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7-12-2019
4 pm

FILED WITH LRC
TIME: 4 pm
JUL 12 2019
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REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 26:090. Veterinarians and pet care providers.

5 RELATES TO: KRS 139.010, 139.200, 139.260, 139.290, 139.480

6 STATUTORY AUTHORITY: KRS 131.130[(-)]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations for the assessment, collection,
9 refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation
10 interprets [~~to interpret~~] the sales and use tax law as it applies to transactions involving
11 veterinarians.

12 Section 1. Definitions. (1) "Pet care services" means non-medical services performed for the
13 benefit of pets and other companion animals including, but not limited to, the services listed in
14 KRS 139.200.

15 (2) "Small animal veterinary services" means all activities related to the wellness, diagnosis,
16 or treatment of pets and other companion animals performed by veterinarians or other persons in
17 support of the veterinary services provided.

18 Section 2. Small animal veterinary services. (1) Small animal veterinary services are subject
19 to sales tax pursuant to KRS 139.200.

20 (2) The list in this subsection shall serve as general examples of small animal veterinary
21 services:

- 1 (a) Bloodwork;
- 2 (b) Dentistry and teeth cleaning;
- 3 (c) Emergency care;
- 4 (d) Euthanasia services (excluding cremation);
- 5 (e) Health and wellness examinations;
- 6 (f) Laboratory testing and examination of lab work;
- 7 (g) Performing surgeries;
- 8 (h) Prescribing medicines and treatments;
- 9 (i) Preventive care;
- 10 (j) Spaying/neutering;
- 11 (k) Vaccinations; or
- 12 (l) X-rays and ultrasounds.

13 Section 3. Animals treated by small animal veterinary service providers. The list in this
14 subsection shall serve as general examples of the types of animals treated by small animal
15 veterinary service providers:

- 16 (1) Birds;
- 17 (2) Cats;
- 18 (3) Dogs;
- 19 (4) Ferrets;
- 20 (5) Gerbils;
- 21 (6) Guinea pigs;
- 22 (7) Hamsters;
- 23 (8) Rabbits;

1 (9) Reptiles; or

2 (10) Turtles.

3 Section 4. Tangible personal property, digital property, or services purchased by small animal
4 veterinary service providers for resale.

5 (1) Effective July 1, 2018, a small animal veterinary service provider may purchase tangible
6 personal property or digital property for resale to the end customer exempt from the sales and use
7 tax according to the provisions of KRS 139.260. Examples include, but are not limited to,
8 prescription and non-prescription dog food, animal shampoos, collars and toys sold at retail along
9 with the medicines, vaccines, surgical sutures, flea treatments, and anesthetics injected into or
10 remaining with the animal. Small animal veterinary service providers may also purchase food they
11 supply to the animals while under veterinary care or while providing pet care services exempt for
12 resale.

13 (2) Effective July 1, 2019, a small animal veterinary service provider may purchase small
14 animal veterinary services exempt for resale to the end customer according to the provisions of
15 KRS 139.260. An example of services for resale are lab-testing services where a laboratory is
16 billing its services to a small animal veterinary service provider which requested the service for a
17 specific customer. The resale exemption for services only applies to services that are specifically
18 resold to the customer.

19 (3) The small animal veterinary service provider shall issue the Resale Certificate (Form
20 51A105) or the Streamlined Sales and Use Tax Certificate (Form 51A26) for these purchases made
21 for resale.

22 (4) Small animal veterinary providers are the consumers of the materials, supplies, and general
23 services used or consumed while providing veterinary services. Providers of small animal

1 veterinary services may not claim a resale exemption on purchases of products used or consumed
2 while providing veterinary services. Examples of these items include, but are not limited to,
3 surgical tools, tables, paper towels, syringes, needles, lab testing kits, general supplies, and
4 janitorial services.

5 Section 5. Veterinary services provided for animals excluded from small animal veterinary
6 services.

7 (1) Veterinary services for animals excluded from small animal veterinary services are not
8 subject to sales tax and the providers are the consumers of the tangible personal property, digital
9 property, or services that they use in performing their services.

