

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in sections 171, First; 1101(b)(19) and (20); 1105(c)(3)(vi) and (5)(iii); 1115(a)(6), (15), and (16); 1115(c)(2); 1142(1) and (8); and 1250 (not subdivided) of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act in the absence of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Sales and Use Tax Regulations, as published in Subchapter A of Chapter IV of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. The heading of section 528.7 of such regulation is amended to read as follows:

Section 528.7 Farming and commercial horse boarding operations. (Tax Law, sections 1101(b)(19) and (20); 1105(c)(3) [,] (vi) and (5)(iii); 1115(a)(6), (15), and (16); and 1115(c)(2))

Section 2. Subparagraph (ii) of paragraph (1) of subdivision (a) of section 528.7 of such regulation is REPEALED, and paragraph (1) is further amended to read as follows:

(1)[(i)] All tangible personal property, whether or not incorporated in a building or structure, for use or consumption [directly and] predominantly either 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] or in a commercial horse boarding operation (or in both) is exempt from the New York State and local sales and compensating use [tax] taxes. (See sections 1115(a)(15) and (16) of the Tax Law exempting certain tangible personal property sold to a contractor, subcontractor, or repairperson when the property is to become an integral component part of a structure,

building, or real property used predominantly either in the production phase of farming or in a commercial horse boarding operation, or in both.)

Section 3. Paragraph (2), including Example 1 (Example 2 remains unchanged), of subdivision (a) of section 528.7 of such regulation is amended to read as follows:

(2) [Effective September 1, 1982, the] The services of installing, maintaining, servicing, and repairing the tangible personal property specified as exempt in paragraph (1) of this subdivision are [exempt] excluded from the [New York] State and local sales and compensating use taxes. However, this [exemption] exclusion 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] rules pertaining to installing, maintaining, servicing, and repairing tangible personal property.)

“Example 1:” A farmer (or an operator of a commercial horse boarding operation) located in an upstate county in this State has a tractor repaired. The tractor is used predominantly in farm production (or in a commercial horse boarding operation). The charge for materials is \$100 and the charge for labor is \$50. The farmer [issued] gives the vendor a timely filed and properly completed [Farmer's Exemption Certificate] exemption certificate and is not required to pay the New York State and local sales and compensating use taxes on the total charge for [material] materials and labor. It does not matter whether [there is a breakdown] the vendor's invoice separately states the charges for the materials and labor [on the bill as both components are exempt from], since neither is subject to tax.

Section 4. Examples 3 and 4 in paragraph (3) of subdivision (a) of section 528.7 of such regulation are REPEALED, and paragraph (3) is further amended to read as follows:

(3) [There is no exemption from the tax imposed on the] The services of maintaining, servicing, and repairing real property, [except when such services are rendered to a grape trellis or a silo as described in

subparagraph (1)(ii) of this subdivision] property, or land that is used or consumed predominantly either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation (or in both) are excluded from State and local sales and compensating use taxes. (See section 527.7 of this Title for rules pertaining to maintaining, servicing, and repairing real property.)

Section 5. Paragraph (4) of subdivision (a) of section 528.7 of such regulation is renumbered to be paragraph (5) of such subdivision, and a new paragraph (4) is added to read as follows:

(4) Fuel, gas, electricity, refrigeration, and steam, and gas, electric, refrigeration, and steam service of whatever nature for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation (or in both) are exempt from State and local sales and compensating use taxes. (See, however, sections 1115(j) and 1120 of the Tax Law with respect to motor fuel and diesel motor fuel.)

Section 6. Paragraph (5), as renumbered, of subdivision (a) of section 528.7 of such regulation is amended to read as follows:

(5) Tangible personal property and services eligible for exemption or exclusion may be purchased without payment of tax upon the issuance to the vendor of a timely filed and properly completed [Farmer's Exemption Certificate] exemption certificate. (See subdivision (e) of this section.)

Section 7. Subdivision (b), excluding the examples which remain unchanged, of section 528.7 of such regulation is amended to read as follows:

(b) “Farming and commercial horse boarding operation defined.” (1) The term “farming” means and includes the following types of farming and activities: [(1) raising]

(i) agriculture, floriculture, horticulture, aquaculture, and silviculture;

(ii) stock, dairy, poultry [or furbearing animals; (2) dairy], fruit [or], fur-bearing animal, truck, and tree farming; [(3)]

(iii) graping; [(4) operating ranches, nurseries, orchards or vineyards; and (5)]

(iv) ranching;

(v) operating nurseries, greenhouses, vineyard trellises, or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural [or], floricultural, or silvicultural commodities;

(vi) operating orchards;

(vii) raising, growing, and harvesting crops, livestock and livestock products (see section 301(2) of the New York State Agriculture and Markets Law); and

(viii) raising, growing, and harvesting woodland products, including, but not limited to, timber, logs, lumber, pulpwood, posts and firewood.

