



2015 EDITION

EQUINE *Sales & Use Tax* REVIEW

Dinsmôre

LEGAL COUNSEL



DEANDORTON

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How to Use This Guide

The information is intended to be a guide and reference tool for practitioners — it is not intended and shall not be relied on for legal or tax advice. State legislation and regulation is subject to frequent change. Every practitioner should research their specific facts and verify the various state tax provisions at that time.

The authors intend to update this publication frequently and will endeavor to have the citations updated frequently. Please check the firms' websites for the most up-to-date version at www.ddafcfa/publications.html or www.dinsmore.com/equinetaxbook.

Overview

Racehorses and show horses are typically purchased and used in multiple states. Their often sizable value and the patchwork of differing state sales and use tax rules can create significant sales and use tax exposures. This publication is an effort to begin developing a resource on the application of various states' sales and use tax rules as they apply specifically to these businesses. It is a work in progress. We anticipate adding states and refining the discussion and appreciate input and observations from advisors to and participants in the equine business and will post updated versions on our firms' websites. The information provided herein is general in nature and may not be used as tax or legal advice. Please consult a professional advisor on your specific situation.

Sales and Use Tax

The sales tax is typically imposed on the retail sale of tangible personal property in the state. Some states also tax leases of such property. Additionally, a few states tax the sale of services. States also exempt certain types of tangible personal property

from the sales tax. The tax is imposed on the purchaser of the property, but collected and remitted by the seller. Some states provide sellers with an exception from the requirement to collect and remit sales tax when they only make taxable sales on an "occasional" or "isolated" basis.

Sales of horses may be exempt from the sales tax on any number of bases. Some states exempt the sale of horses used for particular purposes, such as breeding or racing. States will often exempt horses purchased for re-sale. States will also often exempt the seller from collecting sales tax on horses delivered out of state. Most states do not impose the sales tax on services or on intangible property, so the nature of the item being sold under the relevant state law impacts whether or not sales tax will be due. Some states treat leases as sales subject to the sales tax.

Use Tax

The use tax serves as a complement to the sales tax. It is typically imposed on the storage, use, or consumption of tangible property upon which no sales tax was paid to the state where the property is used.

The use tax is paid directly by the owner of the property to the state where the property is used. Most states permit a credit against the use tax for sales tax paid on the purchase of property to another state. As in the case of the sales tax, states also exempt certain types of tangible property from the use tax.

The use of horses may be exempt from the use tax on a number of bases. Some states exempt "temporary" use of a horse in their state. Some states exempt the use of a horse that was purchased some time prior to importation into the state for use or prior to establishment of residence or commercial domicile in the state. As in the case of sales tax, states may exempt horses used for particular purposes from the use tax. And they will often exempt horses held for re-sale from the use tax. Some states treat leases of property used in the state as subject to the use tax, even where the owner of the property is not domiciled in the state. States may impose the use tax on the purchase price of the property, its fair market value at the time it becomes subject to use tax, the lower or higher of the two or some capped amount.

Foreign Sales

This guide does not currently address purchases or sales of horses from and to foreign countries. If a transaction involves another country, then inquiry should be made as to possible tax impact of such a transaction and international treaties that may apply, as well as United States constitutional issues regarding export of goods.

Request for Comments, Edits, Supplemental Cites and Cases

Should you become aware of any errors or updates, please e-mail the authors and we will incorporate any changes into the online edition prior to the next print edition. *This is a free publication so we do appreciate any input to keep it up to date.*

Many thanks in advance for your assistance. Please check the websites listed above for the latest version.

Arkansas

Sales Tax — 6% State Rate

Mares

Generally subject?	No. Livestock is generally not taxable under Ark. Code Ann. § 26-52-401(18)(A)(iv). Horses fall within the definition of livestock. Ark. Admin. Code 006.05.212-GR-42.
Exceptions	Exemption does not apply when the goods are sold at or from an established business unless that business is located on the seller's farm. Ark. Code Ann. § 26-52-401(18)(C)(i).
Can buyer take possession in the state?	No

Stallions

Generally subject?	No. Livestock is generally not taxable under Ark. Code Ann. § 26-52-401(18)(A)(iv). Horses fall within the definition of livestock. Ark. Admin. Code 006.05.212-GR-42.
Exceptions	Exemption does not apply when the goods are sold at or from an established business unless that business is located on the seller's farm. Ark. Code Ann. § 26-52-401(18)(C)(i).
Stallion Shares	Should be same treatment as stallions.

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property. Sales of services are exempt unless specifically designated as taxable. Ark. Code Ann. § 26-52-301. No specific authority.
Exceptions	N/A

Lifetime Breeding Rights

Generally subject?	N/A. Probably a non-taxable service or sale of intangible property. Sales of services are exempt unless specifically designated as taxable. Ark. Code Ann. § 26-52-301. No specific authority.
Exceptions	N/A

Other

Leasing	Sale includes the lease and rental of tangible personal property. Ark. Code Ann. § 26-52-103(18)(B).
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Racehorses

Generally subject?	No. Livestock is generally not taxable under Ark. Code Ann. § 26-52-401(18)(A)(iv). Horses fall within the definition of livestock. Ark Admin. Code 006.05.212-GR-42.
Exceptions	Exemption does not apply when the goods are sold at or from an established business unless that business is located on the seller's farm. Ark. Code Ann. § 26-52-401(18)(C)(i).
Shipping out of state within a short time-frame	If buyer takes possession out of state, treated as interstate commerce and not subject to sales tax. Ark. Admin. Code 006.05.212-GR-5.
Re-seller (Pinhooker)	Sale-for-resale transactions exempt under Ark. Admin. Code 006.05.212-GR-53 if proper permits obtained.
Sales directly by the breeder	Not taxable unless sold from established business not located on farm. Ark. Code Ann. § 26-52-401(18)(B).
Sales at auction	Yes. Horses sold at auction appear to be generally subject. Livestock not taxable under Ark. Code Ann. § 26-52-401(18)(A)(iv) unless the goods are sold at or from an established business not located on the seller's farm.
By occasional sale	"Isolated sales" not made by an established business are exempt. Ark. Code Ann. § 26-52-401(17).

Claiming

Generally subject?	Yes. Horses sold at claiming races appear to be generally subject.
Exceptions	Exemption does not apply when the goods are sold at or from an established business unless that business is located on the seller's farm. Ark. Code Ann. § 26-52-401(18)(C)(i).
Shipping out of state within a short timeframe	No exceptions noted.

Mares

Generally subject?	No. Same exemptions as sales tax pursuant to Ark. Admin. Code 006.05.212-UT-9(A). Livestock not taxable under Ark. Code Ann. § 26-52-401(18)(A)(iv). Horses fall within the definition of livestock. Ark. Admin. Code 006.05.212-GR-42.
Exceptions	Exemption does not apply when the goods are purchased at or from an established business unless that business is located on the seller's farm. Ark. Code Ann. § 26-52-401(18)(C)(i).

Stallions

Generally subject?	No. Same exemptions as sales tax pursuant to Ark. Admin. Code 006.05.212-UT-9(A). Livestock not taxable under Ark. Code Ann. § 26-52-401(18)(A)(iv). Horses fall within the definition of livestock. Ark. Admin. Code 006.05.212-GR-42.
Exceptions	Exemption does not apply when the goods are purchased at or from an established business unless that business is located on the seller's farm. Ark. Code Ann. § 26-52-401(18)(C)(i).

Stud Fees

Generally subject?	If exemption exists for sales tax, would also apply for use tax. Ark. Admin. Code 006.05.212-UT- May also be a non-taxable service or sale of intangible property. Purchases of services are exempt unless specifically designated as taxable. Ark. Code Ann. § 26-52-301.
Exceptions	N/A

Breeding Rights

Generally subject?	If exemption exists for sales tax, would also apply for use tax. Ark. Admin. Code 006.05.212-UT- May also be a non-taxable service or sale of intangible property. Purchases of services are exempt unless specifically designated as taxable. Ark. Code Ann. § 26-52-301.
Exceptions	N/A

Other

Credit Against Use Tax	Yes. Use tax does not apply on any transaction where sales tax is levied. Ark. Admin. Code 006.05.212-UT-9(A).
Leasing	Leases treated same as purchase. Ark. Admin. Code 006.05.212-UT-3(l).

