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DEPARTMENT OF REVENUE
RULE DEVELOPMENT WORKSHOP
RULES 12A-1.002, 12A-1.015, 12A-1.020
12A-1.0205, 12A-1.021, 12A-1.097

DATE: Monday, May 19, 2008
TIME: Commenced at 10:09 a.m.
Concluded at 11:03 a.m.
LOCATION: 501 South Calhoun Street
Carlton Building, Room 118
Tallahassee, Florida

* * *

REPORTED BY
MICHELLE SUBIA
REGISTERED PROFESSIONAL REPORTER

1 DEPARTMENT PANEL PARTICIPANTS APPEARING:

2 LARRY GREEN
3 JANET YOUNG
4 GARY GRAY

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CERTIFICATE OF REPORTER

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1 PROCEEDINGS

2 MR. GREEN: Good morning. My name is Larry
3 Green, I am a Tax Law Specialist with the
4 Executive Support Program in the Department of
5 Revenue, and I will be the workshop moderator
6 today. My role as moderator is to preside in a
7 neutral fashion at this workshop. It does not
8 include addressing substantive issues.

9 At this time, I would like the other members
10 of the Department of Revenue to introduce
11 themselves, starting with the gentleman on my far
12 left.

13 MR. GRAY: Gary Gray, Program Administrator,
14 Technical Assistance and Dispute Resolution.

15 MR. GREEN: Thank you.

16 MS. YOUNG: Janet Young, Tax Law Specialist,
17 Technical Assistance and Dispute Resolution.

18 MR. GREEN: Thank you. This is a rule
19 workshop held pursuant to Section 120.54(2) of the
20 Florida Statutes. It's held for the purpose of
21 informing and discussing with interested parties
22 the preliminary text of the following proposed
23 rule amendments noticed in the April 11th, 2008
24 edition of the Florida Administrative Weekly,
25 specifically Volume 34, Number 15, Pages 1965

1 through 1972.

2 The rules that we'll consider this morning or
3 that were noticed are Rule 12A-1.002,
4 Practitioners of the Healing Arts; Rule 12A-1.015,
5 Industrial Gases; Rule 12A-1.020, Licensed
6 Practitioners, Drugs, Medical Products and
7 Supplies, and Prosthetic and Orthopedic
8 Appliances; Rule 12A-1.0205, Veterinary Sales and
9 Services; Rule 12A-1.021, Prosthetic and
10 Orthopedic Appliances; and Rule 12A-1.097, Public
11 Use Forms.

12 The format for this workshop is informal and
13 the following procedure will be used for receiving
14 your verbal comments today. Is there anyone here
15 who has an interest, first of all trying to
16 separate out what rules we don't need to discuss
17 today, anyone who has an interest in proposed
18 Rule 12A-1.002, because we'll come back to it?
19 I'm just trying to figure out what rules you have
20 an interest in.

21 (No response.)

22 MR. GREEN: Okay. Well, we can probably skip
23 that one today.

24 What about Rule 12A-1.015, do we need to
25 cover that today?

1 (Affirmative response.)

2 MR. GREEN: All right, we do have someone.

3 Rule 12A-1.020, any participate want to cover it?

4 (Affirmative response.)

5 MR. GREEN: All right. What about

6 Rule 12A-1.0205?

7 (Affirmative response.)

8 MR. GREEN: Thank you. Anyone interested in

9 Rule 12A-1.021?

10 (No response.)

11 MR. GREEN: And the final rule, the public

12 use forms rule, 12A-1.097, is anybody going to

13 want to discuss that rule today?

14 (No response.)

15 MR. GREEN: Okay.

16 MR. GRAY: Larry (indicating.)

17 MR. GREEN: Yes.

18 MR. LaFACE: I did want to discuss that rule.

19 MR. GREEN: Oh, the forms rule?

20 MR. LaFACE: Yes.

21 MR. GREEN: Thank you, Mr. LaFace.

22 Okay. What we're going to do is technical

23 staff in a few minutes will present either the

24 entire rule or just those provisions for which

25 someone indicates an interest, then we'll open the

1 floor for comments or discussions regarding the
2 proposed rule provision, okay?

3 When you do comment -- and this is so we can
4 establish an adequate record -- please state your
5 name and who you represent, and we would ask that
6 you do that every time you comment for at least a
7 while until our court reporter learns who you are,
8 okay?

9 In that regard, if you have not already
10 signed in on the sign-in sheet provided, please do
11 so either now or before you leave today. If you
12 do not already have a copy of these proposed rule
13 amendments, please let me know now and I will
14 provide a copy of the proposed rules to you.

15 Does anyone need a copy of the proposed
16 rules?

17 (No response.)

18 MR. GREEN: Okay. Are there any questions
19 regarding the procedure that we are going to use
20 today?

21 MR. HOLCOMB: Yes.

22 MR. GREEN: Yes, Mr. Holcomb.

23 MR. HOLCOMB: Mark Holcomb with Madsen,
24 Goldman & Holcomb. Is there any change in the
25 draft that's distributed at the workshop from that

1 which was published in the Administrative Weekly?

2 MS. YOUNG: No.

3 MR. GREEN: All right. Is that sufficient?

4 MR. HOLCOMB: Yes, thank you.

5 MR. GREEN: All right. Before we begin
6 presenting the rule changes, is there anyone who
7 wishes to submit written comments regarding these
8 proposed rules?

9 We do have one submission, a copy of which
10 we're going to give to the court reporter. It is
11 from Capital City Consulting, Mr. Ron LaFace,
12 there is the written comments.

