



QUESTION: Are Taxpayer's sales of XXXX ("Product") subject to Florida Sales and Use Tax when sold at retail in Florida?

ANSWER: Yes. Product is not inserted into the body. Furthermore, Product is not a prescription product. There is no exemption for Product. Therefore, sales of Product are subject to Florida Sales and Use Tax.

August 31, 2022

XXXX

Attn.: XXXX

XXXX

XXXX

XXXX

Subject: Technical Assistance Advisement 22A-017

STATUTE CITE: Sections 212.05 and 212.08(2), Florida Statutes (F.S.)

RULE CITE: 12A-1.020, Florida Administrative Code (F.A.C.)

XXXX ("Taxpayer")

FEIN: XXXX

BP#: XXXX

Dear XXXX:

This is in response to your letter dated April 20, 2022, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of a medical product being sold by Taxpayer. An examination of your letter has established you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

Requested Advisement

Are Taxpayer's sales of XXXX ("Product") subject to Florida Sales and Use Tax when sold at retail in Florida?

Stated Facts

Taxpayer sells medical products to hospitals in Florida. Taxpayer is registered as a dealer to collect and remit Florida sales and use tax.

Taxpayer's Product is used to guide the coils and other products in the XXXX system to the location within the body where the coils and other products will be housed. Product is a one-time use item. Product is not inserted into the body, and Product does not stay in the body. Product is not a prescription product.

Taxpayer Position

Taxpayer believes that sales of Product are subject to Florida sales and use tax when sold in Florida.

Law and Discussion

Unless a specific exemption applies, s. 212.05, F.S., provides it is the legislative intent that every person is exercising a taxable privilege that engages in the business of selling tangible personal property¹ in this state. For exercising such a privilege, a tax is levied on each taxable transaction or incident. The tax is due and payable at the rate of 6 percent, plus any applicable surtaxes imposed under s. 212.055, F.S., on the total consideration received for each item or article of tangible personal property when sold at retail in this state.

Exemptions from tax are strictly construed against the claimant. Wanda Marine Corp. v. Dep't of Revenue, 305 So. 2d 65, 69 (Fla. 1st DCA 1975).

Rule 12A-1.020(2)(b), F.A.C., provides that hospitals, healthcare entities, and licensed practitioners are required to pay tax at the time of purchase on taxable items used or consumed in providing medical services.

Rule 12A-1.020(6)(a), F.A.C., defines "[m]edical products, supplies, or devices" as "any products, supplies, or devices that are intended or designed to be used for a medical purpose to treat, prevent, or diagnose human disease, illness, or injury. The purpose is assigned to a product, supply, or device by its label or its general instructions for use."

Rule 12A-1.020(6)(b), F.A.C, provides that unless specifically exempt, products, supplies, or devices sold to hospitals and healthcare entities, or to licensed practitioners are subject to tax.

The rule lists "instruments" and "equipment" as items (products, supplies, or devices) that do not qualify for the exemption from sales tax.

¹ "Tangible personal property" means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses. See s. 212.02(19), F.S.

As a one-time use item, to be exempt, Product would need to be dispensed by prescription, or temporarily or permanently incorporated into a patient. See Rule 12A-1.020(6)(c)1., (d)1., and (e), F.A.C. The stated use of Product does not meet either of these requirements. Accordingly, Product is properly classified as an “instrument” or “equipment” subject to tax.

The sale of medical equipment, products, and supplies, used by healthcare facilities located in Florida, are subject to tax, absent a specific exemption. Product is tangible personal property and is not specifically exempt from tax under the provisions of s. 212.08(2), F.S., *Exemptions; Medical* and Rule 12A-1.020, F.A.C.; therefore, sales in Florida of Product are subject to tax.

Conclusion

Taxpayer’s sales of Product are subject to Florida sales and use tax when sold at retail in Florida.

This response constitutes a Technical Assistance Advisement under section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than that expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material, and this response, deleting names, addresses, and any other details which might lead to identification of the Taxpayer.

Your response should be received by the Department within 15 days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-6363.

Sincerely,

Leigh L. Ceci

Leigh L. Ceci
Tax Law Specialist
Technical Assistance and Dispute Resolution

Record ID: 7000714302