

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

TSB-A-95 (32)S
Sales Tax
August 8, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941205B

On December 5, 1994, a Petition for Advisory Opinion was received from Horse Spa Farm, Inc., 5601 Route 96, Farmingdale, New York 14425.

The issues raised by Petitioner, Horse Spa Farm, Inc., are as follows:

1. Whether the fee charged by Petitioner for use of its oval swimming pool for exercising racehorses is subject to sales and use taxes.
2. Whether the fee charged by Petitioner to have an employee perform the walk around service to exercise the racehorses in the swimming pool is subject to sales and use taxes.
3. Whether the fee charged by Petitioner to transport a racehorse to and from Petitioner's facilities is subject to sales and use taxes.
4. Whether the fee charged by Petitioner to board racehorses, including fees for feed, grooming, walking, riding, etc., are subject to sales and use taxes.

Petitioner is in the process of completing a building over an eight foot deep, four foot wide, fifty foot long oval concrete swimming pool that will be used to exercise the legs and bodies of racehorses. Petitioner intends to charge a fee for the use of the facility based on a fixed amount of time. A horse will be tethered to a rope which will be held by the owner of the horse or a designated appointee to lead the horse around the oval during the entire time the horse is in the water. In some instances an employee of Petitioner, for a fee, may be assigned by the owner of the horse to perform the walk around service. Moreover, Petitioner will charge a fee for an employee to transport the horse to and from the owner's property to the Petitioner's facilities.

Petitioner also maintains an indoor stable in proximity to the pool where horses will be sheltered. Petitioner will charge by the day, week or month for this service. Petitioner will also charge a fee to feed, groom, walk, ride, and perform similar services for horses that are boarded at its stables.

The president of Petitioner is a licensed horse trainer.

Section 1115(m) of the Tax Law provides as follows:

(m)(1) The services of training and maintaining a racehorse to race in a race or race meet held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or a similar law of another state, when the services are

rendered to the owner of the racehorse by a trainer of the racehorse, shall be exempt from tax under this article;

(2) Tangible personal property actually transferred by a trainer to the owner of the racehorse in conjunction with the rendering of a service that is exempt under paragraph one of this subdivision shall be exempt from tax under this article. However, the sale to a trainer of such a racehorse of any such tangible personal property or such services taxable under this article shall not be deemed a sale for resale within the meaning of paragraph four of subdivision (b) of section eleven hundred one and shall not be exempt from retail sales or compensating use tax;

(3) For purposes of this subdivision, a trainer means a horse trainer licensed under the racing, pari-mutuel wagering and breeding law or a similar law of another state, and a racehorse means a horse registered with the jockey club, the United States trotting association, American quarterhorse association or the National steeplechase and hunt association or a horse, during the first twenty-four months of its life, if it is eligible to be so registered.

Section 526.5(g)(1) of the Sales and Use Tax Regulations provides as follows:

(g) Shipping or delivery. (1) Shipping or delivery charges by a vendor to its customers for the cost of transporting tangible personal property to the customer are part of the vendor's receipts subject to tax where the sale of the property is subject to tax or where taxable services were performed on the property. This is so regardless of whether the vendor separately states such charges in a written contact or on an invoice and regardless of whether the vendor ships or delivers the property itself or hires a third party to ship or deliver the property. Similarly, charges by a vendor to its customers for picking up the customer's property upon which the vendor is to perform taxable services are part of the vendor's receipt from the sale of the service subject to tax. (emphasis added)

With respect to issue "1", Section 1115(m)(1) of the Tax Law exempts from sales tax the services of training and maintaining a racehorse to race in a race meet held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or similar law of another state, when the services are rendered to the owner of the racehorse by a trainer of the racehorse. In the instant case, Petitioner will maintain a concrete swimming pool that will be used to exercise the legs and bodies of racehorses. The horses, however, will be led around the pool by the owner of the horse or an appointee designated by the owner. Accordingly, since the owner of the racehorse or his designated appointee will lead the horse around the pool and not a licensed trainer of Petitioner, the fees paid by the owners of the racehorse are not for services rendered by a licensed trainer in training and maintaining the racehorse. However, such fees are not subject to sales tax since they constitute the rental of real property.

As for issue "2", Section 1115(m)(1) of the Tax Law exempts from sales tax the services of training and maintaining a racehorse to race in a race meet held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or similar law of another state, when the

services are rendered to the owner of the racehorse by a trainer of the racehorse. In the instant case, Petitioner will maintain a concrete swimming pool that will be used to exercise the legs and bodies of racehorses. Further, the services rendered by Petitioner of leading the racehorse around the pool will be provided by a licensed trainer, or an employee of Petitioner under the direct supervision of the licensed trainer. Accordingly, provided the licensed trainer is a trainer as defined under Section 1115(m)(3) of the Tax Law and the racehorses are one of those set forth in Section 1115(m)(3), the fees paid to exercise the racehorses in the oval swimming pool and to perform the walk around service will not be subject to sales tax.

Concerning issue "3", Section 526.5(g)(1) of the Sales and Use Tax Regulations provides that charges by a vendor to its customers for picking up the customer's property upon which the vendor is to perform taxable services are part of the vendor's receipt from the sale of the service subject to tax. In the instant case, the services provided by Petitioner relating to the training and exercising of racehorses will not be subject to sales tax provided the services are rendered by a licensed trainer defined under Section 1115(m)(3) of the Tax Law and the racehorse is one of those set forth in Section 1115(m)(3). Accordingly, provided that the service by Petitioner of transporting the racehorse to and from Petitioner's facilities is in connection with the performance of an exempt service, the fee paid for the transportation of the racehorse will not be subject to sales tax. Furthermore, if the transportation services are provided in connection with the rental of the pool by the owner, the transportation charges will not be subject to sales tax.

In regard to issue "4", Section 1115(m)(1) of the Tax Law exempts from sales tax the services of training and maintaining a racehorse to race in a race meet held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or similar law of another state, when the services are rendered to the owner of the racehorse by a trainer of the racehorse. The maintaining of a racehorse would include boarding, feeding, grooming, walking and riding the racehorse provided the services are rendered by a licensed trainer defined under Section 1115(m)(3) of the Tax Law and the racehorse is one of those set forth in Section 1115(m)(3). Therefore, provided that the horse being boarded by Petitioner is a racehorse being trained by Petitioner to compete in a race meet held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or similar law of another state, the fees charged to board the horse, including the feeding, grooming, walking and riding of such horse will not be subject to sales tax. However, if the services being rendered to the owner of the racehorse while the horse is being boarded are not provided by a licensed trainer in connection with the training of a racehorse to race in a race meet held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or similar law of another state as set forth in Section 1115(m)(1) of the Tax Law, then the fees charged by Petitioner to board the horse including fees to feed, groom, walk, and ride the racehorse will be subject to sales and use taxes.

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It is noted that pursuant to Section 1115(m)(2) of the Tax Law that the owner of a racehorse is not required to pay sales or use tax on tangible personal property that is transferred to the owner by Petitioner in conjunction with performing a nontaxable training service. However, Petitioner is required to pay sales tax on purchases of such tangible personal property since Petitioner is not considered to be purchasing the property for resale when providing such exempt services.

DATED: August 8, 1995

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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