

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

TSB-H-80 (121) S  
Sales Tax  
July 4, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800529A

On May 29, 1980, a Petition for Advisory Opinion was received from Hawksworth Farm Associates, Box 227, Route #1, Easton, Maryland 21601.

The issue raised is whether the buyer(s) of undivided, one-fortieth interests in a thoroughbred horse, Spectacular Bid, pursuant to the terms of a syndication agreement entitling them to certain breeding privileges will be subject to a New York State sales or compensating use tax liability if pursuant to terms of said agreement the seller for his own benefit and account and at his own risk trains or races such thoroughbred horse in New York State during the current year.

The syndication agreement provides in paragraph second the following:

"The stallion shall continue in active training and racing during the current year under the management, in the name, at the sole risk, for the sole benefit, and for the sole account of Seller; PROVIDED, HOWEVER, that the Stallion shall be retired from racing and delivered by Seller, at its expense to Claiborne Farm, Paris, Kentucky, not later than December 1, 1980.

... the Stallion to be examined by a qualified veterinarian acceptable to underwriters at Lloyd's for all risks of mortality insurance and physical breeding soundness (without regard to fertility) and shall obtain from the examining veterinarian a certificate with respect to the Stallion's insurability in the Lloyd's market.

In the event the examining veterinarian shall certify that the Stallion is then insurable for all risks of mortality and is physically breeding sound, then the Syndicate Manager shall promptly, by telex, cable or telegram, so notify each of the Co-Owners. Twelve o'clock (12:00) noon on the second day (Saturdays, Sundays, and Federal holidays excluded) following the delivery of the aforesaid certificate to the Syndicate Manager shall be the "effective date" hereof for all purposes of this Agreement and, thereupon title shall pass to Buyer and Buyer will accept delivery of the Stallion, AS IS, as of the effective date and shall assume all risks of loss as to his share thereafter." (emphasis added)

Section 1101(b) (5) of the Tax Law defines the terms Sale, Selling or Purchase as: "Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor."

Section 525.2(a) (2) of the Sales and Use Tax Regulations provides:

"The sales tax is a "transactions tax", liability for the tax occurring at the time of the transaction.... The time or method of payment is immaterial, since the tax becomes due at the time of transfer of property or rendition of service."

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
FRANK J. PUCCIA, DIRECTOR

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Section 525.2(a)(3) of the Sales and Use Tax Regulations provides: "The sales tax is a "destination tax", that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate...."

Since title and possession to Spectacular Bid shall not pass to the buyer(s) prior to the effective date of the Syndication Agreement, Hawksworth Farm Associates remains the uninterrupted owner of Spectacular Bid during the current year.

Accordingly, the buyer(s) not having title or possession to Spectacular Bid will not incur a New York State sales or use tax liability by reason of said animal being trained or raced in New York State by Hawksworth Farm Associates prior to the effective date of the Syndication Agreement.

Dated: June 19, 1980

s/ LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau