

AGENDA
FLORIDA DEPARTMENT OF REVENUE

Meeting Material Available on the web at:
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MEMBERS

Governor Charlie Crist
Attorney General Bill McCollum
Chief Financial Officer Alex Sink
Commissioner Charles Bronson

June 8, 2010

Contact: Robert Babin
(850- 487-1453)

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
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|----|---|---------------------------|
| 1. | Respectfully request approval of the minutes of May 25, 2010.

(ATTACHMENT 1) | RECOMMEND APPROVAL |
| 2. | Respectfully request adoption and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes proposed rules on:

Drugs and Medical Issues: proposed new and amended rules to consolidate, update, and simplify current statutory provisions regarding taxes on medical products, items and services. <i>[Rules 12A-1.002, 12A-1.015, 12A-1.020, 12A-1.021, 12A-1.0215, and 12A-1.097, Florida Administrative Code]</i>

(ATTACHMENT 2) | RECOMMEND APPROVAL |

MEETING OF THE GOVERNOR AND CABINET AS HEAD OF THE DEPARTMENT OF REVENUE

May 25, 2010

MINUTES

With Governor Crist presiding and all members present, the Department of Revenue was convened in LL-03, The Capitol.

The following official actions were taken.

ITEM 1. Approved the minutes of May 11, 2010.

ITEM 2. Approved and granted authority to adopt, file and certify with the Secretary of State under Chapter 120, Florida Statutes, proposed rules on:

Tax Administration Issues

Consent Agreements: proposed amendments to clarify the procedures for taxpayers and the Department to agree to extend the period for assessment or refund.

[Rule 12-16.005, Florida Administrative Code / F.A.C.]

Large Currency Reports: proposed amendments to update the rules related to large currency reports filed with the Department. *[Rule 12-19.005, F.A.C.]*

Electronic Reporting – Unemployment Compensation Tax: proposed amendments to clarify the electronic reporting requirements for unemployment tax agents who report for 100 or more employers. *[Rule 12-24.003, F.A.C.]*

Use of Social Security Numbers for Tax Administration Purposes: proposed amendments to update the use of social security numbers to identify taxpayers for tax purposes and to update the privacy notice statement for the collection, use and release of social security numbers. *[Rules in Rule Chapters 12-6, 12-18, 12-24, 12A-1, 12A-19, 12B-4, 12B-5, 12C-1, and 12C-3.]*

Address/Jurisdiction Databases

Communications Services Tax and Insurance Premium Tax: proposed amendments to adopt, by reference, updated codes used to determine the physical location of customers or policy holders. *[Rules 12A-19.071, 12A-19.100, and 12B-8.0016, F.A.C.]*

ATTACHMENT # 1

Corporate Income Tax

Bonus Depreciation: proposed amendments to - a) update the provisions for adjustments to federal income for Florida income tax purposes; b) establish procedures for reporting the additions and claiming the subtractions required by Section 220.13(1)(e), Florida Statutes; and c) provide procedures for filing amended Florida corporate income tax returns for the 2007 and 2008 tax years. *[Rule 12C-1.013(14), F.A.C.]*

Sales and Use Tax

Registration: proposed amendment regarding the requirement for certain taxpayers to provide security to the state before being issued a sales tax registration certificate. *[Rule 12A-1.060(6), F.A.C.]*

May 28, 2010

MEMORANDUM

TO: The Honorable Charlie Crist, Governor
Attention: Pat Gleason, Director of Cabinet Affairs

The Honorable Bill McCollum, Attorney General
Attention: Rob Johnson, Cabinet Affairs

The Honorable Alex Sink, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide
Amber Hughes, Cabinet Aide

The Honorable Charles Bronson, Agriculture Commissioner
Attention: Jim Boxold, Chief Cabinet Aide
Cathy Giordano, Cabinet Aide

FROM: Robert Babin, Director of Legislative and Cabinet Services

SUBJECT: Rulemaking – Proposed State and Local Tax Issues

What is the Department Requesting? Final adoption of these proposed rules, and approval to file and certify them with the Secretary of State under Chapter 120, Florida Statutes.

Why are These Proposed Sales and Use Tax Rules Necessary?

To update, consolidate, and simplify rules regarding medical items and services.
[*Rules 12A-1.002, 12A-1.015, 12A-1.020, 12A-1.021, 12A-1.0215, and 12A-1.097, Florida Administrative Code*]

ATTACHMENT #2

What do These Proposed Rules Do?

These proposed rules:

- Incorporate statutory provisions that have been added since the last update to these rules;
- Provide guidance on the exemption for drugs and medical products, supplies, and devices required by federal or state law to be dispensed only by a prescription;
- Consolidate the provisions related to veterinarians into a separate rule;
- Update lists of tax-exempt items certified by the Florida Department of Health concerning:
 - Common household remedies and prosthetic and orthopedic appliances; and
 - Chemical compounds and test kits.

Were Comments Received from External Parties? Yes. Rule development workshops were held on March 29, 2005, May 19, 2008, and January 27, 2010. On March 23, 2010, the Governor and Cabinet approved the Department's request to conduct a hearing on these proposed rule changes. A public hearing was held on May 3, 2010 for the proposed rule changes.

Comments were received at the May 3, 2010 public hearing concerning sales of non-prescription items by veterinarians. These public comments suggested that veterinarians should be permitted to sell non-prescription items without collecting sales tax. As an example, veterinarians may dispense unique diet foods -- "prescription diets." Contrary to their name, these diets are not required to be dispensed by a prescription and therefore do not qualify as exempt "drugs." Statutes provide that veterinarians can purchase and provide these items to customers in providing their services. However, current statutes require that veterinarians collect sales tax if they separately charge their customers for these items. Thus, the Department's proposed rule provides that sales of "prescription diets" are taxable.

Similar issues were raised during the rule workshop process, but these issues were accommodated or resolved.

Attached are copies of:

- Summaries of the proposed rules
- Statements of facts and circumstances justifying the rules
- Federal relation statements
- Summaries of meetings, workshops, and hearings
- Proposed rule text with notices of change incorporated
- Notice of cabinet meeting

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULES 12A-1.020, 12A-1.021, AND 12A-1.097
REPEALING RULES 12A-1.002 AND 12A-1.015
CREATING RULE 12A-1.0215

SUMMARY OF PROPOSED RULES

The proposed repeal of Rule 12A-1.002, F.A.C. (Practitioners of the Healing Arts), removes provisions regarding licensed practitioners that are included in the proposed substantial rewording of Rule 12A-1.020, F.A.C., or in proposed new Rule 12A-1.0215, F.A.C.

The proposed repeal of Rule 12A-1.015, F.A.C. (Industrial Gases), removes the provisions regarding the application of tax to certain gases that are redundant of other administrative rules. Provisions for compressed medical gases and medical oxygen are included in the proposed substantial rewording of Rule 12A-1.020, F.A.C., and proposed new Rule 12A-1.0215, F.A.C.

The proposed substantial rewording of Rule 12A-1.020, F.A.C.: (1) updates the title of the rule to “Licensed Practitioners; Drugs, Medical Products and Supplies;” (2) defines the terms “licensed practitioner” and “drug or medicinal drug” for purposes of the rule; (3) provides that hospitals, healthcare entities, and licensed practitioners are required to pay tax on taxable items or services consumed in providing medical services; (4) provides for the exemption for prescription drugs and medical gases and opaque drugs; (5) provides for the exemption for

common household remedies recommended and generally sold for internal or external use in the cure, mitigation, treatment, or prevention of illness or disease in human beings and the taxability of cosmetics, toilet articles, and hygiene products; (6) provides that, unless specifically exempt, medical products, supplies, and devices are subject to tax; (7) provides that medical products, supplies, or devices are exempt when dispensed pursuant to a written prescription; (8) provides that medical products, supplies, or devices bearing the prescription labeling required under federal or state law and that are intended to be used one time only are not subject to tax; (9) provides for the exemption for medical products, supplies, or devices that are temporarily or permanently incorporated into a patient; (10) provides that medical trays required by federal or state law to be dispensed only by prescription and that are intended to be used one time only are not subject to tax; (11) provides a suggested exemption certificate to be used to purchase non-taxable medical products, supplies, or devices; (12) provides for the taxability of chemical compounds and test kits, including a list of taxable and a list of nontaxable chemical compounds and test kits; (13) provides for the exemption for parts or other items added to tangible personal property so that a handicapped person may use an item; (14) provides for the exemption for orthopedic or corrective shoes, eyeglasses, lenses, and stock lenses; (15) provides a suggested exemption certificate to buy certain stock lenses without paying tax at the time of purchase; and (16) provides the recordkeeping requirements for the sale or purchase of medical products, supplies, and devices.

The proposed amendments to Rule 12A-1.021, F.A.C. (Prosthetic and Orthopedic Appliances): (1) clarify that the term “duly licensed practitioner” includes physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, or dentists duly licensed under Florida law; (2) update the list of prosthetic and orthopedic appliances to include only

those items that are specifically exempt under section 212.08(2), F.S., or are certified by the Department of Health as tax-exempt prosthetic or orthopedic appliances, as required in section 212.08(2)(b)1., F.S.; (3) provide that materials and supplies that are incorporated into and become a component part of a prosthetic or orthopedic appliance or device dispensed by a licensed prosthetist or orthotist pursuant to a prescription written by a licensed practitioner are not subject to sales or use tax; (4) provide that expendable materials and supplies used for such purposes are subject to tax; (5) provide a suggested exemption certificate to be extended to the seller when purchasing such materials and supplies and when the exemption certificate is required; (6) provide the recordkeeping requirements for such exemption certificates; and (7) remove provisions for the exemption provided in Section 212.08(2)(j), F.S., for prescribed parts and attachments added to tangible personal property to assist a person with special needs that will be provided in Rule 12A-1.020, F.A.C., as substantially revised.

The proposed creation of Rule 12A-1.0215, F.A.C. (Veterinary Sales and Services), provides: (1) that professional services provided by veterinarians are not subject to tax; (2) that charges for hospitalization of animals are not subject to tax; (3) that charges for boarding and grooming are not subject to tax, but items consumed in providing those services are subject to tax; (4) that prescription drugs, medical gases, and opaque drugs are not subject to tax when required by federal or state law to be dispensed by prescription only; (5) for the taxability of items used by veterinarians for treatment of animals and a list of items that are specifically exempt when purchased by veterinarians; (6) that medical products, supplies, or devices bearing the prescription labeling required under federal law that are intended to be used one time only are not subject to tax; (7) that medical products, supplies, or devices that are temporarily or permanently incorporated into an animal are exempt; (8) that medical trays required by federal or

state law to be dispensed only by prescription and that are intended to be used one time only are not subject to tax; (9) when commonly recognized substances possessing curative or remedial properties purchased by veterinarians are exempt; (10) a suggested exemption certificate to be extended to the seller to purchase items exempt from tax; (11) how to purchase items for purposes of resale to clients without paying tax at the time of purchase; and (12) recordkeeping requirements for veterinarians.

The proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), adopt, by reference, changes to Form DR-46NT, Nontaxable Medical and General Grocery List, to include updated lists of chemical compounds, test kits, common household remedies, prosthetic and orthopedic appliances, optical goods, other medical items, general grocery items, bakery products, seeds, and fertilizers that provide information on whether the item is subject to tax.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The proposed changes to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), are necessary to update, consistent with current statutory provisions, the application of tax to drugs, medicines, and medical products, supplies, and devices used in the treatment of human disease, illness, or injury, and in the treatment of animals.

The proposed substantial rewording of Rule 12A-1.020, F.A.C. (Licensed Practitioners; Drugs, Medical Products and Supplies), is necessary to provide for the administration of sales tax for the following items used to treat human disease, illness, or injury:

- Drugs, medical products, supplies, or devices
- Common household remedies
- Cosmetics, toilet articles, and hygiene products

- Chemical compounds and test kits
- Eyeglasses and lenses
- Orthopedic, therapeutic, or corrective shoes
- Prescribed parts and attachments to assist a person with special needs

The proposed amendments to Rule 12A-1.021, F.A.C. (Prosthetic and Orthopedic Appliances), are necessary to update the list of tax-exempt prosthetic or orthopedic appliances and provide how to purchase materials and supplies that will be incorporated into tax-exempt prosthetic or orthopedic appliances without paying tax at the time of purchase.

Proposed new Rule 12A-1.0215, F.A.C. (Veterinary Sales and Services), is necessary to provide for the application of tax to items used in the practice of veterinary medicine, including medical products, supplies, and devices, and substances possessing curative or remedial properties.

The proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), are necessary to adopt, by reference, changes to Form DR-46NT, Nontaxable Medical and General Grocery List, necessary to reflect the provisions of substantially reworded Rule 12A-1.020, F.A.C., revised Rule 12A-1.020, F.A.C., and new Rule 12A-1.0215, F.A.C.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON MARCH 29, 2005

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on March 11, 2005 (Vol. 31, No. 10, pp. 931-946). A rule development workshop was held on March 29, 2005, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida, commencing at 2:00 p.m., to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter for the following rule sections:

- 12A-1.0011 Schools Offering Grades K through 12; Parent-Teacher Associations; and Parent-Teacher Organizations
- 12A-1.002 Practitioners of the Healing Arts
- 12A-1.011 Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops or Like Establishments; Drinking Water; Ice
- 12A-1.0115 Sales of Food Products Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Caterers, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies
- 12A-1.015 Industrial Gases
- 12A-1.020 Licensed Practitioners; Drugs, Medical Products and Supplies, and Prosthetic and Orthopedic Appliances
- 12A-1.021 Veterinary Sales and Services
- 12A-1.040 Sales of Containers, Wrapping and Packing Materials and Related Products
- 12A-1.071 Rentals, Leases, or License to Use Tangible Personal Property
- 12A-1.097 Public Use Forms

PARTIES ATTENDING

For the Department
of Revenue

MARK ZYCH, Deputy Director, Technical Assistance and
Dispute Resolution
GARY GRAY, Revenue Program Administrator, Technical
Assistance and Dispute Resolution
RICHARD PARSONS, Tax Law Specialist, Technical Assistance
and Dispute Resolution
JONATHAN SWIFT, Tax Law Specialist, Technical Assistance
and Dispute Resolution

Participants

JIM ERVIN, Holland & Knight
GLENN BEDONIE, C.P.A, P.A.
DON DAVIS, Florida Dental Association
MICHELE HOLCOMB, Florida Coca-Cola Bottling Company

Written Comments

DOUGLAS S. BELL., Pennington Moore Wilkinson Bell &
Dunbar
GLENN A. BEDONIE, C.P.A, P.A.

**NATURE OF COMMENTS RECEIVED AT THE RULE DEVELOPMENT
WORKSHOP AND OF THE WRITTEN COMMENTS RECEIVED:**

The Department will be engaging in a separate rulemaking proceeding for the following
proposed rule sections:

- 12A-1.0011 Schools Offering Grades K through 12; Parent-Teacher Associations; and
Parent-Teacher Organizations
- 12A-1.011 Sales of Food Products for Human Consumption by Grocery Stores,
Convenience Stores, and Supermarkets; Sales of Bakery Products by
Bakeries, Pastry Shops or Like Establishments; Drinking Water; Ice
- 12A-1.0115 Sales of Food Products Served, Prepared, or Sold in or by Restaurants,
Lunch Counters, Cafeterias, Caterers, Hotels, Taverns, or Other Like
Places of Business and by Transportation Companies
- 12A-1.040 Sales of Containers, Wrapping and Packing Materials and Related
Products
- 12A-1.071 Rentals, Leases, or License to Use Tangible Personal Property
- 12A-1.097(15)(a) Public Use Forms

Rule 12A-1.020, F.A.C., Licensed Practitioners; Drugs, Medical Products and Supplies, and Prosthetic and Orthopedic Appliances.

Rule 12A-1.020, F.A.C, provides guidelines to licensed practitioners regarding drugs, medical products and supplies, and prosthetic and orthopedic appliances.

Mr. Don Dennis, Florida Medical Association, requested clarification that the proposed rule does not recommend new changes, but is more or less a codification of the Department's stance regarding these issues. Mr. Jonathan Swift confirmed Mr. Dennis' observation that the rule codifies the Department's current position regarding these issues.

The Department has proposed the repeal of Rule 12A-1.015, F.A.C. Subsection (5) of that rule currently provides that "gases used for medical or therapeutic purposes are exempt." Mr. Bedonie requested that the Department bring this feature back into the current proposed rule on medical issues. Mr. Swift advised that if the gas is a medical product it would be exempt as an item incorporated into a patient. Gases that are prescribed would also be exempt. The item could also be listed as an exempt item on Form DR-46NT, Nontaxable Medical and General Grocery List. Mr. Bedonie submitted written comments, dated March 31, 2005, reiterating this position and requesting that the wording in subsection (5) of Rule 12A-1.015, F.A.C., which is currently proposed for repeal, be included in the proposed rules on medical issues, even though the items may be listed on Form DR-46NT.

In response, provisions to establish when compressed medical gases and medical oxygen are exempt from tax have been added to the proposed amendments to Rule 12A-1.020, F.A.C., Licensed Practitioners; Drugs, Medical Products and Supplies, and Prosthetic and Orthopedic Appliances, and to the proposed creation of Rule 12A-1.0205, F.A.C., Veterinary Sales and Services.

ADDITIONAL CHANGES TO THE PROPOSED RULES:

After further review by the Department, changes were made to the following proposed rules:

Proposed Rule 12A-1.020, F.A.C., Licensed Practitioners; Drugs, Medical Products and Supplies, and Prosthetic and Orthopedic Appliances

- The scope of the rule was clarified
- A definition of the term “prescription” was added
- Provisions for drug samples were added
- The exemption for opaque drugs that are used in the connection with medical X-rays for the treatment of human bodies was added
- Provisions for the taxability of medical gases and nonmedical gases were added
- Provisions to clarify the taxability of common household products, cosmetics, toilet articles, and hygiene products were added
- Provisions for the sale of medical products, supplies, or devices to hospitals and to licensed practitioners were added
- Provisions for medical trays bearing the required federal Rx labeling were added
- Provisions for the taxability of chemical compounds and test kits were added
- Form DR-46NT, Nontaxable Medical Items and General Grocery List, has been revised to include updated lists of tax-exempt Common Household Remedies and tax-exempt Prosthetic and Orthopedic appliances, as certified by the Department of Health on September 18, 2007

Proposed New Rule 12A-1.0205, F.A.C., Veterinary Sales and Services

- Instead of amending Rule 12A-1.021, F.A.C., a new rule was created to provide for the taxability of items used or provided by veterinarians

- Provisions for grooming and boarding and for items used in providing grooming and boarding were added
- Provisions for the exemption for prescription drugs and medical gases and opaque drugs used in the connection with the treatment of animals were added
- Examples of items used in the treatment of animals that are subject to tax were added
- Provisions for medical trays bearing the required federal Rx labeling were added
- Provisions for the taxability of chemical compounds and test kits used for the treatment of animals were added
- Additional examples of items purchased for resale by veterinarians were added

Proposed Repeal of Rule 12A-1.021, F.A.C., Prosthetic and Orthopedic Appliances

- Instead of amending Rule 12A-1.021, F.A.C., to provide for the taxability of veterinary sales and services, the rule is proposed to be repealed, and new Rule 12A-1.0205, F.A.C., will be created for this purpose.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON MAY 19, 2008

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on April 11, 2008 (Vol. 34, No. 15, pp. 1965-1972). A rule development workshop was held on May 19, 2008, in Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida, commencing at 10:09 a.m., to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter for the following rule sections:

12A-1.002 Practitioners of the Healing Arts (*Proposed Repeal*)

- 12A-1.015 Industrial Gases (*Proposed Repeal*)
- 12A-1.020 Licensed Practitioners; Drugs, Medical Products and Supplies, and Prosthetic and Orthopedic Appliances (*Substantial Rewording*)
- 12A-1.0205 Veterinary Sales and Services (*Proposed New*)
- 12A-1.021 Prosthetic and Orthopedic Appliances (*Proposed Repeal*)
- 12A-1.097 Public Use Forms (*Proposed Amendments*)

PARTIES ATTENDING

For the Department
of Revenue

MARK ZYCH, Director, Technical Assistance and Dispute Resolution
GARY GRAY, Revenue Program Administrator I, Technical Assistance and Dispute Resolution
JANET YOUNG, Tax Law Specialist, Technical Assistance and Dispute Resolution

Participants

EDWIN BAYO, Florida Veterinary Medical Association
GLENN A. BEDONIE, C.P.A., P.A.
MARK HOLCOMB, Madsden, Goldman, & Holcomb

Written Comments

RON LAFACE, Capital City Consulting, Florida Association of Orthotists & Prosthetists

NATURE OF COMMENTS RECEIVED AT THE RULE DEVELOPMENT WORKSHOP:

Proposed Repeal of Rule 12A-1.015, F.A.C., Industrial Gases

Mr. Glenn Bedonie commented that it appeared that the exemption is being narrowed from an exemption for “industrial gases used for medical purposes” to an exemption for compressed oxygen and compressed medical gases. Mr. Bedonie suggests that natural gas used to heat hospitals is in fact exempt under the current rule. Ms. Janet Young, Department of Revenue, confirmed that the exemption would be for gas used for medical purposes and questioned the statutory authority for Mr. Bedonie’s position. Mr. Bedonie responded that he was just reading it literally.

No change to the Proposed Repeal of Rule 12A-1.015, F.A.C. Subsection (5) of current Rule 12A-1.015, F.A.C., provides that “[g]ases used for medical or therapeutic purposes are exempt.” There is no specific statutory exemption for medical or therapeutic gases. However, Section 212.08(2)(a), F.S., provides an exemption for any medical products and supplies or medicine dispensed according to an individual prescription written by a prescriber authorized by law to prescribe medicinal drugs. Federal regulations (21 C.F.R. Parts 200-299) and Florida law (Rule Chapter 64F-12.007, F.A.C.) require oxygen and other medical gases to be dispensed under a prescription written by a licensed practitioner of the healing arts.

To provide that “natural gas used in a hospital is exempt” is beyond the scope of the exemption provided in Section 212.08(2)(a), F.S., for medical products dispensed according to a prescription.

Proposed Substantial Rewording of Rule 12A-1.020, F.A.C., Licensed Practitioners; Drugs, Medical Products and Supplies, and Prosthetic and Orthopedic Appliances

Mr. Mark Holcomb, Madsen, Goldman & Holcomb, requested clarification in proposed paragraphs (1)(a) and (3)(a) whether hospitals are included as licensed practitioners when using the phrase “hospitals, physicians, dentists, and other licensed practitioners.”

Changes to Paragraphs (1)(a) and (3)(a) of Proposed Rule 12A-1.020: The phrase in these paragraphs has been clarified to refer to hospitals separately from physicians, dentists, and other licensed practitioners.

Mr. LaFace submitted written comments, on behalf of Mr. Morris Gallo, President, Florida Association of Orthotists & Prosthetists, dated May 5, 2008, which expressed concerns that, under the proposed rules, some types of prescribed services and devices would become taxable. Proposed subparagraph 12A-1.020(2)(b)1., F.A.C., defining the term “prescription” for purposes of the entire rule, limits a “prescription” to orders only for items dispensed by a pharmacist. This means that written orders from a physician for medicinal supplies or devices not provided by a pharmacist, such as prosthetics, PT/OT provided supports or devices, speech provided devices, and others are no longer considered prescriptions for tax-exempt purposes. Subparagraph 3. limits an out-of-state prescription to items dispensed by a pharmacist. These limiting phrases should be deleted.

At the proceeding held on May 19, 2008, Mr. Ron LaFace, Florida Association of Orthotists and Prosthetists, commented that proposed paragraph (2)(b), defining the term “prescription” for purposes of the rule, is limited to the definition provided in the rule text. There are many prescriptive devices that are not necessarily dispensed by a pharmacist pursuant to a written prescription. Orthotists and prosthetists all dispense and make custom orthotic and prosthetic devices pursuant to a prescription, but there is no pharmacist involved. Mr. LaFace requests that a section be added to the term “prescription” to show that it is not an exhaustive list of what a prescription means for purposes of the rule.

Mr. Edwin Bayo, Florida Veterinary Medical Association, pointed out that drugs and medicinal supplies are sometimes dispensed by doctors that have a license as a prescriber practitioner. There is no pharmacist involved.

Mr. LaFace also pointed out that a prescribing physician, such as a surgeon, may dispense a drug or orthotic device that the physician is not selling to the patient. In these cases, the health insurers will bill the manufacturer of the drug or device directly. The provisions of proposed paragraph (f) do not directly address this issue. The requirement that a prescription has to go through a pharmacist is too limited. Dispensing a drug by a physician and selling a drug by a physician are two separate items.

Ms. Young advised the workshop participants that the Department would look at these sections of the proposed rule and the statutory provisions to provide some clarity to these provisions.

Removal of Paragraph (2)(b) of Proposed Rule 12A-1.020: The provisions of this paragraph reflect the definition of the term “prescription” provided in Section 212.08(2)(b)4., F.S. This definition of “prescription” is identical to the definition provided in Section 465.003(14), F.S. (Pharmacy), which defines the term for purposes of a pharmacist who dispenses drugs or medicinal supplies.

The exemptions provided in Section 212.08(2), F.S., for medical items and products are not limited to those dispensed by a pharmacist. In addition to defining the term “prescription,” the provisions of subsection 212.08(2), F.S., provide exemptions for:

- *medical products and supplies or medicine dispensed according to an individual prescription written by a prescriber authorized by law to prescribe medicinal drugs;*
- *prosthetic and orthopedic appliances according to an individual prescription written by licensed physician*
- *commonly recognized substances possessing curative or remedial property ordered and dispensed by the prescription of a duly licensed veterinarian; and*
- *parts, special attachments, special lettering, and other like items added or attached to tangible personal property so that a handicapped person can use them when purchased pursuant to an individual prescription.*

This definition will be removed from the proposed rule.

Comments to Subsection (6) Medical Products, Supplies, or Devices:

Mr. Gallo, in his written comments submitted by Mr. LaFace, dated May 5, 2008, provided that premade prosthetic and orthotic devices that are modified and fit to a patient are tax-exempt under the rule. However, the rule does not adequately address the components and materials incorporated into a custom-made device. Examples of these components and materials would be sheets of plastic, liquid resins, and fiberglass. These components are incorporated into and used to make the custom prescription devices and should be tax-exempt at purchase. These are not materials or supplies used in the process of fabrication; they are raw materials and components that are incorporated into the finished tax-exempt device. An additional provision should be added to the rule to allow for these components to be purchased tax-exempt. The exemption is not intended to cover items used in the manufacturing process, such as sandpaper, glues, rivets, tape. These are expendable and taxable to the practitioner.

In additional written comments submitted on June 9, 2008, Mr. Laface suggested the following language:

Materials used in the manufacture or repair of any prescribed orthotic or prosthetic device, and provided by a person licensed in Florida to do so, are exempt from tax

provided the licensed provider has on file with the supplier an exemption certificate as provided below:

Mr. LaFace continued that this language would limit the tax-exempt status to only materials a licensed person could use in prescribed items. It would also make clear that the licensee would only need to provide a generic certificate and not need to be registered with the Department of Revenue.

Changes to Prosthetic and Orthopedic Appliances: Provisions for prosthetic and orthopedic appliances will be retained in Rule 12A-1.021, F.A.C. That rule will be revised to provide that materials incorporated into a prosthetic or orthopedic appliance that become a component part of the appliance are not subject to tax when purchased by a licensed prosthetist or orthotist. The prosthetist or orthotist must provide a written certification to the supplier.

At the rule workshop held on May 19, 2008, Mr. Mark Holcomb provided comment that the provisions of subparagraph (6)(d)2. provide that when a single taxable item is contained on a medical tray that is dispensed under a federal label, the tray is exempt. Surely the Department did not mean to limit the provision to a single taxable item on a medical tray. Mr. Holcomb requested that the provision be modified so that there could be a couple of things on the tray that would otherwise be subject to tax, so that the whole medical tray remains exempt.

Changes to Paragraph (6)(d) of Proposed Rule 12A-1.020: In agreement, this provision has been clarified to provide an exemption for medical trays that contain one or more items that, when sold separately, would be subject to tax.

Mr. Holcomb commented that there is an overlap between (6)(d), (6)(e), and (8). It is like a Venn diagram, overlapping in certain areas. There may be items that are federally labeled as single-use items, that are medical devices incorporated into a patient, and that are also listed as a prosthetic or orthopedic device. For example, pacemakers that could be [exempt under] (6)(d), (6)(e), and (8). The question is whether the vendor is going to require an exemption certificate for an item like a pacemaker or an artificial nose or ear that would fall into the three categories.

Under (6)(d) and (8), no exemption certificate is required. However, if the vendor is looking at (6)(e), the rule says that an exemption certificate is required. There is an administrative burden on sellers and the purchasers of those items. If an exemption certificate is not required under (6)(d) and (8), then there should not be a catch-all category under (6)(e) which would require vendors to obtain exemption certificates. Mr. Holcomb requests that the Department insert language into (6)(e) to provide that a certificate is required, unless the item is covered under (6)(d) or (8). He is just asking for clarity so that taxpayers, vendors, and buyers are not out there unnecessarily getting exemption certificates. It is a burden for recordkeeping in large operations over an extended period of time to be maintaining documentation. The provision is unnecessary and unworkable, and the Department should provide clarification.

Mr. Holcomb questioned what the Department was trying to capture in (6)(e) that was not already captured in (6)(d) or (8). Ms. Young responded that it was the provisions of Section 212.08(2)(g), F.S. For example, a specific metal used by a dentist could also be used by others for other purposes. These items are not federally labeled.

Changes to Medical Products, Supplies, or Devices: Provisions have been added to this paragraph to clarify that an exemption certificate is not required to be issued to purchase such medical products, supplies, or devices tax-exempt *when the item:*

- *The item is listed as a tax-exempt item in Form DR-46NT, Nontaxable Medical Items and General Grocery List; or,*
- *The label of the item indicates that it must be dispensed under federal or state law by the prescription or order of a licensed practitioner and that it is intended for use on a single patient.*

Comments to Prosthetic and Orthopedic Appliances:

Mr. Gallo, in his written comments submitted by Mr. LaFace, dated May 5, 2008, provided that the provisions of paragraph (8)(b) did not make sense. Prosthetic and orthopedic devices are not prescribed by the Department of Health, but by a physician. What does “certified to the Department of Revenue” mean?

At the proceeding held on May 19, 2008, Mr. LaFace questioned the criteria to add an item to the list of orthotic and prosthetic appliances of Form DR-46NT. Ms. Young responded that the Department of Revenue worked with the Department of Health to update the list with products that are currently available. The list has not been updated since 1987. The law has changed as well. There is now a specific exemption for some of the items that are on the current list – for example, an artificial limb.

Comments to Orthopedic or Corrective Shoes:

Mr. Gallo, in his written comments submitted by Mr. LaFace, dated May 5, 2008, concluded his comments with provisions regarding factory-made therapeutic shoes. The rule does a good job with custom-made orthopedic shoes; however, factory-made therapeutic shoes are not addressed. Additional language is needed to cover these shoes deemed “therapeutic” by Medicare’s provisions. These shoes are used to prevent or cure ulcers of the foot due to diabetes. They are prescribed by a physician and must meet specifications detailed under the CMS Therapeutic Shoe Bill. The following language is suggested:

(10)(e) Shoes and inserts, meeting the requirements of the Medicare Therapeutic Shoe Bill, prescribed by a physician to treat, or prevent, ulcers of the foot are exempt from tax.

In additional written comments submitted on June 9, 2008, Mr. Laface suggested the following to remove the connection to federal law that is subject to change:

(10)(a) Orthopedic shoes ... are exempt from tax. For the purpose of this act, any shoe prescribed by a treating physician and supplied by a person licensed in Florida to provide such shoe, is considered an orthopedic shoe.

At the rule proceeding, Mr. LaFace questioned whether the list could be updated again through the rulemaking process. Ms. Young confirmed that it could be updated again. There are two items that Mr. LaFace is interested in possibly updating on the list – (1) the raw components for prescriptive custom-made orthotic and prosthetic devices (fiberglass that becomes a

component; not sandpaper to file them down); and (2) therapeutic shoes (as an orthopedic or corrective shoe section). It does not appear that the current orthopedic or corrective shoe section encompasses therapeutic shoes, which has a different meaning for Medicare concerns. They do require a prescription. They are not tailor-made. They are ordered based on the type of ulcer a person has.

Mr. Gary Gray, Department of Revenue, asked why the fiberglass should be specifically exempt from tax. Mr. LaFace responded that we would like it to be. When you have a finished product that is tax-exempt, we feel that some of the components of that item should also be tax-exempt, so that you are not adding cost layers.

Mr. Holcomb questioned whether these component parts would be exempt under the manufacturing rules. Mr. Mark Zych, Department of Revenue, responded that they would have to be registered and purchase the items with a resale certificate. Mr. Holcomb responded that it may not be a workable process for these practitioners.

Mr. Bedonie commented that the Department may want to consider a product exemption. “For example, I don’t know of any other use for a pacemaker – it could not be used to open a garage door.”

Changes to Orthopedic or Corrective Shoes: The title of this subsection has been changed to “Orthopedic, Therapeutic, or Corrective Shoes” to reflect the addition of provisions for therapeutic shoes that are prescribed by a licensed physician.

A new paragraph will be added to provide that materials and supplies that are incorporated into and become a component part of a prosthetic or orthopedic appliance or device that will be dispensed by a licensed prosthetist or orthotist to a patient pursuant to a prescription written by a licensed physician are not subject to sales or use tax. An exemption certificate will be required to be issued by the prosthetist or orthotist to the selling dealer to purchase such items tax-exempt. A suggested exemption certificate is provided. Items that are used by the prosthetist or orthotist that do not become a part of the item dispensed are subject to tax. These provisions will be moved to the proposed amendments to Rule 12A-1.021, F.A.C.

Rule 12A-1.0205, F.A.C., Veterinary Sales and Services (Renumbered 12A-1.0215)

Mr. Edwin Bayo, Metzger, Grossman, Furlow & Bayo, on behalf of the Florida Veterinary Medical Association, offered his support of the rule text, having no problem with it. “We would suggest that the first item, the purpose of the rule, be clarified.”

Changes in Response: The change that is necessary relates to the purpose and effect and the summary of the proposed rules contained in the Notice of Rule Development Workshop. This provision will be clarified in the Notice of Proposed Rulemaking.

Mr. Holcomb asked that his comments on proposed Rule 12A-1.020, F.A.C., regarding the change for medical trays be applied to this rule.

Changes to Paragraph (4)(c) of Proposed Rule 12A-1.0205: In agreement, this provision has been clarified to provide an exemption for medical trays that contain one or more items that, when sold separately, would be subject to tax.

Rule 12A-1.097, F.A.C., Public Use Forms-Adoption of Form DR-46NT, Nontaxable Medical Items and General Grocery List

Mr. LaFace commented that his prior comments regarding Form DR-46NT, incorporated by reference in this rule, apply to this rule as well.

Mr. Mark Holcomb submitted written comments, dated June 3, 2008, regarding proposed revised form DR-46NT (draft dated 12/17/07). First, for purposes of clarity, the list of prosthetic and orthopedic appliances in the revised form should be expanded to include specifically exempt appliances listed in current Rule 12A-1.021(1)(b), F.A.C., that are not included in revised Form DR-46NT. These items include:

- Artificial Limbs
- Artificial larynx
- Artificial Heart Valves
- Artificial Arteries
- Bone Cement, Nails, Pins, Plates, Screws and Wax
- Catheters
- Colostomy Bags and Appliances
- Dentures

Eyeglasses
Eyelid Load Prosthesis
Hypodermic Syringe Tubing and Parts, when used for medical purposes
Human Organs
Pacemakers (Cardiac)
Portable Resuscitators

The Department should review its prior rulings and determinations since the last amendment to Rule 12A-1.021, F.A.C., in 1987, and the last update to Form DR-46NT in 2001, and include any additional items determined to be tax-exempt exempt prosthetic and orthopedic appliances.

Form DR-46NT lists “Other Exempt Medical Items,” including certain medical products and supplies that are temporarily or permanently incorporated into a patient. These categories conform to paragraph (6)(e) and subsection (8) of proposed Rule 12A-1.020, F.A.C.; however, there is no provision for federal legend/single patient use items that are exempt under proposed paragraph (6)(d) of that rule. The form states the “[u]nless listed as a specifically tax-exempt item, sales of medical equipment to physicians, dentists, hospitals, clinics, and like establishments are taxable....” For purposes of clarity, federal legend/single patient use items should be listed under the category on the form.

Changes in Response: Section 212.08(2)(b)1., F.S., provides an exemption for prosthetic or orthopedic appliances “according to a list prescribed and approved by the Department of Health,” which list shall be certified to the Department of Revenue from time to time and included in the rules promulgated by the Department of Revenue. As a part of this rulemaking, the Department of Revenue worked with the Department of Health in updating this list. The final list was certified by the Department of Health on September 18, 2007, and included in the proposed changes to Form DR-46NT.

Section 212.08(2)(g), F.S., provides an exemption for medical products and supplies used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity which are temporarily or permanently incorporated into a patient or client by a licensed practitioner. These items are not required to be certified by the Department of Health to be tax-exempt.

Proposed subsection (6) of Rule 12A-1.020, F.A.C., provides an exemption for:

- *Medical products, supplies, or devices sold to hospitals, healthcare entities, or licensed practitioners that are dispensed under federal or state law only by the prescription or order of a licensed practitioner and are intended for a single patient use; and*
- *Medical products, supplies, and devices used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity that are temporarily or permanently incorporated into a patient or client or an animal by a licensed physician or a licensed veterinarian*

The items that have been requested to be reinserted on the list as tax-exempt items are not currently certified as tax-exempt prosthetic or orthopedic appliances by the Department of Health. However, these items are specifically exempt under Section 212.08(2), F.S., or as medical products, supplies, and devices temporarily or permanently incorporated into a patient or client by a licensed physician or licensed veterinarian.

Amendments to Rule 12A-1.021, F.A.C., Prosthetic and Orthopedic Appliances, will be proposed to update the rule to reflect the current statutory provisions, including updates to the list of prosthetic and orthopedic appliances that are specifically exempt. Form DR-46NT will list tax-exempt prosthetic and orthopedic appliances and other tax-exempt medical items.

However, the proposed amendments to Rule 12A-1.021, F.A.C., will remove those items that do not qualify as tax-exempt prosthetic or orthopedic appliances. However, these items remain tax-exempt as medical products, supplies, or devices:

- *dispensed under federal or state law only by the prescription or order of a licensed practitioner and are intended for a single patient use; or,*
- *used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity that are temporarily or permanently incorporated into a patient or client or an animal by a licensed physician or a licensed veterinarian*

ADDITIONAL CHANGES TO THE PROPOSED RULE CHANGES:

After further review by the Department, changes were made to the following proposed rules:

Proposed Rule 12A-1.020, F.A.C., Licensed Practitioners; Drugs, Medical Products and Supplies, and Prosthetic and Orthopedic Appliances

- The definition of the term “drug” or “medicinal drug” was clarified
- Provide that medical products, supplies, and devices are exempt when dispensed under federal or state law only by the prescription or order of a licensed practitioner
- Provided a single suggested exemption certificate to purchase certain qualifying medical products, supplies, devices, or materials tax-exempt

Proposed Rule 12A-1.021, F.A.C., Prosthetic and Orthopedic Appliances

- This rule, previously proposed to be repealed, will be retained to provide for the exemption provided in Section 212.08(2)(b)1., F.S., for prosthetic and orthopedic appliances
- Update provisions for those physicians that licensed to prescribe a prosthetic or orthopedic appliance
- Update the list of tax-exempt prosthetic and orthopedic appliances to include those certified by the Department of Health on September 18, 2007
- Provide for the purchase of materials and supplies by prosthetists and orthotists that are used by them to produce, or that are incorporated into, a prosthetic or orthopedic appliance that is dispensed pursuant to a prescription written by a licensed physician
- Remove provisions for the exemption provided for prescribed parts and attachments added to tangible personal property to assist a person with special needs that will be provided in Rule 12A-1.020, F.A.C., as amended

Proposed Rule 12A-1.0215, F.A.C., Veterinary Sales and Services (Renumbered)

- The definition of the term “drug” or “medicinal drug” was clarified
- Provide that charges to a client by a veterinarian for substances possessing curative or remedial properties that are not required by federal or state law to be dispensed only on a prescription are subject to tax

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON JANUARY 27, 2010

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on December 31, 2009 (Vol. 35, No. 52, pp. 6693-6694). A rule development workshop was held on January 27, 2010, in Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed changes to the following rule sections:

12A-1.002 Practitioners of the Healing Arts (*Proposed Repeal*)

- 12A-1.015 Industrial Gases (*Proposed Repeal*)
- 12A-1.020 Licensed Practitioners; Drugs, Medical Products and Supplies (*Substantial Rewording*)
- 12A-1.021 Prosthetic and Orthopedic Appliances (*Proposed Amendments*)
- 12A-1.0215 Veterinary Sales and Services (*Proposed New*)
- 12A-1.097 Public Use Forms (*Proposed Amendments*)

PARTIES ATTENDING

For the Department
of Revenue

MARK ZYCH, Director, Technical Assistance and Dispute Resolution
LARRY GREEN, Senior Management Analyst II
JANET YOUNG, Tax Law Specialist, Technical Assistance and Dispute Resolution

Participants

MARY EDENFIELD, Florida Dental Association
MARK HOLCOMB, Madsden, Goldman & Holcomb
RON LAFACE, Capital City Consulting, Florida Association of Orthotists & Prosthetists
RON WATSON, Florida Dental Association

NATURE OF COMMENTS RECEIVED AT THE RULE DEVELOPMENT WORKSHOP:

Mr. Mark Holcomb commended the drafter of the proposed rules for working with interested parties in making changes and incorporating them into the proposed rules.

Form DR-46NT, Nontaxable Medical Items and General Grocery List, provides a list of prosthetic appliances or orthopedic appliances that are exempt from sales tax. Changes are proposed to the list of tax-exempt appliances. Mr. Mark Holcomb, Madsden, Goldman, & Holcomb, questioned why some items, such as pacemakers, were proposed to be removed from the list.

Ms. Janet Young, Department of Revenue, explained that there are two reasons for the proposed changes to this list. First, the list is being updated to reflect the current statutory provisions of section 212.08(2), F.S. One of these changes is the exemption for items that are temporarily or permanently incorporated into the body by a licensed practitioner. Second, the list is being updated to reflect the Department's policy that items that contain the federal or state warning label that the item must be dispensed or ordered by a licensed practitioner, such as an Rx warning label, are tax-exempt. Items that are proposed to be removed from the list remain tax-exempt, but not as a prosthetic or orthopedic appliance.

Mr. Holcomb continued, stating that provisions in Rule 12A-1.020, F.A.C., provide that no exemption certificate or annual resale certificate is required to be obtained by the selling dealer from the purchasing hospital to document tax-exempt sales of medical products, supplies, or devices. A similar provision is not included in proposed Rule 12A-1.021, F.A.C., Prosthetic and Orthopedic Appliances. At issue is an item that does not have the federal or state required warning label, is not specifically exempt, or has not been certified by the Department of Health as tax-exempt. Ms. Young responded that this issue did need to be reviewed.

Mr. Ron Watson, Florida Dental Association, commented that under Chapter 466, F.S., the definition of physician specifically includes dentists. He questioned whether the term physician applied to dentistry throughout the proposed rules, or only in the proposed rules regarding prosthetic and orthopedic appliances. Also, the term physician is used on Form DR-46NT. Ms. Young responded that this issue did need to be reviewed, so that there is consistency in the treatment of the term "physician" or "licensed practitioner" to consistently include dentists in the proposed rules, as well as in proposed Form DR-46NT. She also confirmed that for the proposed rules, a dentist is a physician licensed to practice medicine in Florida.

Mr. Ron LaFace, representing the Florida Association of Orthotists and Prosthetists, commended the good work of the Department on the revisions to these rules since the prior workshop.

ADDITIONAL CHANGES TO THE PROPOSED RULE CHANGES:

After further review by the Department, changes were made to the following proposed amendments:

Proposed Rule 12A-1.021, F.A.C., Prosthetic and Orthopedic Appliances

- Clarified that, for purposes of the rule, a “licensed practitioner” includes a physician, osteopathic physician, chiropractic physician, podiatric physician, or dentist duly licensed under Florida law
- Clarified that no exemption certificate is required when: (1) the item is listed as an item exempt from tax in Form DR-46NT, Nontaxable Medical Items and General Grocery List, or, (2) the label of the item indicates that it must be dispensed under federal or state law by the prescription or order of a licensed practitioner and that it is intended for use on a single patient

Proposed Form DR-46NT, Nontaxable Medical Items and General Grocery List

- Included dental bridges and crowns as items that are temporarily or permanently incorporated into the body by a licensed practitioner and are tax-exempt
- Added provisions from the proposed rules that medical products, supplies, or devices are exempt when they are dispensed under federal or state law only by the prescription or order of a licensed practitioner and are intended for use on a single patient.
- Included examples of tax-exempt items containing the required federal warning label that were previously included as tax-exempt prosthetic or orthopedic appliances (artificial arteries, heart valves, larynxes; bone cement, nails, pins, plates, screws, and wax; catheters; eyelid load prosthesis; and pacemakers)

SUMMARY OF RULE HEARING

HELD ON MARCH 23, 2010

The Governor and Cabinet, sitting as head of the Department of Revenue, met on March 23, 2010, and approved the publication of the Notice of Proposed Rule for changes to Rule

Chapter 12A-1, F.A.C. (Sales and Use Tax). A notice for the public hearing was published in the Florida Administrative Weekly on March 12, 2010 (Vol. 36, No. 10, pp. 1195-1196).

SUMMARY OF RULE HEARING

HELD ON MAY 3, 2010

The proposed amendments to Rule Chapter 12A-1, F.A.C., were published in the Florida Administrative Weekly on April 9, 2010 (Vol. 36, No. 14, pp. 1593-1603). A rule hearing was held on May 3, 2010, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed changes to the following rule sections:

- 12A-1.002 Practitioners of the Healing Arts (*Proposed Repeal*)
- 12A-1.015 Industrial Gases (*Proposed Repeal*)
- 12A-1.020 Licensed Practitioners; Drugs, Medical Products and Supplies (*Substantial Rewording*)
- 12A-1.021 Prosthetic and Orthopedic Appliances (*Proposed Amendments*)
- 12A-1.0215 Veterinary Sales and Services (*Proposed New*)
- 12A-1.097 Public Use Forms (*Proposed Amendments*)

PARTIES ATTENDING

For the Department
of Revenue

LARRY GREEN, Senior Management Analyst II (Hearing
Officer)
JANET YOUNG, Tax Law Specialist, Technical Assistance and
Dispute Resolution
MARK ZYCH, Director, Technical Assistance and Dispute
Resolution

Participants EDWIN BAYO, Grossman, Furlow and Bayo, LLC, Florida
Veterinary Medical Association
PHIL HINKLE, Florida Veterinary Medical Association
JOHAN MIXON, Florida Veterinary Medical Association
HOLLY MILLER, Florida Medical Association
RON LAFACE, Capital City Consulting, Florida Association of
Orthotists & Prosthetists

**COMMENTS RECEIVED AT THE RULE HEARING AND WRITTEN COMMENTS
MADE A PART OF THE PROCEEDING:**

12A-1.0215, F.A.C., Veterinary Sales and Services:

Mr. Edwin Bayo, representing the Florida Veterinary Medical Association, as well as Mr. Phil Hinkle, Executive Director, and Mr. Johan Mixon of the Association, provided comment regarding “prescription diets” used by veterinarians. “Prescription diets” are foods formulated specifically for the treatment and health maintenance of animals with specific diagnosed illnesses. The standard of practice is for the patient record to contain a diagnosis of the illness and an order or notation indicating that the use of the specific food has been ordered.

These specific diets are not prescription items and are not considered a “drug” under federal or state law. However, the Association considers prescription diets to be “commonly recognized substances possessing curative or remedial properties,” as that term is used in s. 212.08(2)(h), F.S., and asserts that they may be considered in the nature of medical products and supplies used in the mitigation or treatment of disease that are temporarily incorporated into a patient, as provided in s. 212.08(2)(g), F.S.

Presently, the Department’s publication on veterinarians and veterinary clinics provides that “prescription diets” dispensed as treatment of a diagnosed health disorder by, or on the prescription of, a licensed veterinarian are exempt.

The Association requested that the proposed rule be amended to provide that special diet foods provided only upon the order of a veterinarian for the treatment or remediation of a diagnosed condition are exempt.

In Response: No changes were made to the rule text.

Sales of drugs to or by veterinarians in connection with medical treatment are exempt. (s. 212.08(2)(f), F.S.)

Purchases by veterinarians of commonly recognized substances possessing curative or remedial properties are exempt when:

- *ordered and dispensed as treatment for a diagnosed health disorder by or on the prescription of a duly licensed veterinarian; and*
- *applied to or consumed by animals for alleviation of pain or the cure or prevention of sickness, disease, or suffering. (s. 212.08(2)(h), F.S.)*

The specific exemption provided in s. 212.08(2)(h), F.S., applies to purchases of commonly recognized substances possessing curative or remedial properties by veterinarians. This specific exemption does not extend to sales of these substances by veterinarians.

Sales of drugs by a veterinarian are specifically exempt. A “drug” is defined as those substances or preparations that are required by federal or state law to be dispensed only by a prescription. Specifically, “veterinary prescription drugs” means those drugs labeled: “Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian.”

“Prescription diets” for animals are not prescription items under federal or state law. The exemptions provided in section 212.08(2), F.S., do not extend to the sale of “prescription diets” by a veterinarian. Absent a specific statutory exemption, the Department must conclude that the sale of prescription diets for animals by a veterinarian or by any other person is subject to sales tax.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULES 12A-1.020, 12A-1.021, AND 12A-1.097
REPEALING RULE 12A-1.002, AND 12A-1.015
CREATING RULE 12A-1.0215

12A-1.002 Practitioners of the Healing Arts.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14), (19), 212.05(1), 212.08(2), (7) FS. History-Revised 10-7-68, 6-16-72, Formerly 12A-1.02, Repealed.

12A-1.015 Industrial Gases.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(c), 212.05, 212.08(2), (6), (7)(o) FS. History-Revised 10-7-68, 6-16-72, Formerly 12A-1.15, Repealed.

(Substantial Rewording of Rule 12A-1.020 follows. See Florida Administrative Code for present text.)

12A-1.020 Licensed Practitioners; Drugs, ~~Medicine~~ and Medical Products and Supplies.

(1) SCOPE.

(a) Section 212.08(2), F.S., provides an exemption for certain items used in the practice

of medicine by hospitals and healthcare entities or by physicians, dentists, and other licensed practitioners. This rule is intended to clarify the application of tax to items sold to hospitals and healthcare entities or to physicians, dentists, and other licensed practitioners for use in their practice of medicine. This rule is also intended to clarify the exemption for chemical compounds and test kits, common household remedies, drugs, eyeglasses and lenses, medical gases, and medical products, supplies, and devices.

(b) Rule 12A-1.021, F.A.C. (Prosthetic and Orthopedic Appliances), is intended to clarify the exemption provided in Section 212.08(2), F.S., for prosthetic and orthopedic appliances.

(c) Rule 12A-1.0215, F.A.C. (Veterinary Sales and Services), is intended to clarify the application of tax to items used in the practice of veterinary medicine, for the exemptions provided for substances possessing curative or remedial properties, and for medical products, supplies, and devices used in the treatment of animals.

(2) LICENSED PRACTITIONERS.

(a) For purposes of this rule, a “licensed practitioner” is any person who is duly licensed and authorized by laws of the State of Florida to administer, prescribe, or dispense, as appropriate, a drug or device for medical purposes.

(b) Hospitals, healthcare entities, and licensed practitioners are required to pay tax at the time of purchase on taxable items or services used or consumed in providing medical services. See Rule 12A-1.038, F.A.C., for purchases by hospitals or healthcare entities that hold a valid Consumer’s Certificate of Exemption issued by the Department.

(3) DRUGS.

(a) Drugs and medicinal drugs used in connection with medical treatment are exempt. The term “drug” or “medicinal drug” means those substances or preparations commonly known

as “prescription” or “legend” drugs that are required by federal or state law to be dispensed only by a prescription.

(b) Opaque drugs, including X-ray opaques, and radiopaque, such as the various opaque dyes and barium sulphate, that are used in connection with medical X-rays for the treatment of human bodies are exempt.

(4) MEDICAL GASES.

(a) Compressed medical gases and medical oxygen in compliance with the provisions of Rule 64F-12.007, F.A.C., are exempt.

(b) The charge for filling or refilling tanks containing compressed air or nitrox to be used for scuba diving is subject to tax.

(5) COMMON HOUSEHOLD REMEDIES; COSMETICS; TOILET ARTICLES; HYGIENE PRODUCTS.

(a)1. Common household remedies recommended and generally sold for internal or external use in the cure, mitigation, treatment, or prevention of illness or disease in human beings, according to a list prescribed and approved by the Department of Health and certified to the Department of Revenue, are exempt. This list is contained in Form DR-46NT, Nontaxable Medical and General Grocery List (incorporated by reference in Rule 12A-1.097, F.A.C.).

2. Common household items that are not intended to cure, mitigate, treat, or prevent illness or disease in human beings are subject to tax. For example, disinfectants used for the sterilization of glass, containers, utensils, or equipment are subject to tax; products used for the purification of air or for deodorants are subject to tax; chlorine used for the treatment of water in swimming pools is subject to tax.

(b) The exemption provided for common household remedies does not include cosmetics

or toilet articles, even when the cosmetic or toilet article contains medicinal ingredients.

Cosmetics and toilet articles, including those that contain medicinal ingredients, are subject to tax, except when dispensed pursuant to a prescription written by a licensed practitioner.

1. For purposes of this rule, “cosmetics” means any article intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term includes articles intended for use as a compound of any such articles, such as cold creams, suntan products, makeup, and body lotions.

2. For purposes of this rule, “toilet articles” means any article advertised or held out for sale for grooming purposes and those articles which are customarily used for grooming purposes, regardless of the name by which they may be known, such as soaps, toothpastes, hair sprays, shaving products, colognes, perfumes, shampoos, deodorants, and mouthwashes.

(c) Personal hygiene products, except when dispensed pursuant to a prescription written by a licensed practitioner, are subject to tax.

(d) Contraceptive products, except when dispensed pursuant to a prescription written by a licensed practitioner, are subject to tax.

(e) Taxpayers who have a question regarding the taxable status of a product may submit a written description of the product, including the product name, ingredients, and recommended uses, to the Department. This request should be addressed to the Florida Department of Revenue, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443.

(6) MEDICAL PRODUCTS, SUPPLIES, OR DEVICES.

(a) “Medical products, supplies, or devices” are 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.

(b) Unless specifically exempt, products, supplies, or devices sold to hospitals and healthcare entities or to licensed practitioners are subject to tax. Examples of items that do not qualify for exemption are: absorbent cotton; gloves, gowns, uniforms, masks, drapes, or towels; infusion pumps; reusable knives, needles, or scissors; scales; ear syringes; tongue depressors; specimen bags; instruments, equipment, and machines and their parts and accessories; microscopes; examination tables; hospital beds; X-ray machines; X-ray films and developing solutions; computerized axial tomography (CAT) machines; and magnetic resonance imaging (MRI) machines. This is not intended to be an exhaustive list.

(c)1. Medical products, supplies, or devices sold to hospitals, healthcare entities, or licensed practitioners are exempt when:

a. The medical product, supply, or device must be dispensed under federal or state law only by the prescription or order of a licensed practitioner; and

b. The medical product, supply, or device is intended for use on a single patient and is not intended to be reusable.

2. Medical trays and surgical or procedure kits containing medical products, supplies, or devices that are labeled to be dispensed only by the prescription or order of a licensed practitioner and are intended for use on a single patient are exempt, even when the medical tray or kit contains one or more items that, when sold separately, would be subject to tax.

3. No exemption certificate or Annual Resale Certificate is required to be obtained by the selling dealer from the purchasing hospital, healthcare entity, or licensed practitioner to

document exempt sales of medical products, supplies, or devices that are labeled to be dispensed only by the prescription or order of a licensed practitioner. However, selling dealers are required to maintain documents in their records evidencing that the medical product, supply, or device sold to a hospital, healthcare entity, or licensed practitioner is labeled to be dispensed only by the prescription or order of a licensed practitioner.

(d)1. Medical products, supplies, and devices used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of a patient(s) that are temporarily or permanently incorporated into a patient(s) by a licensed practitioner are exempt.

2. A licensed practitioner, or an authorized representative of the licensed practitioner, may extend an exemption certificate to the selling dealer certifying that the purchased medical products, supplies, or devices will be temporarily or permanently incorporated into a patient(s) for the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of a patient(s). For example, a licensed dentist may purchase gold, silver, amalgam, or other dental restorative materials used for dental fillings exempt from tax by extending an exemption certificate to the supplier when those materials are not labeled “Rx only.” A suggested exemption certificate is provided in subsection (11).

3. Any person that is not a licensed practitioner must register with the Department as a dealer, as provided in Rule 12A-1.060, F.A.C., to sell medical products, supplies, or devices in Florida. Registered dealers may purchase products, supplies, or devices for the purposes of resale, or materials to manufacture, compound, process, or fabricate such items for sale, by extending a copy of its Annual Resale Certificate to the selling dealer, as provided in Rule 12A-1.039, F.A.C.

4. No exemption certificate or Annual Resale Certificate is required to make purchases of

medical products, supplies, or devices exempt from tax when:

a. The item is listed as an item exempt from tax in Form DR-46NT, Nontaxable Medical Items and General Grocery List; or,

b. The label of the medical product, supply, or device indicates that it must be dispensed under federal or state law by the prescription or order of a licensed practitioner and that it is intended for use on a single patient.

(e) Medical products, supplies, and devices are exempt when dispensed to a patient according to an individual prescription written by a licensed practitioner.

(7) CHEMICAL COMPOUNDS AND TEST KITS.

(a) The sale of chemical compounds and test kits used for the diagnosis or treatment of human disease, illness, or injury is exempt. The following is a nonexhaustive list of chemical compounds and test kits that are not subject to tax:

1. Allergy test kits that use human blood to test for the most common allergens;
2. Anemia meters and test kits;
3. Antibodies to Hepatitis C test kits;
4. Bilirubin test kits (blood or urine);
5. Blood analyzers, blood collection tubes, lancets, capillaries, test strips, tubes containing chemical compounds, and test kits to test human blood for levels of albumin, cholesterol, HDL, LDL, triglycerides, glucose, ketones, or other detectors of illness, disease, or injury;
6. Blood sugar (glucose) test kits, reagent strips, test tapes, and other test kit refills;
7. Blood pressure monitors, kits, and parts;
8. Breast self-exam kit;

9. Fecal occult blood tests (colorectal tests);

10. Hemoglobin test kits;

11. Human Immunodeficiency Virus (HIV) test kits and systems;

12. Influenza AB test kits;

13. Middle ear monitor;

14. Prostate Specific Antigen (PSA) test kits;

15. Prothrombin (clotting factor) test kits;

16. Thermometers, for human use;

17. Thyroid Stimulating Hormone (TSH) test kits;

18. Urinalysis test kits, reagent strips, tablets, and test tapes to test levels, such as albumin, blood, glucose, leukocytes, nitrite, pH, or protein levels, in human urine as detectors of illness, disease, or injury;

19. Urinary tract infection test kits; and

20. Vaginal acidity (pH) test kits.

(b) Chemical compounds and test kits that are not used to diagnose or treat human disease, illness, or injury are subject to tax. The following is a nonexhaustive list of chemical compounds and test kits that do not test for human illness, disease, or injury and are subject to tax:

1. Blood typing test kits for home use;

2. DNA tests (such as maternity tests, paternity tests, sibling ship tests, twin zygosity tests, ancestry testing, avuncular (grandparent, aunt, and uncle) tests, male lineage tests, or article tests);

3. Drug and alcohol (including nicotine) test kits;

- 4. Ethanol breathalyzer tests (alcohol intoxication);
- 5. Follicle stimulating hormone (FSH) test kits;
- 6. Hazard chemicals detection kits;
- 7. Male fertility (semen analysis) test kits;
- 8. Menopause monitors and test kits;
- 9. Ovulation/leutinizing hormone (LH) test kits;
- 10. Personal wellness or body balance check test kits, such as those to measure hormone levels, cortisol levels, melatonin levels, mineral levels, or antioxidant levels; and
- 11. Pregnancy test kits.

(8) PRESCRIBED PARTS AND ATTACHMENTS.

(a) Parts, special attachments, special lettering, and other like items that are added to or attached to tangible personal property to assist a person with special needs are exempt when purchased pursuant to an individual prescription. When purchased without an individual prescription, these items are subject to tax. For example, items installed on motor vehicles to make them adaptable for use by persons with special needs, such as special controls, purchased pursuant to a written prescription are exempt; however, the motor vehicle and the standard or optional equipment available on the motor vehicle are subject to tax.

(b) If tangible personal property is sold with special controls, lettering, or devices, and the additional charge for the added features is separately stated on the sales invoice for the tangible personal property, that charge for the added features is exempt when purchased pursuant to an individual prescription.

(9) ORTHOPEDIC, THERAPEUTIC, OR CORRECTIVE SHOES.