13 All right. At this time, I would like Janet
14 Young to present those proposed rules for which
15 there was an interest indicated today. Let me go
16 back to my notes. I think the first one is
17 12A-1.015.

18 MS. YOUNG: Yes.

19 MR. GREEN: All right.

20 MS. YOUNG: 12A-1.015, industrial gases, this
21 rule was proposed to be repealed. It removes
22 applications of tax on certain gases that are
23 redundant of other administrative rules.
24 Provisions for compressed medical gases and
25 medical oxygen are included in the proposed

1 amendments to Rule 12A-1.020.

2 MR. BEDONIE: I have a question.

3 MS. YOUNG: Glenn.

4 MR. BEDONIE: Glenn Bedonie with Ryan. It
5 seems to me that by repealing that provision of
6 the rule that you're narrowing the exemption when
7 you're talking about compressed oxygen and
8 compressed medical gases. I think the current
9 rule basically says industrial gases used for
10 medical purposes are exempt.

11 I would like to just advance one argument
12 that hospitals generally are there to provide
13 medical services, they buy natural gas, which I
14 would suggest to you is an industrial gas that
15 doesn't have to be compressed. And there may be
16 an argument that natural gas used to heat
17 hospitals are in fact exempt under the current
18 rule.

19 MS. YOUNG: As a gas for medical purposes, is
20 that what you're --

21 MR. BEDONIE: Yes.

22 MS. YOUNG: Because the current
23 Rule 12A-1.01(5) says gases used for medical or
24 therapeutic purposes are exempt. So you're saying
25 natural gas used by hospitals are exempt?

1 MR. BEDONIE: I'm just suggesting to you an
2 argument that hospitals are there for medical
3 purposes and they use natural gas in fulfilling
4 those medical purposes by heating the building.

5 MS. YOUNG: Can you refer us to any statutory
6 provision?

7 MR. BEDONIE: I'm sorry?

8 MS. YOUNG: Can you refer us to any specific
9 statutory provision?

10 MR. BEDONIE: I'm just reading it literally.

11 MS. YOUNG: Okay.

12 MR. GREEN: Further comments on
13 Rule 12A-1.015?

14 (No response.)

15 MR. GREEN: Okay. Hearing none, we'll go to
16 the next one, I believe that is Rule 12A-1.020.

17 MS. YOUNG: This Rule 12A-1.020 is a
18 substantially reworded rule. It's been
19 reorganized for simplicity and clarification.
20 We've separated the two rules, one for human
21 medical products and services, devices. We've
22 also included orthotic and prosthetic items that
23 were currently in Rule 12A-1.021. We've combined
24 those two rules.

25 And then in addition in this proposed rule

1 making, we've created a new Rule 12A-1.0205 for
2 veterinary sales and services, and we've kind of
3 separated this out and hopefully made it a little
4 simpler for our veterinarians and those
5 veterinarian hospitals and clinics.

6 12A-1.020, the first section, Section (1)
7 just provides the scope of the rule that I just
8 discussed. Do we have any questions on
9 Subsection (1)?

10 Yes, Mark.

11 MR. HOLCOMB: Mark Holcomb with Madsen,
12 Goldman & Holcomb. On (1)(a) -- and this is
13 repeated in (3)(a) -- Janet, as we had discussed
14 previously, I think there needs to be a
15 clarification as to whether or not the wording of
16 the proposed rule includes hospitals as licensed
17 practitioners because the use of the phrase
18 "hospitals, physicians, dentists, and other
19 licensed practitioners" implies that everything
20 that precedes "other" are also licensed
21 practitioners.

22 And I think, as I said, that's also in
23 (3)(a). Yet in (2)(c), (3)(c) and (6)(d), it
24 seems as though the department's presenting
25 hospitals in the disjunctive from licensed

1 practitioners, so it's hospitals and licensed
2 practitioners. So there probably should be some
3 clarification made in (1)(a) and (3)(a) just to
4 make clear whether the department's considering
5 hospitals to be licensed practitioners or not.

6 MS. YOUNG: Okay. So your point is by
7 putting that phrase together, that it appears that
8 a hospital is a licensed practitioner?

9 MR. HOLCOMB: Right, the use of the term
10 "other."

11 MS. YOUNG: So grammatically we need to look
12 at clarifying that language. Thank you, Mark.

13 The next section is Subsection (2) dealing
14 with licensed practitioners. In this section, we
15 define the licensed practitioner, we also define
16 the term "prescription" based on the statutory
17 definition in Section 212.08(2).

18 And we provide that hospitals and licensed
19 practitioners are required to pay tax at the time
20 of purchase of taxable items for services that are
21 consumed in providing medical services. And we
22 refer you over to Rule 12A-1.038, if you hold a
23 valid consumer certificate of exemption issued by
24 the department.

25 MR. GREEN: Yes, Mr. LaFace.

1 MR. LaFACE: Ron LaFace representing the
2 Florida Association of Orthotists and
3 Prosthetists. We believe in Section (2), the
4 Part (b) dealing with prescription needs to be
5 clarified to show that it is not -- that there are
6 other types of prescriptions that -- it says for
7 the purposes of this rule, the term "prescription"
8 includes, but that is not an exhaustive list of
9 prescription.

10 I believe a literal reading of the statute
11 shows that in other sections where the statute
12 defines for the purpose of this section what items
13 mean, they mean that to be exhaustive. But when
14 they go to prescription, they just state that a
15 prescription includes the following provisions
16 which you must have in the rule. So it's not
17 meant to be an exhaustive list.