10 (2) As the consumer, providers of veterinary services for animals excluded from small animal
11 veterinary services are responsible for paying the applicable sales and use tax on all products used
12 in performing their services including any medicines, vaccines, surgical sutures, flea treatments,
13 anesthetics, surgical tools, tables, paper towels, syringes, needles, general supplies, and taxable
14 services that are used or consumed in the provision of their veterinary services.

15 Section 6. Mixed veterinary practices. (1) Persons providing both small animal veterinary
16 services and veterinary services for animals excluded from small animal veterinary services shall
17 maintain records in a manner that documents and distinguishes the specific products and supplies
18 used while rendering both types of veterinary services.

19 (2) Persons providing both types of veterinary services may issue a resale certificate for
20 tangible personal property held in inventory if it is unknown at the time of purchase whether the
21 property will be resold or used in the provision of veterinary services not subject to sales tax. If
22 any portion of the tangible personal property is used or consumed in the provision of veterinary
23 services not subject to sales tax, then the purchaser shall report and pay the sales and use tax on

1 that portion directly to the department according to the provisions of KRS 139.290.

2 Section 7. Pet care services. (1) Pet care services are subject to sales tax pursuant to KRS
3 139.200. Any person, including veterinarians, that provides pet care services is subject to the sales
4 tax on the gross receipts derived from the provision of these services.

5 (2) Pet care services include, but are not limited to, the services listed under the provisions of
6 KRS 139.200.

7 (3) Persons providing pet care services are the consumers of the tangible personal property,
8 digital property, or services they use in performing their services.

9 (a) Pet care service providers may not claim a resale exemption on purchases of products used
10 or consumed while providing their taxable services. Examples of these items include, but are not
11 limited to, grooming equipment, shampoo, toothpaste, toys, bedding, and general supplies.

12 (b) Pet care service providers may claim a resale exemption on purchases of products provided
13 to and remaining with the animals. Examples of these items include, but are not limited to, flea
14 treatments, food, and treats.

15 Section 8. Treatment of other transactions. (1) Pet adoption fees are taxable receipts subject to
16 sales and use tax. Payment of these fees is consideration made for the transfer of tangible personal
17 property in a retail sale.

18 (2) Services provided to service animals covered under the Americans with Disabilities Act
19 (ADA) are not small animal veterinary services or pet care services subject to sales tax.

20 (3) Services provided to farm work stock animals that are exempt under the provisions of KRS
21 139.480 are not small animal veterinary services or pet care services subject to sales tax.

22 ~~[Section 1. Veterinarians are the consumers of the materials, supplies or other items of tangible~~
23 ~~personal property which they use in performing their services. The tax, accordingly, applies to the~~

1 ~~sale of tangible personal property to them. Drugs, medicines and other tangible personal property~~
2 ~~which are personally administered by a veterinarian or by an assistant under his direction during~~
3 ~~treatment of a patient is not the subject of a "retail sale."~~

4 ~~Section 2. Any veterinarian who, for a separate charge, supplies or dispenses drugs, medicines~~
5 ~~or other tangible personal property in any manner other than the manner described above is~~
6 ~~a retailer of such tangible personal property and the tax applies at the time of the delivery of the~~
7 ~~tangible personal property to the consumer.]~~

103 KAR 26:090

APPROVED BY AGENCY:

Daniel Bork
DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

JULY 12, 2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 26:090

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 26:090 to provide guidance to veterinarians and pet care providers per tax law changes.

(b) The necessity of this administrative regulation: To conform to changes made in the authorizing statutes per HB 487 2018/GA regarding the expansion of sales tax on services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, or organizations providing veterinary or pet care type services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They may have new or expended reporting requirements, and/or be required to obtain a sales tax identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Undeterminable, but may be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in good standing with the Department of Revenue.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement

of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 26:090

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Undetermined. There may be additional revenue generated for the state in the first year, however the Department of Revenue has no way of knowing how many veterinarians or pet care providers will be impacted in this early stage of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Undetermined.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

(d) How much will it cost to administer this program for subsequent years? No additional costs should be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: