



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #92-8

TO: ABC Company

SUBJECT: Guided Tissue Regeneration Device
(Sales and Use Tax)

TAX ANALYST: Deana West

REFERENCE: S.C. Code Ann. Section 12-36-2120 (Supp. 1991)
Regulation 117-174.257

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Is the Guided Tissue Regeneration device, as described in the facts, a dental prosthetic device exempt from the sales and use tax pursuant to Code Section 12-36-2120(28)?

Facts:

A Guided Tissue Regeneration Device (GTR) is a new bio-medical device that is about to be introduced in South Carolina. The GTR will be sold to periodontists and general practitioners for use in patients with periodontal disease who need reconstructive surgery. The purpose of the device is to enable and guide the regeneration of periodontal tissues.

The GTR is made of a polylactic acid and is a foil-thin, perforated device with pre-attached sutures that are used to fasten around the neck of a tooth. The device is placed beneath a patient's gums in the area where the bone and the periodontal ligament loss occurred. It is bio-absorbable and is not removed from the patient's mouth as the body hydrolyzes the device over time.

ABC Company believes the device will most likely reduce the incidence of tooth loss in the future, making GTR applications an alternative or replacement for dentures and implants. Furthermore, for patients who have already suffered tooth loss, this device will be used in implant surgery, guiding re-growth of bone tissue around a titanium post rather than a natural tooth.

Discussion:

Code Section 12-36-910(A) imposes a sales tax on the gross proceeds of sales upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310(A) imposes a use tax on the storage, use or other consumption in this State of tangible personal property purchased at retail from outside South Carolina for storage, use or other consumption in this State.

Therefore, there must be a retail sale of tangible personal property in order for the sales tax or use tax to be imposed. Code Section 12-36-110 provides that a "sale at retail" and "retail sale" mean all sales of tangible personal property except those defined as wholesale sales. As set forth in Code Section 12-36-110, the terms include:

* * *

(i) sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property;...

The law, therefore, provides that a dentist, not the patient, is generally considered the consumer of the materials used in rendering professional services. Accordingly such purchases are taxable at the time of purchase by a dentist.

An exemption from the sales and use tax is provided, however, in Code Section 12-36-2120(28) for dental prosthetic devices as follows:

...medicine and prosthetic devices sold by prescription; hypodermic needles, insulin, alcohol swabs, and blood sugar testing strips sold to diabetics under the authorization and direction of a physician; and dental prosthetic devices;....

Guidance as to the definition of the term "prosthetic device" that has been adopted by the Tax Commission can be found in Regulation 117-174.257 which reads, in part:

Prosthetic Device - an artificial device to replace a missing part of the body. Eyeglasses, contact lens, hearing aids and orthopedic appliances, such as braces, wheelchairs and orthopedic custom-made shoes, do not come within the exemption.

SC Revenue Ruling #90-1 addressed items which constitute dental prosthetic devices. Items which are considered dental prosthetic devices include: crowns, bridges, dentures, posts, and implants. Items which are not considered dental prosthetic devices include: amalgam, pins, materials purchased by a dentist to construct a prosthetic device, and any item which does not replace a part of the body.

The GTR device described in the facts does not replace a missing part of the body, as required by Regulation 117-174.257. Rather, it is a new product that assists in the regrowth of tissue or the prevention of the loss of a functional body part and the need for an artificial substitute.

Conclusion:

The Guided Tissue Regeneration (GTR) device is not a dental prosthetic device as defined in Regulation 117-174.257 and SC Revenue Ruling #90-1. Accordingly, it is not allowed the sales and use tax exemption available in Code Section 12-36-2120(28).