

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

TSB-M-80 (12) S  
Revised  
Sales Tax  
January 6, 1983

This memorandum supercedes TSB-M-80(12)S dated October 17, 1980 which should be destroyed.

Race Horses

This publication sets forth the policy of the Department of Taxation and Finance with respect to the imposition of the sales and compensating use tax on race horses purchased within New York State or purchased by New York State residents\* outside the State and raced or used in New York State.

NOTE: If a transaction is subject to sales tax rather than use tax, the exemption provided in section 1118(9) of the tax law will not apply. Additionally, nothing contained in this memorandum shall alter the exemption provided to nonresidents, as specified in section 1118(2) of the Tax Law.

Sales Tax

The purchase of a race horse is subject to sales tax when delivery is made within New York State (unless the horse is purchased for breeding purposes only). The amount of sales tax due is computed by multiplying the purchase price of the horse by the combined New York State and local sales tax rate in effect in the area where delivery is made.

- Examples:
- (1) A resident or non-resident of New York State purchases a race horse at a Saratoga sale for \$50,000. The purchaser or his agent takes delivery of the horse at the sale. Sales tax due on the transaction is \$3500. (7% x \$50,000.).
  - (2) A resident of New York State purchases a race horse at a Saratoga sale and the horse is shipped by the auctioneer, via common carrier, to the purchaser's farm in Kentucky. There is no sales tax due on the transaction. However, should the horse be returned to New York State at some later date, the use of the horse in the State may become subject to a compensating use tax.

Compensating Use Tax

When a New York State resident purchases a race horse outside New York State and subsequently brings it into the State for the purpose of entering pari-mutuel racing events or preparing therefor, a compensating use tax is due if the horse is entered in such events on more than five days in any one calendar year.

- For Example:
- A resident of New York State purchases a race horse outside the State. He has the horse delivered into New York State with the intention of entering it in a pari-mutuel racing event after preparing therefor. The use or racing of the horse is exempt from the compensating use tax for the first five days of pari-mutuel racing in any one calendar year. On the sixth day of racing, a compensating use tax becomes due.

\*See definition of a New York State resident on page 3 of this memorandum.

The following examples illustrate the proper application of the compensating use tax where this same race horse, who is now subject to tax, is raced in localities with different tax rates.

Example 1: Mr Richards, a resident of Yonkers, New York (where the combined state and local tax rate is 8¼%) purchases a race horse in Kentucky.

He subsequently brings the horse into New York State and races it in pari-mutuel events at Saratoga (7% area) for more than 5 days in the calendar year. At the time of the 6th day's race, a taxable event has occurred and a use tax is due.

As Mr. Richards was a resident of New York State at the time of purchase, but not a resident of Saratoga, he owes a use tax only at the State rate of 4%.

Example 2: Same facts as example #1 above, only now Mr. Richards brings the horse down from Saratoga and races it at Roosevelt Raceway (7¼% area).

Mr. Richards owes use tax at an additional ¼%, since the prevailing state tax rate in this locality is 4¼% and Mr. Richards was a resident of a New York State 4¼% area when he purchased the horse.

Example 3: Same facts as examples 1 and 2 above, only now Mr. Richards brings the horse from Roosevelt Raceway, to enter a racing event at Yonkers Raceway (8¼% area). It is the horse's eighth racing day in New York State, but only the first racing day at Yonkers Raceway.

Even though Mr. Richards was a resident of Yonkers at the time he purchased the horse, he does not owe a local use tax at this time since the horse has not had six racing days in this locality. Only after the horse is entered in a racing event at Yonkers Raceway for the sixth day will Mr. Richards become liable for an additional use tax of 4%.

If the horse was used outside New York State for six months or less prior to its first use in New York State, the compensating use tax due is computed on the purchase price. If the horse was used outside New York State for more than six months prior to its use in New York State, the compensating use tax is computed on the current market value at the time of first use within this State, not to exceed original cost. In accordance with section 1111(b)(1) of the tax law, the taxpayer has the affirmative duty to prove that the horse has been used by him outside the State for more than six months prior to its use within New York State, in order to use current market value as the basis for computing the tax.

Upon submission of proof that sales tax legally due another state has been paid to that state, without any right to a refund or credit thereof, New York State will allow a credit in that amount against any taxes due this State; provided that a similar credit is allowed by the other state for taxes paid in New York State.

### Residency

The Sales and Use Tax Regulations define a New York State "resident" as follows:

Section 526.15(a)(1) - "Any individual who maintains a permanent place of abode in this State is a resident."

