Nebraska Department of
REVENUE

INFORMATION GUIDE

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NEBRASKA SALES AND USE TAX FOR DENTISTS, ORTHODONTISTS, AND ORAL SURGEONS

OVERVIEW

Charges for professional dental services are not subject to sales tax.

Dentists are the consumers of all medical supplies, medical equipment, office supplies, and business equipment they use to provide their dental services. Dentists owe Nebraska and local sales or use tax on their purchase of these items.

For purposes of this information guide, "dentists" include orthodontists and oral surgeons.

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This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, sign up for the subscription service at revenue.nebraska.gov to get updates on your topics of interest.

TERMS

Dentist. A dentist is a licensed practitioner under the Uniform Credentialing Act who is authorized to practice dentistry and to prescribe drugs, oxygen, or prosthetic devices within the scope of his or her practice.

Prescription. A prescription means an order done in writing, orally, or electronically by a duly licensed practitioner under the Uniform Credentialing Act for a drug, prosthetic device, or drug refill for human use.

Drugs. Drugs are compounds, substances, and preparations sold to a patient with a prescription, and which meet all of the following criteria:

- Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement;
- Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;
- Intended to affect the structure or any function of the body;
- Are not food, food ingredients, dietary supplements, nor alcoholic beverages; and
- Are not over-the-counter drugs.

Over-the-Counter Drugs. Drugs with a label that identifies the product as a drug as required by 21 C.F.R. 201.66, as this regulation existed on January 1, 2003. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

Prosthetic Devices. Prosthetic devices are replacement, corrective, or supportive devices worn on or in the body to replace a missing portion of the body, to prevent or correct a physical deformity or malfunction, or to support a weak or deformed portion of the body. Prosthetic devices include any supplies used with them and related repair and replacement parts.

TAX EXEMPT SALES AND SERVICES TO THE PATIENT

The following charges to patients are sales tax exempt:

- **Charges for professional dental services** provided to patients are not taxed. In general, services are only taxed when specifically enacted by the legislature, see Neb. Rev. Stat. § 77-2701.16 for taxable services;
- **Charges directly billed under Part B of Medicare** with a doctor's prescription, are tax exempt; and
- **Charges billed under Medicaid**, which are paid in full by a warrant from the State of Nebraska, are tax exempt.

PURCHASES BY DENTISTS

Taxable. Dentists are consumers of the items used in providing examinations, testing, or diagnosis and must pay the Nebraska and any applicable city or county (local option) sales tax to their vendors on all purchases and leases of these items.

Regardless of where a dentist purchases these items, if the vendor does not collect the state and local option sales tax, the dentist is responsible for paying state and local consumer's use tax on the cost of the taxable items.

Purchases of supplies and equipment such as those listed below, are taxable even when purchased outside of Nebraska at trade shows, conventions, symposiums, or through an Internet seller.

Taxable purchases include, but are not limited to:

- Over-the-counter drugs that can be purchased without a prescription. They do not qualify for exemption even if they are prescribed;
- Dental hygiene products given to or used by the patient in the office (e.g., toothpaste, toothbrushes, and teeth whiteners);
- Medical supplies used by the dentist;
  - cariescreens
  - cotton rolls and sponges
  - dentin desensitizer
  - disposable gloves
  - impression materials
  - lab solutions
  - lumineers
  - prophy paste
  - red cote disclosants
  - rubber dams
  - scalpels
  - syringes
  - teeth whitening kits
  - tongue depressors
  - trays
  - x-ray film
- Medical equipment and instruments used by the dentist;
  - anesthesia machines
  - blood pressure equipment
  - dental chairs
  - dental scalers, probes, and mirrors
  - endodontic files and reamers
  - laboratory equipment
  - maintenance and repair services
  - microscopes
  - oxygen concentrators
  - oxygen cylinders
  - oxygen cylinder sheaths and carts
  - parts for all medical equipment
  - regulators
  - resuscitators
  - stationary monitors
  - stethoscopes
  - teeth whitening equipment
  - x-ray equipment
- Office and business equipment, non-medical supplies, and taxable services.
  - advertising or promotional items given away or donated
  - building or office cleaning services
  - computer hardware and software
  - drug and information brochures
  - file folders
  - magazine subscriptions
  - maintenance and service agreements
  - office furniture
  - office supplies
  - paper and linen towels
  - paper products
  - pest control services
  - professional journals and reference materials
  - security services
  - telephones and communication equipment
  - uniforms
  - utilities

Any shipping and handling charges on taxable purchases paid to the retailer are taxable.

Tax Exempt. Drugs, excluding over-the-counter drugs, which are dispensed under a prescription.

Dentists are not required to remit consumer's use tax on sample drugs and supplies which are given to them free-of-charge.

Documentation Needed by the Dentist to Make Tax Exempt Purchases of Drugs, Excluding Over-the-Counter Drugs. A Nebraska Resale or Exempt Sale Certificate, Form 13, is not required for purchases of drugs, excluding over-the-counter drugs. Instead, the dentist is required to maintain records, separate from confidential patient records, showing that these products were prescribed to patients.

Prosthetic Devices and Oxygen Equipment. Dentists may purchase certain prosthetic devices and oxygen equipment exempt from sales and use tax when the product meets the following three-part test:

(1) It is dispensed by the dentist under a prescription;

(2) It is only intended for use by a single patient; and

(3) It is a type of product that is eligible for coverage under the Nebraska Medical Assistance Act (Medicaid).