Racehorses

Generally subject?	No. Same exemptions as sales tax pursuant to Ark Admin. Code 006.05.212-UT-9(A). Livestock not taxable under Ark. Code Ann. § 26-52-401(18)(A)(iv). Horses fall within the definition of livestock. Ark. Admin. Code 006.05.212-GR-42.
Exceptions	Purchases at auction appear to be generally subject. Exemption does not apply when the goods are sold at or from an established business unless that business is located on the seller's farm. Ark. Code Ann. § 26-52-401(18)(C)(i).
Re-seller (Pinhooker)	Purchase-for-resale transactions exempt under Ark. Admin. Code 006.05.212-GR-53 if proper permits obtained.

Claiming

Generally subject?	Yes. Horses purchased at claiming races appear to be generally subject.
Exceptions	Exemption does not apply when the goods are purchased at or from an established business unless that business is located on the seller's farm. A.C.A. § 26-52-401(18)(C)(i).
Re-seller (Pinhooker)	Purchase-for-resale transactions exempt under Ark. Admin. Code 006.05.212-GR-53 if proper permits obtained.

California

Sales Tax — 7.25% State Rate (up to 8.75% including local taxes)

Mares

Generally subject?	Yes.
Exceptions	Racehorse (but not other horse) breeding stock is partially exempt from sales tax. Code section 6358.5, Regs section 1535.

Stallions

Generally subject?	Yes.
Exceptions	Racehorse (but not other horse) breeding stock is partially exempt from sales tax. Code section 6358.5, Regs section 1535.
Stallion Shares	Generally taxable. See <i>Agnew v. Cal. State Bd. of Equalization</i> , 2003 WL 21464990, at *11 (Cal. Ct. App. June 25, 2003) (rev'd on other grounds).

Stud Fees

Generally subject?	Probably no — the sale of the right to breed is not the sale of tangible personal property. CA SUTA Series 110, Jan. 1, 2006.
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Lifetime Breeding Rights

Generally subject?	Probably no — the sale of the right to breed is not the sale of tangible personal property. CA SUTA Series 110, Jan. 1, 2006.
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Racehorses/Showhorses

Generally subject?	Yes.
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Claiming

Generally subject?	Yes. Code 6015(a)(3). Sales at claiming races do not count towards occasional sale limits (track is the retailer).
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Other

Shipping out of state	Nonresident/non-commercially domiciled purchaser must take possession outside of the state to be exempt. Regs section 1620 (3(A)-(B).
Re-sales	Exempt with resale certificate. Code section 6092.
Occasional sales	Exempt if less than 3 sales in 12 months. Regs section 1595.
Sales directly by the breeder	No exemptions noted.
Sales at auction	No exemptions noted.
Leasing	Treated as sale.

Use Tax — 7.25% State Rate (up to 8.75% including local taxes)

Mares

Generally subject?	Yes.
Exceptions	Racehorse (but not other horse) breeding stock is partially exempt from use tax. Code section 6358.5, Regs section 1535.

Stallions

Generally subject?	Yes.
Exceptions	Racehorse (but not other horse) breeding stock is partially exempt from use tax. Code section 6358.5, Regs section 1535.

Stud Fees

Generally subject?	Probably no — the purchase of the right to breed is not the purchase of tangible personal property. CA SUTA Series 110, Jan. 1, 2006.
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Lifetime Breeding Rights

Generally subject?	Probably no — the purchase of the right to breed is not the purchase of tangible personal property. CA SUTA Series 110, Jan. 1, 2006.
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Racehorses/Showhorses

Generally subject?	Yes.
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Other

Credit Against Use Tax	Yes. Code section 6406.
Leasing	Same treatment as a purchase. Code section 6006. No credit for lease payments. Code section 6406.
Re-sales	Exempt.

California

Notes and Comments

California has numerous sales tax rates for the state and localities as follows:

- ▶ The state rate is 7.25% comprised of the following:
 - › 4.75% state general fund tax under Code section 6051.
 - › 0.5% state local revenue fund under code section 6051.2.
 - › 0.5% state local public safety fund tax under California Constitution section 35, Article XIII.
 - › 0.25% state general fund under Code section 6051.3.
 - › 0.25% state fiscal recovery fund tax under Code section 6051.5.
 - › Cities or counties may impose up to 1.5% local (county/city) tax comprised of 0.25% for county transportation funds and 0.75% for city and county operations under Code section 7203.1 and an additional 0.5%. See www.boe.ca.gov/pdf/pub71.pdf for additional information.

1. **McConville v. State Board of Equalization, 85 Cal.App.3d 156, 149 Cal.Rptr. 194 1978.**

Quarter horse case involved broodmare purchased for resale that was subsequently bred.

Relevant statute is California Revenue and Taxation Code section 6201-7273.

Court held that subsequent breeding was necessary to sell horses and didn't change the intent to resell requirement and therefore the horses were not subject to use tax. If the plaintiff ultimately retains the mares, then use tax will be due.

2. **Agnew v. California State Board of Equalization, 2003 WL 21464990 (Cal. App. 2 Dist., June 25, 2003). (unpublished)**

Taxpayer disputed that sales tax was due on syndication of thoroughbred stallion, DESERT WINE. Taxpayer attempted to argue that sale of fractional interests was transfer of services rather than property and the cumulative sale was single sale.

The Court held sale of fractional interests was sale of tangible property and that syndicate owned the horse. Court held that sale was not the sale of a limited partnership interest or sale of services only and that each sale of each fractional interest was a sale, thus cumulative transaction not eligible for occasional sale exemption. Sale of fractional interests were individual sales and not sold into a limited partnership. The Court held that the Board determined more than 40 years prior to the case that each fractional interest represented an undivided ownership interest in the horse (quoting the syndicate agreement at length and Annotation 540.0300). This is to be distinguished from the sale of an annual nomination (right to breed a mare) which is not subject to sales tax as it is not tangible personal property (Annotation 540.0600).

Mares

Generally subject?	Yes. FAC r. 12A-1.049(1).
Exceptions	The sale of equine livestock for breeding purposes is exempt. FAC r. 12A-1.049(6). Sales made by a producer are exempt. FAC r. 12A-1.049(1).

Stallions

Generally subject?	Yes. FAC r. 12A-1.049(1).
Exceptions	The sale of equine livestock for breeding purposes is exempt. FAC r. 12A-1.049(6). Sales by a producer are exempt. FAC r. 12A-1.049(1).
Stallion Shares	Probably treated the same as stallions — no authority.

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
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Racehorses/Showhorses

Generally subject?	Yes. FAC r. 12A-1.049(4).
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Claiming

Generally subject?	Yes, collected only on maximum amount for which a horse is sold at a claiming race one time only during the racing season. FAC r 12A-1.049(5).
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Other

Shipping out of state	Nonresident/non-commercially domiciled purchaser must take possession outside state to be exempt. Fla. Stat. Ann. § 212.06(5)(a).
Re-sales	Exempt. FAC r. 12A-1.039.
Occasional sales	Exempt if seller has paid all sales or use tax and no more than 2 sales within 12 months. FAC Rule 12A-1.037(3).
Sales directly by the breeder	Exempt, even where owner is not a Florida resident. FAC r 12A-1.049(3).
Sales at auction	No exemptions noted.
Leasing	Taxed as sale.

Florida

Use Tax — 6% State Rate

Mares

Generally subject?	Taxable if used within FL. FSA § 212.06(8)(a).
Exceptions	Use for breeding purposes in the state is exempt. FAC r. 12A-1.049(6).

Stallions

Generally subject?	Taxable if used within FL. FSA § 212.06(8)(a).
Exceptions	Use for breeding purposes in the state is exempt. FAC r. 12A-1.049(6).

Stud Fees

Generally subject?	Probably a non-taxable service or use of intangible property — no authority.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or use of intangible property — no authority.
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Racehorses/Showhorses

Generally subject?	Yes. FAC r. 12A-1.049(4).
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Other

Credit Against Use Tax	Yes. FSA § 212.06(7).
Leasing	Same treatment as a sale. FSA § 212.05.
Re-sales	Exempt. FAC r. 12A-1.039.
Prior use outside the state	Items purchased and used in another state for six months or longer before importation are exempt. FSA § 212.06(8)(a).

Notes and Comments

1. *Department of Revenue v. Ocala Breeders' Sales, Inc.*, 725 So.2d 387 (Fla. Dist. Ct. App. 1998).