(a) Orthopedic shoes made to specifications prescribed by a podiatrist, orthopedist, or

other licensed practitioner for the purpose of treating or preventing illness or disease, or to correct physical incapacity are exempt. Therapeutic shoes and inserts prescribed by a licensed practitioner for purposes of treating diabetic foot disease and provided by a podiatrist, orthotist, prosthetist, or pedorthist are exempt.

(b) Shoes made to order for special fitting problems, such as narrow or large feet, are subject to tax.

(c) When a shoe is modified to specifications prescribed by a podiatrist, orthopedist, or other physician by the insertion of a lift, a wedge, or an arch support for the purpose of treating or preventing illness or disease, or to correct physical incapacity, the charge for the shoe is subject to tax. However, any reasonable separately stated charge for the modification is exempt. If no separate charge is made for the modification, the entire charge is subject to tax.

(d) When a shoe is modified for a more comfortable fit (e.g., heel pad inserted or insole added), for improving the style, or for similar purposes, the total charge for the modification and the shoe is subject to tax.

(10) EYEGLASSES AND LENSES.

(a) Prescription eyeglasses, incidental items, and items that become a part of prescription eyeglasses are exempt. Prescription eyeglasses include lenses, including contact lenses, prescribed for the correction of a patient's refractive effort, for the improvement of a patient's vision, or for protective purposes. Incidental items include frames, component parts, carrying cases, contact lens cases, and other similar items.

(b) The sale of eyeglass lens cleaning solutions, contact lens cleaning solutions, and contact lens disinfectants are subject to tax.

(c) The sale of standard or stock eyeglasses, incidental items, or items that become a part

of standard or stock eyeglasses, without a prescription, is subject to tax. Some examples are: frames and component parts, carrying cases, safety glasses, sunglasses, field glasses, opera glasses, and magnifying glasses.

(d) When the purchaser of one-time items that transfer essential optical characteristics to contact lenses has paid at least \$100,000 in tax (sales tax, plus discretionary sales surtax) in any calendar year on such purchases, the purchaser is exempt from tax on purchases of such items for the remainder of that calendar year. Purchasers who hold a valid Sales and Use Tax Direct Pay Permit issued by the Department may make purchases of these items exempt from tax when:

1. The purchaser extends a copy of a valid Sales and Use Tax Direct Pay Permit, as provided in Rule 12A-1.0911, F.A.C., to the selling dealer at the time of purchase; and

2. The purchaser pays to the Department each calendar year \$100,000 in tax due on purchases of one-time items that transfer essential optical characteristics to contact lenses during the calendar year.

(11) SUGGESTED EXEMPTION CERTIFICATE; RECORDKEEPING REQUIREMENTS.

(a) The following is a suggested exemption certificate to be issued to purchase qualified medical products, supplies, or devices exempt from tax at the time of purchase:

EXEMPTION CERTIFICATE

MEDICAL PRODUCTS, SUPPLIES, DEVICES, OR MATERIALS

I, the undersigned individual, as a practitioner licensed in the State of Florida, or an authorized representative of a licensed practitioner, certify that the medical products, supplies, devices, or other materials purchased on or after _____ (date) from
(Selling Dealer's Business Name):_____

(Check the use that qualifies the product, supply, device, or material for exemption)

() Meet the definition of a medical product, supply, or device and will be dispensed by a licensed practitioner.

() Will be used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of a patient and will be temporarily or permanently incorporated into a patient(s) by a licensed practitioner.

I understand that if I use the medical product, supply, device, or other materials for any nonexempt purpose, I must pay tax on the purchase price of the item directly to the Department of Revenue.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax, I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate and that the facts stated herein are true.

Name of Licensed Practitioner: _____

Florida License Number: _____

Address: _____

Name of Authorized Representative: _____

(Signature of Licensed Practitioner or Authorized Representative)

Title

Date

(b) The selling dealer is only required to obtain one certificate for sales made for the purposes indicated on the certificate and is not required to obtain an exemption certificate for subsequent sales made to the same licensed practitioner or authorized representative. The selling dealer must maintain the required exemption certificates in its books and records until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(c) Dealers must maintain copies of exemption certificates, Annual Resale Certificates, prescriptions, and any other documentation required under the provisions of this rule until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(d) Electronic storage by the selling dealer of the required certificates, prescriptions, and other documentation will be sufficient compliance with the provisions of this subsection.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091(3), 212.08(2), 212.085, 213.37, 465.186, 465.187 FS. History-Revised 10-7-68, Amended 1-17-71, Revised 6-16-72, Amended 5-27-75, 5-10-77, 6-26-78, 2-26-79, 6-3-80, 12-31-81, 8-28-84, Formerly 12A-1.20, Amended 12-8-87, _____.

12A-1.021 Prosthetic and Orthopedic Appliances.

(1)(a) Prosthetic and orthopedic appliances are exempt. The term “prosthetic and orthopedic appliances” means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body, used to alleviate the malfunction of any part of the

body, or used to assist any disabled person in leading a normal life by facilitating such person's mobility. Such apparatus, instrument, device, or equipment ~~is exempt shall be exempted~~ according to an individual prescription or prescriptions written by a duly licensed practitioner ~~authorized by the laws of the state to prescribe medicinal drugs~~, or according to a list prescribed and approved by the Department of Health ~~and, which list shall be certified to the Department of Revenue from time to time.~~ For purposes of this rule, a "licensed practitioner" includes a physician, osteopathic physician, chiropractic physician, podiatric physician, or dentist duly licensed under Florida law. ~~The~~ A list of tax-exempt prosthetic and orthopedic appliances is contained in Form DR-46NT (DR-46NT), Nontaxable Medical and General Grocery List (incorporated by reference in Rule 12A-1.097, F.A.C.), dated October 1987, which is incorporated in this rule and made part of this rule by reference, and which has been certified to the Department of Revenue by the Department of Health, is available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a Copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

(b) The prosthetic and orthopedic appliances listed below are specifically exempt:

Arch, foot, and heel supports, gels, insoles, and cushions ~~Supports, excluding shoe~~

reliners and pads

Artificial Limbs

Artificial Eyes

~~Artificial Larynx~~

~~Artificial Heart Valves~~

~~Artificial Arteries~~

Artificial Noses and Ears

Abdominal Belts

Back Braces

Batteries, for use in Prosthetic and Orthopedic Appliances

~~Bone Cement, Nails, Pins, Plates, Screws and Wax~~

Braces and Supports Worn on the Body to Correct or Alleviate a Physical Incapacity or

Injury

Canes (all)

~~Catheters~~

~~Colostomy Bags and Appliances~~

Crutches, Crutch Tips, and Pads

Dentures, Denture Repair Kits and, Cushions, ~~etc.~~

Dialysis Machines and Artificial Kidney Machines, Parts and Accessories

~~Eyeglasses, Eyelid Load Prosthesis~~

Fluidic Breathing Assistor

Hearing Aids (repair parts, batteries, wires, and condensers, ~~etc.~~)

Heart Stimulators - External Defibrillators

~~Hypodermic Needles, Hypodermic Syringes, Hypodermic Syringe~~

~~Tubing and Parts, when used for medical purposes~~

~~Human Organs~~

~~Lithotripter~~

~~Mastectomy Pads~~

Ostomy pouch and accessories

~~Pacemakers (Cardiac)~~

~~Patient Safety Vests~~

~~Portable Resuscitators~~

~~Rupture belts~~

~~Suspensories~~

~~Trusses~~

Urine collectors and accessories ~~Urinal Bags~~

~~Walking Bars~~

~~Walkers, including walker chairs~~

~~Wheelchairs, including powered models, their parts and repairs~~

~~*NOTE: Gold, silver and other materials/devices temporarily or permanently incorporated into the human body by physicians or dentists shall be exempt (i.e.: organ implant, dentures, dental bridge work and crowns).~~

~~(2)(e) Taxpayers who have a question concerning the taxable or exempt status of a prosthetic or orthopedic appliance may submit a written request to the Department, containing the name and a description of the appliance and its (appliance name, recommended use, for a determination of taxability of the appliance. The written request should be addressed usage, etc.)~~

to the Florida Department of Revenue, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443 ~~for a determination of taxability.~~

(3)(a) Materials and supplies that are incorporated into and become a component part of a prosthetic or orthopedic appliance or device that will be dispensed by a prosthetist or an orthotist licensed in the State of Florida to a patient pursuant to a prescription written by a licensed practitioner are not subject to sales or use tax. Examples of such items are: sheets of plastic, liquid resins, and fiberglass.

(b) A licensed prosthetist or orthotist, or its authorized representative, may extend an exemption certificate to the selling dealer certifying that materials and supplies purchased will be incorporated into and become a component part of a prosthetic or orthopedic appliance or device that will be dispensed to a patient pursuant to a prescription written by a licensed practitioner.

No exemption certificate is required when:

1. The item is listed as an item exempt from tax in Form DR-46NT, Nontaxable Medical Items and General Grocery List; or,

2. The label of the material or supply indicates that it must be dispensed under federal or state law by the prescription or order of a licensed practitioner and that it is intended for use on a single patient.

(c) Expendable materials, supplies, and other items that do not become a component part of, or accompany, a prosthetic or orthopedic appliance dispensed to a patient are subject to tax. Examples of such items are: sandpaper, molds used on more than one patient, and tools used by a prosthetist or an orthotist.

(d) The following is a suggested exemption certificate to be issued to purchase materials and supplies purchased that will be incorporated into and become a component part of a

prosthetic or orthopedic appliance or device at the time of purchase exempt from tax:

EXEMPTION CERTIFICATE

MATERIALS AND SUPPLIES THAT BECOME A COMPONENT PART OF A
PRESCRIBED PROSTHETIC OR ORTHOPEDIC APPLIANCE

I, the undersigned individual, as a practitioner licensed in the State of Florida, or an authorized representative of a licensed prosthetist or a licensed orthotist, certify that the materials and supplies purchased on or after _____ (date) from _____ (Selling Dealer's Business Name) will be incorporated into and become a component part of a prosthetic or orthopedic appliance or device that will be dispensed pursuant to a prescription written by a licensed practitioner.

I understand that if I use the materials or supplies for any nonexempt purpose, I must pay tax on the purchase price of the item directly to the Department of Revenue.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax, I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate and that the facts stated herein are true.