18 And the reason for that is because there are
19 many prescriptive devices, prescriptive drugs that
20 are not necessarily dispensed by a pharmacist
21 pursuant to a written prescription. Orthotists
22 and prosthetists all dispense and make custom
23 orthotic and prosthetic devices pursuant to a
24 written prescription, but there is no pharmacist
25 involved in that.

1 So I would ask that you add a section to the
2 term "prescription" to just show that this is not
3 an exhaustive list of what a prescription means
4 for the purpose of this rule.

5 MS. YOUNG: Okay. We're going to look at the
6 statutory definition and your comment and look at
7 those and consider those comments. We do
8 understand.

9 MR. LaFACE: Okay. And you do see the point
10 in the exemption, the medical exemption for the
11 purposes of this Section (1), (2) and (3) all
12 state that these items mean this, and when you go
13 to the prescription section, it just says
14 prescription includes.

15 MS. YOUNG: Correct.

16 MR. LaFACE: Which I think is an integral
17 part of the interpretation.

18 MR. BAYO: My name is Edwin Bayo. I'm here
19 on behalf of the Florida Veterinary Medical
20 Association. But I just as a point of
21 clarification would also point out that drugs and
22 municipal supplies are sometimes dispensed by
23 doctors that have a license as a prescriber
24 practitioner, so there is actual dispensing going
25 on but not through a pharmacy but instead through

1 a licensed doctor who has a prescriber
2 practitioner license. So that's the reason why
3 "intended to be dispensed by a pharmacist" might
4 be a little too limiting.

5 MS. YOUNG: Okay.

6 MR. GREEN: Thank you.

7 MR. LaFACE: And I would like to add a little
8 bit on that I think because there is a further
9 exemption in the medical exemptions dealing with
10 sales of drugs to or by physicians. In the rule,
11 you interpret that to include the dispensing also.
12 But I would think that the dispensing would be
13 under the additional types of prescriptions
14 because the -- and I'm pointing at (f) where it
15 says "sales of drugs to or by physicians are
16 exempt."

17 But when a prescribing physician dispenses in
18 his office, he's not necessarily selling that
19 drug, he just has a dispensing -- he has the
20 authority to dispense that drug or dispense that
21 orthotic device, which orthopedic surgeons do, but
22 he's not necessarily selling that to them.

23 In some cases, health insurers will bill the
24 manufacturer of the drug or device directly
25 through their formulary but the doctor will just

1 have these on stock. So I don't think that (f)
2 necessarily gets to the comment that was raised
3 that it would need to be included under the
4 prescription section.

5 MS. YOUNG: Okay. We're going to look at
6 this section and those statutory provisions, and
7 clearly we need to provide some clarity here, and
8 we will see the best way to do that.

9 MR. LaFACE: Thank you.

10 MR. GREEN: Thank you. Do we have other
11 comments on Rule 12A-1.020?

12 MR. HOLCOMB: On the whole rule?

13 MR. GREEN: You haven't finished going
14 through it?

15 MS. YOUNG: No. We've done Subsection (1)
16 and (2), and now we're going to move on to
17 Subsection (3), if everyone's ready, on medicines
18 and drugs. And I understand some of this stuff
19 overlap the sections.

20 We're going to talk about medicine and drugs,
21 the sale or use of medicine and drugs, including
22 samples. And here again, we have the "to or by
23 hospitals, physicians, licensed and other
24 practitioners in connection with medical treatment
25 are exempt." Those will be labeled with the "Rx

1 only" or the other federal warning which says
2 "Caution: Federal law prohibits dispensing
3 without prescription." Those are drugs and
4 medicines that are dispensed in that manner is
5 what we're talking about here.

6 Paragraph (b) talks about opaque drugs and
7 other x-ray drugs that are used in connection with
8 medical x-rays for treatment of human bodies are
9 exempt.

10 MR. LaFACE: Ron LaFace again. And I just
11 renew my comment that I made on the previous
12 section on the dispensing. I would submit that
13 dispensing by a physician and selling a drug by a
14 physician are two separate items, and that's why
15 the pharmacist provision in the previous section,
16 that a prescription has to go through a pharmacist
17 is too limited.

18 MS. YOUNG: Okay. We'll also look at this
19 section when we're considering that.

20 Is that it on Subsection (3), medicines and
21 drugs?

22 (No response.)

23 MS. YOUNG: Subsection (4), medical gases,
24 compressed medical gases and medical oxygen in
25 compliance with provisions of 21 Code of Federal

1 Regulations, Parts 200 to 299, and Rule 64F-12.007
2 are exempt. Those are provisions that are used to
3 govern the dispensing of compressed medical gases
4 and medical oxygen. And those that are required
5 to have the federal labeled Rx or the other
6 federal warning label are used to be described as
7 a prescription drug or medicine.

8 For clarity purposes, we provided the charge
9 for filling or refilling tanks containing
10 compressed air or nitrox to be used for scuba
11 diving is subject to tax.

12 (No response.)

13 MS. YOUNG: We'll move on to Subsection (5),
14 common household remedies, cosmetics, toilet
15 articles, and hygiene products. We provide
16 consistent with Section 212.08(2), that common
17 household remedies recommended and generally sold
18 for internal or external use that are on a list
19 prescribed and approved by the Department of
20 Health are exempt.

21 These items are contained on Form DR-46NT,
22 nontaxable medical and grocery list. We provided
23 a copy of those items to you. The Department of
24 Revenue worked with the Department of Health in
25 updating a more comprehensive list.

