

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING BY JULY 19, 2004.

AMENDATORY SECTION (Amending WSR 02-21-080, filed 10/17/02, effective 11/17/02)

WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians. (1) Introduction.

This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of dentists and other health care providers, dental laboratories, and dental technicians. For purposes of this rule, a "health care provider" is a person who is licensed under the provisions of Title 18 RCW to provide health care services to humans in the ordinary course of business or practice of a profession. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150 (Optometrists, ophthalmologists, and opticians);

(b) WAC 458-20-168 (Hospitals, medical care facilities, and adult family homes);

(c) WAC 458-20-18801 (Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations).

(2) **Tax-reporting information for dentists and other health care providers.** This subsection provides specific tax-reporting information for dentists and more generalized tax-reporting information for other health care providers. Dentists who employ dental technicians to produce or fabricate dental appliances, devices, restorations, substitutes, or other dental laboratory products should refer to subsection (3)(b) and ~~((+e))~~ (d) of this rule for additional information. Dental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as "dental prostheses" throughout this rule.

(a) **Taxability of dental and other health care services.** Dentists and other health care providers are subject to the service and other activities B&O tax on their gross income from

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performing dental and other health care services. The term "gross income" includes any separate charge for drugs, medicines, and other substances administered or provided to a patient as part of the dental or other health care services delivered to the patient. "Gross income" also includes any separate charges for (~~orthotic devices,~~) prosthetic devices, (~~and dental appliances, devices, restorations, substitutes, or other dental laboratory products~~) including dental prostheses, that are provided as part of the dental or other health care services delivered to patients.

For purposes of this rule, "prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body.

(b) **Sales of tangible personal property apart from dental and other health care services.** A dentist or other health care provider may make sales of tangible personal property such as drugs, medicines, and bandages as a convenience to a buyer apart from any health care services provided to the buyer. These are sales of tangible personal property only when the dentist or other health care provider does not supply or administer the drug, medicine, or other item in the course of delivering (~~health [health]~~) health care services to the buyer. The gross proceeds of these retail sales of tangible personal property are subject to the retailing B&O tax. In addition, the dentist or other health care provider must collect and remit retail sales tax, unless the sale is specifically exempt by law. See WAC 458-20-18801 for detailed information regarding retail sales tax exemptions available for sales of items commonly associated with health care services. Adequate records must be kept by the dentist or other health care provider to distinguish items of tangible personal property that are supplied or administered to patients as part of health care services from those that are sold apart from health care services delivered to the buyer.

Purchases of tangible personal property for resale without intervening use are not subject to the retail sales tax. A dentist or other health care provider purchasing tangible personal property for resale must furnish a resale certificate in the usual form to the seller to document the wholesale nature of the sale. Resale certificates can be obtained from the department's website at <http://dor.wa.gov>, or by calling the department's telephone information center at 1-800-647-7706.

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For additional information regarding resale certificates, refer to WAC 458-20-102 (Resale certificates).

(c) **Equipment and supplies used by dentists and other health care providers.** Purchases of equipment and supplies used by dentists and other health care providers in performing dental or other health care services are purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dentist or other health care provider must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

Dental (~~appliances, devices, restorations, and substitutes, or the components of these items,~~) prostheses are exempt from retail sales and use taxes if the dental prosthesis meets the definition of "prosthetic device" in subsection (2)(a) of this rule. RCW 82.08.0283 and 82.12.0277. Exempt items include, but are not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers(~~, collars, wire, screws, bands, splints, night guards, gold, silver, alloys, acrylic materials, filling material, reline material, cement, cavity liner, pins, and endo post~~)).

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Dr. A is a physician who specializes in the treatment of allergies. Dr. A treats many (~~of her~~) patients with injections of allergy extracts (antigens). Dr. A separately itemizes the charges for the antigen, the administration of the injection, and the office call in (~~her~~) patients' billings. Dr. A is subject to service and other activities B&O tax on the entire charge for the antigen, administration of the injection, and office call. Even though Dr. A separately itemizes the charges for antigens, these are not retail sales because Dr. A administers the antigens to (~~her~~) the patients.

(ii) Dr. B made mail-order purchases of a computer, books, and magazines for use in (~~her~~) Dr. B's dental practice. Dr. B

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did not pay retail sales tax to the sellers on these purchases. Therefore, Dr. B (~~is liable for~~) must remit to the department deferred retail sales or use tax on the computer, books, and magazines(~~, and must remit the tax directly to the department~~)).