Section 8. A new paragraph (2) is added, following Example 3, to subdivision (b) of section 528.7 of such regulation to read as follows:

(2) The term “commercial horse boarding operation” means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives \$10,000 or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. A commercial horse boarding operation does not include any operation whose primary on-site function is horse racing. (See section 301(13) of the New York State Agriculture and Markets Law.)

Section 9. Subparagraphs (i) and (ii) of paragraph (1) of subdivision (c) of section 528.7 of such regulation are amended to read as follows:

(i) Administration includes activities such as sales promotion; general office work; credit and collection; purchasing; maintenance; transporting, receiving, and testing of raw materials; and clerical work in production such as preparation of work production and time records. However, tangible personal property used or consumed in administrative activities that are related to farm production, as described in subparagraph (ii) of this paragraph, is considered to be used or consumed in farm production. This includes tangible personal property used in activities such as preparing animal feed, weight, and health records; and performing research related to farm production.

(ii) Farm production begins with the preparation of the soil or other growing medium, [and] or, in the case of animals, from the beginning of the life cycle. Production ceases when the product is ready for sale in its natural state[; for]. For farm products [which] that will be converted into other products, farm production ceases when the normal development of the [agricultural] farm product has reached a stage where it will be processed or converted into a related product.

Section 10. Paragraph (1), Examples 1 through 9, and the cross-reference in subdivision (d) of section 528.7 of such regulation are REPEALED, and subdivision (d) is further amended to read as follows:

(d) [“Directly and predominantly”] “Predominantly.” [(2)] (1) “Predominantly” means that the tangible personal property must be used or consumed; the real property or land must be used or consumed; or the building, structure, or real property into which the tangible personal property has been incorporated must be used, more than 50 percent of the time [directly] either in the production [phase] for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both.

(2) See section 1115(a)(6)(B) of the Tax Law concerning motor vehicles used predominantly (“i.e.,” more than 50 percent) either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both. The percentage of a vehicle’s use in such activities may be computed either on the basis of mileage or hours of use, at the discretion of the purchaser or user.

Section 11. Subdivision (e) of section 528.7 of such regulation is REPEALED, and subdivision (f) of such section is relettered to be subdivision (e).

Section 12. Subdivision (e), as relettered, of section 528.7 of such regulation is amended to read as follows:

(e) “[Farmer's] Exemption [Certificate] certificate.” (1) [A] An appropriate and properly completed [Farmer's Exemption Certificate is] exemption certificate may be used by a farmer or by an operator of a commercial horse boarding operation to make exempt or excluded purchases of tangible personal property and services described in this [Part] section.

(2) [The Farmer's Exemption Certificate] An exemption certificate may not be used for purchases of [telephone, telegraph, electric, gas and refrigeration service, and heating or] motor fuel. The tax must be paid on such purchases, and the farmer or operator of a commercial horse boarding operation may [claim] apply for a refund or credit of the tax paid on [the portion] motor fuel that is used for exempt or excluded purposes.

(3) [The Farmer's Exemption Certificate] An exemption certificate may be used as a blanket certificate[,] or as a single purchase certificate.

(4) [The Farmer's Exemption Certificate] An exemption certificate is considered to be properly completed when it contains the following information:

(i) name and address of the vendor;

(ii) name and address of the farmer or of the operator of the commercial horse boarding operation;

(iii) signature of the farmer or of the operator of the commercial horse boarding operation (or of the authorized representative of the farmer or operator) certifying that the property or services will be used or consumed in an exempt or excluded manner; [and]

(iv) date prepared; and

(v) any other information required pursuant to Articles 28 and 29 of the Tax Law and Part 532 of this Title.

Section 13. Subparagraphs (viii) through (xi) of paragraph (1) of subdivision (a) of section 528.22 of such regulation are REPEALED, and subparagraphs (vi) and (vii) of such paragraph are amended to read as follows:

(vi) mining; or

(vii) extracting[;].

Section 14. A new cross-reference is added at the end of paragraph (1) of subdivision (a) of section 528.22 of such regulation to read as follows:

“Cross-reference:” See section 528.7(a)(4) of this Part regarding fuel, gas, electricity, refrigeration, and steam, and like services used in farm production or in a commercial horse boarding operation, or in both.

Section 15. Example 3 in subdivision (c) of section 528.22 of such regulation is REPEALED, and Examples 4 and 5 in such subdivision are renumbered to be Examples 3 and 4, respectively.

Dated: Albany, New York
February 24, 2004

Barbara G. Billet
Executive Deputy Commissioner of Taxation and Finance