1 This section also defines the terms
2 "cosmetic, toilet articles" to distinguish those
3 from tax exempt common household remedies. This
4 section also provides that personal hygiene
5 products are subject to tax except when they're
6 dispensed pursuant to a prescription by a licensed
7 practitioner. Contraceptive products are taxable
8 unless those items are dispensed pursuant to a
9 prescription by a licensed practitioner.

10 We also provide information that if anyone
11 has an item that they would like for us to take a
12 look at, you can submit a written description of
13 the product and submit that to the Department of
14 Revenue at the address we provided.

15 If anyone needs a copy of the DR-46NT, that
16 is provided for you.

17 (No response.)

18 MS. YOUNG: Seeing no comments, we'll move on
19 to Subsection (6), medical products, supplies, or
20 devices. We define those that are intended to be
21 used for a medical purpose to treat, prevent, or
22 diagnose human disease, illness, or injury. The
23 purpose is assigned to a product, supply, or
24 device by its label or its general instructions
25 for use. It provides those that are dispensed

1 according to an individual prescription by a
2 licensed practitioner are exempt. The sale of
3 medical products, supplies, or devices to
4 hospitals and to practitioners unless those are
5 specific exempt items in Section 212.08(2) are
6 taxable. We provide a list of items.

7 In Paragraph (d) of Subsection (6), we
8 provide that medical products, supplies, or
9 devices sold to hospitals, health care entities or
10 licensed practitioners exempt when they contain a
11 federal warning "Rx only" or "Caution: Federal
12 law restricts this device to sale or by the order
13 of a designated health practitioner authorized to
14 use the device." And the device must be used for
15 a single patient and it's not intended to be
16 reusable.

17 We apply this to medical trays that contain
18 taxable items and tax exempt items, that those
19 trays that contain that warning are exempt. We
20 provide that no exemption certificate is required
21 to be obtained by the selling dealer when
22 purchasing these items that bear the required
23 prescription label. The selling vendor is
24 required to maintain documentation in the records
25 that the medical product that was sold did contain

1 the required federal warning.

2 Paragraph (e) provides that medical products,
3 supplies, and devices that are temporarily or
4 permanently incorporated into a patient are
5 exempt, and we provide the method by which these
6 items may be purchased tax exempt and using an
7 exemption certificate and provide a suggested
8 exemption certificate.

9 Any comments on this section?

10 MR. HOLCOMB: Yes.

11 MS. YOUNG: Mark.

12 MR. HOLCOMB: Mark Holcomb. On (6)(d)2, it
13 says that the medical tray contains an item that
14 when sold separately is subject to tax. And I'm
15 sure the department doesn't mean to limit that to
16 a single item that may be on that tray. I think
17 the intent here is if it's federally labeled
18 single patient use it's exempt.

19 So what I would ask the department to do is
20 clarify that and say that medical tray contains
21 one or more items that when sold separately would
22 be subject to tax so that there could be a couple
23 of things on the tray that otherwise would be
24 subject to tax but because they're on the tray
25 that's federally labeled and single patient use,

1 the whole tray remains exempt.

2 MS. YOUNG: So we need to provide clarity
3 there. Thank you.

4 MR. HOLCOMB: Do you want me to continue
5 or --

6 MS. YOUNG: Continue, yes.

7 MR. HOLCOMB: Okay. There seems to be
8 overlap between (6)(d), (6)(e) and (8). It's kind
9 of like a Venn diagram, if you remember from back
10 in school, where you have circles that may overlap
11 in certain areas, and there may be items that are
12 federally labeled single patient use. There are
13 also medical devices incorporated into a patient,
14 and they may also be listed as a prosthetic and
15 orthopedic device.

16 One example would be pacemakers. And I see
17 the department has taken that off the NT, but
18 under the current NT it's on there. So a
19 pacemaker could be (6)(d), could be (6)(e), could
20 also be (8). And the question comes up, well, is
21 the vendor going to be requiring an exemption
22 certificate for an item like a pacemaker or
23 artificial noses and ears would also fall into all
24 three categories, and that's under the current
25 revised form of the NT.

1 Under (6)(d), no exemption certificate is
2 required, and that's fine. Under (8), no
3 exemption certificate is required and that's fine.
4 But what if the vendor is looking at (6)(e) and
5 says, well, I think this is, you know, a medical
6 device, supply, or product that's incorporated in
7 the human body and the rule says an exemption
8 certificate is required and I'm requiring an
9 exemption certificate from you, the purchaser of
10 those items?

11 We think that's an administrative burden on
12 the sellers and we think it's an administrative
13 burden on the purchasers of those items that is
14 unnecessary. If an exemption certificate is not
15 required under the more specific provisions of
16 (6)(d) and (8), then there shouldn't be a
17 catch-all category under (6)(e) under which these
18 vendors are requiring exemption certificates.

19 So we would ask that the department in (6)(e)
20 insert language saying something to the effect of
21 except as otherwise provided in (6)(d) or (8). In
22 other words, unless your item is covered under one
23 of those provisions, then you've got to get an
24 exemption certificate under (6)(e) because it's a
25 medical device, appliance, et cetera, incorporated

1 into the human body.

2 So we would ask that there just be clarity in
3 the rule so that taxpayers and vendors and buyers
4 aren't out there unnecessarily getting exemption
5 certificates when they don't have to, because it
6 is a burden for record keeping in large operations
7 over an extended period of time to be maintaining
8 all of that documentation. I just think it's
9 unnecessary, it's unworkable, and the department
10 ought to provide that type of clarification.

