

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 99-3

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

What items of tangible personal property utilized by dentists qualify as exempt prosthetic appliances?

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5061 imposes the transaction privilege tax on the retail classification. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-5061(A)(9) provides an exemption for prosthetic appliances, as defined in A.R.S. § 23-501, prescribed or recommended by a health professional licensed pursuant to Title 32, Chapter 7, 8, 11, 13, 14, 15, 16, 17, or 29. These chapters refer to podiatrists, doctors of chiropractic, dentists, physicians and surgeons, naturopathic physicians, nurses, osteopathic physicians and surgeons, and homeopathic physicians. A.R.S. § 42-5159(A)(17) provides a similar exemption from use tax.

A.R.S. § 42-5155 imposes Arizona's use tax on tangible personal property purchased from a retailer which is used, stored or consumed in Arizona, and stipulates that the use tax applies to any purchase of tangible personal property for resale which is subsequently used or consumed by the purchaser.

A.R.S. § 23-501 defines "prosthetic appliance" to mean an artificial device necessary to support or take the place of a part of the body, or to increase the acuity of a sense organ.

Arizona Administrative Code (A.A.C.) R15-5-156 defines "prosthetic appliance" as an artificial

device which fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.

DISCUSSION:

All retail sales of tangible personal property are subject to transaction privilege tax under the retail classification unless specifically exempt from tax. A sale at retail is defined as a sale for any purpose other than for resale in the regular course of business. A dentist is not considered to resell the tangible personal property that the dentist uses in the treatment of dental patients. See Arizona Transaction Privilege Tax Ruling TPR 90-2, which discusses sales by professional service businesses.

Use tax is imposed on the storage, use or consumption in this state of tangible personal property which is purchased from a retailer. Transaction privilege tax and use tax are complementary taxes; only one of the taxes can be applied to a given transaction.

The sale of prosthetic appliances that are prescribed or recommended by a dentist are exempt from transaction privilege and use taxes. Therefore, the issue addressed in this ruling is what items used by dentists constitute prosthetic appliances.

The department has received numerous letters from dentists and dental supply companies questioning whether the Arizona Court of Appeals' holding in *Renal West v. Arizona Department of Revenue*, 189 Ariz. 409, 943 P.2d 769 (Ct. App. 1997), applies to machinery, equipment and supplies purchased by dentists. The *Renal West* court addressed whether kidney dialysis machines, solutions, testing equipment and supplies constitute an exempt prosthetic appliance. The function of a kidney is to cleanse the human body of metabolic waste. "Dialysis is a mechanical and chemical process of removing accumulated metabolic waste from the human body." The parties in *Renal West* agreed that dialysis is a "complicated, integrated process requiring solutions, testing equipment and supplies." (Emphasis added.) The court determined that: (1) "processes" may fall within the meaning of "prosthetic appliance"; (2) the dialysis process is within the meaning of prosthetic appliance because it replaces the process performed by the kidneys; and (3) all equipment, supplies and solutions essential to the dialysis process are therefore prosthetic appliances.

Unlike the taxpayer in *Renal West*, a dentist does not utilize equipment, supplies, or solutions to replace a bodily process. A dentist physically replaces or supports a part of the body (teeth, a tooth, or a part of a tooth), rather than a bodily process. Because dental processes do not support or replace bodily processes, the process analysis in *Renal West* is inapplicable to machinery and equipment used and tangible personal property consumed by dentists during dental processes. Thus, the meaning of the term "prosthetic appliance" does not include

machinery and equipment used by dentists during dental processes. Only the materials or compounds that a dentist uses to physically support, or as a replacement of, a part of the patient's body (teeth, a tooth, or a part of a tooth) are "prosthetic appliances."

RULING:

The following items are examples of items that support or take the place of teeth, a tooth or a part of a tooth and are therefore, exempt prosthetic appliances when sold to a dentist:

Dentures Crowns Bridges Filling Material

Liners Pins Posts Surgical Implants

Items that do not support or take the place of teeth or parts of teeth, such as dental machinery, equipment and orthodontic appliances, do not qualify as exempt prosthetic appliances when sold to a dentist. Only materials or compounds that physically support or are a replacement of teeth, a tooth or a part of a tooth are exempt from tax.

Mark W. Killian, Director

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.