Taxpayer, Ocala Breeders' Sales (OBS), is a public Thoroughbred auction company. OBS included information about pedigrees and race records in its catalogs, which it gave to prospective buyers. The Florida Department of Revenue imposed a use tax on the amount paid to obtain records on the horses. The appellate court, interpreting Fla. Stat. § 212.05, reversed the district court and held that a use tax could not be imposed for the gathering of information for the catalogs' production. The court first discussed the language of the statute, stating that Ocala was providing an auctioneering service, not a retail service. It then focused on the fact that the costs incurred by Ocala in producing the brochure did not add to the cost of the brochures, which were given away for free. Additionally, the court did not believe the legislature intended to tax clients for using opinions obtained from professionals.

Illinois

Sales Tax — 6.25% State Rate

Mares

Generally subject?	Yes. 35 Ill. Comp. Stat. 120/2.
Exceptions	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 120/2-5(27).
Can buyer take possession in the state?	No – must take possession out of state to be exempt as interstate commerce unless exempt under 35 Ill. Comp. Stat. 120/2-5(27). 86 Ill. Admin. Code 130.610.

Stallions

Generally subject?	Yes. 35 Ill. Comp. Stat. 120/2.
Exceptions	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 120/2-5(27). Additionally, pursuant to 86 Ill. Admin. Code R. 130.2100, farmers or producers of breeding livestock are not liable for retailer's occupational tax (sales tax) with respect to gross receipts realized from sales of stallions for breeding purposes.
Stallion Shares	Interests in of horses likely treated same way as horses under 35 Ill. Comp. Stat. 105/2-5(27).

Stud Fees

Generally subject?	No direct authority. Probably a non-taxable service or sale of intangible property .
Exceptions	N/A

Lifetime Breeding Rights

Generally subject?	No direct authority. Probably a non-taxable service or sale of intangible property or possibly exempt if registered with any of the Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club. 35 Ill. Comp. Stat. 120/2-5(27).
Exceptions	N/A

Racehorses

Generally subject?	Not if registered with any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club. 35 Ill. Comp. Stat. 120/2-5(27).
Exceptions	N/A
Shipping out of state within a short time-frame	No specific exception found. Likely must qualify as interstate commerce (possession accepted out of state) to avoid taxation. 35 Ill. Comp. Stat. 120/2-60 and 86 Ill. Admin. Code 130.610.
Re-seller (Pinhooker)	Resellers are excluded from the sales tax. 86 Ill. Admin. Code R. 130.120(c).
Sales directly by the breeder	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 ILC 105/2-5(27). Additionally, pursuant to 86 Ill. Admin. Code R. 130.2100, farmers or producers of breeding livestock are not liable for retailer's occupational tax (sales tax) with respect to gross receipts realized from sales of stallions for breeding purposes.
Sales at auction	Likely taxable unless registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 ILC 105/2-5(27).
By occasional sale	"A person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail, or a sale through a bulk vending machine, does not constitute engaging in a business of selling such tangible personal property" and sales tax does not apply to sales by such a person. 35 Ill. Comp. Stat. 120/1.

Claiming

Generally subject?	Yes. 35 Ill. Comp. Stat. 120/2
Exceptions	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 105/2-5(27).
Shipping out of state within a short timeframe	No direct authority. Likely must take possession out of state to be exempt as interstate commerce. 86 Ill. Code R. 130.610.

Use Tax — 6.25% State Rate

Mares

Generally subject?	Yes. 35 Ill. Comp. Stat. 105/3.
Exceptions	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 105/3-5(21).

Stallions

Generally subject?	Yes. 35 Ill. Comp. Stat. 105/3.
Exceptions	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 105/3-5(21).

Stud Fees

Generally subject?	No direct authority. Probably a non-taxable service or sale of intangible property.
Exceptions	N/A

Breeding Rights

Generally subject?	No direct authority. Probably a non-taxable service or sale of intangible property or possibly exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 105/3-5(21).
Exceptions	N/A

Other

Credit Against Use Tax	A credit against the Illinois use tax is allowed on property acquired outside the state and brought into Illinois, to the extent of taxes properly due and paid on the sale, purchase, or use of the property in another state, including the District of Columbia. 35 Ill. Comp. Stat. 105/3-55 (d); Ill. Admin. Code 86 §150.310(a)(3).
Leasing	Party leasing tangible personal property is subject to use tax unless an exemption applies. 86 Code R. 130.2013(a).

Racehorses

Generally subject?	Yes. 35 Ill. Comp. Stat. 105/3.
Exceptions	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 105/3-5(21).
Re-seller (Pinhooker)	Resellers are exempt. 86 Ill. Code. R. 150.306(a)(1).

Claiming

Generally subject?	Yes. 35 Ill. Comp. Stat. 105/3.
Exceptions	Exempt if registered with and meeting the requirements of any of the following: Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, and used for purposes of breeding or racing for prizes. 35 Ill. Comp. Stat. 105/3-5(21).
Re-seller (Pinhooker)	Resellers are exempt. 86 Ill. Code. R. 150.306(a)(1).

Notes and Comments

1. *Estate of Graham v. Department of Revenue, 516 N.E.2d 617 (Ill. App. Ct. 1987).*

The operators of two horse farms argued that their purchase of horses was exempt under 86 Ill. Admin. Code 130.2100, which provides a tax exemption for gross receipts realized from the sale of servicing animals for breeding purposes. The Department had found that each of the horses had been used at least once for racing purposes. The court held that the horse owners could not overcome the Department's prima facie case merely by denying the accuracy of the assessments, and the horse owners had failed to present evidence that these particular horses were used for breeding at all. NOTE: Under 35 Ill. Comp. Stat. 105/3-5(27) and 35 Ill. Comp. Stat. 105/3-5(21), horses and interests of horses are now exempt from sales and use tax if registered with and meeting the requirements of the Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, as appropriate, and used for purposes of breeding or racing for prizes.

Notes

Indiana

Sales Tax — 7% State Rate

Mares

Generally subject?	Yes. 45 Ind. Admin. Code 2.2-5-5.
Exceptions	Sales to a registered retailer for resale in the regular course of business are exempt. 45 Ind. Admin. Code 2.2-5-5.
Can buyer take possession in the state?:	Nonresident purchaser must take possession outside state to be exempt. 45 Ind. Admin. Code 2.2-5-53(b).

Stallions

Generally subject?	Yes. 45 Ind. Admin. Code 2.2-5-5.
Exceptions	Sales to a registered retailer for resale in the regular course of business are exempt. 45 Ind. Admin. Code 2.2-5-5.
Stallion Shares	Probably treated the same as stallions — no authority.

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
Exceptions	N/A

Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
Exceptions	N/A

Racehorses

Generally subject?	Yes. 45 Ind. Admin. Code 2.2-5-5.
Exceptions	Sales to a registered retailer for resale in the regular course of business are exempt. 45 Ind. Admin. Code 2.2-5-5.
Shipping out of state within a short time-frame	Nonresident purchaser must take possession outside state to be exempt. 45 Ind. Admin. Code 2.2-5-53(b).
Re-seller (Pinhooker)	Sales to a registered retailer for resale are exempt. 45 Ind. Admin. Code 2.2-5-5.
Sales directly by the breeder	Taxable. 45 Ind. Admin. Code 2.2-5-5.
Sales at auction	Yes. 45 Ind. Admin. Code 2.2-4-33 states that sellers at an auction are “retail merchants,” meaning that their sales are subject to sales tax.
By occasional sale	Exempt if meets definition (note: Indiana refers to occasional sales as “casual sales.”) 45 Ind. Admin. Code 2.2-1-1(d).

Claiming

Generally subject?	Yes. 45 Ind. Admin. Code 2.2-5-5.
Exceptions	Sales to a registered retailer for resale in the regular course of business are exempt. 45 Ind. Admin. Code 2.2-5-5.
Shipping out of state within a short time-frame	Nonresident purchaser must take possession outside state to be exempt. 45 Ind. Admin. Code 2.2-5-53(b).

Mares	
Generally subject?	Taxable. Ind. Code § 6-2.5-3-2.
Exceptions	None.

Stallions	
Generally subject?	Taxable. Ind. Code § 6-2.5-3-2.
Exceptions	None.

Stud Fees	
Generally subject?	Probably a non-taxable service or sale of intangible property – no authority.
Exceptions	N/A

Breeding Rights	
Generally subject?	Probably a non-taxable service or sale of intangible property – no authority.
Exceptions	N/A

Racehorses	
Generally subject?	Taxable. Ind. Code § 6-2.5-3-2.
Exceptions	N/A
Re-seller (Pinhooker)	Sales to a registered retailer for resale are exempt. 45 Ind. Admin. Code 2.2-5-5.

