



SC TECHNICAL ADVICE MEMORANDUM #88-23

TO: Mr. Marvin N. Davant, Director  
Field Services Division

FROM: Jerry B. Knight, Manager  
Tax Policy and Procedures Department

DATE: December 14, 1988

SUBJECT: Sales by Veterinarians  
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-550(31) (Supp. 1987)  
S.C. Code Ann. Section 40-69-20(4) (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170(1976)  
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Are the sales of certain types of dog food, available only through a veterinarian, exempt as "medicine[s]...sold by prescription", pursuant to Code Section 12-35-550(31)?
2. Are the sales of various ointments and drops for the eyes and ears, by a veterinarian, exempt as "medicine[s]...sold by prescription," pursuant to Code Section 12-35-550(31)?
3. Are the sales of various flea and tick collars, shampoos and dips, available only through licensed veterinarians, exempt as "medicine[s]...sold by prescription," pursuant to Code Section 12-35-550(31)?

Facts:

A veterinarian, in addition to performing professional services, sells various products such as pet food, flea collars, ear and eye drops and ointments, shampoo and other pet products. Some items, including certain types of pet food, can only be purchased from a licensed veterinarian.

The veterinarian does not write a prescription for such items but suggests or recommends them to the pet owner.

Code Section 12-35-550(31) exempts from the sales and use tax:

Gross proceeds from the sale of medicine and prosthetic devices, sold by prescription, and hypodermic needles, insulin, alcohol swabs, and blood sugar testing strips old to diabetics under the authorization and direction of a physician.

Discussion:

The issue is whether or not the sale of certain items, such as dog food, ear and eye drops, and flea spray and dip, constitute "medicine[s]...sold by prescription", thereby exempt from the tax.

Regulation 117-174.163 reads:

Veterinarians use and consume medicines, equipment, and supplies in the rendering of professional services. The medicines, equipment, and supplies so used are taxable at the time of purchase by the veterinarian.

Veterinarians in many instances make sales of medicines, vaccines and other supplies. Such property is sold at retail (except where the conditions outlined in 117-174.27 apply) and such sales are taxable when the property is sold outright, not furnished as a part of professional services rendered. In such cases the veterinarian is required to have a retail license. (emphasis added)

The Regulation, 117-174.27, referred to in the above regulation on veterinarians, reads:

The term "chemicals" used in Code Section 12-35-550(5) has been construed to include medicines. As a matter of practical application this construction operates to exempt from payment of sales or use taxes only the gross proceeds of sales of medicines for use in the production for sale of products of the farm.

In summary, veterinarians making retail sales are liable for the tax; however, sales which qualify for the exemptions found at Code Sections 12-35-550(5) and (31) are not subject to the tax. In addition, medicines and other items used by a veterinarian in the performance of professional services are subject to the tax when purchased by or sold to the veterinarian.

In reviewing Code Section 12-35-550(31), the key phrase is "medicine sold by prescription." Regulation 117-174.257 defines "medicine" as "...a substance or preparation used in treating disease."

In addition, the Internal Revenue Service, in Revenue Ruling 55-261, 1955-1 CB 307, provides insight as to whether food may be considered a medicine. Section 213 of the Internal Revenue Code allows a taxpayer a deduction for certain expenses paid for "medical care" during the year; however subsection (b) of that Section limits the deduction for medicine to the amount paid for prescribed drugs or insulin. With respect to food and beverages, Revenue Ruling 55-261, reads, in part:

Advice has been requested with respect to the deductibility as a medical expense of (1) whiskey prescribed by a physician for the relief of angina pain resulting from a coronary artery disease and (2) cost of special food prescribed by a physician for a taxpayer who is on an ulcer diet. Generally, the cost of special food or beverages does not qualify as a medical expense within the meaning of section 23(x) of the Code. However, in special cases, depending upon the particular facts presented, if the prescribed food or beverage is taken solely for the alleviation or treatment of an illness, is in no way a part of the nutritional needs of the patient, and a statement as to the particular facts and to the food or beverages prescribed is submitted by a physician, the cost of such food or beverage may be deducted as a medical expense. Where the special food or beverage is taken as a substitute for food or beverage normally consumed by a person and satisfies his nutritional requirements, the expense incurred is a personal expense within the meaning of section 24(A)(1) of the code; but where it is prescribed by a physician for medicinal purposes and is in addition to the normal diet of the patient, the cost may qualify as a medicinal expense under section 23(x).

