

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-001

NAME
TITLE
ADDRESS 1
ADDRESS 2
ADDRESS 3
CITY STATE ZIP

November 12, 2008

To Whom It May Concern:

Please accept this letter, on behalf of our client, as an official request for ruling regarding the state sales and use taxability of the products and services they sell. COMPANY NAME is in the business of providing lost pet recovery products and services. COMPANY NAME sells microchips and associated scanners to veterinary Practices, Animal Shelters, Breeders, and Pet Stores. These microchips, containing unique identifying numbers, are implanted under a pet's skin. In the event that a pet that has been implanted is lost, the pet can be scanned so that the information associated with the microchip can be used to reunite the pet with its owner. In addition to the sale of the microchips and scanners COMPANY NAME provides the following services:

“Limited” Pet Recovery Services: COMPANY NAME provides an internet accessible data repository in which owner and pet information is held for the purpose of reuniting lost pets with their rightful owners. Pet owners who have their pets “chipped” are asked to fill out a COMPANY NAME enrollment form, or have their vet complete an enrollment form for them. Information on the enrollment form critical to the recovery of the pet is captured and uploaded to the COMPANY NAME database. COMPANY NAME provides a pet recovery call center which receives calls from both individuals and institutions and uses information in the COMPANY NAME database to orchestrate the reuniting of the lost pet with its owner.

“Full” Proactive Pet Recovery Services: COMPANY NAME offers a premium pet recovery service to pet owners who have had their pets chipped. Full Proactive Pet Recovery Services include all services available under the “Limited” plan plus the following additional services.

► Lost Pet Alerts: Subscribers have the ability to log into the COMPANY NAME website to allow them to generate lost pet notices which are either faxed or emailed to veterinarians, shelters, and pet rescuers in the surrounding area in which the subscribers

pet was lost. Subscribers also have the ability to create “Lost Pet” posters that can be printed and posted in the area via this service.

- ▶ 24/7 Emergency Medical Response through the ASPCA Animal Poison Control Center hotline.

- ▶ Complimentary Lost Pet Medical insurance which provides for up to \$3,000 of emergency medical treatment for injuries a subscriber’s pet may suffer while lost.

- ▶ Provision of laminated, wallet-sized Pet ID Cards with the pet’s name, microchip number, photo, vet information and emergency clinic contact information.

Furthermore, in addition to the microchips and scanners and the services described above, COMPANY NAME sells Pet Identification Collar Tags. These collar tags are used in conjunction with the Limited and Full Pet Recovery Services. The tags are individualized with the pet’s microchip ID and the 1-800 COMPANY NAME call center number.

COMPANY NAME sales practices are as follows:

- ▶ Chip Only Sales: Microchips (packaged with single use syringes) are sold to veterinary clinics, shelters, and breeders.

- ▶ Vet Reseller Model: A variety of incentive programs are marketed to veterinary clinics which allow them to obtain chips for free. In a typical transaction, a microchip is provided for free to the clinic for each Full Proactive Service enrollment that COMPANY NAME receives from the participating clinic. Clinics will charge an all inclusive fee to the consumers for the chip, the implant procedure and the first year of pet recovery services. Clinics can also earn a free chip for enrolling a pet in COMPANY NAME that they did not implant (i.e. a competitively chipped pet).

- ▶ Prepaid Program: Both Vets and Shelters are offered an optional “Prepaid” plan wherein the microchip and first year of Full Proactive Pet Recovery Services are offered for sale from COMPANY NAME. Shelters typically pass this charge along to customers as part of the overall set of pet adoption fees.

- ▶ COMPANY NAME Pet Recovery Services: Pet Recovery Services are offered directly to consumers for both COMPANY NAME and competitively chipped pets. Limited pet recovery services are offered at a single fee for the life of the pet. Full Proactive Pet Recovery Services are offered for an annual renewable fee. Consumers are provided with an online consumer portal for registering for either Limited or Full service.

