

SUMMARY

Prescription medical kits, prescription medical trays, prescription medical packs, and prescription IV systems are not subject to tax when all of the following conditions are met:

(a) they are dispensed only pursuant to a prescription or physician's order; and

(b) if they are sold to a hospital which holds a consumer's certificate of exemption, taxpayer must obtain the number of the consumer's certificate of exemption from such hospital; and

(c) if they are sold to a hospital not holding a consumer's certificate of exemption, or to a physician, then the taxpayer must obtain a resale certificate or a certificate from such hospital or physician indicating that the items will be used via a physician's order.

The subsequent sale or charge by the hospital or doctor to the individual patients is exempt from Florida sales tax since, according to FDA restrictions, the item's subsequent use is pursuant to an individual prescription or physician's order.

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May 19, 1999

Re: Technical Assistance Advisement (99A-024)  
Sales and Use Tax; Medical Products  
Section 212.08(2)(a), F.S.  
Rule 12A-1.020, F.A.C.

Dear :

This is in response to your letters of March 16, 1999 and March 24, 1999, in which you requested the issuance of a Letter of Technical Advice regarding the taxable status of certain medical products and supplies, including medical kits, medical trays, medical packs and IV systems. Your March 24, 1999 letter provides in part:

... The medical products in question are administered to patients pursuant to the order of a licensed physician, are strictly regulated by the Federal government, and cannot be dispensed without an order from a physician or licensed practitioner. On the packaging of each of the medical products is a statement which reads "CAUTION: FEDERAL (U.S.A.) law restricts this device to sale by or on the order of a physician or other licensed practitioner."

#### **Applicable Statutes**

Section 212.08, F.S. provides in part:

(2) EXEMPTIONS; MEDICAL.--

(a) There shall be exempt from the tax imposed by this chapter any medical products and supplies or medicine dispensed according to an individual prescription or prescriptions written by a prescriber authorized by law to prescribe medicinal drugs;....

#### **Applicable Rule**

Rule 12A-1.020, F.A.C., provides, in part:

(1)(a) Medicines dispensed in a retail establishment by a pharmacist licensed by the State of Florida, according to an individual prescription or prescriptions written by a duly licensed practitioner authorized by the laws of the state to prescribe medicinal drugs, are exempt.

1. "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means or communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal

supplies and intended to be dispensed by a pharmacist. The term also includes an orally transmitted order by the lawfully designated agent of such practitioner....

2. When a person who prescribes a drug or medicine is also the dispenser, the drug or medicine will not require a prescription by such person but the drug or medicine must be recorded as if a prescription would have been issued or required. If this condition is met, the sale of the medicine or drug shall be exempt from sales tax.

(b) Medicines dispensed or administered directly to a patient or client for consumption by the patient or client by a practitioner of the healing arts licensed by the State of Florida, or a nurse, intern practitioner or veterinary technician under the licensed practitioner's direct supervision, are exempt. The term "practitioner of the healing arts" includes veterinarians.

(c) Medicines dispensed or administered to a patient or client by a hospital or institution either licensed pursuant to the provisions of Chapter 395, Florida Statutes, by a pharmacy licensed pursuant to Chapter 465, F.S., or other organizations permitted by the Board of Pharmacy pursuant to Chapter 828.055, F.S., or owned or operated by the State or federal government, but only for use by or in the particular institution, are exempt....

(6)(a) Medical products and supplies used in the cure, mitigation, alleviation, prevention or treatment of injury, illness, disease or incapacity are taxable, unless:

1. Temporarily or permanently incorporated into a patient or client by a practitioner of the healing arts licensed by the State of Florida.

2. Ordered and dispensed by or on the prescription of a duly licensed practitioner authorized by the laws of the state to prescribe medicinal drugs; or

3. Ordered and dispensed by a pharmacist pursuant to the

established dispensing procedures determined by the joint committee of medical, osteopathic and pharmacy professions as created by section 465.186, F.S....

### **Determination**

Prescription medical kits, prescription medical trays, prescription medical packs, and prescription IV systems are not subject to tax when all of the following conditions are met:

(a) they are dispensed only pursuant to a prescription or physician's order; and

(b) if they are sold to a hospital which holds a consumer's certificate of exemption, taxpayer must obtain the number of the consumer's certificate of exemption from such hospital; and

(c) if they are sold to a hospital not holding a consumer's certificate of exemption, or to a physician, then the taxpayer must obtain a resale certificate or a certificate from such hospital or physician indicating that the items will be used via a physician's order.

The subsequent sale or charge by the hospital or doctor to the individual patients is exempt from Florida sales tax since, according to FDA restrictions, the item's subsequent use is pursuant to an individual prescription or physician's order.

This response constitutes a Technical Assistance Advisement under s.213.22, F.S. which is binding on the department only under facts and circumstances described in the request for this advice as specified in s.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 expressed in this response.

You are further advised that this response and our request are public records under Chapter 119, F.S., which are subject to

disclosure to the public under the conditions of s.213.22, F.S.  
Your name, address, and any other details which might lead to  
identification of the taxpayer must be deleted by the Department  
before disclosure. In an effort to protect the confidentiality  
of such information, we request you notify the undersigned in  
writing within 15 days of any deletions you wish made to the  
request or the response.

Sincerely,

Jonathan E. Swift  
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Technical Assistance and Dispute Resolution  
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