(3) **Tax-reporting information for dental laboratories and dental technicians.** This subsection provides tax-reporting information for dental laboratories and dental technicians.

(a) **Producing or fabricating dental (~~laboratory products~~) prostheses for sale.** The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by dental laboratories and dental technicians is a manufacturing activity. RCW 82.04.120 (~~and chapter 168, Laws of 1998~~). Thus, dental laboratories and dental technicians are subject to manufacturing B&O tax on the value of the dental (~~laboratory products~~) prostheses they manufacture. The value of products manufactured is generally the gross proceeds of sales of such manufactured products. For additional information about the manufacturing B&O tax, refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(i) **Sales of dental (~~laboratory products~~) prostheses manufactured by dental laboratories and dental technicians.** Dental laboratories and dental technicians who make sales within this state of dental (~~laboratory products~~) prostheses they have manufactured are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the dental laboratory or dental technician must report under the manufacturing B&O tax classification as well as the wholesaling and/or retailing B&O tax classifications. However, a multiple activities tax credit (MATC) may be claimed. For detailed information about the MATC, refer to WAC 458-20-19301 (Multiple activities tax credits). Dental laboratories or dental technicians making wholesale sales must obtain a resale certificate from the buyer to document the wholesale nature of the sale. For additional information regarding resale certificates, refer to WAC 458-20-102.

As noted above in subsection (2)(c) of this rule, sales of dental (~~appliances, devices, restorations, and substitutes, and their components,~~) prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers are exempt from retail sales tax if the dental prosthesis meets the definition of "prosthetic device" in subsection (2)(a) of this rule. RCW 82.08.0283.

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(ii) (~~Taxability of income earned by dental laboratories and dental technicians prior to October 1, 1998.~~ Gross income earned by dental laboratories and dental technicians prior to October 1, 1998, is subject to service and other activities B&O tax. Prior to October 1, 1998, dental laboratories and dental technicians were considered to be providing professional services rather than engaging in manufacturing activities. The products produced by a dental laboratory or dental technician were considered the tangible representation of those professional services.) Dental casts, models, and other articles of tangible personal property manufactured by dental laboratories and dental technicians for commercial or industrial use. Dental laboratories and dental technicians may manufacture dental casts, models, or other articles of tangible personal property that they use in producing or fabricating dental prostheses. In such cases, the dental laboratory or dental technician is manufacturing a product for commercial or industrial use and is subject to the manufacturing B&O tax on the value of the dental cast, model, or other article of tangible personal property. (See WAC 458-20-112 (Value of products) for information regarding the value of products.) As the consumer of the dental cast, model, or other article of tangible personal property manufactured for commercial or industrial use, the dental laboratory or dental technician is also liable for use tax on the value of the dental cast, model, or other article of tangible personal property, unless the use is specifically exempt by law.

(b) In-house manufacturing of dental ((laboratory products)) prostheses by dentists. As noted ((above)) in this rule, the production or fabrication of dental ((appliances, devices, restorations, substitutes, or other dental laboratory products)) prostheses by dental laboratories and dental technicians is a manufacturing activity. However, the production or fabrication of dental ((laboratory products)) prostheses by dentists in the course of providing dental care services to their patients is not a manufacturing activity under the law and, therefore, manufacturing B&O tax does not apply to this activity. A dentist may personally produce or fabricate dental ((appliances, devices, restorations, substitutes, or other dental laboratory products)) prostheses, or the dentist may have an employee who is a dental technician produce or fabricate the dental ((laboratory products)) prostheses. These dental ((laboratory products)) prostheses are considered a tangible representation of professional services ((that the

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~~dentist provides to his or her))~~ provided to the dentist's patients. Dentists who manufacture impressions, dental casts, models, or other articles of tangible personal property that they use in producing or fabricating dental ~~((appliances, devices, restorations, substitutes, or other dental laboratory products))~~ prostheses should refer to subsection (3)~~((d))~~(a)(ii) of this rule for tax reporting instructions applicable to this activity.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) **Example.** Jane Doe, an employee of Dentist A, fabricates dental ~~((appliances, devices, restorations, and substitutes))~~ prostheses. Dentist A provides these products to patients in the course of rendering dental care services. Dentist A is subject to service and other activities B&O tax on the gross income ~~((she receives))~~ received for providing dental care services, including any charge for the dental ~~((appliances, devices, restorations, and substitutes))~~ prostheses even if Dentist A separately charges ~~((her))~~ patients for the dental ~~((laboratory products))~~ prostheses. (See subsection (2)(a) of this rule.)

