



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

SC REVENUE RULING #88-9

SUBJECT: Dental Prosthetic Devices
(Use Tax)

EFFECTIVE DATE: June 1, 1988

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-35-515 (1976)
S.C. Code Ann. Section 12-35-550(31) (1987 Supp.)a
S.C. Code Ann. Section 12-35-810 (1987 Supp.)
S.C. Code Ann. Section 12-35-820 (1976)
S.C. Code Ann. Section 40-15-90 (1976)
S.C. Code Ann. Section 40-15-280 (1976)
S.C. Code Ann. Section 40-43-150 (1976)
S.C. Regulation 117-174.160
S.C. Regulation 99-2

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Are purchases of prosthetic devices by dentists from out-of-state dental laboratories subject to the state's use tax, pursuant to Code Section 12-35-810?

Facts:

South Carolina dentists order dental supplies such as crowns and caps from out-of-state, as well as instate, dental labs. The Tax Commission presently requires instate dental labs to remit the state's sales tax on all sales, including prosthetic devices.

Code Section 12-35-810 imposes the use tax and reads, in part:

An excise tax is imposed on the storage, use or other consumption in this state of tangible personal property purchased at retail for storage, use or other consumption in this state at the rate of four percent of the sales price of such property, regardless of whether the retailer is or is not engaged in business in this state.

Code Section 12-35-515 imposes an additional one percent tax. Code Sections 12-35-550(31) and 12-35-820(2) exempt from the tax the "[g]ross proceeds from the sale of medicine and prosthetic devices, sold by prescription,...." (Emphasis added.)

Regulation 117-174.160, reads:

Dentists use and consume equipment, supplies and medicines in rendering professional service, which equipment, etc., is taxable at the time of its purchase by the dentists."

Discussion:

In Haden v. McCarty et. al., 275 Ala 76, 152 So.2d 141 (1963), the Supreme Court of Alabama stated:

We feel, as did the trial court that the transfer of dentures and other prosthetic devices from a dentist to his patient is not a sale within the meaning of the act. It is, as appellees contend, a mere incident to the professional treatment rendered by dentists."

In accordance with Regulation 117-174.160 and the above referenced court case, dentists do not make retail sales of prosthetic devices to their patients. Dentists use and consume such devices in the performance of their professional services.

Therefore, the question concerns the transaction between the dental laboratories and the dentists. This requires a review of various code sections and regulations, other than those in Chapter 35 of Title 12.

Chapter 15 of Title 40 concerns the practice of dentistry. Section 40-15-90 defines "dental technological work" as:

..the extra-oral procedures of constructing, making, altering or repairing, relining or duplicating of dental prosthetic or orthodontic appliances. The persons performing dental technological work, other than dentists, shall be referred to as dental technicians. (emphasis added)

Code Section 40-15-280 defines "work authorization" to mean:

...a written order for dental technological work which has been issued by a licensed dentist. It shall be in a form prescribed by regulations of the board and shall contain the following:

- (a) The name and address of the individual or organization to do the work. (b) Identification of the patient by name or number. (c) The date on which the

authorization was written. (d) A description of the work to be done, with diagrams, if necessary. (e) A specification of the type and quality of materials to be used. (f) The signature of the dentist, his complete address and the number of his state license.

Section 40-45-20 defines "prescription", with respect to physical therapists, to mean:

...the written or oral designation of physical therapy treatment by a licensed doctor of medicine or dentistry and the instruction therefor may be as detailed or as general as the doctor in his sound discretion deems necessary in the particular case."

Parmaceutical Examiners Board Regulation No. 99-2 defines "prescription", in part, as "a written order for drugs or medicines...signed by a...dentist...transmitted to pharmacists through word of mouth, telephone or telegraph or other means of communication....."

Furthermore, commission Decision S-D-155 concerns a health clinic which furnished drugs and prosthetic devices "to their patients as a part of the medical and/or dental services rendered." The taxpayer contended they were a retailer and entitled to the exemption under Code Section 12-35-550(31). The division contended the sales were taxable pursuant to Code Section 12-35-110. The commission held that "the exemption found at [Section] 12-35-550(31) allows an exemption for the retail sale of medicine and prosthetic devices, sold by prescription. The taxpayer did not acquire the medicines here by prescription. Hence, on its face, the exemption does not apply." (emphasis added)

In summary, the legislature has drawn a distinction between a work order of a dentist purchasing items from a dental lab and a dentist issuing a prescription to a pharmacist or physical therapist so a patient can purchase medication or receive therapy.

Conclusion:

The purchases of prosthetic devices by dentists from out-of-state dental labs do not constitute "...prosthetic devices, sold by prescriptions" and are therefore subject to the use tax, pursuant to Section 12-35-810.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.
S. Hunter Howard, Jr., Chairman

s/John M. Rucker
John M. Rucker, Commissioner

s/A. Crawford Clarkson Jr.
A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
June 1 _____, 1988