In light of the above, we request a written response as to the sales & use taxability of the following products and services we sell:

- 1) Microchips;

- 2) Scanners;
- 3) Collar Tags;
- 4) Fee for Limited Pet Recovery Services only;
- 5) Fee for Full Proactive Pet Recovery Services only;
- 6) Microchips given away for free;
- 7) Lump Sum fee for Pet Recovery Service and Microchip;
- 8) Lump Sum fee for Microchip, Implantation, and Pet Recovery Service;

To aid in your analysis we suggest a review of our website at [WEBISTE](#). If you have any questions or should require any additional information please do not hesitate to contact me at PHONE NUMBER or via email at [E-MAIL](#).

Sincerely,

NAME
TITLE
NAME 1

RESPONSE LETTER

January 31, 2011

NAME
NAME 1
ADDRESS 2,
ADDRESS 3
CITY STATE ZIP

RE: Private Letter Ruling Request—Sales and Use Tax Treatment of Lost Pet Recovery Products or Services Provided by COMPANY NAME

Dear NAME:

Your company has requested a private letter ruling for your client COMPANY NAME as to the sales and use tax treatment of certain lost pet recovery products or services. The specific questions that you enumerated in your request letter will be addressed separately below in the Analysis section.

1. Applicable Law

A. Imposition of tax

Utah Code Ann. § 59-12-103 imposes tax on:

- (a) retail sales of tangible personal property made within the state;
.....
- (l) amounts paid or charged for tangible personal property if within the state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed . . .
.....

Utah Code Ann. § 59-12-102(111) defines tangible personal property as follows:

- (a) Except as provided in Subsection (111)(d) or (e), “tangible personal property” means personal property that:
 - (i) may be:
 - (A) seen;
 - (B) weighed;
 - (C) measured;
 - (D) felt; or
 - (E) touched; or
 - (ii) is in any manner perceptible to the senses.

.....

Utah Code Ann. § 59-12-107(2)(c)(i) requires a seller to state on a receipt or invoice the sales tax it collects from a customer, as follows:

Each seller shall:

- (A) give the purchaser a receipt for the tax collected; or
- (B) bill the tax as a separate item and declare the name of this state and the seller's sales and use tax license number on the invoice for the sale.

B. Exemption from Tax

Utah Code Ann. § 59-12-104(25) exempts from sales and use tax:

[A] product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compound product . . .

C. Rule Specific to Veterinary Services

Utah Admin. Code R865-19S-109 (“Rule 109”) has been adopted regarding veterinary services; it states:

(1)(a) Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

(b) Except as provided in Subsection (5), a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

(2) Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

(3) The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

(a) For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with Subsection (1).

(b) For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with Subsection (2).

(4) A veterinarian is not required to collect sales and use tax on:

- (a) medical services;
- (b) boarding services; or
- (c) grooming services required in connection with a medical procedure.

(5) Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

(a) the sales are exempt from sales and use tax under Section 59-12-104; and

(b) the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

(Last substantive amendment on September 23, 2010.)

D. Rule for Property Given Away

Utah Admin. Code R865-19S-68 (“Rule 68”) addresses tangible personal property given away, providing in part:

A. Donors that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

E. Treatment of Bundled Transactions

Utah Code Ann. § 59-12-103(2)(d) prescribes how bundled transactions are taxed. Subsection (2)(d)(i) concerns food items and does not apply for this letter. The relevant subsections are as follows:

- (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i):
 - (A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:
 - (I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or
 - (II) state or federal law provides otherwise; or
 -
- (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

Utah Code Ann. § 59-12-102(16)(a) defines the term “bundled transaction” as follows:

“Bundled transaction” means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

- (i) distinct and identifiable; and
- (ii) sold for one nonitemized price.¹

Utah Code Ann. § 59-12-102(16)(b) excludes certain transactions from the definition of bundled transactions, stating in part:

“Bundled transaction” does not include:

- (i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

.....