Section 526.15(b)(1) - "Any corporation incorporated under the laws of New York, and any corporation, association, partnership or other entity doing business in the State or maintaining a place of business in the State, or operating a hotel, place of amusement or social or athletic club in the State is a resident."

Section 526.15(b)(2) - "Any person while engaged in any manner in carrying on in this State any employment, trade, business or profession shall be deemed a resident with respect to the use in this State of tangible personal property or services in such employment, trade, business or profession."

Accordingly, a person involved in the racing industry is considered to be engaged in "carrying on a business" within New York State, if he maintains a stable, races horses on tracks within New York State, or carries on activities preparatory to racing.

Activities preparatory to racing include the possession of a license to race in New York State and, in conjunction therewith, the entry of horses in races; the hiring of grooms, trainers, jockeys, or drivers; and the registration with a jockey club at various race tracks. Possession of a license by a non-resident which is not accompanied simultaneously by one or more of these other activities will not result in resident status until one or more of the additional acts occur.

### Claiming Races

A sale of a horse is deemed to have occurred when the horse is claimed in a claiming race within New York State.

A "claim" or purchase of a horse is made when a person acquires a horse as a result of a successful bid placed prior to a claiming race. Title is passed once the race begins, and a taxable event has occurred for purposes of Articles 28 and 29 of the tax law.

Sales tax is computed on the purchase (bid) price of the claimed horse.

Example: A horse is entered in a \$30,000 claiming race at Belmont Park. ABC Farms claims the horse. A taxable transaction has taken place and the tax due is \$2175. ( $7\frac{1}{4}\%$  x \$30,000.).

### Leases

The lease of a horse is considered a sale and is subject to sales tax when delivery takes place in New York State.

If a race horse is leased outside New York State and is subsequently brought into New York State, a compensating use tax will be due when the horse is entered in racing events in New York State on more than five days in any one calendar year, if the lessee met the resident requirements, as defined on page 3, at the time the lease took place. (Note: Use tax will be due only on the portion of the lease which covers the period during which the horse was used in New York State.)

The sales or compensating use tax due is to be computed on the amount paid by the lessee to the lessor.

### Trades

Trading of horses is a taxable transaction for each party to the trade, when delivery of the horses takes place within New York State.

Trading of horses outside New York State will cause the parties to the trade to be liable for a compensating use tax if they met the resident requirements set forth on page 3 at the time of the trade, and subsequently entered the horses in racing events in New York State on more than five days in any one calendar year.

The sales or compensating use tax due is to be computed on the current market value of the horse accepted in trade.

### Homebreds

A horse that is raced in New York State by its breeder is exempt from the sales and compensating use tax.

If a breeder transfers ownership of a horse and later reacquires the horse, the reacquisition is considered a purchase.

If reacquisition and delivery of the horse take place in New York State, a sales tax is due. If the horse is reacquired outside New York State, and subsequently is entered in racing events in New York State on more than five days in any one calendar year, a compensating use tax will be due, if the breeder met the resident requirements set forth on page 3, at the time of reacquisition.

If the horse was used outside New York State for more than six months, the compensating use tax due is to be computed on the current market value of the reacquired horse, at the time of first use in this state, but not to exceed original cost. If the horse was used outside New York State for six months or less, the compensating use tax due is computed on the purchase price.

### Syndication

The syndication of a race horse, with the exception of one used exclusively for breeding purposes, is considered a sale of the horse and is subject to the sales or use tax. Information contained in this publication is applicable to transactions involving syndicates.

However, as syndication frequently provides for various contingencies not common to other transactions, taxability cannot be ascertained unless all the facts and the syndication agreement are submitted for review. When submitting information, please mail to:

Central Office Audit Bureau  
Casual Sales Unit  
Bldg. No. 9, State Campus  
Albany, New York 12227

Tax Rates At New York State Race Tracks

<u>Race Track</u>	<u>Tax Rate</u>	<u>Race Track</u>	<u>Tax Rate</u>
Aqueduct Race Course	8¼%	Roosevelt Raceway	7¼%
Batavia Downs	7%	Saratoga Harness Track	7%
Belmont Race Course	7¼%	Saratoga Race Course	7%
Buffalo Raceway	7%	Syracuse Fair Grounds	7%
Finger Lakes Race Track	7%	Vernon Downs	4%
Monticello Raceway	7%	Yonkers Raceway	8¼%

If there are any questions regarding the New York State taxability of race horses that are not answered in this publication, additional information may be obtained by writing to the Casual Sales Unit of the Central Office Audit Bureau at the address shown above. Telephone inquiries may be made by calling (518) 457-5719.