Claiming	
Generally subject?	Taxable. Ind. Code § 6-2.5-3-2.
Exceptions	N/A
Re-seller (Pinhooker)	Sales to a registered retailer for resale are exempt. 45 Ind. Admin. Code 2.2-5-5.

Other	
Credit Against Use Tax	Yes. Ind. Code § 6-2.5-3-5.
Leasing	Treated as a sale. Ind. Code § 6-2.5-4-10.

Kentucky

Sales Tax — 6% State Rate

Mares

Generally subject?	Yes. KRS § 139.531(1)(b).
Exceptions	The sale of a horse for breeding purposes is exempt. KRS § 139.531(2)(a).

Stallions

Generally subject?	Yes. KRS § 139.531(1)(b).
Exceptions	The sale of a horse for breeding purposes is exempt. KRS § 139.531(2)(a).
Stallion Shares	The sale of shares of a horse for breeding purposes is exempt. KRS § 139.531(2)(a).

Stud Fees

Generally subject?	Sales taxes apply to “fees paid for breeding a stallion to a mare in this state.” KRS § 139.531(1)(a).
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Lifetime Breeding Rights

Generally subject?	Yes. See Calumet Farm, Inc. v. Revenue Cabinet, 793 S.W.2d 830 (Ky. Ct. App. 1990)
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Racehorses/Showhorses

Generally subject?	Yes. FAC r. 12A-1.049(4).
Exceptions	The sale of horses less than two years of age to a non-resident/non-commercial domicile of Kentucky is exempt. KRS § 139.531(2)(d)

Claiming

Generally subject?	Yes. Tax applies to “the sales price of any horse claimed at any race meeting within this state.” KRS 139.531(1)(c).
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Other

Shipping out of state	Purchaser must generally take possession outside state to be exempt. KRS 139.200(1)(a).
Re-sales	Purchases of horses for resale are exempt, so long as the horses are not used in racing or showing before resale. KRS § 139.270; 139.290.
Occasional sales	Exempt where seller has less than two retail sales during any 12-month period. KRS 139.010(15).
Sales directly by the breeder	No exemptions noted.
Sales at auction	No exemptions noted.
Leasing	Taxed as a sale. KRS 139.010(6)(a).

Mares

Generally subject?	Yes. KRS § 139.531.
Exceptions	The use of a horse for breeding purposes is exempt. KRS 139.531(2)(a).

Stallions

Generally subject?	Yes. KRS § 139.531.
Exceptions	The use of a horse for breeding purposes is exempt. KRS 139.531(2)(a).

Stud Fees

Generally subject?	Yes. KRS § 139.531(1)(a).
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Lifetime Breeding Rights

Generally subject?	Yes. See <i>Calumet Farm, Inc. v. Revenue Cabinet</i> , 793 S.W.2d 830 (Ky. Ct. App. 1990).
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Racehorses/Showhorses

Generally subject?	Yes.
Exceptions	The temporary use of horses in the state for purposes of racing, exhibiting, or performing is exempt. KRS § 139.531(2)(f).

Other

Credit Against Use Tax	Yes. KRS § 139.510.
Leasing	Treated as sale. KRS 139.200.
Re-sales	Holding horses for resale is exempt, so long as the horses are not used before resale. KRS § 139.270; 139.290.

Kentucky

Notes and Comments

1. ***Stoner Creek Stud, Inc. v. Revenue Cabinet Commonwealth of Kentucky, 746 S.W.2d 73 (Ct. App. Ky. 1988).***

This case arose from audit of taxpayer and subsequent appeal from the Board of Tax Appeals which held that the feed and machinery used in a horse business were not exempt from the application of sales tax and that use tax was due on hay purchased out of state. Board of Tax Appeals decision was affirmed by the Court of Appeals.

Relevant statutes were Kentucky Revised Statutes 139.200, 139.310, 139.480(7) and (9) and Regulations 103 KAR 30:130(1).

The Court held that since horses were not livestock as set forth in the statute (which referred to “human consumption”) and since feed was not “tangible personal property to be used in manufacturing or industrial processing” of finished products for resale, that taxpayers’ arguments failed. The Court indicated that horses are bred and raised, not manufactured and processed and “Happily, the legendary esteem in which Kentuckians have always held horseflesh has never extended to the dinner table.” Similarly, the argument for the machinery failed, based on the Court’s interpretation of the definition of “livestock” under KRS 139.480.

Comment: This issue of sales tax on feed etc. in horse industry is at the forefront of objectives for KEEP (Kentucky Equine Education Project) which seeks to modify this tax so that horse farmers are treated similarly to cattle and other livestock which do not have to pay sales tax on feed etc. For further information, see www.horsework.com.

2. ***Calumet Farm, Inc. v. Revenue Cabinet, Commonwealth of Kentucky, 793 S.W.2d 830 (Ct. App. Ky. 1990).***

This case arose from audit of taxpayer and subsequent appeal from the Board of Tax Appeals. Court held that lifetime breeding right in stallion (ALYDAR) was not a tax-exempt interest in horse but rather, a fee paid for breeding of stallion and fell within statute taxing fees paid for breeding of stallion.

Relevant statute was Kentucky Revised Statutes 139.531.

3. ***Commonwealth of Kentucky, Revenue Cabinet v. Kenington Sales, Inc. (Ct. App. Ky. 1992).***

Case arose from audit of taxpayer which was a thoroughbred sales company that had subsequently changed ownership.

Relevant statutes were Kentucky Revised Statutes 139.531 dealing with sales of yearlings to out of state buyers.

Importance of this case is to point out the necessity to document out of state sales. For forms used by current sales companies, see for example: www.fasigtipton.com/media/ee/docs/KENTUCKY_SALES_AND_USE_TAX.pdf

Use Tax 4% Rate (up to 11% including local taxes)

Mares	
Generally subject?	Taxable. <i>La. Rev. Stat. Ann. Sec. 47:302(A)(2).</i>
Exceptions	None.
Stallions	
Generally subject?	Taxable. <i>La. Rev. Stat. Ann. Sec. 47:302(A)(2).</i>
Exceptions	None.
Stud Fees	
Generally subject?	Probably a non-taxable service or sale of intangible property - no authority. <i>La. Rev. Stat. Ann. Sec. 47:301(16)(a).</i>
Exceptions	N/A
Breeding Rights	
Generally subject?	Probably a non-taxable service or sale of intangible property -- no authority. Only enumerated services are subject to tax and stud fees are not listed in the Louisiana statutes as taxable. <i>La. Rev. Stat. Ann. Sec. 47:302(C).</i>
Exceptions	N/A
Racehorses	
Generally subject?	Taxable. <i>La. Rev. Stat. Ann. Sec. 47:302(A)(2).</i>
Exceptions	None noted.
Re-seller (Pinhooker)	Exempt with resale certificate. <i>La. Rev. Stat. Ann. Sec. 47:301(10)(a); La. Rev. Bulletin No. 09-015, 06/23/09.</i>
Claiming	
Generally subject?	No. A tax exemption applies to race horses sold through entry in claiming race meets held in Louisiana, whether or not the horse claimed was owned by the original breeder. <i>L.R.S. Sec. 47:305(A)(2).</i>
Exceptions	N/A
Re-seller (Pinhooker)	Exempt with resale certificate. <i>La. Rev. Stat. Ann. Sec. 47:301(10)(a); La. Rev. Bulletin No. 09-015, 06/23/09.</i>
Other	
Credit Against Use Tax	Yes. A credit is allowed against the Louisiana use tax only in an amount equal to the comparable state tax rate paid to the other state, applied to the value taxed under Louisiana law. <i>La. Rev. Stat. Ann. Sec. 47:303(A)(3)(a).</i>
Leasing	Treated as a sale. <i>La. Rev. Stat. Ann. Sec. 47:302(B).</i>

Louisiana

Sales Tax 4% State Rate (up to 11% including local taxes)

Mares

Generally subject?	Yes. <i>La. Rev. Stat. Ann. Sec. 47:302(A)(1)</i>
Exceptions	None noted.

Stallions

Generally subject?	Yes. <i>La. Rev. Stat. Ann. Sec. 47:302(A)(1)</i>
Exceptions	None noted.
Stallion Shares	Probably treated the same as stallions - no authority.

