

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks if sales tax is imposed on receipts from the sale of prescription medication originally intended for human use but dispensed by a pharmacy for use on an animal.

We conclude that the prescription medication is exempt from sales tax when purchased by a licensed veterinarian, or a person predominantly engaged in the production of tangible personal property by farming, for use on livestock or poultry used in the production for sale of tangible personal property by farming.

Facts

Petitioner owns two pharmacies that charge sales tax on medication originally intended for human use, such as allergy medicine, but prescribed to and dispensed for use on an animal. Petitioner found that some pharmacies do not charge sales tax in these circumstances and seeks clarification about whether it must charge sales tax on medication it dispenses that is prescribed for use on an animal.

Analysis

Drugs and medicines intended for use, internally or externally in the cure, mitigation, treatment, or prevention of illnesses or diseases in human beings are exempt from sales tax. *See* Tax Law § 1115(a)(3). Generally, purchases of tangible personal property by a veterinarian for use in the practice of veterinary medicine or performing taxable services are subject to tax. *See* 20 NYCRR 528.24. However, Tax Law § 1115(f)(2) exempts drugs or medicines, purchased or used by veterinarians licensed and registered as required by New York State Education Law, for use in the practice of veterinary medicine on livestock or poultry used in the production for sale of tangible personal property by farming. This exemption also applies to purchases of drugs or medicines for use on such poultry or livestock by a person eligible for the farm production exemption in Tax Law § 1115(a)(6). To qualify for that exemption, a person must be predominantly engaged in producing tangible personal property by farming.

If Petitioner’s customer is a licensed veterinarian, or a person eligible for the farm production exemption, and the prescription medication is purchased for use on livestock or poultry used in the production for sale of tangible personal property by farming, such medication is exempt from sales tax. Petitioner is not required to collect sales tax on such purchases if it receives from its customer in good faith a timely provided and properly completed Form ST-125

– *Farmers and Commercial Horse Boarding Operators Exemption Certificate*. Petitioner must retain documentation of that exemption. See 20 NYCRR 533.2(d); TB-ST-770 – *Recordkeeping Requirements for Sales Tax Vendors*. Purchases of medication for use on animals that do not qualify for the exemption under Tax Law § 1115(f) are subject to sales tax, and Petitioner must collect and remit sales tax on those purchases.

DATED: August 20, 2024

/s/

MARY ELLEN LADOUCEUR

Principal Attorney

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.