- (iv) the retail sale of tangible personal property and a service if:

- (A) the tangible personal property:

- (I) is essential to the use of the service; and

- (II) is provided exclusively in connection with the service; and

- (B) the service is the true object of the transaction

.....

- (vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

- (A) seller's purchase price of the tangible personal property or product subject to taxation under this chapter is *de minimis*; or

- (B) seller's sales price of the tangible personal property or product subject to taxation under this chapter is *de minimis* . . .

Utah Code Ann. § 59-12-102(16)(e) further defines the terms used in the *de minimis* exception of § 59-12-102(16)(b)(vi), above.

- (i) For purposes of Subsection (16)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is *de minimis* if:
 - (A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction;
 - or
 - (B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.
- (ii) For purposes of Subsection (16)(b)(vi), a seller:
 - (A) shall use the seller's purchase price or the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is *de minimis*; and

¹ Utah Code Ann. § 59-12-102(16)(d) further defines “sold for one nonitemized price.” We have chosen to not reprint the statute here because the definition is not at issue for this ruling.

- (B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis.
- (iii) For purposes of Subsection (16)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.

2. Analysis

Under § 59-12-107(1)(a), sellers that have nexus for sales tax purposes must pay sales or use tax on their purchases and collect and remit sales tax on their sales. COMPANY NAME has not asked whether it has a requirement to collect Utah sales tax and has not provided enough information to determine this. However, we understand that COMPANY NAME currently does have a sales tax account in the state and has reported and remitted sales tax to the state. Accordingly, our findings are based on the assumption that COMPANY NAME is required to collect Utah sales tax.

Utah Code Ann. § 59-12-103(a) and (l) impose tax on certain purchases, storage, use, and consumption of tangible personal property in the state. As you requested, we will analyze the following products and/or services:

- A. Microchips
- B. Scanners
- C. Collar Tags
- D. Fee for Limited Pet Recovery Services only
- E. Fee for Full Proactive Pet Recovery Services only
- F. Microchips Given Away for Free
- G. Lump Sum Fee for Pet Recovery Service and Microchip
- H. Lump Sum Fee for Microchip, Implantation, and Pet Recovery Service

A. Microchips

In your letter, you explained the following:

COMPANY NAME sells microchips and associated scanners to veterinary Practices, Animal Shelters, Breeders, and Pet Stores. These microchips, containing unique identifying numbers, are implanted under a pet's skin. In the event that a pet that has been implanted is lost, the pet can be scanned so that the information associated with the microchip can be used to reunite the pet with its owner.

.....

Chip Only Sales: Microchips (packaged with single use syringes) are sold to veterinary clinics, shelters, and breeders.

Section 59-12-102(111) defines tangible personal property to include personal property that may be seen, felt, touched, etc. Section 59-12-103 imposes sales tax on certain enumerated

transactions, including the sales, purchases, storage, uses, and consumption of tangible personal property within Utah. The microchips are tangible personal property and are subject to Utah sales and use tax unless some exemption applies.

Section 59-12-104(25) provides an exemption for a product purchased for resale. Consistent with § 59-12-104(25), subsection (1)(a) of Rule 109 states: “Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.” When a customer purchases for resale, they should provide the seller an exemption certificate. *See* subsection (5) of Rule 109. In addition to the resale exemption, other exemptions in § 59-12-104 may apply, such as a sale to the state of Utah, to a political subdivision, or to a religious or charitable institution.

In the current situation, it appears that the microchips that COMPANY NAME sells to veterinarians and others may be resold to other end users, such as pet owners. If COMPANY NAME purchaser (e.g. veterinarian) resells the microchip or meets another exemption, then that purchaser is exempt from sales tax on its purchase from COMPANY NAME. In such a case, the purchaser must provide COMPANY NAME with a valid, completed, signed Utah sales tax exemption certificate. Otherwise, COMPANY NAME should collect sales tax on sales of microchips.

