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TO: Phil Latham, Executive Director  
*South Carolina Dental Association* (“SCDA”)

FROM: Jeff Z. Brooker, III

DATE: February 9, 2016

RE: South Carolina Sales and Use Tax for purchases by SCDA Members  
Our File No. 846-14-0137

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The purpose of this Memorandum is to discuss, generally, the circumstances under which purchases of materials, supplies, equipment and other items used or consumed by dentists would be subject to South Carolina Sales or Use Tax.

In order to fully address this concept, this Memorandum will discuss the following:

1. What is a purchase or sale at retail which is subject to South Carolina Sales or Use Tax?
2. What are the exemptions, if any, from the South Carolina Sales or Use Tax which apply to dentists engaged in business in South Carolina?
3. If a purchase or sale is at retail for purposes of the South Carolina Sales or Use Tax, what is the procedure for a dentist subject to the Sales or Use Tax?

**What is a purchase or sale at retail which is subject  
to the South Carolina Sales or Use Tax?**

As a general statement of the South Carolina Sales and Use Tax, it is generally understood that, “A ‘sale at retail’ or ‘purchase at retail’ is any sale of tangible personal property not defined as a wholesale sale.” South Carolina Sales and Use Tax Manual, 2015 ed., Chap.5, Pg. 1 *relying on* SC Code Ann. §12-36-110.

“A ‘wholesale sale’ is essentially a sale to a licensed retailer or a wholesaler for resale and not for use or consumption.” *Id.* (*relying on* SC Code Ann. §12-36-120).

The South Carolina Department of Revenue (SCDOR) has held that as it relates to medical/dental professionals and their businesses, a “retail sale” includes:

- a. sales of drugs, prosthetic devices, and other supplies to . . . ***dentists*** . . . if furnished to their patients as a part of the service rendered. ***These institutions, companies, and professionals are deemed to be the users or consumers of the property.***
- b. sales of tangible personal property used incidental to the performance of services by . . . ***dentists*** . . . . Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.
- c. sales of tangible personal property, such as equipment, supplies, and medicines, to dentists for use in rendering professional services. ***Note: Sales of dental prosthetic devices to dentists are exempt from the tax.***
- d. sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.

As this list (taken from the South Carolina Sales and Use Tax Manual, 2015 ed., Chap.5, Pg. 3) demonstrates, the purchases made by dentists for ordinary business operations will generally be deemed “retail sales.” Essentially, this means that a dentist will owe *sales tax* paid to the seller (if the seller is a registered South Carolina retail seller) or use tax (for the purchase of tangible goods for use in South Carolina on which no South Carolina sales or use tax has been paid to the seller).

In SC Rev. Rul. 90-1, the SCDOR set forth the general rule for finding transactions entered into by the dentist for the purchase of materials, equipment, etc., were retail sales and, therefore, subject to Sales or Use Tax, unless an exemption applies. Taking the issue of dentists and their businesses directly under consideration, the SCDOR (then the South Carolina Tax Commission) ruled as follows:

“It is apparent that a purchase is the result of a retail transaction when the sale is to a party who is the consumer of the item purchased....A dentist is generally considered the consumer of the materials he purchases. Further, the fact that a dentist places a device into a patient's mouth does not make the dentist a retailer but rather the dentist is a consumer utilizing the device to perform a service.”  
*Citations omitted.*

Under the law and guidance as set forth above, the SCDOR generally will require that transactions at retail will generate a Sales Tax obligation (where the seller is situated in South Carolina) or a Use Tax obligation (where the seller is situated outside South Carolina and no sales or use tax has been collected from the purchaser).

**What are the available exemptions to the South  
Carolina Sales and Use Tax as otherwise  
applicable to Dentists and their businesses?**

As it relates to dentists, the South Carolina Sales and Use Tax exempts the sale of “dental prosthetic devices” from the South Carolina Sales and Use Tax. As stated by the SCDOR, “In order for this exemption to be applicable, the device must pertain to dentistry and must replace a missing part of the body. A device that merely replaces a missing function is not exempt. The sale does not require a prescription.” South Carolina Sales and Use Tax Manual, 2015 ed., Chap. 20, Pg. 3 *relying on* SC Code Ann. §12-36-2120(28)(e).

The issue of prosthetic devices for dentists has been ruled upon by the SCDOR numerous times for nearly 30 years. The South Carolina Sales and Use Tax laws have been amended several times during this same period. Currently, the administrative guidance on the issue of the Sales and Use Tax exemption for dental prosthetic devices are set forth in the following rulings:

- A. SC Rev. Rul. 90-1, Jan. 17, 1990.
- B. SC Rev. Rul. 91-19, Oct. 16, 1991.
- C. SC Priv. Ltr. Rul. 92-8.

