

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2022-02ST
May 20, 2022

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

ISSUES

Sales and Use Tax - Applicability of Medical Exemptions to Post-Treatment Retainers

Authority: [IC 6-2.5-1-25](#); [IC 6-2.5-2-1](#); [IC 6-2.5-5-18](#); [IC 6-2.5-8-1](#).

An orthodontist ("taxpayer") is seeking a determination regarding whether use taxes would be due on post-treatment retainers if the patient is billed as a separate line item on the contract.

STATEMENT OF FACTS

Taxpayer operates an orthodontic practice in Indiana. Post-treatment retainers are provided for every comprehensive orthodontic patient to maintain stability and tooth positions following the conclusion of orthodontic treatments such as braces. The purpose of the retainers is to retain the position of the teeth.

DISCUSSION

Taxpayer requests that the Department determine whether its charge for post-treatment retainers is exempt from Indiana gross retail tax as either durable medical equipment or a prosthetic device pursuant to [IC 6-2.5-5-18](#)(c).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1](#)(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. [IC 6-2.5-2-1](#)(b). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." [IC 6-2.5-3-2](#)(a).

In general, all purchases of tangible personal property are subject to sales and/or use tax unless an enumerated exemption from sales and/or use tax is available. [IC 6-2.5-5-18](#)(c) provides an exemption for certain medical devices and equipment in pertinent part:

Transactions involving the following are exempt from the state gross retail tax if the end user acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) from a licensed practitioner:

- ...
- (3) Prosthetic devices, including artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, and contact lenses.

[IC 6-2.5-1-25](#) defines "prosthetic device" as follows:

"Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

- (1) artificially replace a missing part of the body;
- (2) prevent or correct physical deformity or malfunction; or
- (3) support a weak or deformed part of the body.

A retainer meets the definition of a prosthetic device, as it is worn in the mouth and used to prevent physical deformity of the teeth. Therefore, as long as the retainer is separately itemized on the bill apart from any services, and is sold directly to the patient, then the sale of the retainer would qualify for the exemption at [IC 6-2.5-5-18](#).

On a final note, because the taxpayer is selling retainers, the taxpayer should therefore be registered as a retail merchant, even if all sales are exempt. See [IC 6-2.5-8-1](#).

RULING

The sale by taxpayer of post-treatment retainers to its patients are exempt pursuant to [IC 6-2.5-5-18](#) as long as the retainers are separately itemized on any invoice or billing.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Posted: 11/16/2022 by Legislative Services Agency
An [html](#) version of this document.