The Commerce Clearing House Federal Tax Reporter, Volume 3A, Paragraph 2019.40, with respect to the above ruling and similar rulings on foods and beverages, reads, in part:

Note: Code Sec. 213(b) limits deductions with respect to medicines and drugs only if such medicine or drug is a prescribed drug...CCH

In summary, food is not a medicine, pursuant to Internal Revenue Code. However, food is allowed as a "medical care" deduction, if and only if, it alleviates or treats an illness or disease. Food, which is merely part of the nutritional needs of the patient, is not deductible as a "medical care" expense.

Furthermore, S.C. Code Section 40-69-20(4) defines the "practice of veterinarian medicine" to mean:

- (a) To diagnose, prescribe, or administer any drug, medicine, biologic, appliance, or application or treatment of what-ever nature for the cure, prevention, or relief of any wound, fracture, or bodily injury or disease of an animal;
- (b) To perform any surgical operation, including cosmetic surgery, upon any animal;
- (c) To perform any manual procedure for the diagnosis or treatment for sterility or infertility of animals, including embryo transplants;
- (d) To offer, undertake, represent, or hold oneself out as being qualified to diagnose, treat, operate, or prescribe for any animal disease, pain, injury, deformity, or physical condition;
- (e) To use any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine; this use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine. (emphasis added)

In summary, "medicines" are substances used for the care, prevention or relief of a disease, but do not include foods. A veterinarian may prescribe medicine for the care, prevention or relief of a disease; however, the legislature, by statute, has drawn a distinction between "prescribing" and "administering" a medicine. This distinction can be seen in above cite of Code Section 40-69-20(4)(a).

Upon reviewing the term "medicine," we must now determine if there are any restrictions, with respect to the exemption, as to the types of medicine. The definition of "medicine" and the many restrictions imposed on pharmacists indicate that the medicines in question would not include such "over the counter" medicines as aspirin, tylenol, vitamins, etc. In addition, it is unreasonable to interpret the intent of the legislature so as to exempt "over the counter" medicines and drugs merely because such items are sold pursuant to a prescription of a physician, dentist or veterinarian.

The following is quoted from 68 Am Jur 2d Sales and Use Tax, Section 10:

The sales tax law should be interpreted as the ordinary person reading it would interpret it. The statute should receive a reasonable interpretation and a practical construction, and in case of doubt weight will be given to the radical effect which a proposed construction of the statute will have. Unreasonable or absurd consequences should, if possible, be avoided. (emphasis added)

Therefore, in addition to the requirement that such medicines be "sold by prescription," such medicines must require a prescription.

Conclusions:

1. The sale of certain types of dog food, available only through a veterinarian, does not constitute "medicines...sold by prescription." Therefore, such sales are subject to the sales tax.
2. Where a veterinarian administers ointments and drops for the ears and eyes in the performance of his professional services, the sale to or purchase by the veterinarian of such items are not "by prescription" and are subject to the tax. Where a veterinarian sells such ointments and drops, those transactions are also subject to the tax. The fact that those items are only available through a veterinarian is of no consequence. In order to qualify for the exemption, the sale of such medicines must require a prescription and, in fact, must be "sold by prescription."
3. The sales of various flea and tick collars, shampoos and dips, available only through a veterinarian, do not constitute "medicine[s]... sold by prescription." Therefore such sales are subject to the sales tax.