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BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 20-0072
	)	
...	)	Registration No. ...
	)	

[1] WAC 458-20-151; RCW 82.12.020: USE TAX – DENTAL LABORATORY’S DENTAL MODELS. A dental laboratory is liable for use tax on the dental models it consumes.

[2] WAC 458-20-112; RCW 82.04.450: USE TAX – VALUE OF DENTAL MODELS. Where gross proceeds of sale are available from a dental laboratory’s actual sales, those amounts are used to value dental models for use tax purposes.

[3] WAC 458-20-151; RCW 82.08.0283: PROSTHETIC DEVICE – REFRACTORY DIE MATERIAL. The refractory die material used and fully consumed in manufacturing veneers is not considered a prosthetic device because it does not serve as a replacement, corrective, or supportive device.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Sattelberg, T.R.O. – A dental laboratory protests the Department’s assessment of use tax, arguing that its dental models should be subject to retail sales tax, not use tax. Alternatively, the laboratory argues that if they are subject to use tax then the Department should use the laboratory’s cost valuation methodology as a basis for the measure of use tax. Taxpayer also argues that its refractory die labor and material are exempt from use tax as a prosthetic device. We deny the petition.<sup>1</sup>

ISSUES

1. Whether a dental laboratory’s dental models are subject to use tax under RCW 82.12.020 and WAC 458-20-151.

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

2. If a dental laboratory's dental models are subject to use tax under RCW 82.12.020 and WAC 458-20-151, whether the measure of use tax should be the amount of their sales or instead should be their cost of fabrication.
3. Whether a dental laboratory's refractory die labor and material are exempt prosthetic devices under RCW 82.12.0277.

### FINDINGS OF FACT

. . . ("Taxpayer") is a dental laboratory located in . . . , Washington. Taxpayer fabricates veneers, which are covers that permanently adhere to existing teeth, as well as crowns and bridges.<sup>2</sup> Taxpayer receives orders for veneers or other products from dentists in Washington, as well as from many dentists located outside of Washington.

To make its veneers, Taxpayer first receives impressions of a patient's teeth from a dentist. The impressions are the imprints of the patient's teeth, often in non-rigid form such as silicone or agar. Taxpayer uses the impressions to make a rigid, base model of the patient's teeth and gums. Taxpayer copies the base model and then applies tooth-colored wax to the copied model to simulate the appearance of the veneers once they have been applied. These separate, modified models are called diagnostic wax-ups. Taxpayer may also make copies of the base model that it does not modify.

From there, Taxpayer is able to make a mold of the desired veneers by using the diagnostic wax-up. Taxpayer uses a refractory die material to make the mold itself. Once Taxpayer makes the mold, it can then fabricate the veneers, which are usually porcelain, by baking the porcelain. The refractory die material is used only in the production of the mold, and is rendered useless through the baking process.

Taxpayer sells the completed veneers, diagnostic wax-ups, and models to the ordering dentist, separately billing for each. The dentist will apply the veneers to the patient, use the diagnostic wax-up for consulting with the patient, and keep the base model for patient records. Taxpayer separately charges the dentist for the refractory die material, although the dentist does not receive this material because it was rendered useless in the baking process.

During the period at issue, Taxpayer considered its sales of veneers exempt prosthetic devices, and did not report their income. Taxpayer reported its sales of diagnostic wax-ups, base models, and refractory die labor and material as wholesale sales, and reported an identical amount as manufacturing B&O tax.

In 2019, the Department's Audit Division ("Audit") audited Taxpayer's records for the time period January 1, 2015, through December 31, 2018. Audit agreed that Taxpayer's sales of veneers were exempt prosthetic devices, and did not make any adjustments regarding them. Audit considered the diagnostic wax-ups to be retail sales instead of wholesale sales, and assessed retail sales tax on Taxpayer's in-state sales. Audit considered Taxpayer the consumer of each of its models and

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<sup>2</sup> Veneers differ from crowns in that veneers cover only the front of the tooth while crowns cover the entire tooth. <https://www.healthline.com/health/dental-and-oral-health/veneers-vs-crowns> (last visited November 18, 2019).

refractory die labor and material, and assessed use tax on them. Audit used the amounts Taxpayer charged as the measure of use tax. On August 22, 2019, Audit issued Taxpayer an assessment totaling \$. . . .<sup>3</sup>

Taxpayer paid the assessment and petitioned for refund, making three arguments. Taxpayer first argues that Audit incorrectly subjected its models to use tax. Taxpayer notes that Audit treated the wax-ups as retail sales, and argues that the models should receive the same treatment.