Each of these administrative pronouncements is discussed more fully below.

Under SC Rev. Rul. 90-1, the issue of what is a dental prosthetic device was addressed. Currently, §117-332 SC Code of Regulations defines a prosthetic device as “an artificial device to replace a missing part of the body.” At the time SC Rev. Rul. 90-1 was issued, the applicable Regulation was at §117-174.257. Based on this definition, devices such as artificial teeth, dentures, crowns, inlays, and overlays are “prosthetic devices.”

Expressly included in the definition of prosthetic devices are the following:

- i. Crowns
- ii. Inlays
- iii. Bridges
- iv. Veneers
- v. Dentures
- vi. Posts and Cores

- vii. Implants
- viii. Maxillofacial prosthetics, if used to replace part of the maxilla, mandible or face. Any such item used to straighten, support or in any other manner which does not replace a part of the body, does not come within the provisions of the exemption.

SC Rev. Rul. 90-1 further provides the clarification that devices to “straighten or support a part of the body” are ***not*** prosthetic devices (within the meaning of the sales and use tax exemptions).

SC Rev. Rul. 91-19 addresses the purchases by dental labs for the manufacture of dental products, specifically, dental prosthetics. SC Rev. Rul. 91-19 clarifies that the products purchased by dental labs to manufacture dental prosthetics (as contemplated by SC Rev. Rul. 90-1) ***and certain other tangible personal property*** are also exempt from sales and use tax. The exemption for purchases by dental labs for the dental products they produce lie in the “manufacturing exemption” under SC Code §12-36-2120.

Finally, in 1992, the SCDOR addressed the issue of whether a Guided Tissue Regeneration (“GTR”) device was a “dental prosthetic device” within the meaning of the sales and use tax exemption. As explained in SC Priv. Ltr. Rul. 92-8, a GTR is described as follows:

“The purpose of the device is to enable and guide the regeneration of periodontal tissues. The GTR is made of a polylactic acid and is a foil-thin, perforated device with pre-attached sutures that are used to fasten around the neck of a tooth. The device is placed beneath a patient's gums in the area where the bone and the periodontal ligament loss occurred. It is bio-absorbable and is not removed from the patient's mouth as the body hydrolyzes the device over time.”

SC Priv. Ltr. Rul. 92-8 concludes that because the GTR is a device that “assists in the regrowth of tissue or the prevention of the loss of a functional body part and the need for an artificial substitute,” it is not a dental prosthetic device for purposes of the exemption from sales and use tax.

### **What is the procedure for a Dentist subject to the Sales or Use Tax?**

Perhaps the most daunting task for the dentist is to determine when and if sales tax or use tax has been paid for a purchase that is otherwise subject to sales or use tax. If the dentist concludes that (i) sales tax or use tax applies and (ii) that sales tax or use tax has not been collected by the seller, the next step is to determine which SCDOR Form the dentist should use to report and pay the use tax.

According to the analysis set forth by the SCDOR, a dentist in South Carolina may be required to secure a “use tax registration” if the dentist ***regularly*** purchases tangible personal

property for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser (dentist).

According to the SCDOR, if the Use Tax is owed by a dentist, then the dentist must determine the proper manner to report and pay Use Tax as follows:

- a) pay the use tax online through the SC Department of Revenue's Electronic Payment System at <https://www3.dor.sc.gov/DOREPAY/>. A username and password is required.
- b) report and remit the use tax on the dentist's sales and use tax return ***if*** the dentist is already a licensed South Carolina retailer (e.g., selling other products at retail from the dentist's office). The use tax is reported on Line #2 ("Out-of-State Purchases Subject to Use Tax") of the Worksheet on the SC sales and use tax return (Forms ST-3, ST-388, and ST-403, plus local tax addendum ST-389).
- c) obtain a purchaser's certificate of registration and report and remit the use tax on its use tax return if the dentist is not a licensed South Carolina retailer but the dentist regularly purchases tangible personal property for its business use from an out-of-state retailer. The use tax is reported on Line #2 ("Out-of-State Purchases Subject to Use Tax") of the Worksheet on the SC sales and use tax return (Forms ST-3, ST-388, and ST-403, plus local tax addendum ST-389).

Note: Persons needing to obtain a purchaser's certificate of registration in order to file tax returns and remit the use tax on a periodic basis may do so by completing Form SCDOR-111 or by contacting the Department's License and Registration Section at (803) 896-1350.

- d) report and remit the use tax on a Form UT-3 use tax return if the dentist is not a licensed South Carolina retailer ***and*** does not regularly purchase tangible personal property for its own use from an out-of-state retailer.