

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-90(50)S  
Sales Tax  
October 22, 1990

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900823A

On August 23, 1990, a Petition for Advisory Opinion was received from J. Leon Lascoff & Son, Inc., 1209 Lexington Avenue, New York, New York 10028.

The issue raised by Petitioner, J. Leon Lascoff & Son, Inc., is whether a credit may be claimed on Petitioner's sales tax return for sales tax shown on billing presented to Petitioner by Petitioner's supplier where Petitioner is purchasing such dog food for the purpose of reselling it at retail.

Petitioner purchases dog food from a veterinarian for the purpose of reselling such dog food at Petitioner's business location. The veterinarian purchases the dog food from a third party supplier and is billed directly for such purchases by the supplier. The billing invoice received by the veterinarian separately states the total receipts and the amount of sales tax to be collected from the veterinarian by the third party supplier.

The veterinarian does not bill Petitioner on the veterinarian's own billing invoices but instead furnishes Petitioner a copy of the billing received from the third party supplier. No reference to Petitioner appears on such invoices.

Section 1101 of the Tax Law states, in part:

Definitions.

(b) When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale...

Section 1105 of the Tax Law states, in part:

Imposition of sales tax. - ... there is hereby imposed and there shall be paid a tax ... upon:

(a) The receipts from every retail sale of tangible personal property ...

Section 1115 (f) of the Tax Law states, in part:

... Articles of tangible personal property designed for use in some manner relating to domestic animals or poultry, when sold by such a veterinarian, shall not be subject to tax under subdivision (a) of section eleven hundred five or under section eleven

hundred ten. However, the sale of any such articles of tangible personal property to a veterinarian shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one and shall not be exempt from retail sales tax.

Section 528.24 of the Sales and Use Tax Regulations states, in part:

Services rendered by veterinarians. [Tax Law, §1115 (f)]

(c) Purchase by a veterinarian.

(2) The purchase by a veterinarian of tangible personal property designed for use in some manner relating to domestic animals ... is deemed a retail sale, notwithstanding a subsequent sale of such items by the veterinarian.

Example 1: The purchase of ... food ..., whether used by a veterinarian in performing a service or sold to others, is subject to tax at the time of purchase by a veterinarian.

Example 2: The sale by a veterinarian of ... food ... directly related to the well-being of animals and pets is not subject to tax.

Generally, when Petitioner enters into a transaction to purchase taxable tangible personal property for the purpose of reselling such tangible personal property, the transaction will be considered a purchase for resale and will not be subject to New York State or local sales tax provided Petitioner furnishes the supplier a properly completed form ST-120, Resale Certificate.

However, the instant transaction is an exception to this rule since Petitioner is purchasing the dog food from a veterinarian. Under the provisions of Section 1115(f) of the Tax Law and Section 528.24 of the Sales and Use Tax Regulations, the veterinarian's purchase of the dog food is deemed to be a retail sale as defined under Section 1101(b)(4) of the Tax Law and therefore subject to the tax imposed under Section 1105(a) of the Tax Law. Further, in accordance with the provisions of Section 1115(f) of the Tax Law and Section 528.24 of the Sales and Use Tax Regulations, the veterinarian's subsequent sale of the dog food to Petitioner is not considered to be a sale subject to sales tax.

Moreover, the amount of sales tax stated on the invoice provided to Petitioner represents sales tax which was imposed on the sale of the dog food to the veterinarian and which must be collected by the supplier. Accordingly, since such sales tax was not imposed directly on Petitioner, Petitioner has not paid sales tax on its purchases of the dog food. Therefore, a credit for such sales tax may not be claimed on Petitioner's sales tax return.

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It is noted that Petitioner's subsequent retail sales of the dog food will be subject to State and local sales taxes and Petitioner will be liable for collecting such tax.

DATED: October 22, 1990

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth therein.