B. Scanners

You explained that the scanners and microchips work together and that both are sold to veterinary clinics, shelters, breeders, etc. As with the microchips, the scanners are tangible personal property and COMPANY NAME sales of the scanners are taxable unless an exemption under § 59-12-104 applies. Just as with the microchips, COMPANY NAME should collect sales tax on sales of scanners unless it receives a valid exemption certificate from its customer. Unlike the microchips, however, the scanners are typically not resold by the veterinarians, clinics or shelters. Accordingly, the resale exemption for those items will rarely be available.

C. Collar Tags

You explained the following about collar tags:

COMPANY NAME sells Pet Identification Collar Tags. These collar tags are used in conjunction with the Limited and Full Pet Recovery Services. The tags are individualized with the pet’s microchip ID and the 1-800 COMPANY NAME call center number.

...

Based on the pictures on COMPANY NAME website, these collar tags look similar to traditional pet collar tags in general. However, COMPANY NAME collar tags prominently display COMPANY NAME and phone number, and they are personalized with the pets’ names and microchip numbers. No other personalized information appears on the collar tags. Customers can purchase the collar tags on the COMPANY NAME website by clicking on “Need a replacement collar tag?” The collar tags vary in price from \$8 to \$26 based on style. There is

no apparent reason for pet owners to purchase the collar tags unless they also have COMPANY NAME recovery services.

Additionally, by email you clarified that the collar tags are also bundled into the sales of limited and full pet recovery services. Under your facts, it appears that COMPANY NAME sells the collar tags to veterinarians, animal shelters, etc. and possibly to other end users, in addition to pet owners. In this section, we will analyze the sale of collar tags alone. In the following sections, we will analyze the sale of the collar tags bundled into the sale of limited or full pet recovery services.

As with the microchips and scanners, the collar tags are tangible personal property and COMPANY NAME sales of the collar tags are taxable unless an exemption under § 59-12-104 applies. Just as with the microchips and scanners, COMPANY NAME should collect sales tax on sales of collar tags unless it receives an exemption certificate from its customer.

D. Fee for Limited Pet Recovery Services only

You explained the following about the limited pet recovery services (“Limited Services”):

“Limited” Pet Recovery Services: COMPANY NAME provides an internet accessible data repository in which owner and pet information is held for the purpose of reuniting lost pets with their rightful owners. Pet owners who have their pets “chipped” are asked to fill out a COMPANY NAME enrollment form, or have their vet complete an enrollment form for them. Information on the enrollment form critical to the recovery of the pet is captured and uploaded to the COMPANY NAME database. COMPANY NAME provides a pet recovery call center which receives calls from both individuals and institutions and uses information in the COMPANY NAME database to orchestrate the reuniting of the lost pet with its owner.

As discussed in the previous section, you have indicated that the sale of the collar tags and the sale of Limited Services are included in one single transaction for a single price.

In this case, the Limited Services other than the collar tags are nontaxable services. The recovery services are not identified as one of the taxable, enumerated transactions under § 59-12-103. More specifically, the Limited Services are not taxable repairs or renovations of tangible personal property, nor are they assisted cleaning or washing of tangible personal property. If the Limited Services did not include the sale of the collar tags, clearly no Utah sales tax would apply.

Under § 59-12-102(16)(a), a bundled transaction is the sale of two or more items if the items are: “(i) distinct and identifiable; and (ii) sold for one nonitemized price.” In this case the two distinct and identifiable items are the Limited Services and the microchip. Seven exceptions to a bundled transaction are located in § 59-12-102(16)(b)(i)-(vii). The exceptions of subsections (ii), (iii), (v), and (vii) clearly do not apply. Subsections (ii) and (iii) involve real property;

subsection (v) involves the sale of two services; and subsection (vii) involves sales of items such as food, drugs, and health equipment for human use.

Additionally, the exception of subsection (i), involving tangible personal property, does not apply. Subsection (i) includes “the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction.” However, according to the facts provided, this Lump Sum Fee does not vary and is not negotiable; it does not provide the purchaser with the option of selecting or not selecting the microchip.

