



STATE BOARD OF EQUALIZATION

January 18, 1965

Gentlemen:

This is in reply to your letter of January 7 in which you inquire about the applicability of the sales tax to the purchase of dental supplies by a dentist who operates his own dental laboratory.

In the first situation you pose, a local dentist has a laboratory in his suite and is capable of producing inlays and other dental appliances. He contemplates the employment of a competent dental laboratory technician to produce such appliances for the use of the dentist's patients. Sales tax will be paid on all purchased material. In this instance, there will be no additional sales or use tax payable on the finished products the dentist uses in his practice. The dentist is considered to be the consumer of his purchases.

In the second situation, the dentist contemplates employing the same technician to also produce appliances for two other practicing dentists. The two other dentists will reimburse the first dentist for the cost, without profit, of the technician's services. In this case, the dentist with the laboratory is making taxable sales to the other dentists. The measure of tax is the gross receipts from the sales of the finished products without deduction for the part of the cost attributable to the technician's services. The dentist-seller, who must apply for a seller's permit, may buy the materials which make up the sold, finished products under a resale certificate, or, in the alternative, may take a tax-paid purchases resold deduction for the cost of the materials in the products sold to his customers.

In the third situation, each of the three dentists employ the technician in their own behalf, paying a salary directly to him as well as paying federal and state payroll taxes. Whether the technician will be considered an employee of each of the dentists or be considered an independent contractor, i.e., a dental laboratory, depends on all the circumstances of the case. If, in fact, he acts as an independent dental laboratory, then his charges are taxable. If the technician is an employee, not an independent contractor, working on the separate property of each dentist, then each dentist will only pay sales tax reimbursement to the dental supply house from which he buys his materials. The fact that the dentists pay payroll taxes does not control the determination that the technician is acting in the capacity of an employee for sales tax purposes.

Very truly yours,

E. H. Stetson
Tax Counsel

By Philip R. Dougherty

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