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property - no authority. Only enumerated services are subject to tax, and stud fees are not listed in the Louisiana statutes as taxable. <i>La. Rev. Stat. Ann. Sec. 47:302(C)</i> .
Exceptions	N/A

Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property -- no authority. Only enumerated services are subject to tax and stud fees are not listed in the Louisiana statutes as taxable. <i>La. Rev. Stat. Ann. Sec. 47:302(C)</i> .
Exceptions	N/A

Racehorses

Generally subject?	Yes. <i>La. Rev. Stat. Ann. Sec. 47:302(A)(1)</i>
Exceptions	None noted.

Shipping out of state within a short time-frame Property purchased for exclusive use outside the state is exempt, if first use is outside the state. *La. Rev. Stat. Ann. Sec. 47:305.10*.

Re-seller (Pinhooker) Exempt with resale certificate. *La. Rev. Stat. Ann. Sec. 47:301(10)(a); La. Rev. Bulletin No. 09-015, 06/23/09*.

Sales directly by the breeder Yes. *La. Rev. Stat. Ann. Sec. 47:301(5)(a)*

Sales at auction Yes. all auctioneers must register as dealers and are responsible for the collection of the tax on items sold by them. *La. Rev. Stat. Ann. Sec. 47:303(C)*.

By occasional sale No. An isolated or occasional sale of tangible personal property by a person not engaged in such business is exempt, except for the sale of motor vehicles. *La. Rev. Stat. Ann. Sec. 47:301(10)(c)(II)(bb)*.

Claiming

Generally subject? No. A tax exemption applies to race horses sold through entry in claiming race meets held in Louisiana, whether or not the horse claimed was owned by the original breeder. *L.R.S. Sec. 47:305(A)(2)*.

Mares

Generally subject?	Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.
Exceptions	Horses purchased for breeding purposes only are exempt. Md. Code Ann. Tax-Gen § 11-201; Van Clief v. Comptroller, 126 A.2d 865 (Md. 1956) & in Business Tax Tip #11.

Stallions

Generally subject?	Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.
Exceptions	Horses purchased for breeding purposes only are exempt. Md. Code Ann. Tax-Gen § 11-201; Van Clief v. Comptroller, 126 A.2d 865 (Md. 1956) & in Business Tax Tip #11.
Stallion Shares	Probably treated the same as stallions - no authority.

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property - no authority.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property - no authority.
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Racehorses/Showhorses

Generally subject?	Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.
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Claiming

Generally subject?	Yes. Md. Code Ann. Tax-Gen § 11-201.
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Other

Shipping out of state	Nonresident/non-commercially domiciled purchaser must take possession outside state to be exempt. Md. Code Regs. 03.06.01.25(2).
Re-sales	Exempt with resale certificate. Md. Code Ann. Tax-Gen. § 11-408.
Occasional sales	Exempt if under \$1,000 and the sale is not made through an auctioneer or dealer. Md. Code Ann. Tax-Gen § 11-209.
Sales directly by the breeder	No exemptions noted.
Sales at auction	No exemptions noted.
Leasing	Taxed as a sale. Md. Code Ann. Tax-Gen Sec. 11-101(g); Md. Code Regs. 03.06.01.28(A)).

Maryland

Use Tax — 6% State Rate

Mares

Generally subject?	Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.
Exceptions	Horses used for breeding purposes only are exempt. Md. Code Ann. Tax-Gen § 11-201; Van Clief v. Comptroller, 126 A.2d 865 (Md. 1956) & in Business Tax Tip #11.

Stallions

Generally subject?	Yes. Md. Code Ann. Tax-Gen § 11-101 & 201.
Exceptions	Horses used for breeding purposes only are exempt. Md. Code Ann. Tax-Gen § 11-201; Van Clief v. Comptroller, 126 A.2d 865 (Md. 1956) & in Business Tax Tip #11.

Stud Fees

Generally subject?	Probably a non-taxable service or use of intangible property — no authority.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or use of intangible property — no authority.
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Racehorses/Showhorses

Generally subject?	Yes. Md. Code Ann. Tax-Gen § 11-102 & 201.
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Other

Credit Against Use Tax	Yes. Md. Code Ann. Tax-Gen. § 11-221(c)(1).
Leasing	Taxed as a sale. Md. Code Ann. Tax-Gen Sec. 11-101(g); Md. Code Regs. 03.06.01.28(A)).
Re-sales	Exempt. Md. Code Ann. Tax-Gen. § 11-408.

1. *Van Clief v. Comptroller of State of Maryland*, 211 Md. 191, 126 A.2d. 865 (Ct. App. Md. 1956).

Court held that a broodmare which was formerly a race mare but now producing offspring was livestock “used for agricultural purposes,” and therefore was exempt from sales tax. Construction of statute and definition of “agricultural purposes” were both at issue.

Relevant statute was Code 1951, Article 81, Section 322 (Exemptions) subsection (h). Court relied on other jurisdictions to holding that “the weight of authority in other jurisdictions is that agriculture includes the rearing, feeding and management of horses.”

New Jersey

Sales Tax — 7% State Rate

Mares

Generally subject?	Yes. N.J. Admin. Code § 18:24-28.2.
Exceptions	Exempt if purchased for breeding purposes. N.J. Admin. Code § 18:24-19.5(a).
Can buyer take possession in the state?:	No. N.J. Admin. Code § 18:24-28.2.

Stallions

Generally subject?	Yes. N.J. Admin. Code § 18:24-28.2.
Exceptions	Exempt if purchased for breeding purposes. N.J. Admin. Code § 18:24-19.5(a).
Stallion Shares	Syndication of a horse is considered a sale of the horse and is subject to the sales tax under 18:24-28.9(a) unless the horse is used exclusively for breeding purposes.

Stud Fees

Generally subject?	No. New Jersey Division of Taxation March/April 1989 State Tax News found stud fees to be an exempt farming input.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property - no authority.
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Racehorses/Showhorses

Generally subject?	Yes. N.J. Admin. Code § 18:24-28.2(a).
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Claiming

Generally subject?	Yes. N.J. Admin. Code § 18:24-28.3.
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Other

Shipping out of state	Nonresident/non-commercially domiciled purchaser must take possession outside of state to be exempt. N.J. Admin. Code § 18:24-28.2.
Re-sales	Exempt with resale certificate. N.J. Admin. Code § 54:32B-2(e)(1).
Occasional sales	Exempt casual sale means an isolated sale of an item of tangible personal property by a person who is not in the business of making retail sales of such property. N.J. Admin. Code §. 54:32B-2(u). Does not apply to claiming races.
Sales directly by the breeder	Yes. N.J. Admin. Code § 18:24-28.8(a) provides that a horse that is raced in the state by the breeder is exempt from the sales and compensating use tax.
Sales at auction	No exemption for sale at auction. N.J. Admin. Code § 18:24-28.2
Leasing	N.J. Stat. § 54:32B-2(e).

Mares

Generally subject?	Yes. N.J. Admin. Code § 54:32B-6.
Exceptions	Exempt if used exclusively for breeding purposes. N.J. Admin. Code § 18:24-19.5(a).

Stallions

Generally subject?	Yes. N.J. Admin. Code §. 54:32B-6.
Stallion Syndicates	N.J. Admin. Code § 18:24-28.9 provides that if a horse, not used exclusively for breeding purposes, is syndicated outside of NJ and subsequently is used in NJ, the syndicate will be subject to a compensating use tax if it met the resident requirements of N.J. Admin. Code § 18:24-28.5 at the time of syndication. The residence is that of the syndicate and not of its individual members.
Exceptions	Exempt if used exclusively for breeding purposes. N.J. Admin. Code § 18:24-19.5(a).

Stud Fees

Generally subject?	No. New Jersey Division of Taxation March/April 1989 State Tax News found stud fees to be an exempt farming input.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property - no authority.
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Racehorses/Showhorses

Generally subject?	Yes. N.J. Admin. Code § 18:24-28.4(a).
Exceptions	Yes. N.J. Admin. Code § 18:24-28.4(a) provides that the compensating use tax will not be imposed on the use of a race horse within this State if the horse was purchased by the user while a nonresident/non-commercial domicile of this State.

Other

Credit Against Use Tax	Yes. N.J. Admin. Code § 18:24-28.4(b).
Leasing	Same treatment as a sale. N.J. Admin. Code § 18:24-32.7.
Re-sales	Exempt. N.J. Admin. Code § 54:32B-2(e)(1).