We believe, however, that the exception of subsection (iv) does apply. Subsection (iv) involves the “sale of tangible personal property and a service if: (A) the tangible personal property (I) is essential to the use of the service; and (II) is provided exclusively in connection with the service; and (B) the service is the true object of the transaction.” We believe these tests are met.

Although a collar could theoretically be used without the service, it does not appear one of these collars would ever be purchased in the absence of the service. The characteristics of the collar tags support this conclusion. The COMPANY NAME and number are prominently displayed while the pet owner’s contact information is absent. Using a collar tag, a person finding a lost pet could only contact someone at COMPANY NAME. A collar tag has no apparent value to a pet owner unless the owner also has COMPANY NAME recovery services. Therefore, the sale of collar tags is merely incidental to the sale of services when the two items are sold as part of the same transaction, and we believe “the service is the true object of the transaction” as required by statute.

Because the transaction is not a “bundled transaction,” and the nontaxable service is the true object of the transaction, the sale of the Limited Service is not subject to Utah sales or use tax. The collars and tags are property used by COMPANY NAME in providing its service and thus COMPANY NAME should pay or accrue sales or use tax on its purchase of the collar tags.

E. Fee for Full Proactive Pet Recovery Services only

You explained the following about the full proactive pet recovery services (“Full Services”):

“Full” Proactive Pet Recovery Services: COMPANY NAME offers a premium pet recovery service to pet owners who have had their pets chipped. Full Proactive Pet Recovery Services include all services available under the “Limited” plan plus the following additional services.

► Lost Pet Alerts: Subscribers have the ability to log into the COMPANY NAME website to allow them to generate lost pet notices which are either faxed or emailed to veterinarians, shelters, and pet rescuers in the surrounding area in which the subscribers pet was lost. Subscribers also have the ability to create “Lost Pet” posters that can be printed and posted in the area via this service.

▶ 24/7 Emergency Medical Response through the ASPCA Animal Poison Control Center hotline.

▶ Complimentary Lost Pet Medical insurance which provides for up to \$3,000 of emergency medical treatment for injuries a subscriber's pet may suffer while lost.

▶ Provision of laminated, wallet-sized Pet ID Cards with the pet's name, microchip number, photo, vet information and emergency clinic contact information.

As discussed previously, you provided that collar tags are included in this transaction.

As with Limited Services, the Full Services are not tangible personal property under § 59-12-102(111), and the sale of those services are not one of the taxable, enumerated transactions of § 59-12-103. Therefore, no Utah sales tax applies on the sale of the Full Services.

However, unlike the Limited Services, the Full Services involves the pet ID cards. These pet ID cards are sold as part of the pet recovery services, but the essence of the sale of the Full Services is still the pet recovery services. Therefore, the pet ID cards are incidental, just as the collar tags are, to the sale of the nontaxable services. For the Full Services, the pet ID cards and the collar tags would be considered to be goods consumed by COMPANY NAME in providing the nontaxable service, and COMPANY NAME would be responsible to either pay Utah sales tax or accrue Utah use tax on its purchase of the pet ID cards and collar tags.

F. Microchips Given Away for Free

You explained the following about the microchips given away for free:

Vet Reseller Model: A variety of incentive programs are marketed to veterinary clinics which allow them to obtain chips for free. In a typical transaction, a microchip is provided for free to the clinic for each Full Proactive Service enrollment that COMPANY NAME receives from the participating clinic. Clinics will charge an all inclusive fee to the consumers for the chip, the implant procedure and the first year of pet recovery services. Clinics can also earn a free chip for enrolling a pet in COMPANY NAME that they did not implant (i.e. a competitively chipped pet).

