

EQUINE

SALES & USE TAX

REVIEW

PRODUCED BY

DEAN DORTON ALLEN FORD || WYATT TARRANT & COMBS

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WYATT TARRANT & COMBS LLP

DEAN DORTON ALLEN FORD PLLC

Located in Kentucky, known for its world-class horse farms, racing, and sales, our firm has provided accounting, tax, and business consulting services to the horse industry for over 30 years. Our clients cover a broad spectrum of organizations involved in the horse industry, from small boarding farms to large multidepartmental farms involved in boarding, breeding, selling, stallion management, and crop production; from racing stables to a racetrack; from bloodstock agents to equine veterinary firms to equine insurance agencies; and from industry associations to industry publications. Not all of our clients are based in Kentucky; horse industry clients from other parts of the country and from outside the United States also gain comfort from having our industry specialists work with them.

As a firm, we endeavor to know the business of horses, not just accounting and tax rules relating to the industry. We accomplish this in a number of ways, including, most usefully, by working with our many clients in the industry on their business matters.

We perform a variety of services for our clients involved in the equine industry and we welcome inquiries, whether from new participants in the industry who want assistance in properly structuring and administering their stables or farms or from longtime industry participants seeking to improve the performance and administration of their thoroughbred operations.

S E R V I C E S

ACCOUNTING

- Directly performing many accounting, payroll, and clerical functions for smaller enterprises
- Designing and implementing farm accounting and management information systems
- Performing audit, review, and compilation services on client financial statements

BUSINESS CONSULTING

- Developing financial and business plans for farms, breeding operations, and racing stables
- Financial analysis of stallion prospects
- Designing, implementing, and administering retirement plan and other employee benefit programs
- Providing litigation support and forensic accounting services
- Providing a wide range of technology solutions, e.g. complete managed services, network design and support, technology assessments, software consulting, accounting software solutions, and business application training

S E R V I C E S C O N T I N U E D

TAX

- Developing strategies to use the optimum forms of organization in which to conduct horse and farm businesses
- Reducing exposure to the hobby loss rules
- Structuring transactions to avoid or minimize sales and use taxes
- Avoiding or managing the potential impact of the passive activity loss rules
- Using current and deferred trades of horses and farms to avoid or postpone income taxes
- Using the involuntary conversion tax rules to defer income taxes on insurance recoveries related to horse and farm casualties
- Estate planning designed to use special-use valuation and family farm conservation incentives, family-limited partnership strategies, and deferred tax payments
- Handling multistate tax issues
- Helping foreign owners and breeders to minimize exposure to U.S. taxes and comply with filing requirements
- Developing tax accounting systems to comply, where required, with rules requiring capitalization of preproductive period costs
- Representing clients with federal and state tax audits

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L E I G H M C K E E is a Director of Tax with the Kentucky based accounting and advisory firm of Dean Dorton Allen Ford, PLLC. She is a member of the firm's equine, not-for-profit, and natural resources industry groups. In the equine area, Leigh specializes in international, federal, state, and local income and transfer taxation as it relates to the equine business, including entity structuring to best accomplish numerous and sometimes competing tax and business goals, business transactions, and financial planning and projections.

She received her Bachelor of Science in Foreign Services from Georgetown University, Washington, DC in 1987; her Master of Arts in International Commerce from the Patterson School of Diplomacy and International Commerce, University of Kentucky, Lexington, KY in 1990; and took post-baccalaureate work in Accounting, School of Accountancy, University of Kentucky, Lexington, KY in 1995. She was awarded the Elijah Watts Sells Silver Medal for second highest score in the country on November 1995 CPA Exam.

Leigh is a frequent speaker and author on numerous topics. Recent presentations in the equine area include UK Annual Equine Law Conference - Tax Benefits of Conservation Easements - April 2009; NTRA Equine Tax Conference - Dispositions of Bloodstock - Sales, Like Kind Exchanges, Involuntary Conversions, Charitable Contributions - April 2009; University of Kentucky College of Law, Equine Law Course, Tax and Accounting Issues in the Equine Business, Spring 2007 and Spring 2008; Thoroughbred Owners and Breeders Association New Owners Seminars, Tax and Accounting Issues for Thoroughbred Owners - April 2002, March 2004, June 2005, February 2006; Eastern Kentucky University Meeting of the Minds Program, Special Equine Accounting and Tax Rules, September 2005; Journal of Taxation, Income Tax Consequences of Dispositions of Development Rights in Property, December 2002.

She is a member (1998-present) and past-president (2005-2006) of the Bluegrass Estate Planning Council and a member and board member (1998-present) of the Central Kentucky Planned Giving Council and served on the boards of the Lexington Center Corporation (1998-2008) and the Lexington Children's Museum (1997-1999).

W Y A T T T A R R A N T & C O M B S L L P

As one of the South Central region's largest law firms, we maintain an active national practice with more than 200 attorneys in seven offices throughout Kentucky, Tennessee, Mississippi, Colorado and Indiana. Organized into 13 service teams and industry focused practice groups, we bring to bear the knowledge, experience, and wisdom of our One Firm to meet the needs of every client.

Wyatt attorneys distinguish themselves as legal experts and community leaders. Rare would be the week when our attorneys do not publish a book or article, serve as adjunct professor, or conduct a seminar as experts in our areas of practice. Our attorneys have served as Federal and state judges, legislators, and executive officers, such as Mayor, Governor, Solicitor General, Attorney General and Presidential Emissary. One of us has been Executive Director of the NAACP, and on any given day we serve and lead more than 500 civic, charitable, and professional boards, committees, and commissions throughout our region and the United States.

- Sound Advice
- Vigorous Advocacy
- Thoughtful Counsel
- Attention to Detail, and
- A Sense of Urgency on Your Behalf

Wyatt, Tarrant & Combs, LLP. One Firm Committed To Client Service.

W Y A T T E Q U I N E T E A M

Our equine lawyers, within the Firm's Equine Gaming & Entertainment Practice are experienced in assisting clients with an extensive range of legal issues. These clients include some of the most well recognized names in the horse industry, including publicly traded entertainment companies, industry racing associations, and owners, trainers and breeders of some of the world's greatest race horses and sport horses. With a well-trained professional staff and the latest in computerized research systems, we move quickly to address the most sophisticated legal matters.

Our strengths in this practice area include: years of experience as counsel to the horse industry, active participation in the horse indus-

try (both racing and sport horses), and responsive and personalized service.

Experience in the following categories:

- *Account wagering*
- *Commercial and horse farm real estate*
- *Commercial lending*
- *Copyrights, trademarks and patents*
- *Entity selection and formation*
- *Equine litigation and dispute resolution*
- *Equine tax - federal and state*
- *Gaming: establishment, regulatory compliance*
- *Immigration and work visas*
- *Internet gaming*
- *Legislative, regulatory and lobbying advice*
- *Merchandising strategy, media contracts and event hosting*
- *Mergers and acquisitions*
- *Private placements*
- *Racing and sales of bloodstock*
- *Racing partnerships*
- *Slots and Racinos*
- *Stallion syndications*
- *Simulcasting contracts*

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Born in Toronto, Canada, Ms. D'Angelo has an MBA from York University in Toronto (1990) and her J.D. from the University of Kentucky (1996). She is an Adjunct Professor at the University of Kentucky where she teaches Equine Law. She has been a member of the Planning Committee of the National Conference on Equine Law since 2000.

She is a current Board Member of the Kentucky Chamber of Commerce, Commerce Lexington, LexArts, the KBA IOLTA Board of Trustees as well as the 2010/2011 Chair of the Kentucky Bar Association's Section of Business Law.

She is a General Member of the International Masters of Gaming Law and has recently been published in *Casino Lawyer* and *Casino Enterprise Management* publications. She has been quoted on equine and gaming issues in *The New York Times*, the *Toronto Globe & Mail*, *The Blood-Horse*, the *Thoroughbred Times*, and the *Lexington Herald-Leader*.

Ms. D'Angelo is the co-author (with Mr. Waxman) of *No Contest: An Analysis of Thoroughbred Handicapping Contests Under Conflicting State Law Regimes*, *Journal of Equine, Agricultural and Natural Resource Law*, 2009; Co-Author of *Galloping Across State Lines; Wagering, Wine and the U.S. Constitution*, Kentucky Bar Association, Bench and Bar, May 2007; author of *A Legislative Review of Alternative Gaming*, University of Kentucky, College of Law, National Equine Law Seminar, 2003 and *Partnerships; a Need for Structure*, *The Blood-Horse Magazine*, November 2002.

HOW TO USE THIS GUIDE

OVERVIEW

Racehorses and show horses are typically purchased and used in multiple states. Their often sizable value and the patchwork of differing state sales and use tax rules can create significant sales and use tax exposures. This publication is an effort to begin developing a resource on the application of various states' sales and use tax rules as they apply specifically to these businesses. It is a work in progress. We anticipate adding states and refining the discussion and appreciate input and observations from advisors to and participants in the equine business and will post updated versions to our firms' websites. The information provided herein is general in nature and may not be used as tax or legal advice. Please consult a professional advisor on your specific situation.

SALES TAX

The sales tax is typically imposed on the retail sale of tangible personal property in the state. Some states also tax leases of such property. Additionally, a few states tax the sale of services. States also exempt certain types of tangible personal property from the sales tax. The tax is imposed on the purchaser of the property, but collected and remitted by the seller. Some states provide sellers with an exception from the requirement to collect and remit sales tax when they only make taxable sales on an "occasional" or "isolated" basis.

Sales of horses may be exempt from the sales tax on any number of bases. Some states exempt the sale of horses used for particular purposes, such as breeding or racing. States will often exempt horses purchased for re-sale. States will also often exempt the seller from collecting sales tax on horses delivered out of state. Most states do not impose the sales tax on services or on intangible property, so the nature of the item being sold under the relevant state law impacts whether or not sales tax will be due. Some states treat leases as sales subject to the sales tax.

USE TAX

The use tax serves as a complement to the sales tax. It is typically imposed on the storage, use, or consumption of tangible personal property upon which no sales tax was paid to the state where the property is used. The use tax is paid directly by the owner of the property to the state where the property is used. Most states permit a credit against the use tax for sales tax paid on the purchase of the property to another state. As in the case of the sales tax, states also exempt certain types of tangible personal property from the use tax.

The use of horses may be exempt from the use tax on a number of bases. Some states exempt "temporary" use of a horse in their state. Some states exempt use of a horse that was purchased some time prior to importation into the state for use or prior to establishment of residence or commercial domicile in the state. As in the case of the sales tax, states may exempt horses used for particular purposes from the use tax. And they will often exempt horses held for re-sale from the use tax. Some states treat leases of property used in the state as subject to the use tax, even where the owner of the property is not domiciled in the state. States may impose the use tax on the purchase price of the property, its fair market value at the time it becomes subject to use tax, the lower or higher of the two or some capped amount.

FOREIGN SALES

This guide does not currently address purchase or sales of horses from and to foreign countries. If a transaction involves another country then inquiry should be made as to possible tax impact of such a transaction and international treaties that may apply as well as United States constitutional issues regarding export of goods.

CALIFORNIA

Sales Tax 8.25% Rate*

MARES

Generally subject? Yes

Exceptions: Racehorse (but not other horse) breeding stock is partially exempt from sales tax. Code section 6358.5, Regs section 1535.

STALLIONS

Generally subject? Yes

Exceptions: Racehorse (but not other horse) breeding stock is partially exempt from sales tax. Code section 6358.5, Regs section 1535.

Stallion Shares: Generally taxable. See Agnew v. Cal. State Bd. of Equalization, 2003 WL 21464990, at *11 (Cal. Ct. App. June 25, 2003).

STUD FEES

Generally subject? Probably no - the sale of the right to breed is not the sale of tangible personal property. CA SUTA Series 110, Jan. 1, 2006.

LIFETIME BREEDING RIGHTS

Generally subject? Probably no - the sale of the right to breed is not the sale of tangible personal property. CA SUTA Series 110, Jan. 1, 2006.

RACEHORSES/SHOWHORSES

Generally subject? Yes

CLAIMING

Generally subject? Yes. Code 6015(a)(3). Sales at claiming races do not count towards occasional sale limits (track is the retailer).

OTHER

Shipping out of state: Nonresident/non-commercially domiciled purchaser must take possession outside of the state to be exempt. Regs section 1620 (3)(A)-(B).

Re-sales: Exempt with resale certificate. Code section 6092.

Occasional sales: Exempt if less than 3 sales in 12 months. Regs section 1595.

Sales directly by the breeder: No exemptions noted.

Sales at auction: No exemptions noted.

Leasing: Treated as sale.

*Up to 9.75% including local taxes

MARES

Generally subject? Yes

Exceptions: Racehorse (but not other horse) breeding stock is partially exempt from sales tax. Code section 6358.5, Regs section 1535.

STALLIONS

Generally subject? Yes

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LIFETIME BREEDING RIGHTS

Generally subject? Probably no - the sale of the right to breed is not the sale of tangible personal property. CA SUTA Series 110, Jan. 1, 2006.

RACEHORSES/SHOWHORSES

Generally subject? Yes

OTHER

Credit Against Use Tax: Yes. Code section 6406.

Leasing: Same treatment as a sale. Code section 6006. No credit for lease payments. Code section 6406.

Re-sales: Exempt

*Up to 9.75% including local taxes

Notes and Comments

California has numerous sales tax rates for the state and localities as follows:

The state rate is 7.25% comprised of the following:

- 4.75% state general fund tax under Code section 6051.
- 1% temporary state general fund tax applicable April 1, 2009 to July 1, 2011 under Code section 6051.7.
- 0.5% state local revenue fund under code section 6051.2.
- 0.5% state local public safety fund tax under California Constitution section 35, Article XIII.
- 0.25% state general fund under Code section 6051.3.
- 0.25% state fiscal recovery fund tax under Code section 6051.5.

Cities or counties may impose up to 1.5% local (county/city) tax comprised of 0.25% for county transportation funds and 0.75% for city and county operations under Code section 7203.1 and an additional 0.5%. See www.boe.ca.gov/pdf/pub71.pdf for additional information.

1. *McConville v. State Board of Equalization*, 85 Cal.App.3d 156, 149 Cal.Rptr. 194 1978.

Quarter horse case involved broodmare purchased for resale that was subsequently bred.

Relevant statute is California Revenue and Taxation Code section 6201-7273.

Court held that subsequent breeding was necessary to sell horses and didn't change the intent to resell requirement and therefore the horses were not subject to use tax. If the plaintiff ultimately retains the mares, then use tax will be due.

2. *Agnew v. California State Board of Equalization*, 2003 WL 21464990 (Cal. App. 2 Dist., June 25, 2003). (unpublished)

Taxpayer disputed that sales tax was due on syndication of thoroughbred stallion, DESERT WINE. Taxpayer attempted to argue that sale of fractional interests was transfer of services rather than property and the cumulative sale was single sale. The Court held sale of fractional interests was sale of tangible property and that syndicate owned the horse. Court held that sale was not the sale of a limited partnership interest or sale of services only and that each sale of each fractional interest was a sale, thus cumulative transaction not eligible for occasional sale exemption. Sale of fractional interests were individual sales and not sold into a limited partnership. The Court held that the Board determined more than 40 years prior to the case that each fractional interest represented an undivided ownership interest in the horse (quoting the syndicate agreement at length and Annotation 540.0300). This is to be distinguished from the sale of an annual nomination (right to breed a mare) which is not subject to sales tax as it is not tangible personal property (Annotation 540.0600).

MARES

Generally subject? Yes. FAC r. 12A-1.049(1).

Exceptions: The sale of equine livestock for breeding purposes is exempt. FAC r. 12A-1.049(6). Sales made by a producer are exempt. FAC r. 12A-1.049(1).

STALLIONS

Generally subject? Yes. FAC r. 12A-1.049(1).

Exceptions: The sale of equine livestock for breeding purposes is exempt. FAC r. 12A-1.049(6). Sales by a producer are exempt. FAC r. 12A-1.049(1).

Stallion Shares: Probably treated the same as stallions - no authority.

STUD FEES

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes. FAC r. 12A-1.049(4).

CLAIMING

Generally subject? Yes, collected only on maximum amount for which a horse is sold at a claiming race one time only during the racing season. FAC r 12A-1.049(5).

OTHER

Shipping out of state: Nonresident/non-commercially domiciled purchaser must take possession outside state to be exempt. Fla. Stat. Ann. § 212.06(5)(a)

Re-sales: Exempt. FAC r. 12A-1.039.

Occasional sales: Exempt if seller has paid all sales or use tax and no more than 2 sales within 12 months. FAC Rule 12A-1.037(3).

Sales directly by the breeder: Exempt, even where owner is not a Florida resident. FAC r 12A-1.049(3).

Sales at auction: No exemptions noted.

Leasing: Taxed as a sale.

Use Tax 6% Rate

MARES

Generally subject? Taxable if used within FL. FSA § 212.06(8)(a).
Exceptions: Use for breeding purposes in the state is exempt. FAC r. 12A-1.049(6).

STALLIONS

Generally subject? Taxable if used within FL. FSA § 212.06(8)(a).
Exceptions: Use for breeding purposes in the state is exempt. FAC r. 12A-1.049(6).

STUD FEES

Generally subject? Probably a non-taxable service or use of intangible property - no authority.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or use of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes. FAC r. 12A-1.049(4).

OTHER

Credit Against Use Tax: Yes. FSA § 212.06(7).

Leasing: Same treatment as a sale. FSA § 212.05.

Re-sale: Exempt. FAC r. 12A-1.039.

Prior use outside the state: Items purchased and used in another state for 6 months or longer before importation are exempt. FSA § 212.06(8)(a).

MARES

Generally subject? Yes. KRS § 139.531(1)(b).

Exceptions: The sale of a horse for breeding purposes is exempt. KRS § 139.531(2)(a).

STALLIONS

Generally subject? Yes. KRS § 139.531(1)(b).

Exceptions: The sale of a horse for breeding purposes is exempt. KRS § 139.531(2)(a).

Stallion Shares: The sale of shares of a horse for breeding purposes is exempt. KRS § 139.531(2)(a).

STUD FEES

Generally subject? Sales taxes apply to “fees paid for breeding a stallion to a mare in this state.” KRS § 139.531(1)(a).

LIFETIME BREEDING RIGHTS

Generally subject? Yes. See *Calumet Farm, Inc. v. Revenue Cabinet*, 793 S.W.2d 830 (Ky. Ct. App. 1990).

RACEHORSES/SHOWHORSES

Generally subject? Yes. KRS § 139.531(1)(b).

Exceptions: The sale of horses less than two years of age to a non-resident/non-commercial domicile of Kentucky is exempt. KRS § 139.531(2)(d).

Temporary use of a horse in the state for purposes of racing, exhibiting, or performing will not make the sale taxable. KRS § 139.531(2)(f).

CLAIMING

Generally subject? Yes. Tax applies to “the sales price of any horse claimed at any race meeting within this state.” KRS 139.531(1)(c).

Temporary holding in the state for training purposes is permitted, provided the animal is shipped out of the state immediately upon completion of the training period. Revenue Circular 51C011.

OTHER

Shipping out of state: Nonresident/non-commercially domiciled purchaser must generally take possession outside state to be exempt. KRS 139.200(1)(a)

Re-sales: Purchases of horses for resale are exempt, so long as the horses are not used in racing or showing before resale. KRS § 139.270; 139.290.

Occasional sales: Exempt where seller has less than two retail sales during any 12-month period. KRS 139.010(15)

Sales directly by the breeder: No exemptions noted.

Sales at auction: No exemptions noted.

Leasing: Taxed as a sale. KRS 139.010(6)(a).

Use Tax 6% Rate

MARES

Generally subject? Yes. KRS § 139.531.

Exceptions: The use of a horse for breeding purposes is exempt. KRS 139.531(2)(a).

STALLIONS

Generally subject? Yes. KRS § 139.531.

Exceptions: The use of a horse for breeding purposes is exempt. KRS 139.531(2)(a).

STUD FEES

Generally subject? Yes. KRS § 139.531(1)(a).

LIFETIME BREEDING RIGHTS

Generally subject? Yes. See *Calumet Farm, Inc. v. Revenue Cabinet*, 793 S.W.2d 830 (Ky. Ct. App. 1990).

RACEHORSES/SHOWHORSES

Generally subject? Yes.

Exceptions: The temporary use of horses in the state for purposes of racing, exhibiting, or performing is exempt. KRS § 139.531(2)(f).

OTHER

Credit Against Use Tax: Yes. KRS § 139.510.

Leasing: Treated as sale. KRS 139.200.

Re-sale: Holding horses for resale is exempt, so long as the horses are not used before resale. KRS § 139.270; 139.290.

1. *Stoner Creek Stud, Inc. v. Revenue Cabinet Commonwealth of Kentucky*, 746 S.W.2d 73 (Ky. Ct. App. 1988).

This case arose from audit of taxpayer and subsequent appeal from the Board of Tax Appeals which held that the feed and machinery used in a horse business was not exempt from the application of sales tax and that use tax was due on hay purchased out of state. Board of Tax Appeals decision was affirmed by the Court of Appeals. Relevant statutes were Kentucky Revised Statutes 139.200, 139.310, 139.480(7) and (9) and Regulations 103 KAR 30:130(1). The Court held that since horses were not livestock as set forth in the statute (which referred to “human consumption”) and since feed was not “tangible personal property to be used in manufacturing or industrial processing” of finished products for resale, that taxpayers arguments failed. The Court indicated that horses are bred and raised, not manufactured and processed and “Happily, the legendary esteem in which Kentuckians have always held horseflesh has never extended to the dinner table.” Similarly, the argument for the machinery failed, based on the Court’s interpretation of the definition of “livestock” under KRS 139.480.

Comment: This issue of sales tax on feed etc. in horse industry is at the forefront of objectives for KEEP (Kentucky Equine Education Project) which seeks to modify this tax so that horse farmers are treated similarly to cattle and other livestock owners which do not have to pay sales tax on feed etc. For further information, see www.horseswork.com.

2. *Calumet Farm, Inc. v. Revenue Cabinet, Commonwealth of Kentucky*, 793 S.W.2d 830 (Ky. Ct. App. 1990).

This case arose from audit of taxpayer and subsequent appeal from the Board of Tax Appeals. Court held that lifetime breeding right in stallion (ALYDAR) was not a tax-exempt interest in horse but rather, a fee paid for breeding of stallion and fell within statute taxing fees paid for breeding of stallion. Relevant statute was Kentucky Revised Statutes 139.531.

3. *Commonwealth of Kentucky, Revenue Cabinet v. Kenington Sales, Inc.* (Ky. Ct. App. 1992).

Case arose from audit of taxpayer which was a thoroughbred sales company that had subsequently changed ownership. Relevant statutes were Kentucky Revised Statutes 139.531 dealing with sales of yearlings to out of state buyers. Importance of this case is to point out the necessity to document out of state sales. For forms used by current sales companies, see for example: www.fasigtipton.com/media/ee/docs/KENTUCKY_SALES_AND_USE_TAX.pdf.

MARYLAND

Sales Tax 6% Rate

MARES

Generally subject? Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.

Exceptions: Horses purchased for breeding purposes only are exempt. Md. Code Ann. Tax-Gen § 11-201; Van Clief v. Comptroller, 126 A.2d 865 (Md. 1956) & in Business Tax Tip #11.

STALLIONS

Generally subject? Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.

Exceptions: Horses purchased for breeding purposes only are exempt. Md. Code Ann. Tax-Gen § 11-201; Van Clief v. Comptroller, 126 A.2d 865 (Md. 1956) & in Business Tax Tip #11.

Stallion Shares: Probably treated the same as stallions - no authority.

STUD FEES

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.

