



STATE BOARD OF EQUALIZATION

October 13, 1994

Re: [No Permit Number]
Sales of Drugs to veterinarians

Dear

Your letter of July 22, 1994, to the Board of Equalization Sales and Use Tax Department was referred to the Legal Division for a response. You list several drugs which your veterinarian clients prescribe that are refilled without an office visit required. You ask which of these items are subject to sales tax and also how far back a veterinarian can be audited and required to pay tax. Since you did not identify the taxpayers, this letter does not constitute specific written advice to the taxpayers per Revenue and Taxation Code Section 6596. Instead, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) A "retailer" is one who engages in the business of making retail sales of tangible personal property. (§ 6015(a).) Some persons who make sales of tangible personal property have been defined by statute as being the consumers of the property when it is purchased. As a result, tax applies to the sale of the property to the "statutory consumer" but not to that person's ensuing sale of the property to the actual end consumer.

You did not give any information regarding the process by which the drugs you list are conveyed to your clients' buyers. From your reference to "prescription drugs," we assume that your clients give the animals a standard physical exam and/or other necessary treatment before initially prescribing these medicines. We also assume that each medicine carries the standard legend required by federal regulations regarding use of these drugs only by or upon the order of a veterinarian.

B. Veterinarians.

There is no statutory exemption for sales of drugs and medicines for the purpose of treating animals. However, veterinarians are statutory consumers of such drugs and medicines used or furnished by them in the performance of their professional services. (§ 6018.1.) For the purposes of this section, "drugs and medicines" are defined as follows:

" ... substances or preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals and which is commonly recognized as a substance or preparation intended for this use. The term includes legend drugs, pills, and capsules (other than vitamins), liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps if those soaps are available only to veterinarians. The term does not include vitamins, shampoos, pet foods, prescription diet foods, flea powders, and flea sprays."

(Reg.1506(h)(1)(B). Regulation 1506(h) interprets and implements section 6018.1. Sales and Use Tax Regulations are issued by the Board to interpret, implement, or make specific the provisions of the Sales and Use Tax Law to aid in the administration and enforcement of that law and have the force and effect of law.)

For a veterinarian to refill a prescription, the FDA requires a current doctor/client/patient relationship. The California veterinary Medicine Board of Examiners deems a hands-on physical examination of the dog within the previous twelve months to be necessary for a doctor/client/patient relationship to exist.

The drugs you describe appear to be the kinds of products which fit within the above definition. Title 16 Cal; Code Regs. section 1747.1 (California Board of Pharmacy Regulations) states that all drugs which bear the legend such as "caution - Federal law restricts this drug to use by or on the order of a licensed veterinarian" or similar words are dangerous drugs within the meaning of Business and Professions Code section 4211. We assume that all of the medicines you list bear a legend like the one listed in California Board of Pharmacy Regulation 1747.1. Thus, such medications are considered "dangerous drugs."

Business and Professions Code section 4211 defines "dangerous drug". In general, no person shall provide any dangerous drug, except upon the prescription of a physician and surgeon, dentist, podiatrist, or veterinarian. (See Business and Professions Code section 4227.) Business and Professions Code Section 4228(b) states in part "physicians, dentists, podiatrists, and veterinarians may personally furnish any dangerous drug prescribed by them to the patient for whom prescribed " Business and Professions Code section 4229 states that "no prescription for any dangerous drug ... may be refilled except upon authorization of the prescriber which may be given orally or at the time of giving the original prescription".

Thus, only a veterinarian may dispense "dangerous drugs" and only "to the patient". A staff person in the veterinarian's office may not dispense a "dangerous drug," even as a refill.

The California Veterinary Medicine Board of Examiners considers a hands-on physical examination of the dog within the previous twelve months to be necessary for a veterinarian/client/patient relationship to exist. You do not indicate whether your clients examine their patients on these medications at least every twelve months.

As noted above, licensed veterinarians are consumers of drugs and medicines which they use furnish in the performance of their professional duties. They are also the consumers of other tangible personal property which they furnish to clients without a separately stated charge. They are, however, retailers of drugs and medicines which they furnish for a consideration without performing specific related professional services and of other tangible personal property which they furnish to clients for a separated stated charge. (Reg. 1506(h) (2).) Some of their feed sales may not be subject to tax pursuant to Regulation 1587.

You indicate that the medicines you list are refilled without an office visit. Therefore, regarding the medicines sold within one year of the office visit, the taxable event is the sale to your clients. (Reg. 1506(h) (2) (A).) Their suppliers report and pay tax on such sales and may collect sales tax reimbursement from your clients (Civ. Code § 1656.1.) who would owe no tax on their subsequent sales of such products to their own clients in the performance of their professional duties. Regarding sales made by persons other than the veterinarian or beyond one year after the office visit, those are retail sales on which your clients are required to report and pay tax.

You asked about limitations on auditing tax records. The limitation on a deficiency determination is three years if the veterinarian had been filing a return but did not report some sales or eight years if he did not file at all. It begins to run on the last day of the calendar month following the period for which the amount is proposed to be determined. (§ 6487(a) & (b) .)

For your information, I have enclosed copies of Regulations 1506 and 1587. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

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