

Common Questions -- Agricultural Compounds and Pesticides

Question: *The context for HB 1195 for veterinary medicine is agricultural compounds and pesticides used in caring for livestock. Are any small animal items subject to sales tax? What about a non-prescription drug that may be used for livestock and companion animals?*

Answer: Unless the items or drugs are prescribed by a veterinarian, they are subject to tax. That is the case no matter if the animals being treated are household pets or farm livestock.

Question: *When a taxable item is being used in treatment, is the tax on the number of units used or the complete bottle?*

Answer: This depends on how the bottle was acquired and subsequently used.

One example offered involved a veterinarian in the field who uses 20cc's of penicillin out of a 500cc bottle. If the veterinarian purchased the bottle without tax as a purchase for resale then invoiced his customer for the 20cc's, he would be responsible for charging and collecting sales tax on the invoiced amount (sale) to the customer. However, if rather than selling the 20cc's, the veterinarian includes the penicillin in his bill for services rendered (without a specific charge for the penicillin) then the veterinarian is considered the user of the drug and is responsible for remitting Colorado use tax on the value of the 20cc's.

A more practical solution would be for the veterinarian to pay sales tax to his or her distributor at the time of the purchase of the bottle. The veterinarian would then be able to mete out the product as needed as part of his services without additional tax.

Question: *Are items with horses that are pleasure animals opposed to agricultural animals taxable?*

Answer: Whether the horse is a pleasure animal or draft animal is insignificant for purposes of the sales and use tax. The items are taxable.

Question: *Are nutritional aids designed to look like colostrum (e.g. Colostrix) taxable?*

Answer: These are non-prescription items and thus subject to tax.

Question: *Are oral electrolytes used to re-hydrate baby calves (e.g. LifeGuard) or yeast compounds used to repopulate baby calf guts with acidophelous taxable?*

Answer: These are non-prescription items and are subject to tax.

Question: *Are growth implants (e.g. Ralgro) and other growth promotants mixed in feed and fed taxable?*

Answer: Even though these products may be mixed with feed, they do not independently constitute “feed” for purposes of the feed-for-animals exemption. They remain taxable agricultural compounds.

Question: *Are feed-grade antibiotics (e.g. Rumensin, Chlortetracycline) taxable?*

Answer: These do fit neither the feed exemption nor the prescribed drug exemption. They remain taxable.

Question: *Does farm equipment include (and thus exempt) equipment used in conjunction with agricultural compounds in animals such as drug instruments (needles, syringes, etc.) or calf pullers?*

Answer: HB 1195 does not impact the exemptions or taxation of farm equipment. However, be aware that the terms “farm equipment” and “implement of husbandry” are generally defined as large pieces of equipment or vehicles designed for farm use (tractors, combines, balers, etc.). [See §§ 39-26-716(1)(d) and 42-1-102 (44), C.R.S.]. Therefore, it would appear that none of the instruments described in the question would constitute farm equipment.

Question: *Are prescription drugs which are not taxed for other animal species or in the human arena exempt?*

Answer: If the drugs are prescribed by a veterinarian, the exemption applies.

Question: *Who is responsible for the tax? The Colorado Department of Revenue Web site states “companies that supply” are responsible. Does that mean a distributor can collect and remit the tax or is the veterinarian the “company that supplies” the product and thus should provide a sales tax exemption certificate to the wholesaler and then collect, report and remit the sales tax?*

Answer: The distributor is responsible for charging and remitting sales taxes on transactions within Colorado unless the purchaser provides a resale certificate. Many veterinarians maintain their own inventory of items and can buy items for resale. Unless the items qualify as prescribed drugs, the veterinarian is then subject to sales tax collection upon the subsequent sale of the items, or he or she is liable for use tax if the item is used in the performance of veterinarian services.

Question: *What grace period will exist as guidance is developed?*

Answer: The Colorado Department of Revenue by emergency regulation agrees to waive penalties and penalty interest (except when the tax is actually collected by the retailer) for nonpayment of a sales or use tax liability owed as a result of the enactment of HB 1195, if the sale, use, storage or consumption giving rise to such tax liability occurred on or after March 1, 2010 and before June 1, 2010.