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DEPARTMENT OF TREASURY
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NOTICE REGARDING DENTAL PROSTHESIS EXEMPTION

Issued: February 9, 2018

The Acts. On December 19, 2017, 2017 Public Acts 218, 219, 220, and 221 (Acts) were signed into law. The Acts are effective immediately and are effective retroactively beginning July 1, 2017. Collectively, the Acts exempt dental prostheses from sales and use tax. Specifically, 2017 PAs 218 and 219 amend section 4 of the Use Tax Act (UTA), MCL 205.94, and section 4a of the General Sales Tax Act (GSTA), MCL 205.54a, respectively, to provide an exemption for the sale, use, storage, and consumption of a “dental prosthesis.” 2017 PAs 220 and 221 amend section 2b of the UTA, MCL 205.92b, and section 1a of the GSTA, MCL 205.51a, respectively, to define “dental prosthesis” as a “bridge, crown, denture, or other similar artificial device used to repair or replace intraoral defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw or palate.” Unlike the sale of other exempt medical devices, such as durable medical equipment or other types of prosthetic devices, there is no prescription requirement for this new dental prosthesis exemption under the Acts.

History. Prior to these Acts, there was no specific exemption for dental prostheses.¹ However, the Department issued Letter Ruling 1985-20 in 1985 finding that the sale of custom dental prostheses by a dental lab to a dentist was the sale of a non-taxable service rather than the sale of tangible personal property. As a result, the Department also found that the dental lab could not claim the industrial processing exemption for property used in manufacturing dental prostheses since there was no ultimate sale at retail. Subsequently, 2004 PAs 172 and 173 specifically excluded dental prostheses from the “prosthetic device” exemption.

The Department recently determined that LR 85-20 was incorrect, and revoked it effective July 1, 2017.² The Department advised taxpayers that under current law (prior to the Acts) the sale of a dental prosthesis, even if customized, is a taxable sale of tangible personal property. Consequently, the revocation also advised that dental labs were eligible for the industrial processing exemption if the dental prostheses were ultimately sold at retail.

Analysis. The Acts exempt dental prostheses from sales and use tax for transactions occurring on or after July 1, 2017. Therefore, any person that remitted sales or use tax for transactions occurring on or after July 1, 2017, based on the sale, use, or consumption of dental prostheses that are now exempt due to the passage of the Acts may request a refund of the tax remitted. If

¹ Dental prostheses are specifically excluded from the definition of “prosthetic device.” MCL 205.51a(q) and MCL 205.92b(q).

² Michigan Department of Treasury, *Treasury Update*, http://www.michigan.gov/documents/treasury/Treasury_Update_June_2017_576431_7.pdf (accessed January 3, 2018).

the person requesting the refund is a seller that collected sales tax from its customer, the seller must first refund its customer the tax before the Department will issue a refund to the seller. Persons that purchased exempt dental prostheses and paid sales tax to their seller must request a refund from the seller. Refund requests may be sent to the following address:

Department of Treasury
Technical Services Section
P.O. Box 30698
Lansing, MI 48909-8198

For transactions occurring prior to July 1, 2017, taxpayers may rely on LR 85-20 and treat the sale of a dental prosthesis as the sale of a nontaxable service. However, a taxpayer may also treat transactions occurring prior to July 1, 2017, consistent with the statute after the passage of 2004 PAs 172 and 173. If the taxpayer chooses the latter tax treatment, it may seek a refund from its vendors to which it paid tax for property that qualifies for the industrial processing exemption that is within the statute of limitations under MCL 205.27a(2). However, a taxpayer that treats itself as such will be considered as having made taxable sales of tangible personal property, and would therefore be required to remit sales tax based on the sales price of the dental prostheses for all periods within the statute of limitations under MCL 205.27a(2) and amend its sales tax returns accordingly.

Because this is a *per se* exemption, dentists or other persons purchasing exempt dental prostheses are not required to provide sellers of such property a Michigan Sales and Use Tax Certificate of Exemption (Form 3372) to claim the exemption. Likewise, a seller of exempt dental prostheses is not required to maintain a record of a claim of exemption when selling such products.

To read the new laws in their entirety, please refer to 2017 PAs 218-221 at www.legislature.mi.gov.