



STATE BOARD OF EQUALIZATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

In the Matter of the Petition for
Redetermination Under the Sales
and Use Tax Law

DECISION AND RECOMMENDATION
OF HEARING OFFICER

X-----
Petitioner

Account No. X-----

The matter came on regularly for hearing on November 25, 1975, in Oakland, California, before W.E. Burkett, Hearing Officer.

Appearances:

For the Taxpayer:

X-----

For the Board:

Mr. L.H. Woolslayer
Principal Tax Auditor

Mr. F. Coryell
Auditor

Protested Item
(Period 7/1/71 to 6/30/74)

Sales of drugs at retail not reported.

\$66,672

Contentions of Taxpayer

The application of the tax operates to deny the taxpayer equal protection under the laws as set forth in the federal and state constitution.

Summary of Petition

The taxpayer is an individual engaged in the operation of a veterinary clinic.

The protested measure of tax is made up of the difference between the tax-paid purchase price and the amount billed to customers for animal drugs prescribed or administered by the taxpayer.

The field auditor determined that the taxpayer consistently made sales of drugs in excess of \$150 per month for which a separate charge was made to customers.

The taxpayer does not dispute the amount of the sales or the fact that a separate charge was made to customers for the property. However, it is submitted that it is a denial of equal protection of law to classify the taxpayer as the retailer and yet allow other veterinarians to be classified as consumers. The board has followed the administrative practice of classifying a veterinarian as the consumer of drugs where the volume of drugs separately billed to the customer was less than \$150 per month.

Analysis and Conclusions

We approve of the application of the tax to the taxpayer's drug sales. It is our conclusion that the board's administrative practice does not deprive the taxpayer of equal protection of law or any other rights guaranteed by the provisions of the state and federal constitutions.

Absolute uniformity or equality in the application of tax measures is not required and equal protection of the law is not violated if a tax distinction is placed upon a rational basis (see discussion in Ladd v. State Board of Equalization, 31 Cal.App.3d 1009, 1019).

We officially note that veterinarians are engaged primarily in performing professional services. The drugs provided in the course of performing the service may vary from a single drop of liquid to a substantial quantity of medicine administered over a relatively long period of time. It is thus apparent that it is extremely difficult to determine in each individual case whether the drug had been sold and delivered to the customer or consumed in the course of performing the service. It would appear equally difficult to ascertain in each instance whether the veterinarian's lump-sum charge included a charge for drugs.

Viewed in this setting we consider the presence or absence of a separate charge as a reasonable basis for determining whether the veterinarian has sold or consumed the drugs administered.

The board's administrative practice of foregoing collection where the total sales incidentally made by the veterinarian do not exceed the sum of \$150 per month is upheld on the basis of administrative convenience and the expense of the tax collection. It has be

recently held that these considerations alone may justify differing tax treatment for persons within a single general class (see City of San Jose v. Donohue, 51 Cal.App.3d 40).

Recommendation

It is recommended that the taxes be redetermined without adjustment.

W.E. Burkett, Hearing Officer

12-18-75