

Consumer Use Tax - The “Tax” That Can Bite Dentists Unaware

Many dentists are aware that dental services are generally exempt from sales tax. However, when dentists sell tangible personal property to their customers, this can be taxable on the sale to the patient and/or insurance company. But what about consumers use tax? What is it and how does it impact my dental practice?

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▶ Sales and use taxes can be complicated and confusing, especially when each state has their own set of rules. Although dentists typically provide exempt services, they may be required to pay sales or use tax for items they purchase or charge sales tax on certain items they may sell.

Sales tax is a tax on items of tangible personal property a dentist may sell, while use tax is typically the tax you pay on items you may purchase. Consumer's use tax is complementary to the sales tax. In other words, one or the other can be applicable, but both taxes are never applied to the same transaction. In Missouri, since 1959, use tax has been imposed on the storage, use, or consumption of tangible personal property. Unless an item is specifically exempted by statute, dentists must pay consumer's use tax on purchases of tangible personal property stored, used or consumed in a state, unless tax was paid to the seller. Consumers often pay sales tax to the seller when they make a purchase, and the seller remits the tax to the government. However, not all sellers are obligated to collect tax from you. For example, an out-of-state seller that you purchase from may not have any “nexus” or connection to your state. Therefore, they may

not be required to collect tax in your state. This happens many times with online purchases. If you make purchases online or from a seller not required to collect sales and use tax for your state, the burden may be on you, as the consumer, to pay any tax that may be due. The tax rate and taxability of an item is determined according to the state your business is located or where you take possession of the goods purchased. If you choose to pick up or take possession of your purchase in a different state, the tax rate and taxability will be determined by that state's law. Sales and use tax rules are different in each state. Tax rates vary by state and each state differs in what products are considered taxable and what products are non-taxable. For example, Illinois and Missouri tax products related to the practice of dentistry differently.

Illinois Sales and Use Tax

In Illinois, the professional services rendered by dentists are not taxable. However, when a dentist bills for tangible personal property separate from their services, those charges will typically be taxable, though at different rates. Some items are taxable at the full rate of tax of 6.25 percent plus local tax, while others

are taxable at a reduced rate of tax. Drugs and medical appliances are items taxed at the reduced rate. If the transfer to the patient is separate (separately stated on the invoice) from rendering services as a dentist, it is taxable to the patient at the appropriate rate. For example, mouthwash, toothpaste, and dental floss sold to patients are taxable at the full rate of tax. Dental prosthetics and orthodontic braces, which are considered medical appliances, are taxable at the reduced rate. If the transfer is not separate from rendering services as a dentist, it is taxable upon the dentist's purchase. Examples of property sold to patient apart from rendering services as a dentist that are taxable at the full rate in Illinois are listed below:

- Mouth wash
- Toothpaste
- Dental floss

Other items that are fully taxable in Illinois include, but are not limited to the following:

- Materials for fillings
- X-ray machines and lab equipment
- Non-sterile cotton swabs
- Cosmetics
- Bite guards used for treatment purposes

and not intended for use in directly substituting for a malfunctioning body part

Illinois allows some items to be taxed at a reduced rate of 1 percent. Items that are considered medical appliances, (devices intended to substitute for a malfunctioning body part), are included in this category. Property taxable at the reduced rate in Illinois includes, but is not limited to:

- Dental prosthetics
- Orthodontic braces
- Prescription medicines, drugs, and dentures as incident to furnishing professional services
- Certain non-prescription drugs that meet the statutory definition of medicinal claim and are not grooming and hygiene products
- Sterile dressings, bandages, and gauze

In Illinois, use tax must be self-assessed and paid to the Department of Revenue when

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taxable property is purchased from a vendor who did not charge tax and the property is used or consumed, and not resold to a customer.

Missouri Sales and Use Tax

Like Illinois, use tax should be accrued and remitted on purchases from out-of-state suppliers and other sellers that do not charge Missouri sales/use tax. However, Missouri differs from Illinois on what items are taxable. Missouri's general sales and use tax rate is 4.225 percent, plus local tax.

In Missouri, dentists must pay tax on the purchase of items used or consumed in the practice of their profession. These items may include:

- Medical/Dental instruments
- X-ray film
- Medical/Dental equipment
- Toothpaste
- Floss
- Mouthwash
- Dental supplies
- Dental chairs

For instance, if a dentist provides each patient with a small tube of toothpaste, floss, and mouthwash following their visit, the dentist must pay tax on these items since they are consumed in the practice. The dentist does not have to charge the patients for the tax on these items.