New York

Sales Tax — 4% State Rate (up to 8.875% depending on local surtaxes)

Mares

Generally subject?	Yes. NY Reg. Sec. 527.14(a).
Exceptions	Racehorses exempt if purchased for breeding. NY Reg. Sec. 527.14(c)(1)(ii). 'Racehorses' includes thoroughbreds, standardbreds and quarter horses. NY Reg. Sec. 527.14(b)(1).
Can buyer take possession in the state?:	Exempt to non-resident/non-commercially domiciled purchaser if not delivered within NY. NY Reg Sec 527.14(f).

Stallions

Generally subject?	Yes. NY Reg. Sec. 527.14(a).
Exceptions	Exempt if purchased for breeding purposes NY Reg. Sec. 527.14(c)(1)(ii).
Stallion Shares	Syndication is considered a sale of the horse and is subject to sales tax unless the horse is purchased exclusively for breeding purposes; taxability conditioned upon review of syndication agreement. NY Reg Sec 527.14(c)(ii) and (vii).

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
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Racehorses/Showhorses

Generally subject?	Yes, unless a registered racehorse to be raced in pari-mutuel race. N.Y. TAX LAW 28 § 1115(a)(29).
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Claiming

Generally subject?	Yes, tax due on portion of claiming price greater than any prior claiming price paid in NY during the same calendar year. N.Y. TAX LAW 28 § 1111(g); BUT, exempt if registered for pari-mutuel racing. N.Y. TAX LAW 28 § 1115(a)(29).
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Other

Shipping out of state	Nontaxable if delivered outside NY before purchaser is deemed to have taken possession. NY Reg Sec. 527(14)(f)(1).
Re-sales	Resale purchases are exempt from sales and use tax. NY Tax Law 28 § 1105.
Occasional sales	Exempt if under \$600 per year from home. NY Tax Law 28 § 1115(a)(18).
Sales directly by the breeder	No exemptions noted.
Sales at auction	No exemptions noted.
Leasing	Taxed as a sale. Sec. 1101(b)(5), Tax Law; Sec. 1110, Tax Law; Reg. Sec. 526.7.

Use Tax — 4% State Rate (up to 8.875% depending on local surtaxes)

Mares

Generally subject?	Yes. NY Reg. Sec. 527.14(a).
Exceptions	Exempt if used for breeding purposes. NY Reg. Sec. 527.14(c)(1)(ii).

Stallions

Generally subject?	Yes. NY Reg. Sec. 527.14(a).
Exceptions	Exempt if used for breeding. NY Reg. Sec. 527.14(c)(1)(ii).

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
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Lifetime Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property — no authority.
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Racehorses/Showhorses

Generally subject?	Yes. NY Reg. Sec. 527.14(a).
Exceptions	Exempt if eligible to be registered for pari-mutuel racing. NY TAX LAW 28 § 1115(a)(29). Capped at \$100,000 of price/value per horse. 527.14(d)(iii)(b).

Other

Credit Against Use Tax	Residents may claim credit for other state/local tax paid; Credit not to exceed NY calculated tax; Only available if state that tax was paid allows credit same credit for NY taxes paid. NY Tax Law 28 Sect. 1118(7)(a).
Leasing	Taxed as a sale. Sec. 1101(b)(5), Tax Law; Sec. 1110, Tax Law; Reg. Sec. 526.7.
Re-sales	Resale purchases are exempt from sales and use tax. NY Tax Law 28 § 1105.

North Carolina

Sales Tax 4.75% Rate (Up to 7.5% depending on local surtaxes; see “Other”)

<p>Mares</p> <p>Generally subject? Yes (unless (i) horse farm is seller and isn't primarily a retailer or (ii) occasional sale (see below)). N.C. Gen. Stat. § 105-164.13(4b).</p>		<p>Other</p> <p>Leasing The sales tax is imposed on the gross receipts derived from the lease or rental of tangible personal property. N.C. Gen. Stat. § 105-164.4(a)(2).</p> <p>Occasional sales Occasional or casual sales of horses owned for personal use, not made in the regular or ordinary course of business, are not subject to sales or use tax if the seller does not hold himself or herself out as engaged in business. N.C. Gen. Stat. §105-164.3(11).</p> <p>Horses delivered out of state Occasional or casual sales of horses owned for personal use, not made in the regular or ordinary course of business, are not subject to sales or use tax if the seller does not hold himself or herself out as engaged in business. N.C. Gen. Stat. §105-164.3(11).</p> <p>Racehorses Generally Subject? Yes. North Carolina sales and use division takes position that racehorse owners are “doing business” and therefore don't qualify for the occasional sales exemption. Similarly, racehorses cannot be said to be products of farms once having already been sold by a farm, so the § 105-164.13(4b) exemption is typically unavailable for racehorses.</p> <p>Purchases for re-sale (Pinhooker) Sales for resale are exempt from sales and use tax as wholesale sales. N.C. Gen. Stat. §105-164.3(52).</p> <p>Additional local sales and use taxes Effective October 1, 2014, the additional local rate is 2% in all counties except Alexander, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Duplin, Edgecombe, Greene, Halifax, Harnett, Haywood, Hertford, Lee, Martin, Montgomery, New Hanover, Onslow, Pitt, Randolph, Robeson, Rowan, Sampson, Surry, and Wilkes where the county rate is 2.25%. However, the local rate in Mecklenburg County is 2.5%; and 2.75% in Durham and Orange Counties as a result of the additional transportation tax. Consequently, effective October 1, 2014, the combined state and local rate is 6.75% in 72 counties; 7% in Alexander, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Duplin, Edgecombe, Greene, Halifax, Harnett, Haywood, Hertford, Lee, Martin, Montgomery, New Hanover, Onslow, Pitt, Randolph, Robeson, Rowan, Sampson, Surry, and Wilkes; 7.25% in Mecklenburg County; and 7.5% in Durham and Orange Counties.</p>
<p>Stallions</p> <p>Generally subject? Generally subject: yes (unless (i) horse farm is seller and isn't primarily a retailer or (ii) occasional sale (see below)). N.C. Gen. Stat. § 105-164.13(4b).</p> <p>Stallion Shares Should be same treatment as Stallions.</p>		
<p>Stud Fees</p> <p>Generally subject? Probably not. Probably a non-taxable service or sale of intangible property. Services charges should be separately stated from tangible personal property sales price to avoid sales tax on services. N.C. Gen. Stat. §105-164.4. No specific authority.</p> <p>Exceptions N/A</p>		
<p>Lifetime Breeding Rights</p> <p>Generally subject? Probably not. Probably a non-taxable service or sale of intangible property. Probably a non-taxable service or sale of intangible property. N.C. Gen. Stat. §105-164.4. No specific authority.</p> <p>Exceptions N/A</p>		

Use Tax 4.75% Rate (Up to 7.5% depending on local surtaxes)

Mares

Generally subject? Generally subject: yes (unless horse farm is seller and isn't primarily a retailer). N.C. Gen. Stat. § 105-164.13(4b).
Same exemptions as sales tax pursuant to N.C. Gen. Stat. § 105-164.6(a)

Stallions

Generally subject? Generally subject: yes (unless horse farm is seller and isn't primarily a retailer). N.C. Gen. Stat. § 105-164.13(4b).
Same exemptions as sales tax pursuant to N.C. Gen. Stat. § 105-164.6(a).

Stallion Shares Should be same treatment as Stallions.

Stud Fees

Generally subject? Probably not. If exemption exists for sales tax, would also apply for use tax. N.C. Gen. Stat. § 105-164.6(a).
Probably a non-taxable service or sale of intangible property. Services charges should be separately stated from tangible personal property sales price to avoid sales tax on services. N.C. Gen. Stat. §105-164.4. No specific authority.

Exceptions N/A

Lifetime Breeding Rights

Generally subject? Probably not. If exemption exists for sales tax, would also apply for use tax. N.C. Gen. Stat. § 105-164.6(a).
Probably a non-taxable service or sale of intangible property. N.C. Gen. Stat. §105-164.4. No specific authority.

Exceptions N/A

Other

Credit Against Use Tax Yes. N.C. Gen. Stat. § 105-164.6(c)

Ohio

Sales Tax — 5.5% State Rate

Mares

Generally subject?	Yes. Ohio Rev. Code §5739.02.
Exceptions	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneaur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) (horses used for breeding found to be used for agricultural purpose) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972) (riding horses found not to be used for agricultural purpose). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO).
Can buyer take possession in the state?	Nonresident purchaser must take possession out of state to qualify as interstate commerce. Ohio Admin. Code § 5703-9-39.