CLAIMING

Generally subject? Yes. Md. Code Ann. Tax-Gen § 11-201.

OTHER

Shipping out of state: Nonresident/non-commercially domiciled purchaser must take possession outside state to be exempt. COMAR 03.06.01.25(2).

Re-sales: Exempt with resale certificate. Md. Code Ann. Tax-Gen. § 11-408.

Occasional sales: Exempt if under \$1,000 and the sale is not made through an auctioneer or dealer. Md. Code Ann. Tax-Gen § 11-209.

Sales directly by the breeder: No exemptions noted.

Sales at auction: No exemptions noted.

Leasing: Taxed as a sale. Md. Code Ann. Tax-Gen Sec. 11-101(g); Reg. 03.06.01.28(A))

MARES

Generally subject? Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.

Exceptions: Horses used for breeding purposes only are exempt. Md. Code Ann. Tax-Gen § 11-201; Van Clief v. Comptroller, 126 A.2d 865 (Md. 1956) & in Business Tax Tip #11.

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STUD FEES

Generally subject? Probably a non-taxable service or use of intangible property - no authority.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or use of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.

OTHER

Credit Against Use Tax: Yes. Md. Code Ann. Tax-Gen. § 11-221(c)(1).

Leasing: Taxed as a sale. Md. Code Ann. Tax-Gen Sec. 11-101(g); Reg. 03.06.01.28(A))

Re-sale: Exempt. Md. Code Ann. Tax-Gen. § 11-408.

Notes and Comments

1. *Van Clief v. Comptroller of State of Maryland*, 211 Md. 191, 126 A.2d. 865 (Ct. App. Md. 1956).

Court held that a broodmare which was formerly a race mare but now producing offspring was livestock “used for agricultural purposes” and therefore was exempt from sales tax. Construction of statute and definition of “agricultural purposes” were both at issue.

Relevant statute was Code 1951, Article 81, Section 322 (Exemptions) subsection (h). Court relied on other jurisdictions to holding that “the weight of authority in other jurisdictions is that agriculture includes the rearing, feeding and management of horses.”

MARES

Generally subject? Yes. Reg. Sec. 18:24-28.2.

Exceptions: Exempt if purchased for breeding purposes. Reg. Sec. 18:24-19.5(a).

Can buyer take possession in the state? No. Reg. Sec. 18:24-28.2

STALLIONS

Generally subject? Yes. Reg. Sec. 18:24-28.2.

Exceptions: Exempt if purchased for breeding purposes. Regulation 18:24-19.5(a).

Stallion Shares: Syndication of a horse is considered a sale of the horse and is subject to the sales tax under 18:24-28.9(a) unless the horse is used exclusively for breeding purposes.

STUD FEES

Generally subject? No. New Jersey Division of Taxation March/April 1989 State Tax News found stud fees to be an exempt farming input.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes. Regulation 18:24-28.2(a).

CLAIMING

Generally subject? Yes. Regulation 18:24-28.3.

OTHER

Shipping out of state: Nonresident/non-commercially domiciled purchaser must take possession outside of state to be exempt. Regulation 18:24-28.2.

Re-sales: Exempt with resale certificate. NJAC 54:32B-2(e)(1).

Occasional sales: Exempt casual sale means an isolated sale of an item of tangible personal property by a person who is not in the business of making retail sales of such property. Sec. 54:32B-2(u). Does not apply to claiming races.

Sales directly by the breeder: Yes. 18:24-28.8(a) provides that a horse that is raced in the state by the breeder is exempt from the sales and compensating use tax.

Sales at auction: No exemption for sale at auction. Regulation 18:24-28.2.

Leasing: NJSA Sec. 54:32B-2(e))

Use Tax 7% Rate

MARES

Generally subject? Yes. Sec. 54:32B-6

Exceptions: Exempt if used exclusively for breeding purposes. Regulation 18:24-19.5(a).

STALLIONS

Generally subject? Yes. Sec. 54:32B-6.

Stallion syndicates: Reg 18:24-28.9 provides that if a horse, not used exclusively for breeding purposes, is syndicated outside of NJ and subsequently is used in NJ, the syndicate will be subject to a compensating use tax if it met the resident requirements of NJAC 18:24-28.5 at the time of syndication. The residence is that of the syndicate and not of its individual members.

Exceptions: Exempt if used exclusively for breeding purposes. Regulation 18:24-19.5(a).

STUD FEES

Generally subject? No. New Jersey Division of Taxation March/April 1989 State Tax News found stud fees to be an exempt farming input.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes. Regulation 18:24-28.4(a).

Exceptions: Yes. Regulation 18:24-28.4(a) provides that the compensating use tax will not be imposed on the use of a race horse within this State if the horse was purchased by the user while a nonresident/non-commercial domicile of this State.

OTHER

Credit Against Use Tax: Yes. Regulation 18:24-28.4(b).

Leasing: Same treatment as a sale. Regulation 18:24-32.7.