Under Rule 68, tangible personal property given away for free is taxable to the entity that gives the property away because that entity is considered the end user/consumer of the property. In this case, COMPANY NAME gives away the microchips to veterinary clinics as a promotion or reward for enrolling customers to the Full Services. The veterinary clinics receive the free microchips even when pet owners enrolling into the Full Service do not need the microchips because they already have competitors' microchips in their pets. The COMPANY NAME microchips given away to veterinary clinics are items of tangible personal property brought into Utah for use, not for resale. In this situation, COMPANY NAME would be responsible to accrue and pay use tax to the State of Utah for any microchips given away for free that are

shipped or delivered to Utah. The amount of the use tax would be based on COMPANY NAME cost for the microchips and for any other materials, such as the syringes, that are given away.

G. Lump Sum Fee for Pet Recovery Service and Microchip

You explained the following about a lump sum fee for pet recovery services and microchip:

Prepaid Program: Both Vets and Shelters are offered an optional “Prepaid” plan wherein the microchip and first year of Full Proactive Pet Recovery Services are offered for sale from COMPANY NAME. Shelters typically pass this charge along to customers as part of the overall set of pet adoption fees.

As discussed previously, you provided that the collar tags are bundled into the sale of Full Services. Therefore, the collar tags would be part of this transaction as well.

This sale includes the transfer of both the non-taxable Full Services and the microchip, which is tangible personal property. Therefore, we consider whether the microchip is incidental to the sale of services or whether the microchip is a second object of the transaction. In this case, we find that the microchip is not incidental but is a second object of the transaction. The microchip has value independent of the recovery services. The microchip remains in the pet and organizations with a scanner can continue to read the microchip after the COMPANY NAME recovery services expire. Furthermore, we see nothing preventing a pet owner from subscribing to recovery services from a different provider, using the same microchip.

Because this sale has two separate objects of the transaction, the sale, like the sale of the Limited Service contracts, meets the definition of a bundled transaction under § 59-12-102(16)(a). For the reasons outlined earlier, most of the exceptions to the bundled transaction definition do not apply.

Unlike the Limited Services contract, however, the exception of subsection (iv) does not apply. As noted above, subsection (iv) involves the “sale of tangible personal property and a service if: (A) the tangible personal property (I) is essential to the use of the service; and (II) is provided exclusively in connection with the service; and (B) the service is the true object of the transaction.” However, in this case we have previously found that the microchip is a second true object of the transaction. Additionally, your question about the taxability of the microchip alone suggests that you do not provide the microchip exclusively in connection with COMPANY NAME recovery services. Furthermore, you have explained that COMPANY NAME services can work with a competitor’s chip,² so the microchip provided by COMPANY NAME is not essential to COMPANY NAME recovery services.

However, based on the facts provided, we cannot make a conclusion about the exception found in subsection (vi). Subsection (vi) involves a transaction that includes both a nontaxable item and taxable item. In this case, the nontaxable item would be the Full Services and the taxable item would be the microchip. Subsection (vi) provides that if the taxable item is *de*

² This information is found in the description of the Vet Reseller Model.

minimis then the transaction is not bundled. To determine whether an item is *de minimis*, one must apply the provisions found in § 59-12-102(16)(e). Generally, however, the seller's cost of the taxable item must be 10% or less of the seller's total cost of the bundled transaction. Alternatively, the sale price of the taxable item must be 10% or less of the total sales price of the bundled transaction. If you think that the microchips might be *de minimis*, we recommend that you review the provisions of § 59-12-102(16)(e). If you have additional questions, you are welcome to contact us again.

We will now continue our analysis based on the assumption that none of the exceptions of § 59-12-102(16)(b)(i)-(vii) apply so this lump sum fee transaction is a bundled transaction.

Section 59-12-103(2)(d) provides the tax treatment of bundled transactions. Under § 59-12-103(2)(d)(ii)(A):

[T]he entire bundled transaction is subject to taxation under this chapter unless:
(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business . . .

