

State of Michigan  
Department of Treasury  
Treasury Building  
Lansing, MI 48922

LR 85-20 SALES OF DENTAL CERAMICS

\_\_\_\_\_ is engaged in the manufacture and sale of crowns, bridges, dentures and other dental appliances. These devices are manufactured in accordance with a prescription received from the dentist and are used as replacement body parts, specifically teeth. You have asked whether Sales Tax applies when the device is transferred to the dentist. In addition, you inquire whether tangible personal property purchased and used or consumed in the manufacture of such devices is subject to Sales or Use Tax.

The Michigan Sales Tax Act, MCL 205.54a(k), exempts from tax, sales at retail or any apparatus, device or equipment used to replace or substitute for a part of the human body. When a dental lab manufactures a device in accordance with specifications provided by a dentist it provides a non-taxable service rather than making a sale to the ultimate consumer.

On the other hand, the Department of Treasury Sales and Use Tax Rules, 1979 AC, R 205.111, subjects to tax sales by dental supply houses and others to dentists or dental laboratories of materials, supplies and equipment used in the rendition of their services. The exemption for industrial processing of the Michigan Sales Tax Act, MCL 205.54a(g), does not apply to tangible property used or consumed in the manufacture of dental devices because such devices are not sold at retail to the ultimate consumer. Terchek v Michigan Department of Treasury, 4 MTT 90 (1985), recognized that a dental lab provides a service and is subject to Sales or Use Tax on all tangible personal property used or consumed in the rendition of this service.

November 26, 1985  
LR 85-20

Susan Work Martin  
Commissioner of Revenue

## SPECIFIC SALES AND USE TAX RULES

R 205.111. Physicians, surgeons, dentists, veterinarians, osteopaths, and other practitioners.

Rule 61. (1) Physicians, surgeons, dentists, veterinarians, osteopaths, or other practitioners of the healing arts not otherwise specifically provided for in these rules render nontaxable services.

(2) Sales of drugs, medications, instruments, equipment and other tangible personal property to such persons for use in rendering professional services or in connection with their office, laboratory or other similar quarters are taxable.

(3) Sales by dental supply houses and others to dentists or dental laboratories of materials, supplies and equipment used in the rendition of their services are taxable.

(4) If a dental laboratory sells to dentists tangible personal property in its original form upon which no professional services are performed such as cement, gold, cleaning preparations, etc. then such sales shall be considered as sales at retail and the dental laboratory so engaged must obtain a sales tax license and pay the tax on these sales.

History: 1944 AC, p. 1339; 1954 AC, p. 932; 1954 ACS 26, p. 27; 1954 ACS 78, p.7.

(Reprinted from the MACDL Newsletter November/December 1995)

## NADL PLAYS ROLE IN CHANGE OF ADA POLICY ON SHADE TAKING

During its annual session in early October, the American Dental Association (ADA) voted to change its policy on patient contact for the purpose of shade verification. The National Association of Dental Laboratories' (NADL) Professional Relations Committee has long advocated and encouraged a change in the existing policy.

In 1981, ADA confronted the issue of laboratory referrals for shade taking by issuing an opinion by the, then, Council on Prosthetic Services and Dental Laboratory Relations that the involvement of the laboratory personnel in the process of shade selection or verification did, "...not constitute the practice of dentistry and should be conducted in the dental office or separate dental laboratory setting when, in the best interest of the patient."

In 1990, however, after the demise of the Council, its successor Council on Dental Practice revised that opinion causing a new policy to be adopted eliminating the laboratory as a possible site for shade verification. The new policy confirmed the earlier policy that assistance of the laboratory technician does not constitute the practice of dentistry provided such activity is undertaken in consultation with the dentist and that such assistance is most appropriately provided in the office of the dentist.

Commercial dental laboratories are frequently called upon by a dentist to assist in making a shade selection and, while this service is sometimes provided in the dental operator, it is far more common for the dentist to send the patient to the laboratory to have a shade verified.

While dentists, in virtually all fifty states, refer patients to the dental laboratory, this activity is legal in only eight states. In states where the legal issue has not been specifically addressed, the laboratory faces a dilemma: say "yes" to the dentist and face legal exposure; say "no" and risk losing a client. In states where the dental practices act prohibits contact with the patient, the laboratory risks sanctions for accepting the referral.

NADL supports the legalization of shade taking in a commercial dental laboratory on the written prescription of a licensed dentist and encourages its state components to advocate changes in their respective state laws, by legislation or administrative rulings. This may now be easier to achieve.

During the recently held ADA annual session, a resolution was proposed by the Council on Dental Practice to amend the existing policy and modify its language. This year, NADL's Vice President Gerald Upshaw, CDT and Executive Director Robert Stanley attended the ADA session and had a chance to talk with several state delegations about the resolution, seeking their support for its passage. Upshaw spoke in favor of the resolution before the Dental Benefits, Practice and Health Reference Committee, as did the former and current chairmen of the ADA Council, the President of the American College of Prosthodontists and several individual ADA members.

There was no objection to the resolution in the Reference Committee and no objection when the resolution came to the floor of the ADA House of Delegates. Resolution 7 was adopted as presented and the ADA policy now reads:

Shade selections by laboratory personnel-

Selections of the appropriate shade are a critical step in the fabrication of an esthetically pleasing prosthesis. The Association (ADA) believes that when a dentist requests the assistance of the dental laboratory technician in the shade selection process, that assistance on the part of the dental

laboratory technician does not constitute the practice of dentistry, providing the activity is undertaken in consultation with the dentist and that it complies with the express written instructions of the dentist. The shade selection site, whether dental office or laboratory (where lawful) should be determined by the professional judgment of the dentist in the best interest of the patient and where communication between dentist, patient and technician is enhanced.

Some states have recognized the dental laboratory industry's legal predicament and have amended their dental practices acts to clarify the liability question. Other states have resolved the problem by issuing an administrative ruling, which removes the activity from the illegal practice of dentistry. This new policy by ADA should make the process of change a bit easier.

And in Michigan...

In a letter of 12-10-93 to the MDA from the Department of Commerce, Bureau of Occupational and Professional Regulations comes the answer. In part it says: "I do not believe that a violation occurs when a dental technician performs shade verification subsequent to receiving a work order from a licensed dentist." This letter was signed by Thomas Lindsay, II, Director of the Office of Health Services. This opinion merely states that shade verification is legal in Michigan.

Laboratories should be aware that they might fall under the OSHA Standards as seeing patients in the dental office. As always, it is up to each laboratory to decide on which path they may follow in this area.