Name of Licensed Prosthetist or Orthotist: _____

Florida License Number: _____

Address: _____

Name of Authorized Representative: _____

(Signature of Licensed Prosthetist or Orthotist or Authorized Representative)

Title

Date

(e) The selling dealer is only required to obtain one certificate for sales made for the purposes indicated on the certificate and is not required to obtain an exemption certificate for subsequent sales made to the same licensed prosthetist or orthotist or authorized representative. The selling dealer must maintain the required exemption certificates in its books and records until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(f) Dealers must maintain copies of exemption certificates required under the provisions of this rule until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required certificates will be sufficient compliance with the provisions of this rule.

~~(2)(a) Parts, special attachments, special lettering and other like items that are added to or attached to tangible personal property so that a handicapped person can use them are taxable, unless such items are purchased by a person pursuant to an individual prescription or prescriptions as prescribed in paragraph (a) of subsection (1). For example: items installed on motor vehicles to make them adaptable for use by handicapped persons, such as special controls for paralytics or amputees, when purchased by a person pursuant to a written prescription, are exempt. However, standard or optional equipment, as well as the motor vehicle, is taxable.~~

~~(b) If tangible personal property is sold with special controls, lettering or devices, and the additional charge for the added features is separately stated on the sales invoice for the tangible~~

~~personal property, that portion of the sales receipts attributable to the added features is taxable, unless purchased pursuant to an individual prescription or prescriptions. For example, a television set sold with a closed captioned device built in, the portion of the price attributable to the closed captioned device, if separately stated on the sales invoice and purchased by a person pursuant to a written prescription, may be deducted from the selling price before computing tax.~~

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091(3), 212.06(1), 212.07(1), 212.08(2), 212.085, 213.37 FS. History-Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 6-9-76, 6-26-78, 12-31-81, Formerly 12A-1.21, Amended 12-8-87,_____.

12A-1.0215 Veterinary Sales and Services.

(1) VETERINARY SERVICES.

(a) Services, such as examinations, treatment, or vaccinations of animals rendered by veterinarians are not subject to tax.

(b) Charges for hospitalization as part of the veterinarian's treatment for a diagnosed health disorder are not subject to tax.

(2) BOARDING AND GROOMING.

(a) Charges for boarding animals or for grooming animals are not subject to tax.

(b) Items purchased for use in providing boarding or grooming are subject to tax. For example, cat food, dog food, nail care items, clippers, shears, brushes, combs, soaps, detergents, deodorizers, and colognes are subject to tax. Disinfectants used to clean kennels, cages, equipment, or other items used for boarding or grooming animals are subject to tax.

(3) DRUGS AND MEDICAL GASES.

(a) Drugs, medicinal drugs, and veterinary prescription drugs used in connection with medical treatment of animals are exempt. The term “drug” or “medicinal drug” means those substances or preparations commonly known as “prescription” or “legend” drugs that are required by federal or state law to be dispensed only by a prescription. The term “veterinary prescription drugs” means those drugs intended solely for veterinary use for which the label of the drug bears the statement: “Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian.”

(b) Opaque drugs, including X-ray opaques, and radiopaque, such as the various opaque dyes and barium sulphate, that are used in connection with medical X-rays for the treatment of animals are exempt.

(c) Compressed medical gases or medical oxygen in compliance with the provisions of Rule 64F-12.007, F.A.C., are exempt.

(4) ITEMS PURCHASED FOR TREATMENT.

(a) Veterinarians are required to pay tax at the time of purchase on taxable items and services used or consumed in rendering veterinary services. Some examples of taxable items used or consumed by veterinarians in their practice are: gloves, gowns, uniforms, masks, drapes, or towels; infusion pumps; reusable knives, needles, or scissors; scales; ear syringes; specimen bags; instruments, equipment, and machines, and their parts and accessories; microscopes; examination tables; X-ray machines; X-ray films and developing solutions; computerized axial tomography (CAT) machines; magnetic resonance imaging (MRI) machines; tags; identification chips; disposable medical restraint collars and muzzles; and chemical compounds and test kits used for the diagnosis or treatment of animals’ disease, illness, or injury. This is not intended to be an exhaustive list.

(b) The following items sold to veterinary clinics or hospitals or licensed veterinarians are exempt:

1. Antiseptics;
2. Absorbent cotton;
3. Gauze for bandages;
4. Hypodermic needles and syringes;
5. Lotions;
6. Vitamins; and
7. Worm remedies.

(c)1. Medical products, supplies, or devices sold to veterinary clinics or hospitals or licensed veterinarians are exempt when:

a. The medical product, supply, or device must be dispensed under federal or state law only by the prescription or order of a licensed practitioner; and

b. The medical product, supply, or device is intended for single use and is not intended to be reusable.

2. Medical trays and surgical or procedure kits containing medical products, supplies, or devices that are labeled to be dispensed only by the prescription or order of a licensed practitioner and are intended for a single use are exempt, even when the medical tray or kit contains one or more items that, when sold separately, would be subject to tax.

3. No exemption certificate is required to be obtained by the selling dealer from the purchasing veterinary clinic or hospital or licensed veterinarian to document tax-exempt sales of medical products, supplies, or devices that are labeled to be dispensed only by the prescription or order of a licensed practitioner. However, selling dealers are required to maintain documents in

their records evidencing that the medical product, supply, or device sold to a veterinary clinic or hospital or licensed veterinarian is labeled to be dispensed only by the prescription or order of a licensed practitioner.

(d) Medical products, supplies, and devices used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of an animal(s) that are temporarily or permanently incorporated into an animal(s) are exempt. Such medical products, supplies, and devices may be purchased tax-exempt when the licensed veterinarian, or an authorized representative of the licensed veterinarian, extends an exemption certificate to the selling dealer certifying that the purchased medical products, supplies, or devices will be temporarily or permanently incorporated into an animal(s) for the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of an animal(s). A suggested exemption certificate is provided in paragraph (f).

(e)1. Commonly recognized substances possessing curative or remedial properties are exempt when:

a. Purchased by a licensed veterinarian who orders and dispenses the substance as treatment for a diagnosed health disorder of an animal; and

b. The substance is applied to, or consumed by, animals for the alleviation of pain or the cure or prevention of sickness, disease, or suffering.

2. Charges to a client by a veterinarian for substances possessing curative or remedial properties that are not required by federal or state law to be dispensed only by a prescription are subject to tax.

3. Examples: Transdermal medications, sprays, or powders designed to prevent or treat flea or tick infestation are exempt when they are purchased by and ordered and dispensed by a

licensed veterinarian as part of treatment of a diagnosed health disorder of an animal.

4. Pet foods that are not required by federal or state law to be dispensed only by a prescription are subject to tax.

5. Commonly recognized substances possessing curative or remedial properties may be purchased exempt from tax when the licensed veterinarian, or an authorized representative of the licensed veterinarian, extends an exemption certificate to the selling dealer certifying that the purchased substance possessing curative or remedial properties will be ordered and dispensed and applied to, or consumed by, an animal(s) for the alleviation of pain or the cure or prevention of sickness, disease, or suffering of an animal(s). A suggested exemption certificate is provided in paragraph (f).

(f) The following is a suggested exemption certificate:

EXEMPTION CERTIFICATE

MEDICAL PRODUCTS, SUPPLIES, AND DEVICES

SUBSTANCES POSSESSING CURATIVE OR REMEDIAL PROPERTIES

I, the undersigned individual, as a veterinarian licensed in the State of Florida, or an authorized representative of a licensed veterinarian, certify that the items indicated below, purchased on or after _____ (date) from _____ (Selling Dealer's Business Name), are for the exempt purpose indicated below. The option checked below applies to this purchase:

() Medical products, supplies, or devices that will be temporarily or permanently incorporated into an animal for use in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of an animal(s).

() Substances possessing curative or remedial properties that will be ordered and dispensed and applied to, or consumed by, an animal as treatment for the alleviation of pain or

the cure or prevention of sickness, disease, or suffering of an animal(s).

I understand that if I use the medical product or supply or substance for any nonexempt purpose, I must pay tax on the purchase price of the item directly to the Department of Revenue.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax, I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate and that the facts stated herein are true.

Licensed Veterinarian's Name: _____

Veterinarian's Address: _____

Veterinarian's Florida License No.: _____

Name of Veterinarian's Authorized Representative: _____

(Signature of Veterinarian or Authorized Representative)

Title

Date

(5) ITEMS PURCHASED FOR RESALE.

(a) Veterinarians who sell, lease, or rent items of tangible personal property, such as pet carriers, crates, kennels, houses, cages, clothing, bedding, toys, collars, leashes, leads, tie-outs, feeders, bowls, dishes, gates, or doors, are required to register as a dealer and collect and remit the applicable tax to the Department. This is not intended to be an exhaustive list.

(b) As a registered dealer, the veterinarian may provide a copy of the dealer's Annual

Resale Certificate to purchase taxable items of tangible personal property for resale in lieu of paying tax to the selling vendor, as provided in Rule 12A-1.039, F.A.C.

(6) RECORDKEEPING REQUIREMENTS.

(a) Veterinarians must maintain copies of records indicating the prescription or orders for and the dispensing of drugs, medicines, medical products, supplies, and devices, and substances possessing curative or remedial properties in their records until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(b) Electronic storage by the veterinarian of the orders or prescriptions will be sufficient compliance with the provisions of this subsection.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14), (19), 212.05, 212.07(1), 212.08(2), 212.085, 212.18(3), 465.186, 465.187 FS. History-New _____.

12A-1.097 Public Use Forms.

(1) The following public use forms and instructions are employed by the Department in its dealings with the public related to the administration of Chapter 212, F.S. These forms are hereby incorporated by reference in this rule.

(a) through (b) No change.

Form Number	Title	Effective Date
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(2) through (14) No change.

(15) DR-46NT Nontaxable Medical and General Grocery List

(R. 07/10 ~~r. 02/92~~)

(16) through (23) No change.

Rulemaking Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2), (3), 213.06(1), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7) F.S. Law Implemented 92.525(1)(b), (3), 95.091, 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 201.17(1)-(5), 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(4), (5), 212.17, 212.18(2), (3), 213.235, 213.29, 213.37, 219.07, 288.1258, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7) FS. History-New 4-12-84, Formerly 12A-1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, 6-19-01, 10-2-01, 10-21-01, 8-1-02, 4-17-03, 5-4-03, 06-12-03, 10-1-03, 9-28-04, 6-28-05, 5-1-06, 4-5-07, 1-1-08, 4-1-08, 6-4-08, 1-27-09, 9-1-09, 11-3-09, 1-11-10, 4-26-10,_____.