Re-sale: Exempt. NJAC 54:32B-2(e)(1).

MARES

Generally subject? Yes. NY Reg. Sec. 527.14(a).

Exceptions: Exempt if purchased for breeding. NY Reg. Sec. 527.14(c)(1)(ii).

Can buyer take possession in the state? Exempt to non-resident/non-commercially domiciled purchaser if not delivered within NY. NY Reg Sec 527.14(f).

STALLIONS

Generally subject? Yes. NY Reg. Sec. 527.14(a).

Exceptions: Exempt if purchased for breeding purposes NY Reg. Sec. 527.14(c)(1)(ii).

Stallion Shares: Syndication is considered a sale of the horse and is subject to sales tax unless the horse is purchased exclusively for breeding purposes; taxability conditioned upon review of syndication agreement. NY Reg Sec 527.14(c)(ii) and (vii).

STUD FEES

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes, unless a registered racehorse to be raced in pari-mutuel race. N.Y. TAX LAW 28 § 1115(a)(29).

CLAIMING

Generally subject? Yes; tax due on portion of claiming price greater than any prior claiming price paid in NY during the same calendar year. N.Y. TAX LAW 28 § 1111(g); BUT, exempt if registered for pari-mutuel racing. N.Y. TAX LAW 28 § 1115(a)(29).

OTHER

Shipping out of state: Nontaxable if delivered outside NY before purchaser is deemed to have taken possession. NY Reg Sec. 527(14)(f)(1).

Re-sales: Resale purchases are exempt from sales and use tax. NY Tax Law 28 § 1105.

Occasional sales: Exempt if under \$600 per year from home. NY Tax Law 28 § 1115(a)(18).

Sales directly by the breeder: No exemptions noted.

Sales at auction: No exemptions noted.

Leasing: Taxed as a sale. Sec.1101(b)(5), Tax Law; Sec. 1110, Tax Law; Reg. Sec. 526.7

*Up to 8.875% depending on local surtaxes

Use Tax 4% Rate*

MARES

Generally subject? Yes. NY Reg. Sec. 527.14(a).

Exceptions: Exempt if used for breeding purposes. NY Reg. Sec. 527.14(c)(1)(ii).

STALLIONS

Generally subject? Yes. NY Reg. Sec. 527.14(a).

Exceptions: Exempt if used for breeding. NY Reg. Sec. 527.14(c)(1)(ii).

STUD FEES

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

LIFETIME BREEDING RIGHTS

Generally subject? Probably a non-taxable service or sale of intangible property - no authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes. NY Reg. Sec. 527.14(a).

Exceptions: Exempt if eligible to be registered for pari-mutuel racing. NY TAX LAW 28 § 1115(a)(29). Capped at \$100,000 of price/value per horse. 527.14(d)(iii)(b).

OTHER

Credit Against Use Tax: Residents may claim credit for other state/local tax paid; Credit not to exceed NY calculated tax;

Only available if state that tax was paid allows credit same credit for NY taxes paid. NY Tax Law 28 Sect. 1118(7)(a).

Leasing: Taxed as a sale. Sec. 1101(b)(5), Tax Law; Sec. 1110, Tax Law; Reg. Sec. 526.7

Re-sale: Resale purchases are exempt from sales and use tax. NY Tax Law 28 § 1105.

*Up to 8.875% depending on local surtaxes

MARES

Generally subject? Yes. 72 P.S. § 7202(a).

Exceptions: The purchase of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a). The propagation and raising of horses to be used exclusively for certain thoroughbred and harness racing activities qualifies as farming. Reg. Section 60.21(b)(3). Other types of horses are subject.

STALLIONS

Generally subject? Yes. 72 P.S. § 7202(a).

Exceptions: The purchase of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a). The propagation and raising of horses to be used exclusively for certain thoroughbred and harness racing activities qualifies as farming. Reg. Section 60.21(b)(3). Other types of horses are subject.

Stallion Shares: Subject. See case commentary below. But see exception relating to propagation of certain thoroughbred and harness racehorses.

STUD FEES

Generally subject? Stud fees are generally subject. See commentary below. Stud fees relating to the propagation and raising of horses to be used exclusively for certain thoroughbred and harness racing activities qualifies as farming. Reg. Section 60.21(b)(3).

LIFETIME BREEDING RIGHTS

Generally subject? Probably same as stud fees. No authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes and No. Purchases of horses to be used exclusively in certain thoroughbred and harness racing activities are exempt. Reg. Section 60.21(b)(1). Other horses are generally subject.

CLAIMING

Generally subject? No. Claiming races are also governed under Reg. Sec. 60.21. An example within this regulation states that a horse purchased at a claiming race was not subject to sales and use tax.

OTHER

Shipping out of state: Nonresident/non-commercially domiciled purchaser must take possession outside state to be exempt. Reg. Sec. 31.3(25).

