



Executive
Director
Marshall Stranburg

QUESTION: WHETHER THE SALES OF EQUESTRIAN SUPPLIES, NON-PRESCRIPTION MEDICATIONS, SUPPLEMENTS, PESTICIDES, AND WORMERS ARE EXEMPT FROM SALES TAX SALES TAX UNDER S. 212.08(2), F.S.

ANSWER: NON-PRESCRIPTION MEDICATIONS ARE TAXABLE, SINCE THEY ARE NOT 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 EXCEPT WHEN SOLD TO VETERINARY CLINICS AND LICENSED VETERINARIANS.

EQUINE JOINT SUPPLEMENTS CONTAINING GLUCOSAMINE, WHICH WORKS TO FIGHT AGAINST WEAR AND TEAR ON A HORSE'S JOINTS, ARE EXEMPT AS FEED FOR LIVESTOCK.

INSECT AND FLY REPELLANTS CONTAINING FIVE ACTIVE INGREDIENTS AND THAT KILL BITING FLIES, MOSQUITOES, AND TICKS ARE EXEMPT.

EQUESTRIAN CLOTHING THAT OFFERS FLY PROTECTION TO KEEP PESTS AWAY FROM THE HORSE'S FACE AND EARS ARE TAXABLE.

September 25, 2015

Re: Technical Assistance Advisement – TAA 15A-011
Equestrian Supplies, Medicine, Pesticides and Wormers
Taxpayer Name: XXXXX ("Taxpayer")
Sales and Use Tax
Section 212.08(2), 212.08(5), (7)(d), and 212.02(29), Florida Statutes (F.S.)
Rule 12A-1.0215, Florida Administrative Code, F.A.C.

Dear XXXXX:

This response is in reply to your letter to the Department, dated XXXXX, in which you are requesting the Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., regarding whether the sales of equestrian supplies, medicine, pesticides and wormers are exempt from sales tax under s. 212.08(2), F.S. An examination of your petition has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for issuance of a TAA.

Child Support – Ann Coffin, Director • General Tax Administration – Maria Johnson, Director
Property Tax Oversight – Dr. Maurice Gogarty, Director • Information Services – Damu Kuttikrishnan, Director

<http://dor.myflorida.com/dor/>
Florida Department of Revenue
Tallahassee, Florida 32399-0100

As provided in s. 213.22(1), F.S., a technical assistance advisement may be issued to a taxpayer who requests an advisement relating to the exemptions in s. 212.08(1) or (2), F.S., at any time. “Technical assistance advisements shall have no precedential value except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement.”

REQUESTED RULING

You are requesting advisement regarding whether the sales of equestrian supplies, non-prescription medications, supplements, pesticides and wormers are exempt from sales tax sales tax under s. 212.08(2), F.S.

FACTS

As stated in your letter, you are an equestrian retailer with two locations in the State of Florida. Currently you do collect tax on the equestrian supplements and fly protection clothing, as they are non-prescription items. Specifically, you are requesting advice concerning the taxability of the following seven items:

1. Apple flavored XXXXX is a non-prescription FDA approved drug used for the treatment of worms and bots, large and small strangles, pinworms, roundworms, hairworms, neck threadworms, and large-mouth stomach worms in horses.
2. FDA approved non-prescription XXXXXX oral paste helps prevent gastric ulcers.
3. XXXXX by XXXXX is an equine joint supplement containing glucosamine, which works to fight against wear and tear on a horse’s joints.
4. XXXXX is an insect repellent containing five active ingredients and kills biting flies, mosquitoes, and ticks.
5. XXXXX is a fly repellent that repels horse flies, house flies, stable flies, deer flies, gnats, mosquitoes, and ticks.
6. XXXXX fly sheet that offers fly protection that’s cool and light. This is a strong polyester mesh that is strapped to the animal to offer additional protection from insects.
7. XXXXX is a mask that fits over the bridle to keep pests away from the horse’s face and ears.

LAW

Section 212.08(2), F.S., exempts the sale of medical products and supplies or medicine dispensed according to an individual prescription or prescriptions written by a prescriber authorized by law to prescribe medicinal drugs. As provided in Rule 12A-1.0215(3)(a), F.A.C.:

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.”

Over the counter non-prescription medications such as vitamins and wormers are exempt when sold to veterinary clinics or hospitals or licensed veterinarians. See Rule 12A-1.0215(4)(b), F.A.C. As provided in Rule 12A-1.0215(4)(e)2., F.A.C., 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.

Section 212.08(7)(d), exempts the sale of “feeds for livestock,” including racehorses. As provided in s. 212.02(29), F.S., “livestock” includes all animals of the equine class. Section 212.08(5)(a), F.S., exempts the sale of pesticides used directly on livestock.

As provided in s. 212.08(13), F.S., no transactions shall be exempt from the tax imposed by Chapter 212, F.S., except those expressly exempt herein.

CONCLUSION

Item numbers one and two, the non-prescription Apple flavored XXXXX and the non-prescription XXXXX are taxable since they are not 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 except when sold to veterinary clinics and licensed veterinarians. Item number three, the XXXXX by XXXXX, is a feed supplement and is exempt under s. 212.08(7)(d), F.S., as feed for livestock. Item numbers four and five, XXXXX and XXXXX, are both exempt as a pesticide under s. 212.08(5)(a), F.S. Item numbers six and seven, the XXXXX and the XXXXX are both taxable.

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

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Technical Assistance Advisement
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If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-7202.

Sincerely,

Richard R. Parsons
Tax Law Specialist
Technical Assistance & Dispute Resolution
(850) 717-7202

Record ID: 202421