11 MS. YOUNG: Are you familiar with how vendors
12 are documenting these items today, the sale of
13 these items?

14 MR. HOLCOMB: I can't speak to how the
15 vendors are documenting them today. I don't know
16 that there is a -- I didn't find a requirement for
17 any exemption certificate in the statute or the
18 rule, and I think that, you know, raises a
19 potential question of where is that requirement
20 coming from. But I don't know how vendors are
21 documenting those today.

22 I think it's accepted that the federally
23 labeled single patient use items are exempt and no
24 certificates are being required. The same with
25 the prosthetic and orthopedic devices, that no

1 certificate is being required.

2 I mean, I guess I should ask that question,
3 where is that exemption certificate requirement
4 coming from?

5 MS. YOUNG: It would be the specific
6 exemption, the authority given to the department
7 to allow us to use a certificate exemption to
8 document the sale of exempt items.

9 MR. HOLCOMB: So it's the general --

10 MS. YOUNG: General.

11 MR. HOLCOMB: Okay.

12 MS. YOUNG: Because as with the federal
13 warning, the Rx label and documentation to see
14 that, you know, we can see that and wouldn't need
15 to require that additional documentation. Here
16 there would be no distinguishing between whether
17 that item was sold to be used to be temporarily
18 incorporated or not into a patient.

19 So you've got -- the vendors are going to
20 need some way to document this tax exemption
21 because there are common items that are used in
22 that manner, that's why we suggested the exemption
23 certificate.

24 MR. HOLCOMB: Right. It seems to me it's a
25 broad category, that it's kind of a catch-all, all

1 encompassing, that subsumes within it (6)(d) and
2 (8).

3 MS. YOUNG: Right.

4 MR. HOLCOMB: Which probably is not intended.

5 MS. YOUNG: Okay.

6 MR. GREEN: Mr. LaFace.

7 MR. LaFACE: Never mind.

8 MR. GREEN: He no longer has a comment.

9 MR. HOLCOMB: Can I ask one other question,
10 I'm sorry?

11 MS. YOUNG: Sure.

12 MR. HOLCOMB: Just for purposes of clarity,
13 on (6)(e) is there something in particular that
14 the department is trying to capture there that
15 would not already be captured under (6)(d) or (8)?

16 MS. YOUNG: Yes. There's an exemption,
17 specific exemption in Paragraph 212.08(2)(g),
18 that's the specific exemption we're trying to
19 capture.

20 MR. HOLCOMB: Okay. I mean, are there
21 specific items though that we could help the
22 department address or is that not a quantifiable
23 list?

24 MS. YOUNG: It's not a quantifiable list. I
25 believe in the past -- and Gary might want to help

1 me here -- is we've dealt with items that are used
2 by dentists for specific metals for fillings where
3 they're not required to be federally labeled, they
4 are purchased as a raw material that are used by
5 dentists, you know, to fill a cavity or to make a
6 crown and those kinds of items, and that's what
7 we've suggested is to issue a suggested exemption
8 certificate.

9 Do you have anything else, Gary?

10 MR. GRAY: It's the first thing that came to
11 my mind too.

12 MS. YOUNG: That's the most common use, and
13 that's the issue we're trying to address here.
14 And that may have changed, you know, the Florida
15 law may have changed. I know the legislature
16 looked at it this session. Whether they made any
17 progress with that issue, I can't tell you.

18 MR. HOLCOMB: Okay. Thank you.

19 MS. YOUNG: No more comments on
20 Subsection (6)?

21 (No response.)

22 MS. YOUNG: Subsection (7), chemical
23 compounds and test kits. This section deals with
24 those that are used to diagnose or treatment of
25 human illness, disease, or injury. The DR-46NT,

1 the form that we have provided in the past and
2 we'll continue to provide, we've taken that list
3 and updated it with those items that are currently
4 on the market and provided a more comprehensive
5 list.

6 We've also added chemical compounds and test
7 kits that are not used to diagnose or treat human
8 illness, disease, or injury and that are subject
9 to tax, we've provided a list of those in the
10 rule.

11 Any comments on any one of these test kits?

12 (No response.)

13 MS. YOUNG: Subsection (8) deals with
14 prosthetic and orthopedic appliances. It provides
15 a statutory definition of what an orthopedic or
16 prosthetic appliance is. There's specific
17 exemptions for artificial eyes, artificial limbs,
18 crutches, dentures, and hearing aides.

19 In addition to those exemptions, the
20 prosthetic and orthopedic appliances that are
21 prescribed and approved by the Department of
22 Health and certified to the Department of Revenue
23 do not require an exemption certificate to qualify
24 for an exemption, those items are also listed on
25 the DR-46NT. And we worked with the Department of

1 Health and updated that list as well.

2 Paragraph (c) provides that prosthetic and
3 orthopedic appliances are exempt when they are
4 sold or dispensed pursuant to an individual
5 prescription written by a licensed physician under
6 the chapters that we have designated.

7 When a licensed physician prescribes an item
8 to a patient that qualifies as a prosthetic or
9 orthopedic appliance, the physician must indicate
10 on the prescription the medical use of the item or
11 the medical condition that will be improved
12 through the use of the item. And here again, we
13 have offered to the public anyone who has a
14 question about a specific product can send us
15 information on that product and ask for a
16 determination of the taxability of that item.

