

**Revenue Ruling
No. 04- 008
November 15, 2004
Sales and Use Tax**

Sales Tax Exemption for Dental Devices under La. Rev. Stat. Ann. § 47:305(D)(1)(t)

The purpose of this revenue ruling is to clarify the requirements of the exemption provided in La. Rev. Stat. Ann. § 47:305(D)(1)(t) in order to determine the taxability of dental-related items.

Facts

A Louisiana supplier of dental equipment sells a wide variety of items used in dentistry to numerous dentists in Louisiana. The supplier wishes to properly apply the exemption found in § 47:305(D)(1)(t) to its Louisiana sales of dental-related items.

Applicable Law

Section 47:305(D)(1)(t) provides a sales and use tax exemption for orthotic devices, prosthetic devices, prostheses and restorative materials utilized by or prescribed by dentists in connection with health care treatment or for personal consumption or use and any and all dental devices used exclusively by the patient or administered exclusively to the patient by a dentist or hygienist in connection with dental or health care treatment.

Exemption Requirements

The statute establishes two independent methods by which an item of tangible personal property can qualify as a dental device. A purchase of dental equipment or material can qualify either for the first category by belonging to a listing of items expressly exempted if used or prescribed by a dentist in connection with health care treatment or for personal consumption or use, or it can qualify for the second category by falling into the general category of “any and all dental devices,” provided that the item is exclusively used by or administered to the dental patient by a dentist or dental hygienist for dental or health care treatment.

In order to qualify under the first prong of the exemption, both of the following requirements must be met:

- 1. The item must be an orthotic device, a prosthetic device, prostheses, or restorative material.**

Since none of the terms are statutorily defined, the ordinary usage of these terms should be applied when determining whether to apply the exemption. An “orthotic device” is an apparatus used to support, align, prevent, or correct deformities or to improve the function of movable parts of the body. Items used in a dental practice that move teeth orthodontically or that fixate or expand the jaw would meet the definition of an orthotic device as used in § 47:305(D)(1)(t). Examples of orthotic devices used in the dental practice include arch bars, braces, wires, brackets and bands attached to teeth to move the teeth orthodontically, expansion appliances, facebows, ligature ties, and springs for braces.

A “prosthetic device” is an item or material that artificially replaces missing parts of the human body. “Prostheses” are artificial devices used to replace or augment a missing or impaired part of the human body. The only difference between a prosthesis and a prosthetic device is that the prosthesis is the actual replacement part while the prosthetic device can be any material used in making or fitting the replacement part, including the

prosthesis itself. Prosthetic devices include, but are not limited to, the following items: dentures, implants, uncover parts used with implants, allogenic bone, gortex membrane, and the tacks that hold the membrane in place.

“Restorative materials” are materials used to replace oral tissues in dentistry. Restorative materials include, but are not limited to, the following items: amalgam, bonding materials and primers, dental cement, composite resins, strip crowns, and resin veneer crowns.

2. The item must be utilized or prescribed by a dentist in connection with health care treatment or for personal consumption or use.

In order to qualify for the exemption, the orthotic device, prosthetic device, prostheses, or restorative material must either be used by the dentist for health care treatment or prescribed by a dentist for the personal use or health care treatment of the dental patient.

For the exemption provided in § 47:305(D)(1)(t), “health care treatment” is the systematic application of remedies to effect a cure, prevent damage, or heal an injury. Treatment would not encompass diagnostic measures, which while useful or necessary in determining the source or extent of the medical problem, are not used directly to remedy the medical condition of the patient. For example, x-ray film and film holders used to diagnose the dental or periodontal health of a patient would not be considered “used for health care treatment” since these items are diagnostic tools but do not heal, prevent, or treat any dental condition.

If one of the items listed in the exemption—orthotic devices, prosthetic devices, prostheses, or restorative materials—is prescribed or used by a dentist and is for the personal consumption or use of the dental patient, the item will be exempt, whether or not the item is used for health care treatment. Therefore, a prosthesis used solely for cosmetic purposes is exempt if prescribed or used by a dentist for his or her dental patient’s personal use.

In order to qualify under the second prong of the exemption, all of the following requirements must be met:

1. The item must be a dental device.

A “dental device” is an item used to achieve or maintain dental or periodontal health. Dental devices include nearly every item in a dental office that comes in direct contact with the dental patient and is not primarily used as an infection control device for the protection of dentists, dental hygienists, or dental assistants.

2. The item must be exclusively used by the dental patient or exclusively administered to the dental patient by a dentist or dental hygienist.

The “exclusive use or administration” requirement contemplates that the exemption only be permitted on the sale or use of nondurable goods used once on one patient and disposed of or given to the dental patient. The term “administered to” the dental patient means that the item be dispensed or applied and requires that there be some direct contact between the dental patient and the dental device. Items or materials used exclusively for sterilization or disinfection of dental instruments or machinery are not “administered to” the dental patient. In situations where an item can only be used one time but has more than one use—some uses which constitute administrations to the patient and other uses not—the exemption will be allowed if the item is used fifty percent or more of the time in direct contact with the dental patient and all other qualifications are met.

For example if a dentist purchases a box of presoaked alcohol wipes, he or she only uses each packet one time but may use the wipes for more than one purpose. An alcohol wipe used to wipe down a medicine vial is not used directly on a patient and, therefore is not “administered to” the patient. On the other hand, if an alcohol wipe is used on a dental patient’s skin in preparation for the insertion of intravenous tubing or to clean the mouth of the patient, the alcohol wipe would be “administered to” the dental patient as required by the second prong of the exemption. To ease the administrative burden on the dentist with such multifunctional items, the entire use of the item will be presumed “administered” to the patient if the dentist administers the item to patients fifty percent or more of the time.

Examples of items not exclusively used by or administered to the dental patient include but are not limited to the following items: paper towels used by dental professionals, x-ray film, tray covers, surgical caps or hats used by dental professionals, safety glasses, face shields, sterilization chemicals and cleaners used for surface disinfection, gowns worn by dental professionals, gloves, curing light covers, and autoclave bags and the apparatus used with them.

3. The use or administration of the item must be in connection with dental or health care treatment.

As defined above, “health care treatment” must be to affect a cure, prevent damage, or heal an injury. “Dental treatment” means the application of a particular remedy, procedure, or technique for curing, preventing, or alleviating a disease, injury, or condition of or relating to the teeth. Both health care treatment and dental treatment, as used in the exemption, must be remedial, restorative, preventative, or curative in nature, as opposed to merely diagnostic. Dental treatment includes whitening the teeth since the procedure cures or, at a minimum, alleviates the discolored condition of affected teeth. Items, which are not used or administered for dental or health care treatment, include but are not limited to the following: bite block covers, sensor holders, sensor covers, and x-ray film holders.

Conclusion

In order to qualify for the sales and use tax exemption provided in § 47:305(D)(1)(t), the item must either: 1) be an orthotic device, prosthetic device, prosthesis, or a restorative device used or prescribed by a dentist for health care treatment or for personal use or consumption by the dental patient or 2) be a dental device exclusively used by or administered to the dental patient by a dental professional for dental or health care treatment. The “exclusive use or administration” requirement contemplates that the exemption only be permitted on the sale or use of nondurable goods used once on one patient and disposed of or given to the dental patient. The term “administered to” the dental patient means that the item be dispensed or applied and requires that there be some direct contact between the dental patient and the dental device. Health care treatment and dental treatment do not include diagnostic procedures.

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