

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion [REDACTED] (Petitioner) located at [REDACTED]. Petitioner asks whether purchases of "blood products" by a veterinarian for use in surgical procedures are subject to New York State and local sales taxes.

We conclude that such blood products are exempt from sales tax when used by a licensed veterinarian to perform veterinary services on livestock or poultry used in the production for sale of tangible personal property by farming.

Facts

Petitioner operates a veterinary surgical hospital located in New York State. Petitioner's veterinarians are licensed under the New York State Education Law. Petitioner states that it purchases blood products for use in surgical procedures performed by the practice. These blood products include red blood cells, plasma, cryoprecipitate and cryopoor. Petitioner's patients are primarily dogs and cats, but they provide services to all kinds of animals needing critical care.

Analysis

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.

"Drugs and medicines" are defined for purposes of the exemption in Tax Law § 1115(a)(3) as articles other than food used in the diagnosis, cure, mitigation, treatment or prevention of disease in humans, or articles other than food that are intended to affect the structure or any function of the human body. See NYCRR 528.4(b)(1). That exemption is expressly limited to drugs and medicines for human use. The exemption for drugs used by veterinarians in Tax Law § 1115(f)(2) does not include this limitation. While there is no separate definition for exempt drugs under § 1115(f)(2), we read the regulatory definition to apply to this section without the limitation for human use.

Here, the blood products Petitioner purchases are used in performing surgical procedures on animals rather than humans. Such products qualify as drugs and medicines because they are used in surgical procedures on critically ill or injured animals and because they affect the structure or function of the animal's body. If Petitioner uses the blood products in the performance of veterinary services on livestock or poultry used in the production for sale of tangible personal property by farming, such products are exempt from sales tax. Petitioner may use Form ST-125—*Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*. to purchase such blood products exempt from sales tax. Purchases of blood products by Petitioner for use in providing veterinary services to any animal other than livestock or poultry used in farm production do not qualify for the exemption under Tax Law § 1115(f) and are subject to sales tax. If Petitioner does not know at the time of purchase how the blood products will be used, it must pay sales tax and claim a refund using Form AU-11 for any blood products used in an exempt manner.

DATED: August 2,2024

/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.