

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-96 (33)S
Sales Tax
May 23, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960314A

On March 14, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Pattison, Koskey & Rath, PC, 502 Union Street, Hudson, NY 12534.

The issue raised by Petitioner, Pattison, Koskey & Rath, PC, is whether fees paid to a farm for the care of horses boarded at the farm for the purposes of breeding are subject to State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

A farmer cares for horses that are boarded on his farm for the purpose of breeding. The farmer charges a fee based on his daily cost to feed, bed and exercise the horses. He sends bills to the owners of the horses each month to recoup his expenses. The farmer does not board any horses on his farm that are not there for breeding purposes.

Section 1105(c) of the Tax Law imposes sales tax upon:

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(vi) such services rendered on or after September first, nineteen hundred eighty-two with respect to tangible personal property for use or consumption directly and predominantly in the production for sale of tangible personal property by farming, as such tangible personal property is specified in paragraph six of subdivision (a) of section eleven hundred fifteen of this article. The exemption provided by this subparagraph (vi) shall not apply to the taxes imposed pursuant to section eleven hundred seven of this article. (emphasis added)

Section 528.7 of the Sales and Use Tax Regulations provides, in part:

(a) Exemption. (1)(i) All tangible personal property for use or consumption directly and predominantly in the production for sale of tangible personal property by farming, with the exception of property which will be incorporated into a building or structure is exempt from the sales and compensating use tax.

* * *

(2) Effective September 1, 1982, the services of installing, maintaining, servicing and repairing the tangible personal property specified as exempt in paragraph (1) of this subdivision are exempt from the New York State and local sales and compensating use taxes. However, this exemption does not apply to the sales and compensating use taxes imposed in New York City under section 1107 of the Tax Law. (See section 527.5 of this Title for a description of the terms installing, maintaining, servicing and repairing.)

* * *

(b) Farming. The term farming means and includes the following types of farming and activities:

- (1) raising stock, poultry or furbearing animals;
- (2) dairy, fruit or truck farming;
- (3) graping;
- (4) operating ranches, nurseries, orchards or vineyards; and
- (5) operating greenhouses or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural or floricultural commodities.

Example 1: Breeding, raising and feeding livestock, poultry, or other animals, which produce a product for sale or are themselves a food product, is farming. (emphasis added)

Horses, as well as other animals, are considered tangible personal property for New York State and local sales and use taxes. Boarding, including feeding and exercising, horses is considered the service of maintaining the horses. Pursuant to Section 1105(c)(3) of the Tax Law the maintaining and servicing of tangible personal property are subject to sales tax. These services are exempt from tax, however, if rendered with respect to tangible personal property for use or consumption directly and predominantly in the production for sale of tangible personal property by farming. Persons engaged in breeding horses for sale are considered engaged in farming. The horses will qualify for exemption from tax under Section 1115(a)(6) of the Tax Law if used directly and

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predominantly for breeding purposes. Charges for boarding or maintenance of exempt horses will also be exempt under Section 1105(c)(3)(vi) of the Tax Law. Accordingly, if the horses being boarded for breeding purposes are used by their owners predominantly in breeding horses for sale, pursuant to Section 1105(c)(3)(vi) of the Tax Law and Section 528.7(a)(2) of the Sales and Use Tax Regulations, the fees charged by the farm for the care of the horses are not subject to State and local sales and compensating use taxes. In order to claim this exemption, the owner of the horse must furnish the provider of the service with a properly completed Form ST-125, Farmer's Exemption Certificate. This exemption does not apply to the sales tax imposed under Section 1107 of the Tax Law on charges for boarding horses in New York City. It is noted, however, that if the horse is not used predominantly in breeding horses for sale, the fee charged by the farm for feeding, bedding and exercising the horse is subject to sales and use taxes.

DATED: May 23, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.