

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-05(29)S  
Sales Tax  
July 21, 2005

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040702A

On July 2, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from Sentage Corporation/D.P./Mt. Vernon, 5775 Wayzata Blvd. #670, Minneapolis, MN 55416. Petitioner, Sentage Corporation/D.P./Mt. Vernon, furnished additional information with respect to the Petition on October 12, 2004.

The issue raised by Petitioner is whether Petitioner's charges for bite blocks, models and impression trays billed to dentists during the process of making artificial teeth, dentures, partial dentures, crowns and bridges are subject to New York State sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a dental laboratory which manufactures and sells various dental equipment and supplies and prosthetic devices. Such items include orthodontic devices (i.e., TMJ splints, positioners, retainers, etc.), artificial teeth, dentures, partial dentures, crowns (permanently attached by a dentist), bridges and space maintainers. With respect to the artificial teeth, dentures, partial dentures, crowns and bridges, Petitioner has two separate billing procedures.

1. Petitioner bills the dentist one "lump sum" for the artificial teeth, dentures, partial dentures, crowns and bridges.
2. Petitioner bills the dentist, upon the dentist's request, on an "a la carte" basis. The dentist requests this installment billing method in order to be reimbursed concurrently with the steps of performing his or her service, either directly by the patient or the insurance company. This means Petitioner bills the dentist for the purchase of the artificial teeth, dentures, etc., as work progresses in the process of creating these items.

Petitioner provided the following description of the steps in the production process of removable acrylic dentures:

1. Dentist sends a preliminary impression to Petitioner's lab to be "boxed" and "poured" in stone.
2. An acrylic tray is made from the preliminary stone cast for use as a final impression tray.
3. Dentist receives final tray and takes final impression with this tray which is sent back to lab.

4. Lab receives final impression taken by dentist, it is boxed and poured in stone and a bite block, or bite rim as it is sometimes called, is fabricated. The bite block is typically a base plate with a wax or compound rim.
5. Dentist receives the bite block, and takes the patient's "bite registration" which records vertical dimension.
6. Dentist sends bite registration back to Petitioner's lab.
7. Bite registration and stone casts are mounted on an articulator and are now ready for tooth selection.
8. After appropriate teeth are selected, the bite registration and stone casts are set in wax on articulated casts which are used to make "set-up" teeth.
9. Dentist receives the "set-up" teeth and tries them in the patient's mouth to ensure that the bite taken was correct and that they are esthetically pleasing to the patient.
10. Dentist sends approved set-up teeth back to lab.
11. Lab receives approved set-up teeth and proceeds to make a wax denture which is then made into an acrylic denture.
12. After curing, denture is finished and polished and is ready to be sent to dentist for final insertion.

Additionally, Petitioner describes the most common steps for the production of crowns and bridges as follows:

1. Once the impression is received from the dentist all of the necessary models and dies are fabricated.
2. From these dies and models, the various types of prosthetics are made.
3. Once the crown or bridge is completed, it is sent to the dentist to check and see if the bite, margins and fit are proper. It is much harder to adjust the device without the use of models.
4. In some cases, if there is more work to be done, additional impressions must be taken by the dentist, and more models may have to be made for additional changes. It is not possible to fabricate the crown or bridge without model work.

Petitioner provided sample copies of its bills to dentists. These bills disclosed most of the steps in the lump sum billing procedure as separate line items (i.e., impression trays, models, bite

blocks), all being provided for a single charge. The a la carte billing showed a majority of the same separate line items. Under the a la carte billing, these line items were billed on several separate invoices at various time intervals, reflecting the progress of the services provided to the patients.

### **Applicable law and regulations**

Section 1105(a) of the Tax Law imposes sales tax upon "[T]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105-B of the Tax Law provides, in part:

(a) Receipts from the retail sales of parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by manufacturing, processing . . . shall be exempt from the tax imposed by subdivision (a) of section eleven hundred five of this article.

(b) Receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen of this article, including the parts with a useful life of one year or less, tools and supplies described in subdivision (a) of this section, to the extent subject to such tax, shall be exempt from the tax on sales imposed under subdivision (c) of section eleven hundred five of this article.

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

\* \* \*

(3) Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

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

\* \* \*

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment....

Section 526.6 of the Sales and Use Tax Regulations provides, in part:

(a) The term *retail sale* or *sale at retail* means the sale of tangible personal property to any person for any purpose, except as specifically excluded.

\* \* \*

(c) (7) Tangible personal property purchased for use in performing a service not subject to tax is not purchased for resale.

Section 528.4 of the Sales and Use Tax Regulations provides, in part:

(a) Exemption. (1) Drugs and medicines intended for the use, internally or externally in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health are exempt.

\* \* \*

(e) Medical equipment. (1) *Medical equipment* means machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eyeglasses and artificial devices which qualify for exemption under section 1115(a) (4) of the Tax Law), which are intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases or the correction or alleviation of physical incapacity in human beings.