Therefore, the entire lump sum fee for the Full Services and taxable microchip would be subject to tax unless COMPANY NAME can meet § 59-12-103(d)(ii)(A)(I) and reasonably identify the item not subject to tax. If COMPANY NAME meets § 59-12-103(d)(ii)(A)(I), then it would charge and collect sales tax on only the taxable portion of the bundled transactions (i.e. on the microchip). Furthermore, COMPANY NAME must follow § 59-12-107(2)(c)(i), under which it must give its customer a receipt for the tax collected or it must bill the tax as a separate item on the invoice. However, the exemptions discussed in the earlier analysis under "A. Microchips" could still apply to make the entire sale nontaxable.

Finally, we note that with this transaction, COMPANY NAME would be responsible to either pay Utah sales tax or accrue Utah use tax on its purchase of the pet ID cards and collar tags, just as it must with the sales of the Full Services alone.

H. Lump Sum Fee for Microchip, Implantation, and Pet Recovery Service

You explained the following about a lump sum fee for microchip, implantation, and pet recovery services:

► **Vet Reseller Model:** A variety of incentive programs are marketed to veterinary clinics which allow them to obtain chips for free. In a typical transaction, a microchip is provided for free to the clinic for each Full Proactive Service enrollment that COMPANY NAME receives from the participating clinic. ***Clinics will charge an all inclusive fee to the consumers for the chip, the implant procedure and the first year of pet recovery services.*** Clinics can also earn a free chip for enrolling a pet in COMPANY NAME that they did not implant (i.e. a competitively chipped pet).

(Emphasis added.)

Because this transaction involves the Full Services, the sale of collar tags is part of the transaction.

Unlike the other transactions, this transaction appears to not involve a sale by COMPANY NAME, but rather a sale by a COMPANY NAME customer (e.g. a veterinary clinic). A veterinarian would implant the microchip and would, therefore, be the party selling this lump sum service.

For analysis purposes, this situation is similar to the other bundled transaction discussed above. This transaction includes nontaxable services (implantation and pet recovery) and also taxable property (the microchip) and meets the definition of a bundled transaction found in § 59-12-102(16)(a) unless an exception applies. Based on the information provided, we find that the exceptions of subsections (b)(i)-(v) and (vii) are not met. According to your website, the membership fee is \$16.99 per year and “the average cost to have a microchip implanted by a veterinarian is around \$45.” Thus, it does not appear that either portion of the transaction is *de minimis*.

For this lump sum transaction, the entire lump sum fee for the nontaxable services and the taxable microchip would be subject to tax unless the veterinary clinic can meet § 59-12-103(d)(ii)(A)(I) and reasonably identify the items not subject to tax. If the veterinary clinic meets § 59-12-103(d)(ii)(A)(I), then it would charge and collect sales tax on only the taxable portion of the bundled transactions (i.e. on the microchip). Furthermore, the veterinary clinic must follow § 59-12-107(2)(c)(i), under which it must give its customer a receipt for the tax collected or it must bill the tax as a separate item on the invoice.

3. Conclusion

Based on the above analysis, COMPANY NAME products or services are taxable as follows:

Tangible personal property subject to sales tax unless an exemption applies:

- Microchips sold alone
- Scanners
- Collar Tags sold alone

Sales and give aways not subject to sales tax:

- Fee for Limited Pet Recovery Services only
- Fee for Full Proactive Pet Recovery Services only
- Microchips Given Away for Free

Sales of bundled items with the tax treatment depending on § 59-12-103(d)(ii)(A)(I):

- Lump Sum Fee for Pet Recovery Service and Microchip (unless the Microchip is *de minimis*)
- Lump Sum Fee for Microchip, Implantation, and Pet Recovery Service

Tangible personal property subject to use tax based on the cost of items used or consumed:

- The cost of microchips, syringes, etc. for Microchips Given Away for Free
- The cost of collar tags and/or pet ID cards for:
 - Limited Pet Recovery Services only
 - Full Proactive Pet Recovery Services only
 - Lump Sum Fee for Pet Recovery Service and Microchip
- The cost of the Microchip in a Lump Sum Fee for Pet Recovery Service and Microchip, if the Microchip is *de minimis*.

Our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

R. Bruce Johnson
Commissioner

RBJ/aln
09-001