Stallions

Generally subject?	Yes. Ohio Rev. Code §5739.02.
Exceptions	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneaur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO).
Stallion Shares	Likely same treatment as stallions.

Stud Fees

Generally subject?	No direct authority. Probably exempt as a non-taxable service or sale of intangible property. Unless otherwise provided, services are exempt. Ohio Rev. Code § 5739.01(B).
Exceptions	N/A

Lifetime Breeding Rights

Generally subject?	No direct authority. Probably exempt as a non-taxable service or sale of intangible property. Unless otherwise provided, services are exempt. Ohio Rev. Code § 5739.01(B)
Exceptions	N/A

Racehorses

Generally subject?	Yes. Ohio Rev. Code §5739.02.
Exceptions	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneaur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO).
Shipping out of state within a short time-frame	When an item is sold in Ohio to be delivered out of state, it is treated as interstate commerce and sales tax does not apply. Ohio Admin. Code § 5703-9-39.
Re-seller (Pinhooker)	Sales tax does not apply to resellers. Ohio Rev. Code § 5739.01(E).
Sales directly by the breeder	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneaur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO).
Sales at auction	Generally, yes. Auctioneer is not responsible for collecting tax when transaction is casual sale of items acquired for non-business use unless sale location is auctioneer’s permanent place of business, which means that auctioneer has conducted more than two auctions there during the year. Ohio Admin. Code 5703-9-30.
By occasional sale	Casual sales exempt. Ohio Rev. Code § 5739.02(8). Casual sale occurs when someone purchases an item for their own personal use (as opposed to business purposes). Ohio Rev. Code § 5739.01(L).

Claiming

Generally subject?	Yes, unless purchased for agricultural purpose. Ohio Rev. Code § 5739.02(B)(42)(n); Ohio Rev. Code § 5739.01(OO).
Exceptions	N/A
Shipping out of state within a short timeframe	When an item is sold in Ohio to be delivered out of state, it is in interstate commerce and sales tax does not apply. Ohio Admin. Code § 5703-9-39.

Use Tax — 5.5% State Rate

Mares		Racehorses	
Generally subject?	Yes. Ohio Rev. Code § 5741.02(C)	Generally subject?	Yes. Ohio Rev. Code § 5741.02(C)
Exceptions	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO). Ohio has the same exemptions for use tax as for sales tax. Ohio Rev. Code § 5741.02(C).	Exceptions	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO). Ohio has the same exemptions for use tax as for sales tax. Ohio Rev. Code § 5741.02(C).
Stallions		Re-seller (Pinhooker)	
Generally subject?	Yes. Ohio Rev. Code § 5741.02(C).		Use tax does not apply to resellers. Ohio Rev. Code § 5741.02(C).
Exceptions	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO). Ohio has the same exemptions for use tax as for sales tax. Ohio Rev. Code § 5741.02(C).	Claiming	
Stud Fees		Generally subject?	Yes. 35 Ill. Comp. Stat. 105/3.
Generally subject?	No direct authority. Probably exempt as a non-taxable service or sale of intangible property. Unless otherwise provided, services are exempt. Ohio Rev. Code § 5739.01(B).	Exceptions	Exempt if used for agricultural purposes. Ohio Rev. Code § 5739.02(B)(42)(n). Compare <i>Gochneur v. Kosydar</i> , 346 N.E.2d 320 (Ohio 1976) with <i>Red Fox Stables, Inc. v. Porterfield</i> , 277 N.E.2d 433 (Ohio 1972). Livestock exemption applies to animals used for “agricultural purposes,” although the definition of “livestock” excludes “animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production. Ohio Rev. Code § 5739.01(OO). Ohio has the same exemptions for use tax as for sales tax. Ohio Rev. Code § 5741.02(C).
Exceptions	N/A	Re-seller (Pinhooker)	
Breeding Rights			Use tax does not apply to resellers. Ohio Rev. Code § 5741.02(C).
Generally subject?	No direct authority. Probably exempt as a non-taxable service or sale of intangible property. Unless otherwise provided, services are exempt. Ohio Rev. Code § 5739.01(B).	Other	
Exceptions	N/A	Credit Against Use Tax	Yes – available to extent that sales tax was paid to another jurisdiction. Ohio Rev. Code § 5741.02(C)(5).
Other		Leasing	Yes. Ohio Rev. Code § 5741.02(A)(2) provides that use tax applies to leases.

Ohio

Notes and Comments

1. ***Gochneaur v. Kosydar, 346 N.E.2d 320 (Ohio 1976).***

A trainer/breeder tried to argue that his racehorses were exempt from Ohio's use tax under the Ohio Rev. Code § 5739.02 agriculture exemption. Using the definition of "agriculture" in Webster's dictionary, the court found that the racehorses satisfied the definition of "agriculture" because they were "livestock." Ultimately, however, the court ruled in favor of the Tax Commissioner, because the trainer did not properly give notice of appeal.

2. ***Red Fox Stables, Inc. v. Porterfield, 277 N.E.2d 433 (Ohio 1972).***

Red Fox Stables, which operated a riding academy on a 187-acre tract of land, appealed sales and use taxes imposed on its purchase of horses. The *Stable* argued that the transactions at issue constituted exempt agricultural activity. The court disagreed, holding that the activity was not undertaken in furtherance of agriculture. The court relied heavily on a prior Board of Tax Appeals opinion that defined "agriculture" as "the cultivation of the soil for the purpose of producing vegetables and fruits and includ[ing] gardening or horticulture, together with the raising and feeding of cattle or stock for sale as a business." Under this definition, the court did not consider the purchase of horses for use at a riding academy an "agricultural" use.

3. ***Randall Park Jockey Club, Inc. v. Peck, 122 N.E.2d 787 (Ohio 1954).***

Taxpayer, a racing association, appealed sales and use taxes imposed on its rental of pari-mutuel machines, which it used to take bets on horse races. The Club argued that the rental involved installation of the devices, which was a tax-exempt service. The court disagreed, holding that the machines were taxable personal property that triggered sales and use taxes. The court further explained that the taxes should be imposed on the cost of the rental and not on the price of each wager ticket sold through the machine.

Oklahoma

Sales Tax — 4.5% State Rate

Mares

Generally subject?	No. OKLA. STAT. tit. 68 § 1357.7 exempts all sales of horses after January 1, 1989.
Exceptions	N/A
Can buyer take possession in the state?:	N/A

Stallions

Generally subject?	No. OKLA. STAT. tit. 68 § 1357.7.
Exceptions	N/A
Stallion Shares	Probably nontaxable based on OKLA. STAT. tit. 68 § 1357.7 — no direct authority.

Stud Fees

Generally subject?	Probably not. OKLA. STAT. tit. 68 § 1404(7) provides exception for livestock (including horses - OKLA. ADMIN. CODE § 710:65-13-15(a)(4)) brought from out-of-state for breeding purposes. OKLA. ADMIN. CODE § 710:65-13-15(k)(10) also states that breeding supplies (including semen and storage supplies) are exempt. Additionally, OKLA. STAT. tit. 68 § 1357.7 may extend to breeding rights. Or, a non-taxable service. Oklahoma sales tax is imposed only on those services specifically taxed by statute. OKLA. STAT. tit. 68 § 1354.
Exceptions	Breeding supplies exemption only extends to agricultural use, which does not include ownership of livestock solely for one's own use for pleasure riding, trail riding, performance riding, participation in horse shows, or racing. OKLA. ADMIN. CODE § 710:65-13-15(c)(5).

Lifetime Breeding Rights

Generally subject?	Probably not. OKLA. STAT. tit. 68 § 1404(7) provides exception for livestock (including horses - OKLA. ADMIN. CODE § 710:65-13-15(a)(4)) brought from out-of-state for breeding purposes. OKLA. ADMIN. CODE § 710:65-13-15(k)(10) also states that breeding supplies (including semen and storage supplies) are exempt. Additionally, OKLA. STAT. tit. 68 § 1357.7 may extend to breeding rights. Or, a non-taxable service. Oklahoma sales tax is imposed only on those services specifically taxed by statute. OKLA. STAT. tit. 68 § 1354.
Exceptions	Breeding supplies exemption only extends to agricultural use, which does not include ownership of livestock solely for one's own use for pleasure riding, trail riding, performance riding, participation in horse shows, or racing. OKLA. ADMIN. CODE § 710:65-13-15(c)(5).

