

Sales and Compensating Use Tax Treatment of Products Used in the Restorations of Teeth

The Department of Taxation and Finance has reconsidered the sales and compensating use tax (“sales tax”) treatment of certain products that are purchased by dentists for use in performing restorations of teeth. Until this time, the department has considered onlays and inlays to be taxable dental supplies that did not qualify for the prosthetic aid exemption from sales tax. While that was a rational application of the Tax Law, the department has now decided to adopt an alternative interpretation of the Tax Law under which these products are exempt from sales tax as prosthetic aids. This change in policy will take effect for sales and uses occurring on or after June 1, 2006.

Dental supplies

Section 1115(a)(3) of the Tax Law provides, in pertinent part, the following exemption from sales tax:

Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings... and supplies required for such use or to correct or alleviate physical incapacity... but not including... supplies, other than such drugs and medicines, purchased at retail for use in performing medical or similar services for compensation.

Section 528.4(h)(1) of the sales tax regulations provides, in part:

Medical... supplies purchased for use in performing medical or similar services for compensation are not exempt from tax.

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Example 4: Dental supplies such as porcelain, mercalloy, gold, silver, acrylic denture base, amalgam, composite resin, silicate, and dental floss are not exempt when purchased by a dentist who will use them in performing a dental service for compensation.¹

Accordingly, dental supplies, other than drugs and medicines, used by a dentist (including his or her employees) in providing dental care for compensation are subject to sales tax. Dental supplies include all products used or consumed by the dentist in the practice of dentistry, such as direct-filling materials used in the restorations of patients’ teeth, but do not include prosthetic dental devices as described in this memorandum. A dentist is not considered to be purchasing dental supplies for resale to patients as part of his or her dental practice, nor are

¹ See *Dental Society of the State of New York v. New York State Tax Commission*, 110 A.D.2d 988 *affd* 66 N.Y.2d 939.

such supplies considered to be used by the dentist in the production of any tangible personal property for sale.

Prosthetic dental devices

Section 1115(a)(4) of the Tax Law provides an exemption from sales tax for:

Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.

Section 528.5(b) of the sales tax regulations provides, in part:

Qualifications. (1) In order to qualify as a prosthetic aid, a hearing aid, eyeglasses or an artificial device, the property must either completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part and must be primarily and customarily used for such purposes and not be generally useful in the absence of illness, injury or physical incapacity.

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Example 1: Artificial hands, arms, legs, false teeth, etc. are exempt.

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Example 4: A crown which is permanently attached to a tooth by a dentist is exempt.

Section 528.5(c)(2) of the regulations provides:

Supplies used in conjunction with prosthetic aids, hearing aids, eyeglasses and artificial devices are not exempt from the tax.

Based on the foregoing, prosthetic dental devices (including their component parts, but not related supplies) that completely or partially replace missing teeth or the functions of permanently inoperative or permanently malfunctioning teeth are prosthetic devices exempt from sales tax. **These prosthetic dental devices include implants, dentures, bridges, full and partial crowns (both temporary and permanent), onlays, and inlays.** Prosthetic dental devices do not include any products that are not primarily and customarily used for such purposes and that are generally useful in the absence of illness, injury, or physical incapacity. This includes products that are cosmetic in nature, such as laminate veneers, decorative caps, and specialty or jewelry teeth.