

**Revenue Ruling
No. 08- 003
February 4, 2008
Sales and Use Tax**

Sales Tax Exemption as Medical Drug for Dermal Filler Substances

Purpose: The purpose of this Revenue Ruling is to address whether or not substances and/or compounds used in medical practice as dermal fillers are subject to Louisiana sales tax or excluded by exemption under R.S. 47:305(D)(1).

Law:

Exclusions and Exemptions from (sales) tax include:

R.S. 47:305 (D)(1): The sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in the taxing jurisdiction of the following tangible personal property is hereby specifically exempted from the tax imposed by taxing authorities, except as otherwise provided in this Paragraph:

(j) Solely for purposes of the state sales and use tax, drugs prescribed by a physician or dentist;

(s) Solely for the purposes of the state sales and use tax, and all medical devices used exclusively by the patient in the medical treatment of various diseases or administered exclusively to the patient by a physician, nurse, or other health care professional or health care facility in the medical treatment of various diseases under the supervision of and prescribed by a licensed physician.

R.S. 47:301(20) provides the definition of “drugs” as: “Drugs includes all pharmaceuticals and medical devices which are prescribed for use in the treatment of any medical disease.”

Analysis/Discussion:

Civil Code art. 11 states “the words of a law must be given their general prevailing meaning.” The products in question are termed “dermal fillers” and are either purchased in liquid form or a dried form then mixed with liquid to obtain viscosity. They are injected into the body through a syringe. Current generations of these products include by brand name Botox, Restylane, Radiesse, Sculptra, Juvederm, Zyplast, etc. The products are in general comprised of collagen or hyaluronic acids mixed with other substances capable of maintaining liquidity.

A *pharmaceutical* is defined as “a drug or medicine used in medical treatment.” A *drug* is generally understood to be a “chemical substance that affects the processes of the mind or body” and “any chemical compound used in the diagnosis, treatment, or prevention of disease or other abnormal condition.” A *device* is generally understood to be a tool, equipment, machine, implement, or instrument. The compositions of the materials used in the products at issue are compound substances that fall within the definition of a *drug* under ordinary construction of the term. The Department will conclude that the products are compounds that have the properties of a pharmaceutical “drug”, as required for the exemption granted by R.S. 47:305(D)(1)(j).

A Revenue Ruling is issued under the authority of LAC 61III.101 (C). A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

Therefore, based upon the composition of the product itself, the Department adopts the use of the term *pharmaceutical* to determine the question of which statute is applicable to the instant issue.

Whether the product is classified as a “pharmaceutical” or a “device” does not answer the question of whether the product qualifies for an exemption under R.S. 47:305(D)(1). The more significant issue presented is whether or not the product is being used to treat “disease”, as both statutes authorizing the exemption require the product be used in treatment of disease in order for the exemption to apply. Disease is defined as “a pathological condition of a part, organ, or system of an organism resulting from various causes, such as infection, genetic defect, or environmental stress, and characterized by an identifiable group of signs or symptoms” and, “a condition or tendency, as of society, regarded as abnormal and harmful.”

At this time, numerous products are in use with varying compositions, and most if not all are used for some cosmetic enhancement purposes. However, some if not all of these products are used in the direct treatment of disease and/or rehabilitation of serious medical conditions unrelated to mere enhancement of the appearance of aging tissue and muscle.

Collagen and hyaluronic acid fillers are used to treat some soft tissue defects that lead to certain forms of stress urinary incontinence; facial lipoatrophy (muscle wasting) resulting from diseases such as HIV; and perlèche, a condition whereby deep cracks and splits form at the corners of the mouth that can bleed when the mouth is opened. Hyaluronic acid is also well suited to biomedical applications targeting skin, cartilage, and eye tissues, including corneal transplantation surgery, glaucoma surgery and surgery to repair retinal detachment. One or more of the above substances may be injected near the vocal folds and vocalis muscle to facilitate speech and prevent inadvertent aspiration of liquids. One or more of the products are also used for maxillofacial augmentation and to treat osteoarthritis of the knee. It is anticipated that not only these products, but future generations of such products, will be suitable and medically effective in treatment of other disease and abnormal conditions and functions of the human body.

The skin is the largest organ of the body. With respect to the products’ use for facial appearance, such products are used for normalization of facial contours due to birth defects, disease (such as with HIV and AIDS) and loss of normal appearance due to accident or injury. The fact that the products are also used for facial contour restoration for the aging face does not remove them from the category of pharmaceuticals used for medical treatment of disease and abnormal conditions.

The Department recognizes that the demand for such pharmaceutical product may be for enhancement of appearance and not correction of defect. Nevertheless, decisions on the use of such products are made between the physician and the patient. The Department will not query to what extent the benefits of such usages to an individual patient should be applied to correction or enhancement, or both.

Conclusion:

The Department finds that the products known as “dermal fillers” are used to treat disease and abnormal conditions, and will not collect sales or use taxes on the use of such products when

administered by a physician or under his supervision. Local taxing jurisdictions are not bound by the position of the Department.

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