring title to all property purchased by the contractor under government reimbursement arrangements to the government are well understood. Had it been the intention of the parties to include such a provision in this contract, they could have done so. Where the

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State has intended to make clear its ownership rights, it has done so in sections 6.6 and 6.48. If the State would now like to take title to all reimbursable supply items when they are purchased by the contractor, then I would suggest that the contract be amended to expressly so provide.

With respect to the suggestion that the claim forms should be considered exempt business inventories on the theory that the contractor holds the claim forms for sale to the State, please be advised that I have discussed the conclusions contained in Supervising Tax Auditor Leon Adams' September 20, 1988, letter with Mr. Robert Nunes, Chief of Operations, and Mr. Gary Jugum, Assistant Chief Counsel, of the State Board of Equalization. After reviewing Mr. Adams' letter, and the materials referenced therein, they both have agreed that insofar as the Medi-Cal claim forms are concerned, there is no sale to the State. Thus, I remain of the opinion, as indicated in my April 14, 1988, letter, that the claim forms do not qualify as business inventories.

RHO:cb
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cc: Mr. John Netemeyer
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