

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-20(35)S
Sales Tax
July 14, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). The petitioner requests guidance on whether the receipt from his purchase of a milling machine from a dental supplier is exempt from sales tax pursuant to Tax Law §§ 1105-B and 1115(a)(12). We conclude that the receipt is not exempt from sales tax because he is using or consuming fabricated dental devices in the sale of dentistry services, rather than producing tangible personal property for sale.

Facts

The petitioner is a dentist who is purchasing a Sirona Cerec Milling Machine for the fabrication of crowns, inlays, onlays, and veneers. The machine also has the capability to mill dental implant abutments, dental bridges and other restoration devices such as dental bars and bridge telescopes. Dental bars are devices used to secure dentures for wear. Bridge telescopes are devices used to ensure even distribution of force across a dental bridge.

Analysis

Tax Law § 1105(a) imposes sales tax on the receipts from every retail sale of tangible personal property. Tax Law § 1101(b)(6) defines tangible personal property as corporeal personal property of any nature. The milling machine is itself tangible personal property. Accordingly, petitioner's purchase of the machine would be subject to taxation in the absence of an applicable exemption.

Tax Law § 1115(a)(12) exempts from tax all machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property 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. Tax Law § 1105-B(a) exempts from tax parts with a useful life of one year or less, and tools or supplies for use or consumption directly and predominantly in the production of tangible personal property for sale.

Here, the milling machine fabricates tangible personal property. The machine fabricates prosthetic dental devices, which are devices that completely or partially replace missing teeth or the functions of permanently inoperative or permanently malfunctioning teeth. *See* Tax Law § 1115(a)(4); 20 NYCRR 528.5(b)(1). Prosthetic dental devices, which include implants, dentures, bridges, full and partial crowns (both temporary and permanent), onlays, and inlays, are tangible personal property. *See* TSB-M-06(5)S. The machine also fabricates non-prosthetic devices, such as veneers, decorative caps or jewelry teeth, which are also tangible personal property. *See* Tax Law § 1101(b)(6).

However, the petitioner is not producing tangible personal property for sale within the meaning of Tax Law §§ 1105-B and 1115(a)(12) because he is not in the business of selling dental devices separately from his services. *See Southern Tier Iron Works v. Tully, Jr.*, 66 AD2d 921 (3d Dep't 1978); *Midland Asphalt Corp. v. Chu*, 136 AD2d 851 (3d Dep't 1988). Rather, the petitioner's sales are more properly characterized as sales of a professional service and not sales of tangible personal property. Though the dental devices constitute tangible personal property that is provided to patients, the transfer of tangible personal property (the dental devices) is part and parcel of the rendering of dental services. *See Butler v. State Tax Commission*, 131 AD2d 953 (3d Dep't 1987); *Greene & Kellogg, Inc. v. Chu*, 134 AD2d 755 (3d Dep't 1987). In other words, the dentist is fabricating the dental devices for use or consumption in rendering dental services. The petitioner is not making a sale of tangible personal property.

Accordingly, the receipt from the purchase of the Sirona Cerec Milling Machine is subject to tax and is not exempted from sales tax pursuant to Tax Law §§ 1105-B and 1115(a)(12). The Tax Law §§ 1105-B and 1115(a)(12) exemptions do not apply because the dentist is not engaged in producing tangible personal property for sale within the meaning of the Tax Law, but is instead using or consuming the fabricated dental devices in the sale of dentistry services.

DATED: July 14, 2020

/S/
DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.