

PROCEDURE FOR TAXATION UNDER TITLE 42 OF TRANSACTIONS

ENGAGED IN BY VETERINARIANS

TPP 92-2

This procedure gives general information on the Arizona transaction privilege and use taxes for veterinarians.

APPLICABLE LAW:

A.R.S. § 42-1305 "Privilege licenses; revocation; violation; classification"

A.R.S. § 42-1310.01 " Retail classification, definitions"

A.R.S. § 42-1316 "Exemptions"

A.R.S. § 42-1322 "Return and payment of tax; estimated tax; extensions; abatements; definition"

GENERAL PROVISIONS:

The transaction privilege tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the seller, not the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax.

In general, all sales of tangible personal property to a veterinarian are subject to transaction privilege tax. For example, the sales of all office equipment, nonprescription drugs (when not purchased for resale), surgical instruments, X-ray equipment, or any other apparatus used in the practice of surgery or medicine are subject to transaction privilege tax.

The use tax is a complementary tax to the transaction privilege (sales) tax. The use tax is imposed on the storage, use or consumption in Arizona of tangible personal property purchased from a retailer and for which no sales tax was paid. Such purchases would most commonly be those made from out-of-state vendors. The use tax does not apply to the

purchase of tangible personal property for resale in the regular course of business. However, items which were originally purchased for resale which are subsequently consumed by the purchaser are subject to the use tax. For example, a veterinarian may purchase pet food for resale but instead of reselling the pet food, use the food to feed animals kept on the premises. In those circumstances, because no transaction privilege tax was paid when the food was purchased, use tax must be paid.

The purchase of food for use in feeding animals kept on the premises is subject to the transaction privilege tax under the retail classification. A.R.S. § 42-1310.15 provides a reduced rate of tax for sales of feed which are subject to tax under the feed classification. The feed classification is comprised of the business of selling certain livestock or poultry feed to persons who are engaged in producing livestock, poultry or livestock or poultry products, or who are engaged in feeding livestock or poultry commercially. Veterinarians are not considered to be engaged in the business of producing livestock or poultry. Therefore, sales of animal food to veterinarians is subject to tax under the retail classification rather than under the feed classification.

Animal food, as well as other items which are purchased for resale are not subject to transaction privilege tax. A veterinarian who makes retail sales of tangible personal property is subject to transaction privilege tax on those sales under the retail classification.

Inconsequential Sales And Professional Service Occupations

Arizona provides an exemption from transaction privilege tax for the gross proceeds of sales or the gross income from professional or personal service occupations or businesses which involve sales or transfers of personal property only as inconsequential elements.

Often items which are utilized by a person engaged in a professional service occupation are inconsequential to the charge for the professional service provided. Examples of inconsequential items used during the performance of veterinary services are bandages, splints, and flea or tick dip.

Inconsequential items are usually consumed by the veterinarian during the performance of his or her services. Arizona Administrative Code rule R15-5-1805 provides that sales made to service businesses are considered to be sales to a consumer. **The vendor is liable for the transaction privilege tax when these items are sold to the veterinarian. If the transaction privilege tax has not been paid, use tax applies.** The use of resale certificates to purchase these items is not appropriate as these items are not being resold but are being consumed by the veterinarian during the performance of professional services.

The transfer of items of tangible personal property by a veterinarian shall be considered to be inconsequential and, therefore, not subject to transaction privilege tax, when:

1. The cost of the tangible personal property to the veterinarian represents less than 15% of the charge to the consumer of the veterinary service; *and*
2. The tangible personal property is not in a form which is typically subject to retail sale; for example, tick dip used by a veterinarian to dip a dog is not in a form which is typically subject to retail sale; *and*
3. The charge for the tangible personal property is not separately stated on the invoice, even though it is otherwise an inconsequential element of the transaction.

In the event a retail sale of tangible personal property and the performance of a service are part of one transaction, the gross proceeds realized from the performance of the professional service and the sale of tangible personal property are subject to transaction privilege tax unless the retail sale is separately stated on the invoice and in the books and records of the veterinarian.

