

SALES AND USE TAX: Does it Apply to My Practice?

BY BOB CREAMER, CPA

Does sales and use tax apply to your practice? The answer is determined by your particular circumstances. Does your practice sell tangible personal property, such as toothbrushes, paste, and whitener? Does your practice purchase tangible personal property items such as dental equipment, bibs, masks, and gloves? If so, then you might be subject to sales and use taxes.

Sales and use taxes are the same tax but are applied at different times. Sales tax is collected at the time of purchase, and use tax is remitted by the purchaser if sales tax was not paid at the time of purchase. The specifics of who pays the tax, when the tax is paid, and if the item is taxable will vary from state to state, as each state has very specific rules and rates that apply. This article will provide you with some general information about sales and use taxes and give you an indication of any further action you may need to take in order to protect yourself and your practice from potential audit issues.

WHO, WHAT, WHERE

As a dentist, you provide personal services, which are exempt from sales tax. However, you may also provide or use products as part of your business that are subject to sales and use taxes. As mentioned before, sales and use taxes apply to items that are described as tangible personal property, which are items either sold by your practice or “consumed” in your practice. Equipment purchased by your practice, such as dental equipment, computers, and furniture items, are also included in these definitions and are subject to tax.

Sales taxes come in four types depending on your state. If your state has sales and use tax, you are subject to one the following:

- Required to collect taxes from your patients and forward it to the state (Consumer Levy State)
- Allowed to choose to collect the tax from

the patient or pay it on their behalf (Seller Privilege State)

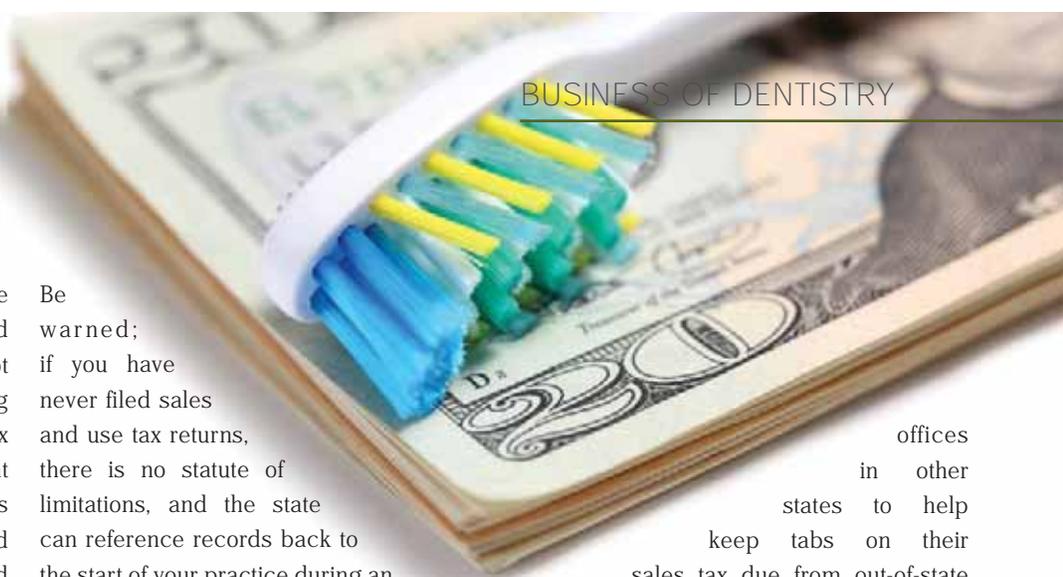
- Taxed on the transaction, and either the patient or the practice is liable for the tax (Transaction Tax State)
- Taxed on the gross receipts, and the patient is not liable for the tax (Gross Receipt States)

Some items are not taxable. For example, prescription-strength items are generally not taxable; however, you should check the sales and use tax rules in your state to be sure of this. Items provided to your patients for free are considered promotional and are subject to sales tax when you purchase them (or subject to use tax if you did not pay sales tax). If you purchase an item and pay the sales tax on it, then you should charge the same amount to your patient. That item would not be subject to sales tax, because you already paid sales tax at the time of the original purchase. If you mark up the price, then the amount of the markup is subject to sales and use tax. If you plan on purchasing items for mark up and resale, the best way to do this is to get a “resale” certificate. If you have a resale certificate, the initial purchase is not subject to sales tax, and the tax is due when you resell the item. However, if you end up using that item rather than reselling it, you will be required to pay use tax on the item when it is consumed inside your practice.

WHAT ABOUT OTHER ITEMS SPECIFIC TO THE PRACTICE OF DENTISTRY?

Depending on the state, items such as crowns, braces, brackets, and implants

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can be exempt. For example, in the state of Washington, these items are considered “prosthetic devices” and are therefore not subject to tax. A common trend among many states is to consider the item tax exempt if the supplies or equipment actually punctures or stays in the patient’s body. In most cases, if the item is used and then disposed of, it is considered taxable unless it punctures the patient, like a needle. To be sure of the specifics, research the items subject to tax in your specific state.

