

1977 S.C. Op. Atty. Gen. 19 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 77-9, 1977 WL 24352

Office of the Attorney General

State of South Carolina

Opinion No. 77-9

January 10, 1977

*1 Eyeglasses that are sold by prescription of a person authorized by law to issue the same and that replace a missing part of the eye are exempt from the sales tax

TO: James A. Walton

Director

Sales and Use Tax Division

South Carolina Tax Commission

QUESTION

Are eyeglasses sold by prescription exempt from the sales and use tax?

STATUTE INVOLVED

Section 65–1404.2.

DISCUSSION

The statute provides that:

‘Any person fifty years of age or over and any person who is totally and permanently disabled as defined by Section 65–1522.1 shall not be required to pay sales tax on medicine and prosthetic devices sold by prescription.’ Section 65–1404.2. (Emphasis added)

Effective July 1, 1977, the above is repealed and the language of the exemption is that:

‘There are exempted * * *

‘Gross proceeds from the sale of medicine and prosthetic devices sold by prescription.’ Section 22, Part II, of Act 709, Acts of 1976.

Section 65–1402.2 was enacted in 1974, Act 1135, Section 5, Part II, and further provides that:

‘The Tax Commission shall make such rules and regulations as may be necessary provisions of this Section. * * *.’ provisions of this Section. * * *.’

The Tax Commission, pursuant to that directive, adopted a rule that provided in part that:

‘Prosthetic devices are defined as artificial devices to replace a missing part of the body. Eye glasses, hearing aids and orthopedic appliances, such as braces, wheel chairs, and orthopedic custom-made shoes do not come within the exemption, and the exemption section makes no provision for exemption from the tax for charges for the repair of prosthetic devices.

‘Medicines and prosthetic devices to be exempted from the tax must be sold on prescription, in writing, by a medical doctor, a dentist, an osteopath, or a chiroprapist.’

The rule has been in effect since January 1, 1975. The General Assembly has met on two occasions and enlarged the exemption, however, failed to modify or alter the term ‘prosthetic devices’ as defined by the Commission’s rule. The Tax Commission’s administrative interpretation is therefore entitled to weight and is not to be overruled without cogent reason. [Etiwan Fertilizer Co. v. South Carolina Tax Commission](#), 217 S. C. 354, 60 S. E. 2d 682.

The Commission’s interpretation is fortified by other well settled rules of construction.

Tax deductions are a matter of legislative grace and the taxpayer must establish compliance with the statutory conditions imposed. *AVCO Corporation v. Wasson*, (Smith’s 12/4/76); [Southern Soya Corporation of Cameron v. Wasson](#), 252 S. C. 484, 167 S. E. 2d 311 (1969). *Davis Mechanical Contractors, Inc. v. Wasson, et al.*, Smith’s Report, January 8, 1977.

Likewise, doubt in an exemption statute is construed against the exemption and in favor of the tax. [Chronicle Publishers, Inc. v. South Carolina Tax Commission](#), 244 S. C. 192, 136 S. E. 2d 261; *Davis Mechanical Contractor, Inc. v. Robert C. Wasson, et al.*, Smith’s Reports, supra.

*2 Prosthesis is defined as:

1. ‘The addition to the human body of some artificial part, as a leg, eye, or tooth.’ [Webster’s New Collegiate Dictionary](#).
2. (1) ‘The substitution of an artificial part for a missing natural part of the body.
(2) ‘An artificial part or substitution for a missing part of the body, as a limb, denture, eye, etc.’ [Schmidts’ Attorneys Dictionary of Medicine](#).

[The Encyclopedia Britannica](#), 200 Anniversary Edition, 1968, provides that: ‘* * * by definition a prosthesis is any artificial organ or part replacing a missing natural one.’ The authority further states that ‘Braces, which give support or stability to a limb or joint are not replacement parts, hence are not considered prosthesis; instead, they are known as orthotic (‘straightening’) devices.

The eyeglasses therefore to be exempt must be sold by prescription and must replace a missing part of the eye. Eyeglasses that support or aid the eye would not be exempt.

The Commission’s rule, however, limits the exemption to prosthetic devices sold by prescription of medical doctors, dentists, osteopaths and chiroprapists. This limitation is ineffective as the General Assembly has conferred the right to provide eyeglasses upon prescription of an optometrist. [Chapter 18, Title 56, South Carolina Code of Laws](#).

CONCLUSION

Eyeglasses that are sold by prescription of a person authorized by law to issue the same and that replace a missing part of the eye are exempt from the sales tax.

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