OLR Bill Analysis

SB 1107

AN ACT CONCERNING THE TAXATION OF AMBULATORY SURGICAL CENTER SERVICES.

SUMMARY

Beginning July 1, 2021, this bill terminates the 6% ambulatory surgical centers (ASC) gross receipts tax and instead subjects ASC services to 6.35% sales tax, subject to certain exclusions.

Under the bill, the sales tax generally applies to ASC services (i.e., procedures and services included in a facility fee payment to an ASC) rendered by an ASC for consideration. The tax does not apply to, among other things, (1) the first $1.5 million of gross receipts received during each 12-month period beginning on July 1 for the provision of ASC services; (2) Medicaid or Medicare payments; or (3) amounts received by the ASC for tangible personal property used in connection with ASC services.

The bill also authorizes a refundable state tax credit against the sales tax for ASCs, based on a portion of the (1) Medicaid payments the ASC received or would have been due had services similar to ASC services been performed by and at a hospital instead and (2) payments received from ASC services provided to individuals covered under the state employee health plan or municipal employees health insurance program (MEHIP).

Lastly, for the period from July 1, 2020, to July 1, 2021, the bill allows ASCs to deduct certain COVID-19 expenses from their gross receipts for purposes of the ASC gross receipts tax.

EFFECTIVE DATE: July 1, 2021, and applicable to calendar quarters beginning on or after July 1, 2021, except that the changes to the existing ASC gross receipts tax are effective June 1, 2021, and applicable to calendar quarters beginning on or after July 1, 2020.

§§ 2-5 — SALES TAX ON ASC SERVICES

Beginning July 1, 2021, the bill subjects to sales tax ASC services performed by ASCs for a consideration, excluding services performed by an employee for his or her employer.

ASC Services Subject to Tax

Under the bill, "ASC services" are the procedures and services included in a facility fee payment to an ASC that are (1) associated with a surgical procedure and (2) not reimbursable ancillary or professional procedures or services. They (1) include facility services only and (2) exclude surgical procedures and physicians', anesthetists', radiology, diagnostic, and ambulance services that are separately reimbursed to an ASC from the facility fee payment.

Gross Receipts for Purposes of the Tax

The bill limits the gross receipts from ASC services that are subject to sales tax to the amounts received (cash or in kind) from patients, third-party payers, and others for the provision of ASC services, including retroactive adjustments under reimbursement agreements with third-party payers. Gross receipts exclude the following:

1. the first $1.5 million of gross receipts received during each 12-month period beginning July 1, excluding Medicaid and Medicare payments, for ASC services (presumably, the ASC would track its gross receipts and begin applying sales tax after reaching this threshold);

2. Medicaid or Medicare payments received for ASC services;

3. payer discounts, charity care, and bad debts (as defined below);

4. amounts received by an ASC for tangible personal property used in connection with an ASC service (e.g., implants, devices, drugs, and biologicals), regardless of the payer; and

5. amounts received by an ASC that were or are subject to the current ASC gross receipts tax;

Under the current ASC gross receipts tax, gross receipts exclude (1) the first $1 million of the ASC's gross receipts in the applicable fiscal year, excluding Medicaid and Medicare payments, and (2) gross receipts from any Medicaid and Medicare payments the ASC receives.

Definition of ASC

By law, and under the bill, an ASC is a distinct entity that (1) operates exclusively to provide surgical services to patients not requiring hospitalization, where the services are not expected to take more than 24 hours; (2) has an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC; and (3) meets the federal requirements to do so.

Payer Discounts, Charity Care, and Bad Debts

"Payer discounts" is the difference between an ASC's published charges and the actual payments it received from third-party payers for a different or discounted rate or payment method. It excludes charity care and bad debts.

"Charity care" is free or discounted health care services provided to individuals who cannot afford to pay, including to the uninsured patient or patients who are not expected to pay all or part of an ASC's bill based on income guidelines and other financial criteria established in statute or in an ASC's charity care policies on file at its office. It does not include bad debts and payer discounts.

Reporting Method

The bill allows ASCs to report their sales of ASC services on the cash basis of accounting, rather than on an accrual basis. It does so by extending to ASCs an existing provision that allows retailers whose only sales are certain enumerated services and who report their sales on the cash basis of accounting for federal income tax purposes to do so for state sales tax reporting purposes. Under the cash basis method of accounting, the retailer reports its sales during the filing period in which the customer provides payment regardless of when the services were rendered.

Tax Credit

The bill establishes a tax credit against the sales tax for ASCs equal to the following:

1. the greater of 50% of the aggregate amount of Medicaid payments (a) the ASC received during the applicable reporting period for ASC services or (b) that would have been due had those services been performed by and at a hospital instead (i.e., the "Medicaid investment"); plus

2. 25% of the aggregate payments received from or on behalf of each individual covered under the state employee health plan or MEHIP for the provision of ASC services (i.e., the "state health plan investment").

If the credit amount allowed exceeds the ASC's sales tax liability for the reporting period, the ASC must file a refund claim with DRS in the form and manner the DRS commissioner prescribes. After verifying the claim, the DRS commissioner must treat the excess as an overpayment and refund it to the ASC. DRS must add interest to the overpayment at a rate of 0.67% for each month or fraction of a month; the accrual period for this interest begins 90 days after DRS receives the ASC's refund claim and runs until the date DRS provides notice that the refund is due.

Under the bill, an ASC that claims this credit and receives a refund is entitled to retain it for its own account and is not required to refund or pay it to any user or payer for ASC services.

§ 1 — ASC GROSS RECEIPTS TAX

The bill terminates the ASC gross receipts tax as of July 1, 2021, and makes conforming changes.

It also allows ASCs to retroactively deduct COVID-19 expenses from their gross receipts for purposes of the tax for FY 21 (i.e., for calendar quarters from July 1, 2020, to July 1, 2021). Specifically, they may deduct any amounts they incurred, directly or indirectly, as a result of COVID-19, for the ASC's personnel, patients, service providers, visitors, facilities, or tangible personal property. This includes amounts for purchasing, leasing, licensing, or using tangible or intangible property in connection with COVID-19 tests, protection, prevention, or treatment.

Under the bill, "COVID-19" means the respiratory disease designated by the World Health Organization (WHO) on February 11, 2020, as coronavirus 2019 and any related mutation of it that the WHO recognizes as a communicable respiratory disease.

BACKGROUND

Related Bill

sHB 6443, favorably reported by the Finance, Revenue and Bonding Committee, contains identical provisions.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable
Yea 48 Nay 0 (04/22/2021)