

THE PRICE OF BEAUTY STATE OFFICIALS CONSIDER SALES TAX ON
COSMETIC SURGERY PROCEDURES

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How about a little Botax to go with your Botox?

That's what California plastic surgeons and dermatologists may be asking patients if state tax officials decide that breast implants, face-lifts and other FDA-approved cosmetic enhancements should be levied the same sales tax as other goods.

And that cost will likely be passed on to the consumer.

Taxing the silicone, the collagen, the Botox and other products that go into such procedures could inject millions of dollars into the state's coffers. But doctors and advocacy groups warn that the potential tax wrinkle would discriminate against women and darken the business climate.

"The whole concept of taxing medical care is a slippery slope. What's next? Taxing the morbidly obese? Taxes on Lasik surgery? Once the door is open, it becomes a floodgate," said Bill Seward, assistant executive director for health policy and advocacy at the American Society of Plastic Surgeons.

While some say it is only fair to slap on a "vanity tax" for elective cosmetic procedures, others say such a tax could also unfairly be applied to patients in need of reconstructive surgery.

Dr. Steven Teitelbaum, a plastic surgeon in Santa Monica, said levies on face-lifts and breast implants would hit women harder than men.

"Such a tax is discriminatory toward women. It singles them out," said Teitelbaum, noting that those who undergo mastectomies and breast augmentation will suffer the greatest burden from the tax because those procedures are more expensive than others.

Last year, New Jersey was the first state to implement a cosmetic surgery tax, charging doctors about 6 percent on gross receipts. The state brought in about \$7.5 million from the tax, \$17.5 million short of expectations. Now other states are considering the tax, with California's Board of Equalization likely to make a decision in the next several months.

The board began mulling the tax after the California Society of Dermatology, Plastic Surgery and other industry groups filed a petition because state auditors were "erroneously assessing tax on prescription drugs used to treat medical conditions," according to a discussion paper filed by the board.

"It's an issue that has generated a lot of interest," said Anita Gore, spokeswoman for the board, speaking of the more than three dozen letters the board has received on the issue. A staff opinion will be made at the next hearing on Jan. 31. In the meantime, the board has remained tight-lipped on its stance.

Doctors say it is difficult at times to draw a line between a medical condition and elective cosmetic surgery. For example, some breast augmentations should be tax-free even though they were not made necessary by a disfiguring accident.

"At some point we will be asking ourselves 'How small do a woman's breasts have to be or how deformed in order to avoid sales tax?'" Teitelbaum said.

Medical conditions, as they apply to Botox, are equally confusing. The Board of Equalization acknowledges that sales of Botox are not subject to tax when the product is used to treat physical maladies like cervical dystonia (abnormal muscle contractions). But auditors said that Botox products did not meet the definition of medicine when used for cosmetic purposes. The same goes for collagen when it is injected under a patient's skin to hide wrinkles.

The board has yet to make a decision on whether to tax Botox and other products when used for cosmetic purposes. But doctors say if the agency decides to tax these products, patients will ultimately have to pay the price.

"If we have to pay sales tax on breast implants, we will have to pass it along to the patient," said Pamela Dipasquale, office manager for a Redlands plastic surgeon who figured a breast implant levy would cost her office about \$10,000 a year.

Dr. Stuart Kaplan, a dermatologist in Beverly Hills, has not calculated the potential tax burden of Botox on his practice. He is, however, concerned about an increase in accounting work.

"We are not a store. We don't have cashiers here," said Kaplan, whose Botox injections can range between \$250 and \$300 per facial zone. "I'm a solo practitioner. I don't have the wherewithal for this."

Another issue is the precedent that a sales tax on plastic surgery procedures sets for the medical industry. Doctors expressed concern that merely introducing a levy on Botox or breast implants would open the door to other taxes in the medical industry. And with all of the costs associated with health care, the government shouldn't be able to determine a diagnosis through a tax levy, Teitelbaum said.

But some groups would welcome the "vanity tax."

William Ahern, a spokesman for the Tax Foundation in Washington, D.C., noted that California is the "poster child for bad sales tax policy. The state

has the highest state-level tax rate and the lowest per capita collection."

On average, California's sales tax rate is about 8 percent. And based on that, Ahern is in favor of instituting a new tax that could eventually help lower sales tax for the consumer.

"I mean, the (plastic) surgeons' ire is understandable because other medical services are not taxed. But in general, service businesses to the individual and consumer should be taxed in the same way," Ahern said.

The other question that looms is whether the prospect of a sales tax on Botox is worrisome to its Irvine-based manufacturer Allergan. The product accounted for more than a third of the company's revenue in 2005. But Allergan declined to comment.

Gary Nachman, an analyst with Leerink Swann in New York, said the sales tax is a nonissue for Allergan and the consumer. "At the end of the day, they (the company and consumer) won't feel the sales tax," he said. When asked whether a sales tax on medical products sets a lousy precedent, "there could be a greater danger as far as that is concerned."