Practice of Medicine definition invokes state sales tax around the U.S.

States’ definition of the practice of medicine, which frequently includes only the treatment of illness or disease, may well affect another aspect of ASDSA members’ practice differently in the various states: whether the collection and remittance of sales tax applies to services and/or products in a given state. The issue of whether cosmetic medical procedures are construed as included in the practice of medicine by individual states has long been an important advocacy area for ASDSA, as it impacts what level of licensure and physician supervision is needed to perform cosmetic medical procedures.

Recently the state of Massachusetts gave ASDSA members another reason to advocate for a medical definition which expressly includes cosmetic medical procedures and eliminates any question of the possible application of sales tax. Sales tax in that state, as in most, is charged on all personal property, except as exempted. In Massachusetts, where there is no legal definition of the practice of medicine, medical products are exempt from sales tax, but “cosmetic” medical products are not specifically named. The Massachusetts Department of Revenue has issued a 2008 tax directive stating that a specific dermal filler is subject to sales tax stating, “The Department has not ruled that products used for cosmetic purposes qualify as 'medicine'...” calling the filler “an inert material and an anesthetic [that] neither treats a disease nor affects the physical condition of the patient...”

At least fifteen states and the District of Columbia neither have definitions of the practice of medicine that extend beyond the treatment of illness or disease, nor provide specific exemptions for cosmetic medical products within their state tax code. In response to recent sales tax rulings, some dermal filler manufacturers have begun notifying customers of the need to charge a sales tax on their product. These include Arizona, Connecticut, Idaho, Illinois, Maine, Maryland, Massachusetts, Mississippi, New York, Virginia, as well as the District of Columbia. Customers may be able to claim tax exemption in some states if they are able to provide documentation that their product will be used for medical purposes, e.g. for the treatment of vocal folds or facial lipoatrophy associated with HIV. Illinoisians who can demonstrate their product’s medical use are taxed at the reduced rate of 1 percent plus applicable local taxes.

ASDSA's position statement on cosmetic medical procedures taxes reads, “Procedures are often difficult to clearly define as strictly cosmetic or medically necessary. A forced definition of cosmetic versus medically-necessary at the state level would force government employees to determine whether patients who receive treatment to correct scarring from domestic violence, car accidents, dog mauling or other traumatic events should be taxed.” Because sales tax exemptions in these states are also tied to use, this again places bureaucrats in the unlikely position of determining what should be considered a medically necessary procedure.

In the states of Hawaii, Missouri, and South Carolina, sales taxes are levied on dermal fillers regardless of their use. Purchasers of dermal fillers in West Virginia who pay sales tax are eligible for a refundable exemption through the state.

Several other states explicitly exempt dermal fillers from sales tax within their state tax code, while others have recently issued rulings determining the exemption. The State of Louisiana's ruling acknowledges the difficulty in defining whether the use of these products should be considered strictly medically necessary or strictly for cosmetic purposes. That ruling states, “...decisions on the use of such products are made between the physician and the patient. The Department will not query to what extent the benefits of such usages to an individual patient should be applied to correction or enhancement, or both...” Utah allows two possible reasons for sales tax exemption of dermal fillers—consideration as prosthetic devices or drugs. According to the state of Utah’s analysis, dermal fillers could be classified in their state as a prosthetic device, because, “...it provides physical support for skin and related tissues that have a deformation in the form of a wrinkle or fold...” Additionally, the state says, “...if the product was not a cosmetic device, it would be a drug...because it is a ‘compound, substance, preparation, or component of a compound, substance, or preparation...intended to affect...the structure of the body.’”

To some degree, whether an individual product has been singled out for taxation depends on where it is in the approval process and whether it’s recently come under the radar. When a product’s sales tax exempt status is unclear, states may issue specific tax rulings to determine taxable or tax-exempt status. Dermal filler manufacturers continually navigate complex state and federal tax codes to determine if their individual products are subject to sales tax. However, because several states have a dual tax payment responsibility, it is important that ASDSA members exercise due diligence in checking to see if they should be paying a tax on their purchases.

As states struggle to find new sources of revenue in difficult economic times, taxation on cosmetic medical procedures and cosmetic medical products may become a target for tax revenue. ASDSA will continue to work together with the Stop Medical Taxes Coalition and other strategically aligned organizations to fight the taxation of cosmetic medicine. Additionally, as a part of our ongoing patient safety effort coupled with these tax issues, ASDSA is addressing the larger issue of securing a definition of the practice of medicine, state-by-state, which is not limited to the treatment of illness and disease, but includes cosmetic medical procedures which affect living tissue as well.

Information within this article should not be considered tax advice. If you have questions as to whether or not you should be paying sales taxes on medical products, please contact your legal counsel or state department of revenue for specific guidance. If you’d like to get involved with ASDSA’s advocacy efforts, please contact Advocacy and Socioeconomic Affairs Manager Lisle Poul sen at (847) 956-9126 or lpoulsen@asds.net.