(2) To qualify, such equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury or physical incapacity.

\* \* \*

(g) Supplies. (1) Supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases or for the correction and alleviation of physical incapacity are exempt.

\* \* \*

(h) Taxable medical equipment and supplies. (1) Medical equipment and supplies purchased for use in performing medical or similar services for compensation are not exempt from tax.

\* \* \*

(2) Medical services for human beings include but are not limited to the practices of medicine, dentistry, physical therapy, chiropractic, nursing, podiatry, optometry and radiology, whether performed by a private practitioner, clinical laboratory, hospital, nursing home, ambulance service, clinic, or health maintenance facilities.

Section 528.5 of the Sales and Use Tax Regulations provides, in part:

Prosthetic aids. (a) Exemption. Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof, purchased to correct or alleviate physical incapacity in human beings are exempt from the tax.

(b) 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.

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

\* \* \*

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

**Opinion**

Petitioner is a dental laboratory which manufactures and sells various dental equipment and supplies. Petitioner offers dentists purchasing artificial teeth, dentures, partial dentures,

crowns and bridges the choice of two different billing options. Petitioner will bill the dentist the full purchase price of the artificial teeth, dentures, partial dentures, crowns and bridges being manufactured in a single lump sum amount or Petitioner will bill the dentist as the work progresses. The progress payments are otherwise known in the dental industry as "a la carte" billing. The a la carte billing separately states individual charges at various intervals in the production process.

Petitioner's production process differs somewhat for artificial teeth, dentures, partial dentures, crowns and bridges, but in each case the process begins with the dentist initially making a dental impression of the patient's mouth. This initial impression is sent to Petitioner's lab. The lab uses this initial impression to make a model or final impression which may again be sent back to the dentist for a bite registration. Once all of the necessary impressions, models and bite registrations are returned to the lab, the lab can continue the process of creating the artificial teeth, dentures, partial dentures, crowns and bridges. As part of this process, Petitioner prepares dentures with waxed up denture teeth, which are sent to the dentist to physically verify with the patient that the denture has the appropriate fit and bite. Crowns and bridges are similarly sent to the dentist to physically check the fit in the patient's mouth. After the dentist has verified that the denture's fit is correct, the denture is returned to the lab and the lab processes it in acrylic. If the dentist finds the dentures, crowns or bridge do not fit correctly, these items will be sent back to the lab for further processing. The lab then sends the final products back to the dentist for the final patient insertion. Petitioner's production process for artificial teeth, dentures, partial dentures, crowns and bridges is the same whether the dentist opts to be billed on the lump sum or a la carte basis.

Artificial teeth, dentures, partial dentures, crowns and bridges are prosthetic aids or devices for purposes of section 1115(a)(4) of the Tax Law. See section 528.5 of the Sales and Use Tax Regulations and *Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related Items*, Publication 822 (6/01) at page 5. Therefore, Petitioner's charges to a dentist for artificial teeth, dentures, crowns and bridges are exempt from sales tax as provided for under section 1115(a)(4), whether the dentist makes one lump sum payment or makes several payments over time.

The bite blocks, models and impression trays are items used by Petitioner in its process of producing the prosthetic devices. While for billing purposes these items may be individually noted on Petitioner's bill to the dentist, these items are not being purchased by the dentist. These items are used by Petitioner in conjunction with the production of the artificial teeth, dentures, crowns and bridges. As such, these items are expenses incurred by Petitioner in manufacturing artificial teeth, dentures, crowns and bridges for sale. Petitioner's charges to dentists for these items, therefore, are exempt from sales tax under section 1115(a)(4) of the Tax Law, despite the fact that the dentist may take possession of these items.

It should be noted that the bite blocks, models and impression trays may qualify as exempt production supplies or equipment used and consumed by Petitioner in its production of the prosthetic devices it sells to the dentist. Petitioner's purchases of these items, therefore, are

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exempt from sales and use tax if used directly and predominantly in the production of tangible personal property for sale. See sections 1105-B and 1115(a)(12) of the Tax Law.

Petitioner states that, in addition to selling prosthetic aids, it is also in the business of selling dental equipment and supplies. Similarly sales of bite blocks, models, and impression trays by Petitioner to dentists for use in providing dental services to their patients, rather than Petitioner providing these items to the dentist in conjunction with Petitioner's production of artificial teeth, dentures, crowns and bridges, are sales of medical supplies or equipment. Sales of these items to a dentist for use in performing dental services for compensation are not exempt under section 1115(a)(3) of the Tax Law and will be subject to sales and use tax under section 1105(a). See section 528.4(h) of the Sales and Use Tax Regulations. Sales of these items to a dentist are not exempt under section 1105-B or 1115(a)(12) of the Tax Law, since these items are not used by the dentist in the production of tangible personal property for sale.

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/s/  
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NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.