

NEW YORK CASE HIGHLIGHTS SALES TAX PITFALLS FOR BOARDING OPERATIONS

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Commercial horse boarders and breeders enjoy a fairly broad set of sales and use tax exemptions in New York State. Exemptions covering most of the operation's purchases are designed to parallel the tax breaks given to farming operations and to encourage growth in the industry. However, a recent decision by the state's Tax Appeals Tribunal highlights the need for boarders and breeders to fully understand the sales framework applicable to horse boarding operations. As the case demonstrates, misapplication of the rules can be costly.

In *Matter of New Windsor Stables, Inc.*,^[1] the Tax Appeals Tribunal (New York's highest administrative body for tax disputes) upheld a more than \$500,000 assessment of tax and interest against a Long Island-based stable for failing to collect tax on certain sales associated with its boarding operations. The stable had never registered as a "vendor" for sales tax purposes and had not collected tax on any of its various charges to customers for services. These included charges for boarding, grooming, and training for both horses and riders. An audit by the New York State Department of Taxation and Finance determined that although the stable qualified as a "commercial horse boarding operation," entitling it to a broad exemption on most of its purchases, more than 40 percent of its service revenues over the five-year audit period were subject to sales tax. The stable was also assessed tax on certain sales of horses it could not substantiate were out-of-state sales or otherwise exempt.

One of the key takeaways from the *New Windsor* case is that although "commercial horse boarding operations" do benefit from broad sales tax exemptions covering most purchases of goods and services used to carry out the business, the service of *boarding horses* is generally subject to sales tax in New York—regardless of whether provided by a commercial boarding operation or a stable boarding just a few horses—requiring stable operators to register with New York State and to collect tax if they charge for boarding, feeding, exercising, and caring for horses. As crass as it may seem, horses are viewed simply as "tangible personal property" under New York's Tax Law. And for sales tax purposes, any form of "maintaining, servicing or repairing" tangible property is subject to tax, including boarding. ^[2] An exemption is available for boarding (and other "maintenance" charges) if the boarding is purchased for use "predominantly...in a commercial horse boarding operation" (which includes breeders).^[3] The taxpayer in *New Windsor* argued that its boarding services were rendered to horses that were used predominantly in a horse boarding operation—just

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as the exemption provides. However, the Tribunal dismissed the argument, holding that the horses boarded at the stable were “the *object* of petitioners’ services; they were not *used* to provide such services” (emphasis added). Thus the stable’s separately stated charges for boarding, grooming, laundry and related charges (but not charges for show training or providing riding instruction) were assessed as taxable maintenance services.

The *New Windsor* case highlights just one potential pitfall for boarding and breeding operations. The following are some critical points to know about sales tax in New York as applied to “commercial horse boarding operations” and boarding in general.

Definition of a “Commercial Horse Boarding Operation”

- “[A]n agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars 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 from both].”[4]

Exemptions on Purchases

- A business that meets the definition is entitled to purchase goods and services tax-free, as long as they are used “predominantly” (more than 50 percent) in the boarding operation or in farm production (including breeding horses for sale). This generally includes:
 - Equipment and supplies
 - Building materials and services to real property (used to erect, alter, maintain, or repair a building or structure used predominantly in the boarding or farming operation)
 - Motor vehicles (used more than 50 percent of the time on the property or for travelling between other properties used in the boarding/farming operation)
 - Utility services, diesel fuel (exemption does not apply in New York City)[5]

Taxability of Sales

- Charges for boarding, grooming and caring for horses is considered taxable maintenance to tangible personal property, unless those services are sold to someone using them for use in a horse boarding, breeding or farming operation.[6] This applies to both commercial horse boarding operations and any business or individual that charges for boarding.
- Sales of horses, whether by a commercial horse boarding operation or otherwise, are general taxable unless the horse is delivered to a purchaser outside of New York. Exemptions also exist for sales of qualifying “racehorses” and for horses sold for use in breeding.[7]

[1] N.Y. Tax Appeals Tribunal, Nov. 10, 2014.

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[2] See N.Y. Tax Law § 1105(c)(3).

[3] N.Y. Tax Law § 1105(c)(3)(vi).

[4] N.Y. Tax Law § 1101(b)(20).

[5] See N.Y. Tax Law §§ 1115(c)(2), 1115(j). Regular, non-diesel motor fuel (gasoline) cannot be purchased tax free, but a refund or credit can be claimed for gasoline used in the operation.

[6] See N.Y. Tax Law § 1105(c)(3)(vi).

[7] See N.Y. Tax Law §§ 1115(a)(29), 1105(c)(3)(vi).