

Jan 27, 2003

Re: Technical Assistance Advisement 03A-003

Sales and Use Tax - Sales to Dental Labs

Section: 212.08, F.S.

Rules: 12A-1.020, 12A-1.021, F.A.C.

Petitioner: XXX (herein "Taxpayer")

FEI: XX

Dear:

This letter is a response to your petition dated December 3, 2002, for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced party and matter. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

FACTS

The petition sets forth the following facts:

[Taxpayer] is in the business of developing, manufacturing and selling dental and dental laboratory products.

[Taxpayer] is located outside the state of Florida, but sells to customers within the state of Florida, and has nexus with Florida. Therefore, [Taxpayer] is required to collect applicable [sales and] use tax from Florida customers. Most of [Taxpayer]'s products that are sold to dental laboratories become a component part of the dentures, dental crowns, bridges, and other products manufactured by the dental labs for sale to dentists. A few products, such as impression material and composites, are purchased by the dental labs for resale to dentists without any change in form.

The following is a list of the [Taxpayer]'s products that are sold to dental labs:

ALLOYS - metals that are used to make the framework or structure that is the base for a dental crown, cap or bridge. These alloys can be made of a combination of precious metals, mostly a gold and palladium mixture, or of non-precious metals, such as nickel or chrome-cobalt. In

some cases, the [Taxpayer] will sell the precious metal in its pure form to dental laboratories for specific applications.

PORCELAIN - material that is applied as a veneer over the metal base of a dental crown, cap or bridge.

COMPOSITES - materials that are used to manufacture bridges, crowns, inlays, etc. (Note: This should not be confused with composites [that] are used by dentists to cement dental work or as a chair-side restorative.)

IMPRESSION MATERIAL - this is used by a dentist or doctor to take an impression of the patient's mouth. From the impression a working model is produced to simulate the patient's upper and lower teeth.

DENTAL OFFICE MATERIALS - Laboratories will rarely purchase dental office composites, impression materials, or bonding agents [that] will then be resold to dentists without a change in form.

The sale of all of the above items by [Taxpayer] is subject to federal regulation by the Food and Drug Administration ("FDA"). Under section 21 of Code of Federal Regulations, these devices must bear the language "Caution: Federal law restricts this device to sale by or on the order of a dentist". See 21 C.F.R. 801.109 for this application.

Under proposed rules, currently being treated as FDA regulations by the FDA, this statement can be reduced to "Rx Only".

[Taxpayer] also sells relatively small amounts of supplies to the labs, such as abrasives, which are used by [Taxpayer]'s customers in manufacturing the dental crowns and other dental products, etc. Machinery and equipment are also sold to the dental labs. [Taxpayer] intends to charge the dental labs use tax on the sale of such items.

REQUESTED ADVISEMENT

Advice is requested on the taxability of the various products and proper documentation required for exempt sales.

LAW AND DISCUSSION

Section 212.08(2), Florida Statutes, provides in part:

(2) EXEMPTIONS; MEDICAL.

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

(f) Sales of drugs to or by physicians, dentists, veterinarians, and hospitals in connection with medical treatment are exempt.

Rule 12A-1.020(6)(a), Florida Administrative Code, provides:

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

1. Temporarily or permanently incorporated into a patient or client by a practitioner of the healing arts licensed by the State of Florida.
2. Ordered and dispensed by or on the prescription of a duly licensed practitioner authorized by the laws of the state to prescribe medicinal drugs; or
3. Ordered and dispensed by a pharmacist pursuant to the established dispensing procedures determined by the joint committee of medical, osteopathic and pharmacy professions as created by section 465.186, F.S.

Rule 12A-1.021(1)(b), Florida Administrative Code, provides in part:

... *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).

The purchase by a dentist or a dental lab of raw materials that will become component parts of medical or dental products that will in turn be dispensed to a healthcare patient by a healthcare practitioner is exempt from tax. One-time use products, such as dental impression materials, that contain the FDA warning "Rx-Only" would be included within this category.

Such sales to licensed dental labs (and to licensed dentists) would require no further documentation when the medical product being sold is subject to federal regulation or is an "Rx-only" product. These one-time use products that contain the "Rx-Only" labeling would be product specific exempt, and the vendor would not be required to obtain a resale certificate or affidavit.

For sales of medical products that are to be resold, and which are not "Rx-only", to dental labs and dentists who are registered for sales and use tax purposes, a copy of their Annual Resale Certificate should be obtained. For sales of non-Rx materials to unregistered dental labs and unregistered dentists, an affidavit should be obtained which states that the specified products will be incorporated into a patient pursuant to a doctor's orders and are therefore exempt from tax pursuant to section 212.08(2), Florida Statutes. Form DR-97, titled "Suggested Format for Blanket Exemption Certificate Based on Property's Use," may be used if Taxpayer used the space marked "Other" to insert the justifying language. This form is available on the Department's web site, www.myflorida.com/dor.

Sales to dental labs and dentists of equipment and consumable supplies are not exempt from tax, and the vendor should collect tax from the customer.

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 upon 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 from that which is 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.

Sincerely,

Sara D. Faulkenberry

Tax Law Specialist

Technical Assistance and Dispute Resolution

850/414-9838

Control #52951