

RULE 2010-1

VETERINARIAN SALES AND USE TAX RULE

The Commissioner of Revenue, pursuant to his authority under Ark. Code Ann. §§ 26-52-316; 26-52-404; 26-52-405; 26-53-106; 26-53-131, does hereby issue the following regulation:

A. DEFINITIONS.

1. "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than "food and food ingredients," "dietary supplements," or "alcoholic beverages" that is the following:
 - a. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
 - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
 - c. Intended to affect the structure or any function of the body.
2. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a veterinarian.
3. "Veterinarian" means a practitioner of veterinary medicine duly licensed under the laws of this or some other state.
4. "Veterinarian-client-patient relationship" means the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client, that is, the owner or caretaker, has agreed to follow the instruction of the veterinarian, and there is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal, by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept, and the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

B. SALES BY VETERINARIANS.

1. Tangible Personal Property Used or Consumed by the Veterinarian. Veterinarians are deemed to be the consumers or users of tangible personal property that is used or consumed by them in the nontaxable practice of veterinary medicine. Tangible personal property that is administered by a veterinarian, or by an assistant under the veterinarian's direction, during the

treatment of an animal is furnished as part of the nontaxable practice of veterinary medicine and is not taxed as a retail sale of tangible personal property. The veterinarian must pay tax on its purchase of tangible personal property used or consumed in the nontaxable practice of veterinary medicine. See subsection (C).

Example 1: J.T. takes his puppy to the veterinarian for a rabies vaccination and checkup. J.T. is charged for the rabies vaccination and checkup, which are separately itemized on the invoice. Administering the vaccine is considered a nontaxable veterinary service. The vaccine is consumed in the rendition of veterinary services and the veterinarian is required to pay sales or use tax on the purchase of the vaccine. The veterinarian should not collect sales tax from J.T.

Example 2: J.T. takes his dog to the veterinarian to be microchipped. J.T. is charged for the chip, implant procedure, and enrollment in a pet recovery service, which are separately itemized on the invoice. The microchip is consumed in the rendition of veterinary services and the veterinarian is required to pay sales or use tax on the purchase of the microchip. The veterinarian should not collect sales tax from J.T.

2. Drugs Requiring a Prescription.

a. A veterinarian's sale of a drug that can only be legally dispensed by prescription is not taxable when sold by the veterinarian pursuant to a veterinarian-client-patient relationship. A drug that can only be legally dispensed by prescription is furnished as part of the nontaxable practice of veterinary medicine. The veterinarian must pay tax on its purchase of drugs that can only be legally dispensed by prescription. See subsection (C).

Example 1: J.T. takes his dog to the veterinarian to examine a skin condition. The veterinarian determines that the dog has a bacterial infection and prescribes a drug to be administered twice a day for a week. The drug can only be legally dispensed by prescription. J.T. is charged for the office visit and the drug, which are separately itemized on the invoice. The veterinarian should not collect sales tax from J.T.

Example 2: J.T. takes his cat to the veterinarian. The veterinarian diagnoses the cat with a heart condition and prescribes a diuretic. The diuretic can only be legally dispensed by prescription. J.T. refills the prescription on a monthly basis at the veterinary clinic. The veterinarian should not collect sales tax from J.T. on the refill because the drug is sold by the veterinarian pursuant to a veterinarian-client-patient relationship.

b. However, the sale of a drug that can only be dispensed by prescription is taxable when a veterinarian sells a drug prescribed by another veterinarian or the drug is sold by a pharmacist. The sale of the drug is a retail sale of tangible personal property because the drug is not sold by a veterinarian pursuant to a veterinarian-client-patient relationship.

Example: J.T. takes his cat to the veterinarian. The veterinarian diagnoses the cat with a heart condition and prescribes a beta blocker. The drug can only be legally dispensed by prescription. J.T. must refill the prescription on a monthly basis. J.T. refills the prescription for the beta blocker at his local pharmacy. The pharmacy should collect tax from J.T. on the retail sale of the beta blocker.

