

Cite as Det. No. 92-094, 12 WTD 135 (1993).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>D E T E R M I N A T I O N</u>
For Determination of Tax	)	
Liability of	)	No. 92-094
	)	
. . .	)	Registration No. . . .
)	)	

[1] RULE 18801 -- RETAIL SALES TAX -- EXEMPTIONS -- PROSTHETIC DEVICES. Dental device implanted below patient's gums and used to guide regeneration of bone and tissue is a prosthetic device under the statute. Fact that device is eventually absorbed by the body or surgically removed is not determinative where implantation occurs. ACCORD: Deaconess Medical Center v. Department of Rev., Docket No. 87-2-2055-7 (Thurston County Superior Court, 1988); Det. No. 90-97, 9 WTD 195 (1990).

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Taxpayer petitions for determination of whether new dental device qualifies as an exempt prosthetic device.

FACTS AND ISSUES:

Adler, A.L.J. -- Taxpayer is a manufacturer of products sold to dentists. It seeks a determination on whether a recently-developed product is exempt from sales or use tax. Taxpayer explains:

The product is a bio-medical device that will be sold to dentists (periodontists and general practitioners) for reconstructive surgery resulting from periodontal

disease. In the industry, the product is referred to as a "Guided Tissue Regeneration" (GTR) device and is subject to FDA approval as a class II medical device (defined by 510K submission).

Briefly, the product is a foil-thin, perforated device with pre-attached sutures (used to fasten around the neck of a tooth) that is placed beneath a patient's gums in the area where bone and periodontal ligament loss occurred. The purpose of the device is to enable and guide the regeneration of periodontal tissues lost due to disease.

The primary difference between this product and the only other device currently on the market...is that it is bio-absorbable and is not removed from the patient's mouth. The product is made of a polylactic acid.

In the field of periodontology, it wasn't discovered until only a few years ago that the body can regenerate bone and ligament to its original anatomy. This device, which was invented as a result of this discovery, will most likely reduce the incidence of tooth loss in the future, making GTR applications an alternative or replacement for dentures and implants. Furthermore, for patients who have already suffered tooth loss, this device will be used in implant surgery, guiding regrowth of bone tissue around a titanium post rather than a natural tooth.

#### DISCUSSION:

[1] Dentists are subject to use tax on all materials deemed consumed by them in rendering medical services under WAC 458-20-151 (Rule 151), unless an exemption from use tax applies to the materials themselves. The rule references WAC 458-20-18801 (Rule 18801), which discusses the sales and use tax exemptions and defines "prosthetic device" to mean

artificial substitutes which generally replace missing parts of the human body, such as a limb, bone, joint, eye, tooth, or other organ or part thereof, and materials which become ingredients or components of prostheses.

. . .

The retail sales tax does not apply to sales of prosthetic devices, orthotic devices prescribed by physicians, osteopaths, or chiropractors, nor to sales

of ostomic items. (See RCW 82.08.0283.) Sutures, pacemakers, hearing aids, and kidney dialysis machines are examples of prosthetic devices. Drainage devices which are particularly prescribed for use on or in a specific patient are exempt from sales or use taxes as prostheses because they either replace missing body parts or assist dysfunctional ones, either on a temporary or permanent basis. A prosthetic device can include a device that is implanted for cosmetic reasons.

. . .

The use tax does not apply to the use of articles and products which are exempt from sales tax as specified herein. (See RCW 82.12.0277.)

(Emphasis supplied.)

RCW 82.08.0283 and 82.12.0277 contain no definition of "prosthetic," nor do they contain any limitations indicating that eligibility for exemption is conditioned on how the prosthetic device is used or whether it is a permanent replacement.

In Deaconess Medical Center v. Department of Rev., Docket Number 87-2-2055-7 (Thurston County Superior Court, 1988), the court used similar logic and commented:

prosthetic devices [are exempted from] sales and use taxes imposed by Chapters 82.08 and 82.12 respectively. In neither chapter is the term "prosthetic devices" defined. . .

However, absent a statutory definition, terms used in statutes are to be given their ordinary meaning, which may be determined by reference to extrinsic aids, such as dictionaries. [Citation omitted.] In the ordinary meaning attached to "prosthetic devices," as defined in Dorland's Illustrated Medical Dictionary, 26th Edition, and Taber's Cyclopedic Medical Dictionary, there is not a requirement that the prosthesis be a permanent replacement. These definitions also indicate the prosthesis need only replace a missing part, organ, or part of an organ or the function of the part or organ.

Therefore, since the department's definition, in so far as it requires the replacement be permanent, broadens the sales and use tax imposed by the statute. This results in this regulation being invalid to this extent.

(Brackets and emphasis supplied.)

In this case, as in Deaconess, the statute contains no language suggesting that the exemption can be denied based on the fact that the device is used temporarily and then absorbed. Additionally, the device clearly replaces the function of the gums and bone until they can regenerate themselves. In this respect, it is like sutures, which replace the function of the skin temporarily and which often are absorbed by the body when their task is completed. Under the broad definition of "prosthesis" relied upon by the court and reflected in the rule amendment, application of the law or rule in a manner that limits access to the exemption granted by the legislature would be invalid.

#### DECISION AND DISPOSITION:

Taxpayer's petition is granted, and the device is entitled to the sales or use tax exemption. This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However, it shall not be binding if there are relevant facts which are in existence but not disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 2nd day of April 1992.