For example, a veterinarian may treat an animal for an illness and, as part of the same transaction, sell a collar and leash to the animal's owner. The sale of the collar and leash is a retail sale because the items sold are in a form which is typically subject to retail sale. If the sale of the collar and leash is not separately stated on the invoice, the gross proceeds realized from the office visit are subject to transaction privilege tax.

Retail Sales By Veterinarians

A veterinarian may be in the business of making retail sales as well as in the business of performing a professional service. Retail sales of pet food or supplies are subject to the transaction privilege tax. Arizona Revised Statutes (A.R.S.) § 42-1310.01.M defines a retail sale as one for any purpose other than resale in the regular course of business.

A taxpayer may be in two separate businesses at one time and be subject to the appropriate tax on each business. *Trico Electric Cooperative v. State Tax Commission*, 79 Ariz. 293, 288 P.2d 782 (1955). Therefore, it is possible for a veterinarian to be exempt from transaction privilege tax as a professional service business and, at the same time, be subject to the transaction privilege tax on retail sales.

The transfer of tangible personal property is subject to transaction privilege tax as a retail sale when a person engaged in a professional service occupation makes a practice of offering for sale tangible personal property in such a manner as to indicate the sales are not casual, the veterinarian is a retailer of those items and the tangible personal property transferred is in a

form which is typically subject to retail sale.

An example of taxable sales of tangible personal property, in addition to service being rendered, is where a veterinarian regularly sells cans or bags of pet food. The sales are subject to transaction privilege tax under the retail classification because the veterinarian is making regular sales and the pet food is in a form which is typically subject to retail sale.

Prescription Drugs And Medical Oxygen

Prescription drugs sold by a veterinarian in the performance of professional services are exempt from the transaction privilege tax. In order to qualify for the exemption the drugs must be prescribed by the veterinarian and the drugs must only be available with a prescription.

The exemption does not apply to over-the-counter medication, which is available without a prescription, even if a prescription has been written for its use.

Medical oxygen, as well as the delivery hose, mask or tent, regulator and tank, are exempt from transaction privilege tax if their use has been prescribed by a veterinarian.

The question has arisen regarding the taxability of dietary pet food. These diets are only available on the prescription of a veterinarian. They are specially formulated by the manufacturer to correct or alleviate particular medical conditions. The dietary pet food aids in the treatment of various diseases by providing a properly balanced diet. Sales of dietary pet food are limited by the manufacturer to sales through veterinarians.

A.R.S. § 32-1901.20(c) defines "drugs" as articles other than food intended to affect the structure or any function of the body of man or other animals. The statute allows an exemption from transaction privilege tax for drugs on prescription. (emphasis added.) To qualify for the exemption the tangible personal property must contain a legend drug. Dietary pet foods which do not contain legend drugs or medication do not qualify for the exemption.

Licensing, Sales Tax Returns And Resale Certificates

The rendering of professional services in which the transfer of tangible personal property is an inconsequential item is not subject to transaction privilege tax. Therefore, a veterinarian, not in the business of making retail sales, is not required to obtain a transaction privilege tax license unless the veterinarian is in another business which may be subject to the tax.

Veterinarians who are in the business of making retail sales which are subject to the Arizona transaction privilege tax must obtain a transaction privilege tax license from the Department of Revenue.

A state Transaction Privilege Tax License costs \$12 and must be displayed at each business location.

A few weeks after the Transaction Privilege License has been approved by the Department, the taxpayer will begin receiving sales and use tax forms (Form ST-1). Taxpayers must report monthly for the first 12 months, whether or not any sales are made. The Department will contact you if your reporting requirement should change.

Veterinarians who purchase tangible personal property subject to transaction privilege tax (such as non-prescription drugs, pet food, etc.) but intend to resell such property to a patient, may use an exemption certificate to avoid paying the transaction privilege tax to wholesalers on the purchases which are for resale.

If a veterinarian makes recurring purchases from out-of-state vendors who do not collect the use tax or if the veterinarian withdraws items from inventory upon which the tax has not been paid, the veterinarian is required to register with the Department to pay the use tax. Periodic payment of the use tax may be paid with an accompanying letter. In addition, use tax may be remitted with the Form ST-1 if the veterinarian is licensed in the state. There is no charge to be registered with the Department to pay the use tax.

Paul Waddell, Director
Signed December 2, 1992