17 Ron, do you have a comment?

18 MR. LaFACE: Ron LaFace again. I'm looking
19 at the items on the approved list from the
20 Department of Health that do not require a
21 prescription, and I'm wondering what criteria is
22 used to add items to that list. I'm looking
23 specifically at batteries for use in prosthetic
24 and orthopedic appliances.

25 Is that just a list that the Department of

1 Health sends over with certain items?

2 MS. YOUNG: We worked together on that list.
3 We tried to look at the products that are
4 available currently -- it's been quite some time
5 since this list has been updated -- to try to
6 update that list. The last time that list was
7 updated was in 1987. Obviously things have
8 changed in the medical industry. And also the law
9 has changed too.

10 Now we have items that are specifically
11 exempt that prior to the law change they were
12 contained in the DR-46 as a tax exempt item, now
13 they are specifically exempt. For instance, an
14 artificial limb, we used to have those on the list
15 and now they're specifically exempt.

16 And obviously we've tried to include, you
17 know, a broader category of items in that. And
18 they worked with us on those items and looked at
19 several items that are now available, whether they
20 would qualify based on the criteria in the
21 statute.

22 MR. LaFACE: Okay. Is there an opportunity
23 to update this list again through the rule-making
24 process?

25 MS. YOUNG: Certainly there is an

1 opportunity.

2 MR. LaFACE: Okay. There would be two items
3 that we would be interested in possibly updating
4 on this list, and it also spills over into
5 Section (10). But one of them would be some of
6 the raw components for prescriptive custom made
7 orthotic and prosthetic devices, not necessarily
8 the sandpaper to file them down but the fiberglass
9 that you have to purchase that becomes the
10 orthotic component, which once it is a product it
11 is sales tax exempt.

12 But we would try to add for at least
13 prescriptive devices the raw materials that become
14 components of the device, and also therapeutic
15 shoes, which possibly could be added under the
16 orthopedic or corrective shoe section. But they
17 are ordered prescriptive shoes that are ordered
18 for people with diabetic ulcers in order to
19 correct the ulcer and not get into a gangrene
20 situation and have to amputate the leg. They are
21 not used for just totally comfort and they are
22 used just to treat a medical condition.

23 And it doesn't appear that they are
24 encompassed under the current orthopedic or
25 corrective shoe section. And I don't know if

1 there would be an opportunity to maybe expand
2 therapeutic shoes that are prescriptive into that
3 section or look -- they also would fit with some
4 of the devices here even though they do require
5 prescriptions. So that's why I raised both
6 sections.

7 MS. YOUNG: They do require prescriptions?

8 MR. LaFACE: Yes.

9 MS. YOUNG: They would currently be exempt
10 under the rule.

11 MR. LaFACE: Well, when you have the specific
12 orthopedic shoe section, I don't think that they
13 would -- or at least the reading that the
14 practitioners have is they may not fall into that
15 category because they are not specifically
16 orthopedic shoes, they are therapeutic shoes,
17 which has a different meaning as far as Medicare
18 is concerned.

19 MS. YOUNG: Okay.

20 MR. LaFACE: And so that's why we could
21 either expand the definition for orthopedic shoes
22 to include them or to add them in another section.
23 But I guess it made them nervous when you have a
24 specific section. You have orthotic and
25 prosthetic devices, then you have orthopedic

1 shoes, and now you have therapeutic shoes sitting
2 out there on an island by themselves.

3 MS. YOUNG: So they're concerned that they
4 would not be included as a prosthetic or
5 orthopedic appliance dispensed by a licensed
6 practitioner?

7 MR. LaFACE: Correct.

8 MS. YOUNG: Because we have a separate
9 section dealing with orthopedic --

10 MR. LaFACE: Prescriptive orthopedic shoes.

11 MS. YOUNG: Prescriptive orthopedic shoes.

12 MR. GRAY: Can I ask you a question?

13 MR. LaFACE: Sure.

14 MR. GRAY: Do you know if these orthopedic
15 shoes are tailormade?

16 MR. LaFACE: I do not believe they are
17 tailormade. They are manufactured and then a
18 prescription is written for them. They are
19 ordered, sent there, but they are not individually
20 tailormade for the person other than how any
21 normal shoe would be made. But I believe that
22 they are ordered depending on what type of ulcer
23 the person has.

24 But I think I know where you're headed with
25 that, so what I would like to do is just get some

1 additional comments and I'll submit them within
2 the record period as to exactly the process of
3 ordering therapeutic shoes.

4 MR. GRAY: All right.

5 MS. YOUNG: Thank you for those additional
6 comments.

7 MR. GRAY: I do have one more question I
8 would like to ask you. The fiberglass that you
9 say is a product that you would purchase to make a
10 prosthesis, why do you think that that would be
11 specifically exempt from tax?

12 MR. LaFACE: We would like for it to be
13 exempt from tax. And we look at some of the items
14 there such as batteries and crutch tips and think
15 of them as the same type of item. When you've got
16 a finished product that is tax exempt, some of the
17 components of that item we feel should also be tax
18 exempt so that you're not adding cost layers,
19 things that are actually considered parts of a
20 medical device, not the materials that are used to
21 manufacture that device necessarily, but pieces
22 that become components that normally would not be
23 tax exempt. We would along the same reasoning for
24 those other components in other sections -- we
25 would seek that they be added.