Taxpayer next argues that the Department should not have used the amounts Taxpayer billed its clients as the measure of use tax, but instead should have used a cost method. Taxpayer provided a spreadsheet showing its proposed methodology, which we summarize as the Taxpayer's rate per hour multiplied by the estimated labor time per unit, plus estimated materials cost per unit, to equal the cost per unit. Taxpayer then multiplied the cost per unit times the number of units sold to reach its total costs per sale.

. . .

Taxpayer finally argues that the labor related to the refractory die material, as well as the material itself, are indistinguishable from the prosthetic device, the veneers, that they are used to make. Taxpayer thus argues that the refractory die labor and material should be considered exempt as prosthetic devices.

## ANALYSIS

### 1. Taxpayer's Models

Washington has both a retail sales tax and a use tax. Retail sales tax is an excise tax imposed on each retail sale in this state, to be paid by the buyer to the seller. RCW 82.08.020; RCW 82.08.050. Use tax is imposed on the consumer "for the privilege of using within this state as a consumer any article of tangible personal property acquired by the user in any manner" on which Washington's retail sales tax has not been paid. RCW 82.12.020(1). "Consumer" means "any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business . . . ." Use tax complements the retail sales tax by imposing a tax equal to the sales tax on items of tangible personal property, unless an exemption is available. WAC 458-20-178.

The Department's regulation regarding the taxation of health care providers, including dental laboratories, is WAC 458-20-151 ("Rule 151"). Rule 151 contains the following section regarding "[d]ental casts, models, and other articles of tangible personal property manufactured by dental laboratories and dental technicians for commercial or industrial use:"

Dental laboratories and dental technicians may manufacture dental casts, models, or other articles of tangible personal property that they use to produce or fabricate dental prostheses. In such cases, the dental laboratory or dental technician is manufacturing a product for commercial or industrial use and is subject to the

manufacturing B&O tax on the value of the dental cast, model, or other article of tangible personal property. For information regarding the value of products, see RCW 82.04.450 and WAC 458-20-112. *As the consumer of the dental cast, model, or other article of tangible personal property manufactured for commercial or industrial use, the dental laboratory or dental technician is also liable for use tax on the value of the dental cast, model, or other article of tangible personal property, unless the use is specifically exempt by law.*

Rule 151(3)(a)(ii) (emphasis added).

Taxpayer argues that the base models should be taxed as retail sales, and not subject to use tax. Taxpayer notes that Audit treated the diagnostic wax-ups as retail sales, and argues that the base models should receive the same treatment. We disagree.

As Rule 151(3)(a)(ii) plainly states, the dental laboratory is the consumer of the models it fabricates. Here, Taxpayer fabricates base models in order to ultimately produce the veneers. As a consumer, or user of the models, Taxpayer is subject to use tax on them under Rule 151. While Taxpayer does ultimately sell the models to the ordering dentists, that does not negate the fact that Taxpayer uses them as a consumer prior to the sale, and that their tax treatment is very specific under Rule 151. Accordingly, we deny Taxpayer's petition on this issue.

## 2. Measure of Use Tax

Use tax is imposed on the value of articles used. RCW 82.12.020(4)(a). "Value of the article used" in pertinent part, is defined as:

[T]he purchase price for the article of tangible personal property, the use of which is taxable under this chapter. . . . In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

RCW 82.12.010(7)(a).

