

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-92(59) S
Sales Tax
July 30, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920504A

On May 4, 1992 a Petition for Advisory Opinion was received from Guilderland Animal Hospital, RD #2, Altamont, New York 12009-9526.

The issue raised by Petitioner, Guilderland Animal Hospital, is whether Petitioner is liable for collecting sales tax on sales of pet food and pet supplies at Petitioner's satellite clinic, Crosstown Veterinary Center, 2601 Curry Rd. Ext., Schenectady, NY 12303.

Petitioner's satellite clinic provides veterinary services six days per week, grooming services and sales of pet food and pet supplies. The veterinary services rendered by Petitioner constitute the practice of veterinary medicine as defined in the Education Law.

Section 1101 of the Tax Law states, in part:

Definitions.

(b) When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale ...

Section 1105 of the Tax Law states, in part:

Imposition of sales tax. - ... there is hereby imposed and there shall be paid a tax ... upon:

(a) The receipts from every retail sale of tangible personal property . . .

Section 1115(f) of the Tax Law states:

Services rendered by a veterinarian licensed and registered as required by the education law which constitute the practice of veterinary medicine as defined in said law, including hospitalization for which no separate boarding charge is made, shall not be subject to tax under paragraph (3) of subdivision (c) of section eleven hundred five, but the exemption allowed by this subdivision shall not apply to other services provided by a veterinarian to pets and other animals, including, but not limited to, boarding, grooming and clipping. Articles of tangible personal property designed for use in some manner relating to domestic animals or poultry, when sold by such a veterinarian, shall not be subject to tax under subdivision (a) of section eleven hundred five or under section eleven hundred ten.

However, the sale of any such articles of tangible personal property to a veterinarian shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one and shall not be exempt from retail sales tax.

Section 528.24 of the Sales and Use Tax Regulations states, in part:

(a) Exemption. (1) The exemption is allowed for services rendered by a licensed veterinarian which constitute the practice of veterinary medicine, including hospitalization for which no separate boarding charge is made.

(2) The exemption is not applicable to other services provided by a veterinarian, including but not limited to boarding, grooming and clipping.

(3) The exemption is allowed for articles of tangible personal property designed for use in some manner relating to domestic animals or poultry, when sold by such a licensed veterinarian.

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(c) Purchases by a veterinarian. (1) Purchases of tangible personal property by a veterinarian for use in the practice of veterinary medicine and performing taxable services are subject to tax.

(2) The purchase by a veterinarian of tangible personal property designed for use in some manner relating to domestic animals or poultry is deemed a retail sale, notwithstanding a subsequent sale of such items by the veterinarian.

Example 1: The purchase of medicine, collars, flea spray, food or brushes, whether used by a veterinarian in performing a service or sold to others, is subject to tax at the time of purchase by a veterinarian.

Example 2: The sale by a veterinarian of collars, flea spray, brushes, food and medicine which are directly related to the well-being of animals and pets is not subject to tax.

(d) Taxable transactions. (1) Nonprofessional services performed by a veterinarian are subject to tax.

Example 1: Boarding, clipping and washing of pets are services which are subject to tax.

(2) The sale by a veterinarian of articles which are not related to the care and maintenance of animals is subject to tax.

Example 1: The sale of pets by a veterinarian is subject to tax.

(3) Veterinarians who carry on taxable activities are required to register as vendors, collect the tax and file returns.

In the instant matter, Petitioner is involved in practicing veterinary medicine at the satellite clinic. Therefore under the provisions of Section 1115(f) of the Tax Law and Section 528.24 of the Sales and Use Tax Regulations, Petitioner is required to pay sales tax on purchases of tangible personal property regardless of whether the tangible personal property is for use in the practice of veterinary medicine, for performing taxable services or designed for use in some manner relating to domestic animals or poultry.

Subsequent sales by Petitioner of tangible personal property such as collars, flea spray, brushes, food and medicine which are directly related to the well-being of animals and pets are not subject to sales tax.

Because Petitioner provides taxable grooming services, Petitioner is required to be registered as a sales tax vendor and collect sales tax on the receipts from the grooming services. However, even though Petitioner must be registered as a sales tax vendor, Petitioner's purchases and sales of tangible personal property still fall under the provisions of Section 1115(f) of the Tax Law and Section 528.24 of the Sales and Use Tax Regulations which require that Petitioner pay sales tax on certain purchases of tangible personal property, but not collect sales tax on subsequent sales of such property to customers.

DATED: July 30, 1992

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.