Examples include:

- crowns
- dental prostheses, (e.g., complete dentures and bridges)
- filling materials such as amalgam, resin, and cement adhesives
- nasal cannulas
- occlusal orthotic devices
- orthodontic braces and appliances, such as retainers
- oxygen face masks
- oxygen fittings and accessories
- oxygen tubing

Documentation Needed for Exemption Based on the Patient's Use. The dentist must present the vendors of these products with a completed and signed Nebraska Resale or Exempt Sale Certificate, Form 13. The dentist must complete Section B, Category 2, and complete the description of the product and the intended use (prescribed for use as a prosthetic device).

CONSUMER'S USE TAX

When the applicable sales tax has not been collected by the vendor, the dentist is responsible for remitting the consumer's use tax. Consumer's use tax is paid directly to the Department. If the dentist takes delivery of such items within the boundaries of a city or county that has a local option sales tax, the local option consumer's use tax must also be remitted.

The Nebraska and local option consumer's use tax is remitted as follows:

- ❖ If you have a sales tax permit, the Nebraska and local consumer's use tax is reported on the appropriate consumer's use tax lines of your Nebraska and Local Sales and Use Tax Return, Form 10.
- ❖ If you do not have a sales tax permit, the Nebraska and local consumer's use tax is reported on a Nebraska and Local Consumer's Use Tax Return, Form 2.

OVER-THE-COUNTER SALES

Over-the-counter sales are sales of taxable products which are sold separately from the dentist's professional services. These may include sales of items such as toothbrushes (e.g., electronic, sonic), tooth whitener, and dental care materials before or after an appointment. The dentist is making retail sales and must collect sales tax on the sales price of the product. The dentist may purchase the products tax exempt as a purchase for resale.

Obtaining a Permit. If you are making over-the-counter sales, a Nebraska Sales Tax Permit is obtained by completing a Nebraska Tax Application, Form 20, and returning it to the Department.

Documentation Needed for Tax Exempt Purchases for Resale. The dentist must give the vendors of these products a completed and signed Nebraska Resale or Exempt Sale Certificate, Form 13. The dentist must complete Section A of the Form 13.

GENERAL TAX INFORMATION

Keeping Records For Tax Purposes. While the Health Insurance Portability and Accountability Act (HIPAA) restrictions provide for privacy of individual patient health information, the Department has statutory authority to review dentists' accounting records for audit and other tax purposes. These records may include:

- General ledgers;
- Sales and purchase journals;
- Depreciation schedules and other tax records;
- Inventory files; and
- Invoices

The dentist is responsible for blacking out any patient names which may be on these records. These records may include invoices and accounting records, even if the records contain one or more patients' names. These records must be kept: for three years if filing a Nebraska Sales and Use Tax Return, Form 10; for five years if no sales and use tax return was filed; or for any statutorily extended period.

These records must include the accounting records ordinarily maintained by the dentist and the schedules and working papers used to compute the tax liability.

To document any tax exempt sales or purchases, you must keep the following:

- Sales and purchase invoices,
- Receipts,
- Medicaid and Medicare billing forms,
- Resale and exempt sale certificates, and
- Records substantiating the prescription of drugs, oxygen, and prosthetic devices

When a sale is made to refill a prescription, the records of the retailer must show the identification number of the original prescription.

Tips: First, keep adequate documentation for tax purposes to support claimed exemptions. Second, keep exemption documents out of individual patient medical files, which cannot be reviewed by the Department. In the case of audit or review, these two tips may assist the dentist from paying sales and use taxes due to missing or inaccessible records.

Medical Records. Generally, charges for paper copies of medical records are subject to state and local sales and use tax.

The total amount charged for Release of Information (ROI) services is subject to tax when the copies are delivered to a location within Nebraska. ROI services are taxable when the customer obtains the paper copies or copies by other tangible means (e.g., CD, DVD, flashdrive). Faxes or digitally sent copies are not taxable. The total amount subject to tax includes any staffing, postage, or handling fees included in the charge. ROI services, when acting as agents for a health care provider, must collect the sales tax on all taxable sales of copies of medical records for the health care provider. If the ROI service is not acting as an agent for the health care provider, the health care provider is responsible for collecting the sales tax. The health care provider may purchase the copies from the ROI service sales tax exempt, with a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13.

Charges for copies of medical records provided to the patient or a person holding that patient's power of attorney for health care, defined under Neb. Rev. Stat. §§ 30-3401 through 30-3432, are exempt from sales and use tax. A power of attorney for health care authorizes a designated attorney-in-fact (e.g., spouse, family member) to make essential health care decisions when the patient is incapable of doing so.

Copies of medical records, sold directly to Medicare or Medicaid, and to other exempt entities, are exempt from sales and use tax.

Sales to Exempt Medical Facilities. Sales of medical supplies, equipment, or records to one of the specific health care facilities listed in Nebraska Sales and Use Tax Regulation 1-090 are sales tax exempt. For a list of exempt organizations, please see our Information Guide on Nebraska Taxation of Nonprofit Organizations.

Documentation Required for the Exempt Sale. Dentists must obtain a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section B, Category 3 from any exempt organization. It must also include the exempt organization's Nebraska Exemption Number (which begins with the prefix "05").

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