



COLORADO
Department of Revenue

Taxation Division

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

GIL-18-004

February 8, 2018

XXXXXX
Attention: XXXXXX
XXXXXX
XXXXXX

Re: Taxability of Prescription Pet Food

Dear XXXXXX,

You submitted a request for guidance on behalf of XXXXXX (“Company”) to determine the taxability of prescription pet food.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Is the sale of prescription pet food exempt from sales tax?

Discussion

Colorado levies sales tax on the sale of tangible personal property.¹ Some tangible personal property, such as prescription and nonprescription drugs, are exempt from sales or use tax if the item sold satisfies the statutory requirements for the exemption. Colorado exempts the sale of prescription drugs when furnished by a “licensed provider” as part of professional services provided to a patient.² A

¹ §39-26-104 C.R.S.

² §39-26-717(1)(a), C.R.S.

“licensed provider” is any person authorized to prescribe drugs including, but not limited to, veterinarians.³ A prescription drug includes prescription drugs dispensed or furnished to animals. However, the Colorado Food and Drug Act⁴ and the Federal Food, Drug, and Cosmetic Act⁵ exclude food from the definition of a drug.

While pet food is excluded from exemption as a prescription drug, pet food prescribed by a veterinarian may still be eligible for exemption as a nonprescription drug or material.⁶ Prescription pet food must be provided to a patient as part of the professional services offered by the veterinarian.⁷ In order to qualify for the exemption, the prescription pet food must be purchased from the veterinarian that prescribed the food and leave the veterinarian’s premises with the patient.⁸ A sale of prescription pet food by anyone other than the prescribing veterinarian, such as a pet food store, will not be exempt.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Ryan Doerflein
Colorado Department of Revenue
Office of Tax Policy & Analysis

³ §§ 39-26-717(3), 12-64-103(10)(a), C.R.S.

⁴ §25-5-402(9)(c)

⁵ 21 U.S.C. § 321(g)(1)

⁶ §39-26-717(1)(k), C.R.S.

⁷ Department Regulation §39-26-717(1)(f)(iii)(A)

⁸ Department Regulation §39-26-717(1)(f)(i)(C)