

REQUEST LETTER

04-017

NAME
ADDRESS

Re: Medicare Prescription Drug Discount Card

I am writing to request Utah’s opinion on the taxability status of an enrollment fee and transaction fee applicable to the new Medicare Prescription Drug Discount Card Program. The program enables Medicare beneficiaries to obtain discounts of 10-25 percent on prescription drugs only. COMPANY, herein after “the company” will be working with a third party drug card sponsor, herein after “the processor.” The company will collect a \$\$\$\$ annual enrollment fee and transaction fees (\$\$\$\$ to \$\$\$\$) will apply each time a beneficiary uses his/her discount drug card. The company will remit both the enrollment fees and the transaction fees to the processor; thus, neither will represent revenue to COMPANY. Since the processor will control the discount drug card, beneficiaries can use the card in multiple pharmaceutical businesses – not just in COMPANY Pharmacies.

Will the enrollment fee and transaction fee be subject to sales tax (for either the company or the processor) based on the facts presented above? Please fax response to FAX NUMBER.

Your assistance in this matter is greatly appreciated. Feel free to contact me with further questions.

NAME
ADDRESS

RESPONSE LETTER

June 2, 2005

NAME
ADDRESS

RE: Private Letter Ruling Request – Medicare Prescription Drug Discount Card

Dear NAME,

We have received your request for an opinion concerning the taxability of the enrollment fee and transaction fees associated with a Medicare Prescription Drug Discount Card Program (“Medicare Program”). COMPANY collects the enrollment fee when a consumer purchases a membership to use the Medicare Program. It collects the transaction fees when the Medicare Program member purchases a prescription drug. You state that the fees only apply to

prescription drug sales. COMPANY transmits these fees to an unidentified third-party drug card sponsor referred to as the “processor.”

Transaction Fees. Pursuant to Utah Code Ann. §59-12-104(10), sales of prescription drugs in Utah are exempt from sales and use tax if the prescribed drug currently qualifies as exempt “medicine” (as defined in UCA §59-12-102(16)) and, effective July 1, 2005, as an exempt “drug” (as will be defined in UCA §59-12-102(24)). Any charge considered part of the purchase price of an exempt prescription medicine or drug would also be exempt from taxation, including a transaction fee associated with the exempt sale. Should a transaction fee be collected in connection with a taxable sale, however, the transaction fee would also be taxable.

Enrollment Fee. Utah Admin. Rule R865-19S-62(A) (“Rule 62”) provides that “[meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold.” Although COMPANY is a person “engaged in selling taxable commodities,” the Commission does not automatically consider the enrollment fee taxable. *Utah State Tax Commission (“USTC”) Tax Bulletin 33-94* interprets Rule 62 to provide that:

[p]ursuant to this rule, amounts paid for memberships are subject to sales tax if the membership entitles the purchaser to discounted or free merchandise or services of a type subject to the sales tax. Examples include memberships allowing the card holder to enter a facility and make purchases of merchandise at the stated price without any additional markup, and video memberships that allow members to rent videos at half price.

For purposes of this letter, we will assume that the Medicare Program only applies to prescription medicine or drug sales that are exempt in Utah. In that case and pursuant to *USTC Tax Bulletin 33-94*, the enrollment fee would be nontaxable because it would only entitle the purchaser to receive discounts on sales that are exempt from taxation.

This private letter ruling is based on the information and assumptions discussed above. Should the actual circumstances be different, our response may be different. Please contact us if you have any other questions.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/KC
04-017