



Douglas J. MacGinnittie
Commissioner

State of Georgia
Department of Revenue
Administrative Division – Office of Tax Policy
1800 Century Blvd., N.E., Suite 15107
Atlanta, Georgia 30345-3205
(404) 417-6649

Frank M. O'Connell
Director

June 12, 2013

Georgia Letter Ruling SUT No. 2013-06-12-01 Medical & Drugs

This letter is in response to your request for guidance on the application of Georgia sales and use tax to the sale of certain items by Taxpayer.

Facts

Taxpayer manufactures patient specific dental devices pursuant to a doctor's prescription and sells the devices to the prescribing doctor. Taxpayer submitted a list of products and materials that it sells to doctors pursuant to a prescription. Next to each product and material is noted the type of final device associated with the product and/or material and the ultimate type of device into which the product or material is incorporated.

Issue

Are charges by Taxpayer to licensed dentists for the items listed subject to sales and use tax in Georgia?

Analysis

Dental Practice Overview

The Georgia Board of Dentistry controls and regulates the practice of dentistry in Georgia.¹ The practice of dentistry is generally defined in O.C.G.A. §§ 43-11-1(6) and 43-11-17(a). In addition, Ga. Comp. R. & Regs. r. 150-14-.02 provides that the fabrication of any dental appliance, cap, covering, prosthesis or cosmetic covering is included in the practice of dentistry as defined by O.C.G.A. § 43-11-17. No person shall fabricate any dental appliance, cap, covering, prosthesis or cosmetic covering, as defined by this chapter, unless he or she is licensed to practice dentistry or working under the prescription of a licensed dentist.²

The following definitions are applicable to the practice of dentistry:

¹ O.C.G.A. § 43-11-7.

² Ga. Comp. R. & Regs. r. 150-14-.02(2).

(1) "Appliance" means any fixed or removable structure which may or may not be made with an impression of a human mouth or extraoral facial structures or any portion of the human mouth, teeth, gums or jaw used to prevent adverse dental conditions, including but not limited to changing the appearance of teeth, changing the shape and shade of teeth, protect teeth, effecting the position of teeth or repairing or replacing missing or damaged teeth. In addition, appliances shall also include any device that gains a desired dental or medical result by using the teeth or surrounding oral structures as support.

(2) "Cap" shall mean any fixed or removable artificial structure created with a model or impression of a natural or artificial tooth and used or worn as a covering on that natural or artificial tooth.

(3) "Cosmetic covering" means any fixed or removable artificial structure or product used or worn as a covering on natural or artificial human teeth created with a model, impression or any other measuring device including but not limited to computer assisted design (CAD), of the human mouth or any portion thereof and used solely for cosmetic purposes. Cosmetic covering shall include, but not be limited to, such structures commonly known as "grills."

(4) "Covering" means any item that is used to permanently or temporarily place over a natural or prosthetic tooth.

(5) "Dentist" shall mean an individual who is licensed in this State pursuant to O.C.G.A. §43-11-1(9).

(6) "Fabricate" means to create, design or construct any structure, whether artificial or naturally occurring, defined by this rule as a dental appliance, cap, covering, prosthesis or cosmetic covering.

(7) "Prosthesis" means:

(a) Prosthesis: Artificial replacement of any part of the human body.

(b) Dental prosthesis: Any device or appliance replacing one or more missing teeth and/or, if required, associated structures. This term includes but is not limited to abutment crowns and abutment inlays/onlays, bridges, dentures, obturators, and gingival prostheses.

(c) Definitive prosthesis: Prosthesis to be used over an extended period of time.

(d) Fixed prosthesis: Non-removable dental prosthesis that is solidly attached to abutment teeth, roots or implants.

(e) Fixed-removable prosthesis: Combined prosthesis, one or more parts of which are fixed, and the other(s) attached by devices that allow their detachment, removal and reinsertion by a dentist only.

(f) Interim prosthesis: A provisional prosthesis designed for use over a limited period of time.

(g) Removable prosthesis: Complete or partial prosthesis, which can be removed and reinserted by a patient.

(8) "Theatrical purposes" shall mean any fabricated product defined by this rule that is only used during activities of the performing arts and removed immediately after such use.³

Sales Tax Overview

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and on certain enumerated services.⁴ "Retail sale" or "sale at retail" means a sale of tangible personal property or taxable services to any person other than for resale.⁵ "Sale" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner, by any means of any kind of tangible personal property for a consideration.⁶ The amount subject to tax is the "sales price". "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale; and
- (iv) Delivery charges.

"Sales price" does not include:

- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;
- (v) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and
- (vi) Credit for any trade-in.⁷

Exemptions from taxation are strictly construed, and an exemption will not be granted unless the relevant statute clearly and distinctly shows that such was the plain and unambiguous intention of the General Assembly.⁸ The standards for reviewing taxation statutes are well settled:

³ Ga. Comp. R. & Regs. r. 150-14-.01.