Dental models are subject to use tax on their value under Rule 151(3)(a)(ii). Rule 151 refers to RCW 82.04.450 and WAC 458-20-112 ("Rule 112") regarding how the value of products is determined. RCW 82.04.450 and Rule 112 state that the value of products is determined by sales proceeds first, and if that is not available, then comparable sales. Rule 112 provides that if no comparable sales exist, a cost basis calculation is available:

In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs.

To summarize, we look to actual sales first to determine value, and then to comparable sales if there are no actual sales. If no comparable sales exist, then a cost basis calculation can be used as a measure of the value of products.

Here, Taxpayer proposes its cost valuation methodology as an alternative to the Taxpayer's actual sales amounts. This approach ignores the requirement under RCW 82.04.450(1) and Rule 112 that the first method of the "value of products" of manufactured items is the "gross proceeds from the sale." We have the gross proceeds of sale here, as Taxpayer billed for the items it manufactured, which is what Audit used as the measure of use tax. Since, under Rule 112, we only resort to a cost basis calculation in the absence of actual sales or comparable sales, we conclude that Audit correctly used actual sales as its use tax measure and deny Taxpayer's petition arguing for a cost basis calculation.

### 3. Refractory Die Labor and Material

"Prosthetic devices" are exempt from retail sales tax and use tax. RCW 82.08.0283(1)(a); RCW 82.12.0277(1)(a). "Prosthetic device" is defined in RCW 82.08.0283(4)(a) as:

Rule 151 defines "prosthetic device" reiterating RCW 82.08.0283(4)(a), and also states: "[d]ental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as 'dental prostheses' throughout this rule." Rule 151(1)(c)(iv). Rule 151 defines exempt "dental prostheses" to include "full and partial dentures, crowns, inlays, fillings, braces, retainers, collars, wire, screws, bands, splints, night guards, gold, silver, alloys, acrylic materials, filling material, reline material, cement, cavity liners, pins, and endo posts." Rule 151(2)(c).<sup>4</sup> Rule 151 does not include dental "casts" and "models" as defined as dental prostheses, and taxes them differently. Rule 151(3)(a)(ii).

There is no dispute here regarding whether the veneers themselves are exempt, as Audit treated the veneers as exempt prosthetic devices. The dispute is whether the exemption extends to the refractory die labor and material that were part of the process of fabricating the veneers, but did not become part of the veneers themselves.

We note that Taxpayer has the burden of establishing its entitlement to any deduction or exemption from tax liability. *See Budget Rent-A-Car, Inc. v. Dep't of Revenue*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972) ("Exemptions to the tax law must be narrowly construed. Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction from a taxable category has the burden of showing that he qualifies for it."); *see also Lacey Nursing v. Dep't of Revenue*, 128 Wn.2d 40, 905 P.2d 338 (1995); *Port of Seattle v. State*, 101 Wn. App. 106, 1 P.3d 607 (2000); Det. No. 13-0279, 33 WTD 75 (2014).

Here, the refractory die material is consumed as part of the veneer manufacturing process. Taxpayer bills separately for the refractory die labor and material, but that is only an itemized reimbursement of the costs the laboratory incurs. Since the refractory die material is consumed

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<sup>4</sup> The Department's regulation regarding medicines and medical devices, WAC 458-20-18801 ("Rule 18801"), lists these examples of prosthetic devices: "dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers." Rule 18801(206)(a), Table 5.

and rendered useless through the veneer fabrication process, the refractory die material cannot be a prosthetic device because it does not serve as a replacement, corrective, or supportive device. RCW 82.08.0283(4).

The “prosthetic device” use tax exemption also extends to the “use of labor and services rendered in respect to the repairing, cleaning, altering, or improving” a prosthetic device. RCW 82.12.0277(2). This list refers to prosthetic devices that are already existing, as one does not repair or improve something that has not yet been made and in need of repair or improvement, for example. Because the refractory die produces the veneers, the prosthetic device, and is consumed in production, it cannot also repair, clean, alter, or improve, the veneers. Thus, this use tax exemption does not apply to the labor of the fabrication process of the prosthetic device itself. Accordingly, we deny Taxpayer’s petition on this issue.

#### DECISION AND DISPOSITION

We deny Taxpayer’s petition for refund.