SALES AND USE TAX EXAMPLES AND ENFORCEMENT

Generally, sales taxes refer to taxes collected at the time of purchase. Use taxes refer to instances in which the purchaser bought a taxable item and did not pay sales tax on it. In such cases, it is the purchaser’s responsibility to determine the amount of the tax and remit it to the state.

For example, if you live in Washington and travel to Oregon to purchase a piece of dental equipment, you will probably not be charged sales tax, because Oregon does not charge sales tax. However, once you take that piece of equipment back to Washington and start using it in your practice, it becomes subject to use tax.

Another scenario is if you have two offices in different states, for example in Arizona and Nevada, and you would like to move a piece of equipment from your Arizona office to your Nevada office. The basic state rate (not local) in Arizona is 6.6%, which is what you would have paid when you purchased the equipment. In Nevada, depending on what county you are in, the rate can be as high as 8.1%. Therefore, in our scenario, when you move the piece of equipment from Arizona (6.6%) to Nevada (8.1%), you may be subject to an additional 1.5% tax, payable to Nevada in the form of use tax.

Be warned; if you have never filed sales and use tax returns, there is no statute of limitations, and the state can reference records back to the start of your practice during an audit. If you believe you should have been paying taxes but have not been, you should not wait to be audited. There are options for anonymously negotiating with the state to pay your back taxes, either in part or as a whole. Get your accountant or attorney involved as a third party to negotiate on your behalf—your situation will be much worse if you wait until you are audited to address it.

One frequent finding during an audit is that the taxpayer paid tax to the wrong state. If a vendor is not registered in your state, it may charge you sales tax for the state they are in and remit it to their state instead of yours. If you get audited, your state will want its tax dollars and, depending on the laws in your state, you may have to pay the tax again. Therefore, whenever you buy taxable goods or services from an out-of-state vendor and the vendor is not registered to collect sales taxes in your state, you should self-assess the tax on your use tax return. If the vendor is not registered in your state, you might end up being taxed twice. In order to determine if the vendor is registered in your state, contact your state, or go online to find out—the information that will help you determine to whom the tax should be reported and paid is publicly available. If you have concerns about double taxation, contact your accountant or attorney to help you determine how to avoid being taxed twice.

As deficits rise, we are seeing states become increasingly more active in pursuing sales and use tax dollars. Many states actually have

offices in other states to help keep tabs on their sales tax due from out-of-state vendors. In the past, some states have offered amnesty programs to encourage taxpayers to start filing without any penalties or interest. In September 2012, Texas sent letters specifically to dentists offering an amnesty program on late filing interest and penalties if these dentists voluntarily filed a return for each of the last several years and paid the related taxes due.

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DECISIONS ABOUT SALES AND USE TAXES AND YOUR PRACTICE

Once you have determined that you are located in a sales-and-use-tax state and that you sell items that are subject to tax, where do you go from there? Your practice will need to register in your state to notify them that you will be reporting taxes and to determine the correct rates and types of taxes that apply to you. As mentioned before, you may also apply for a reseller certificate that enables you to instruct your vendors not to collect taxes on the items that will be resold to your patients.

The following are some frequently asked questions that may pertain to you and your practice:

What if I don't sell anything to patients but I just give it to them for free?

These items would be considered promotional, and you should therefore pay sales tax when you purchase the items, instead of when you give them to patients.

What if I only sell prescription-strength items?

Prescription-strength items are generally not taxable; however, check the sales and use tax rules in your state to be sure.

What if I include the price of the toothbrush in the fee for the treatment?

If you paid sales tax on it when you purchased it, then no additional tax is due.

If you did not pay the tax when you purchased it, then sales tax will be due if your fees vary between patients who

receive a toothbrush and those who do not.

What if I have been selling non-prescription-strength items for years and have not been filing a tax return?

Gather reports on the sales transactions and calculate how much your potential liability may be.

Depending on how high the dollar amount is, you may either want to just pay it and start filing returns, or, if it is more than the potential third-party fees, contact your accountant or attorney and discuss having him or her serve as a third party to negotiate anonymously with the state on your behalf.

What if the vendor I have been buying disposable supplies from has not been charging me sales tax?

Contact the vendor and determine why not or find out if they are actually registered in your particular state. If they inform you that those items are not taxable in your state, verify these findings with your accountant or the state. If

the items are taxable, register for a sales tax number and file the use tax portion of the return. If the tax is significant, contact your accountant or attorney as discussed above.

Sales and use taxes are a complicated area of one's practice. We hope that this article will help you determine how this tax area might impact you. If you need more information related to this subject, contact your state, accountant, or attorney. **B**



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