1 MR. GRAY: Part of my concern here would
2 be -- I'll just use this as an example for
3 discussion purposes. Let's say that you make
4 crutches, you have to buy wood, and typically wood
5 is just an item that people would pay tax on
6 unless they presented a resale certificate to turn
7 that wood into a table or a chair or something
8 like that. Much like somebody who were to build
9 wheelchairs, those wheels, maybe they could be --
10 maybe that wheel could go on to a bicycle, the
11 same style, the same type could go into a bicycle
12 as the type that goes onto a wheelchair.

13 MR. LaFACE: And I think the wheels are
14 covered for the wheelchair.

15 MR. GRAY: Yeah, but they wouldn't be covered
16 for a bicycle.

17 MR. LaFACE: Right, and the fiberglass
18 wouldn't be covered for the boat.

19 MR. GRAY: That's exactly where I'm going
20 with this.

21 MR. LaFACE: Right. Because the bicycle and
22 the boat are not medical devices.

23 MR. GRAY: Right.

24 MS. YOUNG: Right. Do you know how your
25 clients are buying these now?

1 MR. LaFACE: We're working on that.

2 MS. YOUNG: You're working on getting that?

3 MR. LaFACE: Yes.

4 MS. YOUNG: And that will be part of your

5 comments back to us?

6 MR. LaFACE: Exactly.

7 MR. GREEN: Mr. Holcomb.

8 MR. HOLCOMB: Just a question. Wouldn't

9 those component parts be exempt under the

10 manufacturing rule?

11 MR. GRAY: Mark.

12 MR. ZYCH: Mark Zych, Department of Revenue.

13 If they were registered and purchased them with a

14 resale certificate, of course.

15 MR. HOLCOMB: That may not be a workable

16 process for these practitioners.

17 MS. YOUNG: Any other comments?

18 (No response.)

19 MS. YOUNG: I believe we've kind of covered

20 Subsection (9), prescribed parts and attachments,

21 as well as Subsection (10), orthopedic or

22 corrective shoes, as we've gone through this

23 discussion on Subsection (8).

24 Do we need to discuss any of these sections

25 further?

1 (No response.)

2 MS. YOUNG: We'll move on to Subsection (11),
3 eyeglasses and lenses, prescription eyeglasses and
4 incidental items that become a part of
5 prescription eyeglasses are exempt. We talk about
6 the sale of eyeglass lens cleaning solution and
7 contact lens cleaning solution and contact lens
8 disinfectants are subject to tax. There's a
9 specific exemption for the sale of one-time items
10 that transfer the optical characteristics to
11 contact lenses if the vendor has paid at least
12 \$100,000 in tax in any calendar year. We provide
13 how that vendor may purchase those items tax
14 exempt at the time of purchase.

15 (No response.)

16 MS. YOUNG: Subsection (12) provides the
17 record-keeping requirements for dealers for these
18 medical -- the sale of these medical items.

19 Any comments on those?

20 (No response.)

21 MS. YOUNG: Any comment on Rule 12A-1.020 in
22 their entirety before we move on to 12A-1.025,
23 veterinary sales and services?

24 (No response.)

25 MS. YOUNG: This rule deals --

1 MR. GREEN: Mr. Bedonie, do you have a
2 question?

3 MR. BEDONIE: Well, I'm just following the
4 flow of discussion. It seems like certain items
5 that are sold can only be used for an exempt
6 purpose. And you may want to consider a product
7 exemption. I don't know of any other use for a
8 pacemaker. I don't think I could open up a garage
9 door with it.

10 And it just seems like when we get into
11 record-keeping requirements, it may provide an
12 opportunity of taxation of items that were never
13 intended to be taxed. And a general statement
14 that, you know, the department will consider a
15 product exemption for those items that can only be
16 used for an exempt purpose.

17 MS. YOUNG: Okay. Any other comments?

18 (No response.)

19 MS. YOUNG: Let's move into 12A-1.025 (sic),
20 veterinary services, services such as examination,
21 treatment, vaccination are not subject to tax,
22 charges for hospitalization as part of the
23 veterinarian's treatment are not subject to tax.

24 Boarding and grooming services are covered in
25 Subsection (2). These charges are subject to tax,

1 items used in providing those services, for
2 example, food, nail care items, et cetera,
3 disinfectants to clean the kennels and cages,
4 those items are subject to tax.

5 Do we have any comment on those two
6 subsections?

7 (No response.)

8 MS. YOUNG: We also talk in Subsection (3)
9 about drugs and medical gases. And because a
10 veterinarian is a licensed practitioner, these
11 provisions apply to -- for drugs and medical gases
12 that apply to human use also applies to animal
13 use, as well as the opaque drugs and other items
14 used in x-ray, medical x-rays for animals.

15 In Subsection (4), we talk about items
16 purchased for treatment. There are specific items
17 that are -- we have examples of those items that
18 are taxable when they're used in their practice,
19 gloves, gowns, and the list is provided there.

20 Chemical compounds and test kits for the
21 diagnosis and treatment of animal disease,
22 illness, or injury are subject to tax, the
23 specific exemption applies to those for human use.

24 There is a list of items in (b) of that
25 section of items that are exempt when purchased by

1 a veterinary clinic, hospitals or licensed
2 veterinarians, those items are listed there as
3 provided in Section 212.08(2).

4 We talk in Item (c) when they're sold --
5 items that are sold to veterinary clinic or
6 hospital that bear the prescription labels that
7 we've discussed previously and they are intended
8 for a single use and not intended to be reusable.

9 The provisions for medical trays apply here
10 too if they contain the required label, even
11 though they may contain a taxable item, if they're
12 used for a single use and maintain a federal
13 warning label those are exempt. No exemption
14 certificate required here.

