



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

floridarevenue.com

QUESTION: Is Taxpayer's rental of System subject to Florida Sales and Use Tax?

ANSWER: There is no specific exemption for System. Therefore, Taxpayer's rental of System would be subject to Florida Sales and Use Tax.

December 4, 2020

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Subject: Technical Assistance Advisement 20A-019

STATUTE CITE(S): Section 212.08, Florida Statutes (F.S.)

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

XXXXXXX ("Taxpayer")

FEIN: XXXXXXXX

BP#: XXXXXXXX

Dear XX XXXXXX:

This is in response to your letter dated July 25, 2019, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of Taxpayer's rental of an XXXXXXXX ("System"). An examination of your letter has established you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

Facts

In your letter you state that the Taxpayer is a XXX-XXX XXXXX XXXXXXXXXXXX accredited hospital operating in XXXXXXXX XXXXX XXXXXXXX. Your letter states that the System is used to analyze blood. In an email, dated August 22, 2019, you corrected this assertion by stating that the System analyzes both blood and urine.

According to the invoice you provided, Taxpayer is renting the System from XXXXXXXX ("Lessor"), and Lessor is charging the Taxpayer Florida Sales Tax on the rental of the System each month.

You also provided that the System is defined as:

A mains electricity (AC-powered) laboratory instrument intended to be used for the qualitative and/or quantitative in vitro determination of chemical and/or biological markers (e.g., drug, hormone, microbial toxin) in a clinical specimen, using an immunological method that utilizes a chemiluminescent detection system together with sample processing, data processing and/or data display software. The device operates with minimal technician involvement and complete automation of all procedural steps.

Marketing material you provided shows photographs of the System as a countertop piece of equipment. It is much larger than a computer desktop sitting next to it (if a computer screen is approximately 18 inches across, the System appears to be three times longer). The System appears in another photograph with two male technicians. The System sits on a countertop and appears to be about the same height as the distance between the technicians' waists and shoulders. Another shows the System with one male technician standing in front of the system. This photograph appears to show the System is comparable in height to that distance between the technician's waist and eyes.

The marketing material also provides that the System can perform "up to 180 tests/hour throughput" and "400-test walkaway capacity" among other features that will increase the productivity and operational efficiencies of the customer.

The Department has learned the following:

- The U.S. Food and Drug Administration regulates things such as the test kits and devices at issue here under the Federal Food, Drug, and Cosmetic Act.
- The System can be found at the FDA's website at:
XXXXXXX
- By way of comparison, an exempt item listed in the Rule at issue (A Thyroid Stimulating Hormone (TSH) test kit) can be found at the FDA's website at:

<https://accessgudid.nlm.nih.gov/devices/20816467020086>

- XXXXXXXX XXXXX XXXX System as "an immunoassay test instrument for mid-volume labs." This website indicates that System's sample types are "serum, plasma, and urine." [emphasis added]

Requested Advisement

Is the Taxpayer's rental of the System, as described above, subject to Florida sales and use tax?

Statute and Rule

Section 212.08, F.S., provides, in pertinent part:

The sale at retail, the ***rental***, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(2) EXEMPTIONS; MEDICAL-

(a) chemical compounds and test kits used for the diagnosis or treatment of human disease, illness or injury...

Emphasis added

Rule 12A-1.020(7), F.A.C., states, in pertinent part:

(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:

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; ...

Emphasis added.

Discussion

The rules of statutory construction are inapplicable here because Section 212.08(2)(a), F.S., is clear and unambiguous; however, it should be pointed-out that Florida courts have consistently held that exemptions must not be expanded beyond their express terms and must be strictly and narrowly construed against the taxpayer. State Department of Revenue v. Anderson, 403 So.2d 397, 399 (Fla. 1981); Green v. Pederson, 99 So.2d 292, 296 (Fla. 1957); Asphalt Pavers, Inc. v. Department of Revenue, 584 So.2d 55, 57 (Fla. 1st DCA 1991).

Section 212.08(2)(a), F.S., provides an exemption for **test kits**. Under an analysis of plain and ordinary language or referring to such sources as the FDA website, the System is not a test kit. Merriam-Webster's dictionary defines "kit" as follows: "1a(1) : a collection of articles usually for personal use ..." <https://www.merriam-webster.com/dictionary/kit> This should conclude our analysis of the question of whether or not the System is exempt from Florida Sales and Use Tax.

Assuming there was any ambiguity in the term "test kits," it would have to be interpreted narrowly and as an exception in light of the other exemptions it is listed with – none of which include the kind of immunoassay system like the System described here. Rule 12A-1.020(7)(a)5., F.A.C., provides a specific exemption from Florida Sales and Use Tax on the sale or rental of "blood analyzers."

1. Although Rule 12A-1.020(7)(a)5., F.A.C., uses the term "blood analyzer," that term must be read in the context of the entire rule (which provides that **test kits** are exempt from Florida Sales and Use Tax) and carries out the intent of the Legislature in Section 212.08(2)(a), F.S. (that only **test kits** are exempt from Florida Sales and Use Tax).
2. The Department does not view the System as described to be a "blood analyzer" that would be exempt from Florida Sales and Use Tax because the System, while it may analyze blood, does not fall into the larger and qualifying category of a **test kit**.
3. The System is a laboratory instrument that analyzes more than blood. It also analyzes urine. Therefore, the System would not be a blood analyzer, as it does not strictly analyze blood.

Conclusion

Taxpayer's rental of the System is not exempt from Florida Sales and Use Tax.

This response constitutes a Technical Assistance Advisement under section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in section 213.22, F.S. Our response is predicated on those facts and

the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than that expressed in this response.

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

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

Sincerely,

Leigh L. Ceci

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

Record ID: XXXXXXXXX

cc: XXXXXX
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