



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

SC REVENUE RULING #90-1

- SUBJECT:** Dental Prosthetic Devices
(Sales & Use)
- EFFECTIVE DATE:** Applies to all periods open under statute.
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith.
- REFERENCE:** S.C. Code Ann. Section 12-35-550(31) (Amended July 1, 1989)
- 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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

1. For the purposes of Code Section 12-35-550(31), what is the definition of the phrase "dental prosthetic device"?
2. Of those items listed in Exhibit "A", which, if any, are "dental prosthetic devices"?

Facts:

Code Section 12-35-550(31) was amended as of July 1, 1989 to exempt from the tax the:

Gross proceeds from the sale of 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 (emphasis added).

Prior to July 1, 1989, sales of dental prosthetic devices were exempt only if sold by prescription.

Discussion:

While a Commission Decision dated May 31, 1989 concerned the sale of dental prosthetic devices to a dentist prior to the amendment of Code Section 12-35-550(31), it does provide insight into the issues in question. In the Decision, the Commission held:

While there is no significant dispute as to whether the purchases were retail purchases, we address it here for clarity. It is apparent that a purchase is the result of a retail transaction when the sale is to a party who is the consumer of the item purchased....A dentist is generally considered the consumer of the materials he purchases. Further, the fact that a dentist places a device into a patient's mouth does not make the dentist a retailer but rather the dentist is a consumer utilizing the device to perform a service. Kilbane v. Director of Revenue, 544 S.W.2d 9 (1976) and Hardy v. State Tax Commission, 561 P.2d 1064 (1977). In determining whether a provider of services such as a dentist is selling tangible personal property or merely using such in performing his services, the "true test is one of basic purpose of the buyer." 9 Vanderbilt Law Review, 228, 231 (1956). A dental patient has as his basic purpose the acquiring of services and not acquiring tangible personal property. From all the above, we find and conclude that [the dentist] purchased tangible personal property for use in South Carolina as the result of a retail purchase by the consumer of such purchase (emphasis added).

After reviewing the exemption, the Commission further held:

To apply this exemption, [the dentist] must bring himself squarely within the statutory terms of the exemption he seeks. Textile Hall Corp. v. Hill, 54 S.E.2d 809 (1949). Further, the language of the tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the exemption being claimed. John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer, 278 S.E.2d 340 (1981). Thus we must decide if what is being sold is a prosthetic device....(emphasis added).

In summary, the retail transaction is the transaction whereby the dentist purchases the dental prosthetic device for use in performing professional services; and, "we must decide if what is being [purchased by the dentist] is a [dental] prosthetic device [at the time of purchase]". Note, the Decision was overturned in court for other reasons.

To answer the first question (What is a "dental prosthetic device"?) we must refer to Regulation 117-174.257. That regulation defines the term "prosthetic device" as "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" (emphasis added).

Also, quoting from an Attorney General Opinion (#77-9; January 10, 1977), "by definition a prosthesis is any artificial organ or part replacing a missing natural one.Braces, which give support or stability to a limb or joint are not replacement parts, hence are not considered prosthesis; instead, they are known as orthotic ('straightening') devices."

With respect to specific devices, the Commission held in the aforementioned Decision dated May 31, 1989 that:

.... devices purchased by [a dentist] such as artificial teeth, dentures, crowns, inlays and overlays are prosthetic devices. Devices such as braces and other straightening apparatuses are not prosthetic devices (emphasis added).

Conclusions:

1. The term "dental prosthetic device" is determined to mean an artificial device or part which replaces a missing part of the body. The term does not include devices which straighten or support a part of the body.
2. Of the items listed in Exhibit "A", the following are considered to be "dental prosthetic devices", at the time of purchase by the dentist, and are therefore exempt from the tax:
 - a) Crowns
 - b) Inlays
 - c) Bridges
 - d) Veneers
 - e) Dentures
 - f) Posts and Cores
 - g) Implants
 - h) Maxillofacial prosthetics, if used to replace part of the maxilla, mandible or face. Any such item used to straighten, support or in any other manner which does not replace a part of the body, does not come within the provisions of the exemption.

It should be noted that all other items listed in Exhibit "A" are not considered to be "dental prosthetic devices", and that materials, purchased by a dentist to construct a prosthetic device, do not qualify for the exemption, as they do not constitute "dental prosthetic devices" at the time of purchase.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

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

s/T. R. McConnell
T. R. McConnell, Commissioner

Columbia, South Carolina
January 17, 1990

EXHIBIT "A"

1. Amalgam: A metallic direct filling material used to replace lost tooth structure. It is obtained by mixing an alloy for dental amalgam with mercury.
2. Composite materials: Plastic filling materials used to replace lost tooth structure. They are composed of an organic polymeric matrix reinforced with a fine dispersion of an inorganic filler such as quartz.
3. Sealants: A plastic material used to fill pits and fissures where enamel formations were incomplete.
4. Space maintainers: An acrylic or acrylic and wire appliance that maintains arch space to allow space for eruption of secondary or permanent teeth.
5. Orthodontic wire: Wires of noble or base metal alloy providing the primary mechanism for force application for movement of teeth.
6. Bands: A flattened continuous circumferential metallic ring which is constructed to fit and be cemented around the clinical crown of a tooth.
7. Crowns, Inlays, Bridges, Veneers: Partial or total replacement procedures of the anatomical crown portion of a tooth. Used to replace lost tooth structure or missing teeth.
8. Dentures: Devices intended to replace one or more teeth and associated tissues.
9. Posts and cores: Composed of composite resins, amalgam, stainless steel or cast gold and are used to replace missing tooth structure after a tooth has been treated endodontically.
10. Pins: Used to stabilize restorative devices such as crowns, endodontically treated teeth, and/or to reinforce and retain large restorations.
11. Gutta percha: Used as a root canal filling material. Generally is modified with zinc oxide, a radiopacifer and plasticizer.

12. Implants: Devices placed by surgical procedures to replace missing teeth and to provide supports for prosthetic devices.
13. Calcium hydroxide material: Material used as a liner or base to provide a barrier for the protection of pulpal tissue from chemical irritation.
14. Zinc oxide eugenol material: A cement or restorative material produced by reaction of a powder which is mainly zinc oxide with a liquid which is mainly eugenol.
15. Acrylic material: A synthetic polymer used for construction of denture bases, artificial teeth, for veneers, as a cement and/or as a restorative material.
16. Porcelain material: Used in fixed dental prostheses as an esthetic veneer for crowns and bridges with metal substrates and all-ceramic restorations such as porcelain jacket crowns or inlays. Also used to fabricate artificial teeth.
17. Prosthetic metal: Casting alloys used to fabricate precision metal devices used in intraoral fixed and removable prosthesis.
18. Maxillofacial prosthetics: Definitions have been given for the implants listed under this heading. A general definition of all follows:
- Prosthetic devices used for replacement or various lost body parts to restore or maintain function.

Specific items not included in the general definition of Maxillofacial prosthetics:

18a. Radiation carrier: Device used to contain radioactive isotopes for application of radiation to diseased tissues.

18b. Radiation shield: Leaded walls or aprons used to protect patients and dental personnel from unnecessary radiation.

18c. Docking device: Aligning and positioning devices used in radiology.

18d. Fluoride applicator, A device for holding topical fluoride per arch: formulations for applications in the mouth.