

Spina Dental Supplies

Dentists await IRS device tax rules

Washington—Dentists and the dental industry await IRS regulations implementing a [2.3 percent](#) medical device excise tax that takes effect [Jan. 1, 2013](#). The Internal Revenue Service, among other regulatory agencies, is expected to issue post-election rules implementing [Affordable Care Act](#) provisions, the excise tax among them.

The dental profession and industry are basing member and customer guidance on proposed rules issued by the IRS on Feb. 3, 2012 defining a "taxable medical device...in general" as a device approved by the Food and Drug Administration for human use. The FDA regulates dental devices as well, and the IRS said those, too, are subject to the tax.

The medical device excise tax is a manufacturer's excise tax, the IRS said, and the manufacturer or importer of a taxable medical device is responsible for reporting and paying the tax.

Dr. Daniel Collado and Dr. John Reitz told the ADA News that they received letters from dental laboratories attempting to explain the tax and how it will be applied.

"Each lab has the option of including the MDT in their charge to the dentist or separately itemizing the MDT on their invoice to the dentist," the National Association of Dental Laboratories said in an advisory on "steps a dental laboratory should take between now and January 1, 2013." The steps recommend filing of several relevant tax forms although the forms had not been updated as of September and the filing frequency was uncertain.

[The proposed rule appears to indicate that dental equipment, material and supply purchased by a dentist for use in the office will be subject to the tax, such as restorative materials, hand instruments, surgical instruments and endodontic filling materials, the ADA Washington Office said.](#) It appears that completed dental prosthetics will not be taxed but the materials that are used to make dental prosthetics will be subject to the tax.

While the completed crown or denture may not be taxed, according to this interpretation of the proposed rule, the materials used to make the crown or denture such as the metal alloys, acrylic and porcelains will be taxed. But these interpretations await clarification from the Internal

Revenue Service.

However, the IRS clearly rejected profession-industry exemption requests.

The ADA and a coalition that included the Academy of General Dentistry, the American Academy of Oral and Maxillofacial Surgeons, the American Association of Orthodontists, the Dental Trade Alliance and the National Association of Dental Laboratories asked the Secretary of the Treasury to "...exercise the authority in Section 4191(b)(2) of Public Law 111-152 to determine that the excise tax does not apply to dental devices manufactured by dental laboratories and orthodontic manufacturers."

"A commentator requested that the proposed regulations provide a blanket exclusion for dental instruments and equipment," the Notice of Proposed Rulemaking said. "The proposed regulations do not adopt this suggestion. There is no statutory basis for treating dental devices differently from other taxable devices. Many dental instruments and equipment are subject to the FDA's listing requirement. Accordingly, those devices that are listed as devices with the FDA pursuant to FDA requirements are 'taxable medical devices' under the proposed regulations, unless they fall within an exemption under Section 4191(b)(2), such as the retail exemption."

The Affordable Care Act exempts eyeglasses, contact lenses, hearing aids and "any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use" from the taxable medical device definition.

The Association also urged Congress to repeal this provision of the Affordable Care Act. There has been no further action on House-passed repeal legislation, and whether the "lame duck" session of Congress will take up the legislation is uncertain.

The ADA News and ADA.org will continue to report on developments concerning the medical device excise tax.

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