Tangible personal property purchased by dentists and not used in the practice of their profession, but instead is sold to patients are taxable on the sale to the patient. For example, if a dentist sells accessories such as travel kits, mirrors, and other items not related to the practice of the profession, those sales are taxable on the sale to the patient.

Several items are tax exempt in Missouri. Such items include:

- Purchase and sales of dentures, partial plates, and braces, as finished products
- Sales of prescription drugs
- Sales of orthopedic and prosthetic devices including:
 - Restorative materials – Examples include aluminum crowns, amalgam, bases and liners, denture repair materials, denture teeth, gold, mercury, pit and fissure sealants, porcelains, temporary filling materials, and the like;
 - Prosthetic devices and supporting materials – Examples include acrylics,

bonding materials, chrome alloys, implant materials, metal alloys;

- Orthodontic devices and materials – Examples include arch bar splits, bone grafting materials, endodontic materials, face bow headgear, gutta percha points, mucosal grafts, orthodontic appliances (brackets, elastics, resins, separators, waxes, wires), root canal sealants, surgical wires.

Failing to File Consumer's Use Tax

Failing to accrue use tax on purchases and properly file use tax returns can lead to a variety of issues. Individuals and business making purchases from out-of-state suppliers or from the internet have the potential to be audited if they do not accrue and remit use tax on those purchases, as discussed above. Audits can lead to penalties and interest on unpaid taxes.

In Illinois, the statute of limitations to assess a deficiency is three years from the time the return is filed. If a return has never been filed, the statute of limitations increases to six years. In Missouri, the statute of limitations for a deficiency is three years after the return was filed or required to be filed. However, if a return has never been filed, there is no statute of limitations on the time a deficiency can be assessed. This means several years of tax and penalties could be due if sales or use tax returns have never been filed.

Conclusion

While sales and use tax can be confusing, it is important to be aware of some of the intricacies of the sales and use tax law. By not properly filing a consumer's use tax return for those taxable items where tax was not charged, the period subject to audit, as well as the tax, interest and penalties can be significant. It is always best not to get bitten when it comes to sales tax, but also consumer's use tax. Anders CPAs + Advisors stand ready and willing to help. Contact an Anders advisor to learn more about filing use tax in your dental practice.

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³ See <https://dor.mo.gov/personal/consumer/>

⁴ *Id.*

⁵ Ill. Admin. Code §130.1956(b).

⁶ Ill. Admin. Code §130.1956.

⁷ *Id.*

⁸ ILCS Chapter 35 §115/3-10; §110/3-10; Ill. Admin. Code 86 §160.145; Ill. Admin. Code 86 §140.101(b)(1) (A); Ill. Admin. Code 86 §140.140(c); Ill. Admin. Code 86 §140.109(a).

⁹ Ill. Admin. Code §130.1956(a).

¹⁰ Ill. Admin. Code §130.311(e).

¹¹ Ill. Admin. Code §130.1956(a).

¹² *Id.*

¹³ *Id.*

¹⁴ Ill. Admin. Code §140.140(c).

¹⁵ Ill. Admin. Code §130.311(e).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Illinois Dept. of Rev. General Information Letter No. ST 00-0009-GLL, 01/25/2000.

¹⁹ Ill. Admin. Code §130.311(e).

²⁰ *Id.*

²¹ *Id.*

²² Ill. Admin. Code §130.311(c).

²³ Ill. Admin. Code §130.311(e).

²⁴ Mo. Code Regs. 10-103.395(1).

²⁵ Mo. Code Regs. 10-103.395(3)(A).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Mo. Code Regs. 10-103.395(4)(G).

³¹ Mo. Code Regs. 10-103.395(4)(A).

³² Mo. Code Regs. 10-103.395(4)(B).

³³ Mo. Code Regs. 10-103.395(4)(G).

³⁴ Mo. Code Regs. 10-103.395(1).

³⁵ Mo. Code Regs. 10-103.395(4)(F).

³⁶ Mo. Code Regs. 10-113.013(3)(C).

³⁷ Mo. Code Regs. 10-113.013(3)(A).

³⁸ Mo. Code Regs. 10-113.013(3)(D).

³⁹ ILCS §120/4.

⁴⁰ ILCS §135/12; Dept. of Rev. v. ABC Business, Ill. Dept. of Rev., Office of Administrative Hearings, Dkt. No. UT 1301, 01/24/2013.

⁴¹ Mo. Rev. Stat. §144.220.

⁴² *Id.*