15 Subparagraph (d) talks about medical products
16 and supplies used to treat animals that are
17 temporarily or permanently incorporated. We also
18 provide a certificate exemption here.

19 In (e) we talk about commonly recognized
20 substances that are exempt when a licensed
21 veterinarian prescribes the substance for the
22 animal and it's supplied to or consumed by the
23 animal. We provide examples of those types of
24 items.

25 One of those examples that's commonly used is

1 therapeutic pet food, transdermal medications,
2 sprays, or powders. Paragraph (f) provides an
3 exemption certificate that covers both of these
4 items.

5 Go ahead.

6 MR. BAYO: For the record, Edwin Bayo with
7 the law firm of Metzger, Grossman, Furlow & Bayo,
8 and I'm here representing the Florida Veterinary
9 Medical Association. And we support the rule
10 text, we have no problem with the text that's
11 presented.

12 The only comment, which I shared with you
13 before going on the record, is on the purpose
14 of -- the stated purpose of the rule, the purpose
15 is to provide for the taxability of veterinary
16 services, and of course my client has a concern
17 about that when the first item reads -- we would
18 suggest that the purpose be clarified to read that
19 the purpose is to clarify the exemption for
20 veterinary services and then pick up from there
21 on. That's my only comment.

22 MS. YOUNG: We'll try to clarify that for
23 you. I see what your concern is.

24 MR. GREEN: Mr. Holcomb, do you have a
25 comment?

1 MR. HOLCOMB: I do. Mark Holcomb. Just for
2 the good of the order, in (4)(c)2, I guess
3 while -- if we're going to make the medical tray
4 change in Rule 20, we might as well make it here
5 too on items versus items that would otherwise be
6 subject to tax.

7 MS. YOUNG: Yeah.

8 MR. GRAY: Good catch.

9 MS. YOUNG: Subsection (5) deals with
10 purchases for resale. Veterinarians commonly sell
11 things that are used for animals, that these items
12 can be purchased tax exempt when they are a
13 registered dealer and the veterinary collects tax
14 when they sell it.

15 We also provide in Subsection (6) the
16 record-keeping requirements for veterinarians and
17 other clinics and hospitals that dispense these
18 items.

19 (No response.)

20 MS. YOUNG: Moving on to 12A-1.097, public
21 use forms. The changes to this rule adopt the
22 changes to Form DR-46NT, nontaxable medical and
23 general grocery list.

24 And, Mr. LaFace, I'm assuming those comments
25 that we discussed earlier in Rule 12A-1.020 would

1 apply to Rule 97 and the adoption of the
2 amendments to the DR-46NT?

3 MR. LaFACE: I'm sorry, I was deep in
4 thought, but I'll say yes.

5 MS. YOUNG: Okay. Any other comments on the
6 rules?

7 (No response.)

8 MR. GREEN: All right. Seeing none, we'll
9 conclude. We anticipate proceeding with the
10 formal rule-making process immediately. If anyone
11 would like to submit written comments, bearing in
12 mind that they become a part of the public record,
13 please do so by the close of business Monday,
14 June 9th, 2008.

15 Written comments may be either mailed or
16 faxed. Written comments should be addressed to
17 Janet Young here at the Department of Revenue, and
18 we have her mailing address that is also listed in
19 the notice that was published in the FAW, but
20 we'll be happy to share it with you after the
21 workshop. We also have the fax numbers if you
22 prefer to fax written comments.

23 On behalf of the department, we want to thank
24 each of you for taking the time to be here and
25 making your comments and concerns known. The

1 department thinks it's invaluable to have this
2 kind of participation from both taxpayer
3 representative and those from the private
4 industry. It is always easier when we can form an
5 alliance between these groups and the department
6 to work towards a common goal.

7 I can assure you that we'll do our best to
8 resolve any questions and address any concerns
9 that have been discussed here today within current
10 statutory provisions. Thank you for coming, this
11 concludes the workshop.

12 MR. HOLCOMB: Can I ask -- I'm sorry -- one
13 last question?

14 MR. GREEN: Yes, Mr. Holcomb.

15 MR. HOLCOMB: I'm understanding your comment
16 to be the department wants to go into notice of
17 proposed rule making rather than have another
18 workshop, and I just would ask a question whether
19 it makes sense, given the comments today, which
20 some of them seemed to be fairly substantive in
21 the rule, it might make sense to turn around
22 another workshop draft.

23 MS. YOUNG: It might. We'll consider that.

24 MR. HOLCOMB: Thank you.

25 MR. GREEN: Thank you. Anything else?

1 (No response.)
2 MR. GREEN: We are concluded.
3 (Proceedings concluded at 11:03 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA:

4 COUNTY OF LEON:

5 I, MICHELLE SUBIA, Registered Professional
6 Reporter do hereby certify that the foregoing
7 proceedings were taken before me at the time and place
8 therein designated; that my shorthand notes were
9 thereafter translated under my supervision; and the
10 foregoing pages numbered 3 through 44 are a true and
11 correct record of the aforesaid proceedings.

12 I FURTHER CERTIFY that I am not a relative,
13 employee, attorney or counsel of any of the parties,
14 nor relative or employee of such attorney or counsel,
15 or financially interested in the foregoing action.

16 DATED THIS 2nd day of June, 2008.

17

18

19 _____
MICHELLE SUBIA, RPR
20 For the Record Reporting
1500 Mahan Drive
Tallahassee, Florida 32317
21 (850)222-5491

22

23

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