



FLORIDA

Executive
Director
Leon M. Biegalski

August 10, 2017

SUMMARY

TAX: Sales and Use

TAA NUMBER: 17A-014

ISSUE: Whether the sale of prescription pet food is exempt from sales tax when sold in a pet store that has a veterinary clinic on the premises operating independently of the pet store.

STATUTE CITES: 212.08(2)(i), F.S.

QUESTION: Taxpayer questions whether the purchase of prescription pet food is exempt from sales tax when prescribed by a licensed veterinarian and purchased in a pet store that has a veterinary clinic on the premises operating independently of the pet store.

ANSWER: The exemption provided in Section 212.08(2)(i), F.S., applies only to therapeutic veterinary diets specifically formulated to aid in the management of illness and disease of a diagnosed health disorder in an animal available only from a licensed veterinarian. Since Taxpayer is not a licensed veterinarian, all sales of animal health foods that are not required by federal or state law to be dispensed by a prescription from a licensed veterinarian are taxable regardless of whether the product is prescribed by a licensed veterinarian.

Re: Technical Assistance Advise ment 17A-014
Sales and Use Tax
XXXXXXXX ("Taxpayer")
FEI #: XXXXXXXXXXX
Section 212.05 and 212.08, Florida Statutes (F.S.)
Rule 12A-1.0215, Florida Administrative Code (F.A.C.)

Dear XXXXXXXX:

This response is in reply to your letter to the Department, dated May 11, 2017, in which you are requesting the Department's issuance of a Technical Assistance Advise ment ("TAA") pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., concerning the taxability of animal health food sold by a "non-veterinarian retailer." 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://floridarevenue.com>
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.”

ISSUE

Whether the sale of therapeutic veterinary diets, formulated to address common medical conditions with pets, is exempt when sold by a “non-veterinarian retailer” on or by prescription from a licensed veterinarian.

FACTS

Taxpayer operates a chain of retail stores that sell pet supplies and offer pet services throughout the United States, Puerto Rico and Canada. As provided in your request for advisement, certain manufacturers of pet health animal food require that customers have a prescription from a licensed veterinarian in order to purchase the food. The prescription requirement is imposed by the manufacturers, independent of any federal or state law, as a measure to avoid enforcement and regulatory actions by the U.S. Food and Drug Administration, including mislabeling and false marketing. Where a manufacturer requires a prescription to purchase pet health animal food, Taxpayer will sell the food only if the purchaser has a prescription from his or her veterinarian, and in such instances, Taxpayer collects and remits sales tax on the product. Taxpayer asserts that since it is not a licensed veterinarian, the sale of animal health food is not exempt from sales tax.

LAW

As provided in Section 212.05, F.S., every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state. For the exercise of such privilege, a tax is levied on each taxable transaction or incident and is due and payable at the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state. As provided in Section 212.08(13), F.S., no transactions shall be exempt from the tax imposed by Chapter 212, F.S., except those expressly exempted therein.

Section 212.08(2)(i), F.S., states that the sale of “therapeutic veterinary diets specifically formulated to aid in the management of illness and disease of a diagnosed health disorder in an animal and which are only available from a licensed veterinarian are exempt from the tax imposed under this chapter.” (Emphasis added.)

As provided in Rule 12A-1.0215(6), F.A.C.:

- (a) Animal foods that are required by federal or state law to be dispensed only by a prescription are exempt from tax.
- (b) Animal foods which are therapeutic veterinary diets are exempt from tax. For the purpose of this rule, “therapeutic veterinary diets” means those animal foods that are specifically formulated to aid in the management of illness and disease of a diagnosed health disorder in an animal and which are only available from a licensed veterinarian.
- (c) Even when sold by a veterinarian, animal foods which are not required by federal or state law to be dispensed only by a prescription and animal foods that are not therapeutic veterinary diets are subject to tax.

Section 212.08(2)(a), F.S., provides an exemption for 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 defined in Rule 12A-1.0215(3)(a), F.A.C., “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.’ The animal health food at issue here is not a ‘prescription’ or ‘legend’ drug as defined in this rule.”

In construing statutory exemptions from tax, the Department must follow the fundamental rule of statutory construction established by the Florida Supreme Court, which mandates that exemptions from, or exceptions to, taxing statutes are special privileges granted by the legislature and must be strictly construed, "with any doubt being resolved in favor of the state." State v. Dickinson, 286 So. 2d 259 (Fla. 1974).

CONCLUSION

The exemption provided in Section 212.08(2)(i), F.S., applies only to therapeutic veterinary diets specifically formulated to aid in the management of illness and disease of a diagnosed health disorder in an animal available only from a licensed veterinarian. Since Taxpayer is not a licensed veterinarian, all sales of animal health foods that are not required by federal or state law to be dispensed by a prescription from a licensed veterinarian are taxable regardless of whether the product is prescribed by a licensed veterinarian.

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,

Technical Assistance Advisement
Page 4 of 4

we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

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

Sincerely,

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

Control Number: 213355