3. Other Tangible Personal Property. The retail sale of tangible personal property other than a drug that can only be legally dispensed by prescription is subject to sales tax. If the invoice does not separately state taxable and nontaxable items, then the total amount reflected on the invoice may be subject to tax.

Example 1: J.T. takes his dog to the veterinarian to examine a skin condition. The veterinarian determines that the dog has a bacterial infection and prescribes a drug to be administered twice a day for a week. The drug can only be legally dispensed by prescription. During the checkout, J.T. also purchases three months of flea and tick preventative that can be purchased without a prescription. J.T. is charged for the office visit, the drug, and the flea and tick preventative, which are separately itemized on the invoice. The veterinarian should collect sales tax from J.T. on the retail sale of the flea and tick preventative.

4. Grooming and Boarding Services. Pursuant to Ark. Code Ann. § 26-52-316 pet grooming and kennel services are taxable. A veterinarian that provides pet grooming or kennel services must collect sales tax from its customers. See Arkansas Gross Receipts Tax Rule GR-9.16.

C. PURCHASES BY VETERINARIANS.

1. Permitted Business.

- a. A veterinarian holding a sales tax permit may purchase tangible personal property exempt from sales or use tax as a sale for resale. See Arkansas Gross Receipts Tax Rule GR-53. As tangible personal property used, consumed, or furnished in the nontaxable practice of veterinary medicine is withdrawn from stock, the veterinarian is required to self-assess and pay sales or use tax based upon the purchase price of the property. When tangible personal property is sold at retail, the veterinarian must collect sales tax from the customer based upon the sales price.

Example: A veterinarian purchases a case of a fast-acting flea preventative. Some of the flea preventative will be used to treat animals receiving medical care at the veterinary clinic and some of the flea preventative will be sold to customers at retail. The veterinarian should purchase the flea preventative exempt from tax. Any of the flea preventative that is used or consumed by the veterinarian should be treated as a withdrawal from stock and the veterinarian is required to self-assess, report, and pay tax on the purchase price of the flea preventative. The veterinarian is required to collect sales tax on the sales price of the flea preventative when it is sold at retail.

- b. A veterinarian may pay sales or use tax on purchases of tangible personal property used or consumed in the nontaxable practice of veterinary medicine at the time of purchase.
2. Non-Permitted Business. If a veterinarian does not have a sales tax permit, the veterinarian is required to pay sales or use tax at the time of purchase. Tangible personal property purchased from an out-of-state vendor for use, storage, distribution, or consumption in the performance of veterinary services is subject to Arkansas use tax. If the vendor does not collect tax at the time of sale, the veterinarian is required to report and remit Arkansas use tax on the purchase price of the tangible personal property. A credit for sales tax paid in another state is given to offset Arkansas use tax if the other state requires the tax to be paid. See Arkansas Compensating Use Tax Rules UT-3, UT-4, UT-7, and UT-11.
3. Sales of tangible personal property, such as office supplies and equipment, surgical instruments, or operating supplies, to a veterinarian are taxable sales and the veterinarian is required to pay sales or use tax on the purchase of these items.
- D. COMMERCIAL PRODUCTION OF LIVESTOCK AND POULTRY. Arkansas law provides a limited exemption for agricultural chemicals such as vaccines, medications, and medicinal preparations used in the commercial production of livestock and poultry. Such vaccines, medications, and medicinal preparations are not subject to sales or use tax when sold to the producer of the livestock or poultry. See Ark. Code Ann. §§ 26-52-404, 26-52-405, and Arkansas Gross Receipts Tax Rule GR-45.

Issued this _____ day of April 2010 in the City of Little Rock, Pulaski County, Arkansas.

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration

Tim Leathers, Commissioner of Revenue
Arkansas Department of Finance and
Administration