⁴ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

⁵ O.C.G.A. § 48-8-2(31).

⁶ O.C.G.A. § 48-8-2(33).

⁷ O.C.G.A. § 48-8-2(34).

⁸ Ga. Comp. R. & Regs. r. 560-12-1-.18.

Taxation is the rule, and exemption from taxation [is] the exception. And exemptions are made, not to favor the individual owners of property, but in the advancement of the interests of the whole people. Exemption, being the exception to the general rule, is not favored; but every exemption, to be valid, must be expressed in clear and unambiguous terms, and, when found to exist, the enactment which it is given will not be enlarged by construction, but, on the contrary, will be strictly construed.⁹

Prosthetic Devices

O.C.G.A. § 48-8-3(54) provides a sales and use tax exemption for the “sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription”. “Prosthetic device” means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to:

- (A) Artificially replace a missing portion of the body;
- (B) Prevent or correct physical deformity or malfunction; or
- (C) Support a weak or deformed portion of the body.¹⁰

Dental crowns, implants, complete and partial dentures, obturators and fillings are considered to be prosthetic devices.¹¹

If a prosthetic device can be sold or used only pursuant to a prescription under federal or state law, and title and possession will be permanently transferred to a natural person to whom a prescription for the device is issued, the entity transferring the device to that natural person may purchase the item tax exempt without furnishing form ST-5 (Sales and Use Tax Certificate of Exemption).

Record Keeping for Audit Purposes

All dealers must keep and preserve: (a) suitable records of sales and purchases; (b) books of account necessary to compute the tax due; and (c) other information required by the Commissioner.¹² Regulations require that the following records be kept:

- a daily record of all cash and credit sales, including any type of financing or installment plan in use, and amounts of taxes collected;
- a record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;
- a record of all deductions and exemptions claimed in filing sales or use tax returns, including exemption and resale certificates;
- a record of all tangible personal property used or consumed in the conduct of the business; and

⁹ *GA Dep't. of Rev. v. Owens Corning*, 283 Ga. 489 (2008); see also *Southwire Company v. Chilivis*, 139 Ga. App. 329 (1976) (explaining that when interpreting tax exemptions all doubts must be resolved in favor of the taxing authority).

¹⁰ O.C.G.A. § 48-8-2(29).

¹¹ Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(h)(3)(xix).

¹² O.C.G.A. § 48-8-52; Ga. Comp. R. & Regs. r. 560-12-1-.15.

- a true and complete inventory of the stock on hand and its value, taken at least once yearly.¹³

Dealers must retain records for three years.¹⁴ However, if an assessment has been made and an appeal to the Commissioner or a court is pending, books and records relating to the period covered by the assessment must be preserved until the final disposition of the appeal.¹⁵

Ruling

Although the Department of Revenue is unable to individually address each specific item in Taxpayer's list, if an item is properly classified for purposes of O.C.G.A. § 43-11-17 and Ga. Comp. R. & Regs. r. 150-14-.01 as an appliance, cap, covering, or prosthesis, such items would also be "prosthetic devices" for sales tax purposes. Further, under Georgia law, a dental lab may only provide, produce, fit, repair, adjust, and reline such items when the items are ordered by and returned to a licensed dentist. Consequently, because the items categorized as appliances, caps, coverings, or prostheses are "prosthetic devices" for sales tax purposes and under Georgia law may be sold or used only pursuant to a prescription, Taxpayer may sell these items to a licensed dentist without the collection of sales tax even if the dentist does not provide form ST-5. Fabrication and delivery charges associated with such exempt items are also exempt. Cosmetic coverings and products used for theatrical purposes are not considered "prosthetic devices" for sales tax purposes and are, thus, subject to tax unless the purchaser provides appropriate exemption documentation.

When Taxpayer sells a prosthetic device without the collection of sales tax and the purchasing dentist does not provide form ST-5 then Taxpayer must maintain books and records to support that the prosthetic device on which tax was not collected can be sold or used only pursuant to a prescription under federal or state law, and that the sale was to a dentist. These records must be maintained for a period of no less than three years.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, and taxpayer in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the Statutes or Rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this response.

¹³ Ga. Comp. R. & Regs. r. 560-12-1-.23(1)(a) to Ga. Comp. R. & Regs. r. 560-12-1-.23(1)(e).

¹⁴ O.C.G.A. § 48-8-52(a); Ga. Comp. R. & Regs. r.560-12-1-.15.

¹⁵ O.C.G.A. § 48-8-52(a); Ga. Comp. R. & Regs. r. 560-12-1-.15; Ga. Comp. R. & Regs. r. 560-12-1-.23(1); Ga. Comp. R. & Regs. r. 560-12-1-.23(3).