(ii) **Example.** The facts are the same as in the previous example except that Dentist A also sells to Dentist B dental ~~((appliances, devices, restorations, and substitutes))~~ prostheses produced by Jane Doe in the course of ~~((her))~~ Jane's employment with Dentist A. For these sales of dental ~~((laboratory products))~~ prostheses to Dentist B, Dentist A is acting as a dental laboratory and, therefore, is liable for both manufacturing B&O tax and retailing B&O tax with respect to the manufacture and sale of dental ~~((appliances, devices, restorations, and substitutes))~~ prostheses to Dentist B. Dentist A may also claim a MATC (see subsection (3)(a) and (a)(i) of this rule.) The sales to Dentist B are exempt from retail sales tax under RCW 82.08.0283 if the items qualify as a prosthetic device as defined above in subsection (2)(a) of this rule.

(c) **Equipment and supplies used by dental laboratories and dental technicians.** Purchases of equipment and supplies by dental laboratories and dental technicians for use in manufacturing dental ~~((appliances, devices, restorations, substitutes, or other dental laboratory products))~~ prostheses are generally purchases at retail and subject to retail sales

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tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dental laboratory or dental technician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department((7)) unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding use tax, refer to WAC 458-20-178.

(i) **Components of dental prostheses produced for sale.**

Purchases of supplies that become components of dental ((appliances, devices, restorations, and substitutes)) prostheses that are produced for sale are ((exempt from retail sales and use taxes. RCW 82.08.0283 and 82.12.0277. For detailed information regarding the use tax, refer to WAC 458-20-178)) purchases at wholesale and are not subject to retail sales tax if the buyer provides the seller with a properly completed resale certificate to document the wholesale nature of the transaction. WAC 458-20-102.

((For example,)) (ii) **Example.** The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. A dental lab purchases equipment and supplies including gold, silver, alloys, artificial teeth, cement, and tools. The purchases of gold, silver, alloys, artificial teeth, and cement that become components of dental ((laboratory products)) prostheses are ((exempt from retail sales and use taxes)) wholesale purchases and are not subject to retail sales tax if the buyer provides the seller with a properly completed resale certificate. The tools are subject to retail sales or use tax unless they qualify for the manufacturing machinery and equipment sales and use tax exemption. Additional information about this exemption is provided below in subsection (3)((+e))(d) of this rule.

(d) ((**Dental casts, models, and other articles of tangible personal property manufactured by dental laboratories and dental technicians for commercial or industrial use.** Dental laboratories and dental technicians may manufacture dental casts, models, or other articles of tangible personal property that they use in producing or fabricating dental appliances, devices, restorations, substitutes, or other dental laboratory

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~~products. In such cases, the dental laboratory or dental technician is manufacturing a product for commercial or industrial use and is subject to the manufacturing B&O tax on the value of the dental cast, model, or other article of tangible personal property. (See WAC 458-20-112 for information regarding the value of products.) As the consumer of the dental cast, model, or other article of tangible personal property manufactured for commercial or industrial use, the dental laboratory or dental technician is also liable for use tax on the value of the dental cast, model, or other article of tangible personal property, unless the use is specifically exempt by law.~~

~~(e))~~ **Sales and use tax exemptions for manufacturing machinery and equipment.** A retail sales and use tax exemption is provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers of certain machinery and equipment used directly in a manufacturing operation. This exemption is limited to machinery and equipment used to manufacture products for sale as tangible personal property. Thus, dental laboratories and dental technicians manufacturing dental (~~appliances, devices, restorations, substitutes, or other dental laboratory products~~) prostheses for sale may be eligible for this exemption. The exemption is not available if these products are produced or fabricated by a dentist or an employee of a dentist and are provided to patients in the course of delivering dental care services to the patients (as is the case in the example provided in subsection (3)(b)(i) of this rule). Refer to WAC 458-20-13601 (Manufacturers and processors for hire--Sales and use tax exemption for machinery and equipment) for detailed information regarding this exemption.