Re-sales: Sale of property for purposes of resale is not subject to sales tax. 72 P.S. § 7201(k).

Occasional sales: Exempt if not more than 3 sales in a calendar year and not sold from a location at which other businesses are making similar sales of the same taxable property. Reg. Sec. 32.1.

Sales directly by the breeder: No exemptions noted.

Sales at auction: No exemptions noted.

Leasing: Taxed as a sale. Reg. Sec. 31.1 (1).

Use Tax 6% Rate

MARES

Generally subject? Yes. 72 P.S. § 7202(b).

Exceptions: The use of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a).
The propagation and raising of horses to be used exclusively for certain thoroughbred and harness racing activities qualifies as farming. Reg. Section 60.21(b)(3).
Other types of horses are subject.

STALLIONS

Generally subject? Yes. 72 P.S. § 7202(b).

Exceptions: The use of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a).
The propagation and raising of horses to be used exclusively for certain thoroughbred and harness racing activities qualifies as farming. Reg. Section 60.21(b)(3).
Other types of horses are subject.

STUD FEES

Generally subject? Stud fees are generally subject. See commentary. Stud fees relating to the propagation and raising of horses to be used exclusively for certain thoroughbred and harness racing activities qualifies as farming. Reg. Section 60.21(b)(3).

LIFETIME BREEDING RIGHTS

Generally subject? Probably same as stud fees. No authority.

RACEHORSES/SHOWHORSES

Generally subject? Yes and No. Purchases of horses to be used exclusively in certain thoroughbred and harness racing activities are exempt. Reg. Section 60.21(b)(1).
Other horses are generally subject.

OTHER

Credit Against Use Tax: Yes. Reg. Sec. 31.7(b).

Leasing: Taxed as a sale. Reg. Sec. 31.1 (1).

Re-sale: Exempt. 72 P.S. § 7201(k).

1. *Commonwealth v. Hanover Shoe Farms, Inc.* (27 Pa. D. & C2d 366, 1962 WL 6811 (Pa.Com.Pl., 1961))


Appeal from Board of Finance and Revenue to the Court of Common Pleas of Pennsylvania. Relevant statute was Selective Sales and Use Tax Act (72 P.S. 3403-2). The Sales and Use Tax Act used the words “farming” and “agriculture” without defining them. The Court held that the sale of semen for artificial insemination was a retail sale under the statute. Court found that raising of standardbred horses was not “farming” or “agriculture” and therefore no exemption was permitted, holding that seminal fluid was tangible personal property. In fact, the Court stated that “*Standardbred horses fill no basic need of man. It is common knowledge that the breeding and raising of standardbred horses is one of producing a luxury product and not a product ordinarily considered necessary to man’s needs: standardbred horses have no relation to the land except to occupy it and the fact that they produce waste used to fertilize the soil is the nature of all living creatures.*”

2. *Commonwealth v. Wetzel*, 435 Pa. 468, 257 A.2d 538 (S.Ct. Pa. 1969).

The Court held that the sale of stud fee services for breeding of standardbred horses later sold in the market was not exempt from sales tax under sale for resale exemption. Taxpayer Wetzel sent mares to Hempt Farms for artificial insemination. Taxpayer’s argument was that “semen provided by Hempt Farms stallion, in uniting with the ovum of appellant’s mare to produce a foal, represents personal property physically incorporated into other personal property to be sold in the regular course of business.” The Court also noted that since Hanover Shoe prohibits the characterization of artificial insemination and standardbred horse breeding as agricultural or farming, the taxpayer attempted to rely on the more general provisions of the statute for assembly operations. A similar case was argued by the mink breeders of Pennsylvania and failed. A subsequent Tax Act had been adopted in Pennsylvania since Hanover Shoe and the mink case, but did not alter the sections at issue.

3. *Hempt Brothers, Inc. v. Commonwealth*, 137 Pa.Cmwlth. 188, 585 A.2d 593 (S.Ct. Pa., 1991).

Court held that the purchase of shares in stallion syndications resulted in acquisition of ownership interests subject to use tax. Taxpayer attempted to argue, contrary to clear wording of syndication agreement, that the interest was more like a breeding right and was not “ownership” right.



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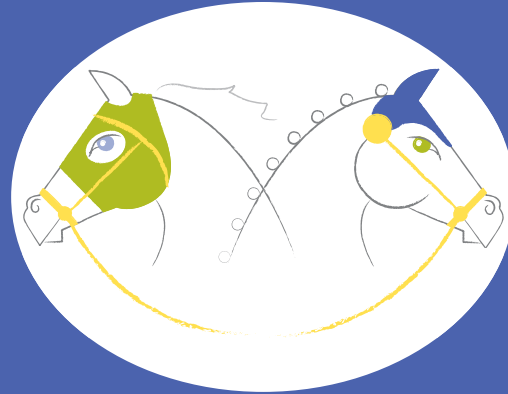
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