Racehorses

Generally subject?	No. OKLA. STAT. tit. 68 § 1357.7.
Exceptions	N/A
Shipping out of state within a short time-frame	N/A
Re-seller (Pinhooker)	No. Resellers are exempt under OKLA. STAT. tit. 68 § 1404(2).
Sales directly by the breeder	No. OKLA. STAT. tit. 68 § 1357.7.
Sales at auction	N/A
By occasional sale	N/A

Claiming

Generally subject?	No. OKLA. STAT. tit. 68 § 1357.7.
Exceptions	N/A
Short time frame	N/A

Mares

Generally subject?	No. OKLA. STAT. tit. 68 § 1404(4) provides that all exemptions to Sales Tax also apply to Use Tax. OKLA. STAT. tit. 68 § 1357.7 provides exemption for all horse sales after January 1, 1989.
Exceptions	N/A

Stallions

Generally subject?	No. OKLA. STAT. tit. 68 § 1404(4) provides that all exemptions to Sales Tax also apply to Use Tax. OKLA. STAT. tit. 68 § 1357.7 provides exemption for horses.
Exceptions	N/A

Stud Fees

Generally subject?	Probably not. OKLA. STAT. tit. 68 § 1404(7) provides exception for livestock (including horses - OKLA. ADMIN. CODE § 710:65-13-15(a)(4)) brought from out-of-state for breeding purposes. OKLA. ADMIN. CODE § 710:65-13-15(k)(10) also states that breeding supplies (including semen and storage supplies) are exempt. Additionally, OKLA. STAT. tit. 68 § 1357.7 may extend to breeding rights. Or, possibly a non-taxable service. Oklahoma sales tax is imposed only on those services specifically taxed by statute. OKLA. STAT. tit. 68 § 1354.
Exceptions	Breeding supplies exemption only extends to agricultural use, which does not include ownership of livestock solely for one's own use for pleasure riding, trail riding, performance riding, participation in horse shows, or racing. OKLA. ADMIN. CODE § 710:65-13-15(c)(5).

Breeding Rights

Generally subject?	Probably not. OKLA. STAT. tit. 68 § 1404(7) provides exception for livestock (including horses - OKLA. ADMIN. CODE § 710:65-13-15(a)(4)) brought from out-of-state for breeding purposes. OKLA. ADMIN. CODE § 710:65-13-15(k)(10) also states that breeding supplies (including semen and storage supplies) are exempt. Additionally, OKLA. STAT. tit. 68 § 1357.7 may extend to breeding rights. Or, possibly a non-taxable service. Oklahoma sales tax is imposed only on those services specifically taxed by statute. OKLA. STAT. tit. 68 § 1354.
Exceptions	Breeding supplies exemption only extends to agricultural use, which does not include ownership of livestock solely for one's own use for pleasure riding, trail riding, performance riding, participation in horse shows, or racing. OKLA. ADMIN. CODE § 710:65-13-15(c)(5).

Racehorses

Generally subject?	No. OKLA. STAT. tit. 68 § 1404(4) provides that all exemptions to Sales Tax also apply to Use Tax. OKLA. STAT. tit. 68 § 1357.7 provides exemption for horses.
Exceptions	N/A
Re-seller (Pinhooker)	No. Resellers are exempt under OKLA. STAT. tit. 68 § 1404(2). And OKLA. STAT. tit. 68 § 1404(4) provides that all exemptions to Sales Tax also apply to Use Tax.

Claiming

Generally subject?	No. OKLA. STAT. tit. 68 § 1404(4) provides that all exemptions to Sales Tax also apply to Use Tax. OKLA. STAT. tit. 68 § 1357.7 provides exemption for horses.
Exceptions	N/A
Re-seller (Pinhooker)	No. Resellers are exempt under OKLA. STAT. tit. 68 § 1404(2). And OKLA. STAT. tit. 68 § 1404(4) provides that all exemptions to Sales Tax also apply to Use Tax.

Other

Credit Against Use Tax	Yes. OKLA. STAT. tit. 68 § 1404(3).
Leasing	Leasing is treated same as sales — horses would be exempt. OKLA. STAT. tit. 68 § 1401(6).

Pennsylvania

Sales Tax — 6% State Rate

Mares

Generally subject?	Yes. 72 Pa. Stat. § 7202(a).
Exceptions:	The purchase of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a). The propagation and raising of horses to be used exclusively for certain thoroughbred and harness racing activities qualifies as farming. Reg. Section 60.21(b)(3). Other types of horses are subject.

Stallions

Generally subject?	Yes. 72 Pa. Stat. § 7202(a).
Exceptions:	The purchase of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a). The propagation and raising of horses to be used exclusively for commercial racing activities qualifies as farming. Reg. Section 60.21(b)(3). Other types of horses are subject.
Stallion Shares	Subject. See case commentary below. But see exception relating to propagation of thoroughbred and harness racehorses.

Stud Fees

Generally subject?	Stud fees are generally subject. See commentary below. Stud fees relating to the propagation and raising of horses to be used exclusively for commercial racing activities qualify for the farming exemption. Reg. Section 60.21(b)(3).
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Lifetime Breeding Rights

Generally subject?	Probably same as stud fees. No authority.
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Racehorses/Showhorses

Generally subject?	Yes and No. Purchases of horses to be used exclusively in certain thoroughbred and harness racing activities are exempt. Reg. Section 60.21(b)(1). Other horses are generally subject.
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Claiming

Generally subject?	No. Claiming races are also governed under Reg. Sec. 60.21. An example within this regulation states that a horse purchased at a claiming race was not subject to sales and use tax.
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Other

Shipping out of state	Nonresident/non-commercially domiciled purchaser must take possession outside state to be exempt. Reg. Sec. 31.3(25).
Re-sales	Sale of property for purposes of resale is not subject to sales tax. 72 Pa. Stat. § 7201(k).
Occasional sales	Exempt if not more than three sales in a calendar year and not sold from a location at which other businesses are making similar sales of the same taxable property. Reg. Sec. 32.1.
Sales directly by the breeder	No exemptions noted.
Sales at auction	No exemptions noted.
Leasing	Taxed as a sale. Reg. Sec. 31.1 (1).

Pennsylvania

Use Tax — 6% State Rate

Mares

Generally subject?
Exceptions

Yes. 72 Pa. Stat. § 7202(b).

The use of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a). The propagation and raising of horses to be used exclusively for commercial racing activities qualifies as farming. Reg. Section 60.21(b)(3). Other types of horses are subject.

Stallions

Generally subject?
Exceptions

Yes. 72 Pa. Stat. § 7202(b).

The use of tangible property by a person engaged in the business of farming is exempt if used predominantly in the farming operation. Reg. Section 32.33(a). The propagation and raising of horses to be used exclusively for commercial racing activities qualifies as farming. Reg. Section 60.21(b)(3). Other types of horses are subject.

Stud Fees

Generally subject?

Stud fees are generally subject. See commentary below. Stud fees relating to the propagation and raising of horses to be used exclusively for commercial racing activities qualifies as farming. Reg. Section 60.21(b)(3).

Lifetime Breeding Rights

Generally subject?

Probably same as stud fees. No authority.

Racehorses/Showhorses

Generally subject?

Yes and No. Purchases of horses to be used exclusively in commercial racing activities are exempt. Reg. Section 60.21(b)(1). Other horses are generally subject.

Other

Credit Against Use Tax
Leasing
Re-sale

Yes. Reg. Sec. 31.7(b).

Taxed as a sale. Reg. Sec. 31.1 (1).

Exempt. 72 Pa. Stat. § 7201(k).

Pennsylvania

Notes and Comments

1. ***Commonwealth v. Hanover Shoe Farms, Inc.* (27 Pa. D. & C2d 366, 1962 WL 6811 (Pa.Com.Pl., 1961))**

Appeal from Board of Finance and Revenue to the Court of Common Pleas of Pennsylvania.

Relevant statute was Selective Sales and Use Tax Act (72 P.S. 3403-2). The Sales and Use Tax Act used the words “farming” and “agriculture” without defining them.

The Court held that the sale of semen for artificial insemination was a retail sale under the statute. Court found that raising of standardbred horses was not “farming” or “agriculture” and therefore no exemption was permitted, holding that seminal fluid was tangible personal property.

In fact, the Court stated that “Standardbred horses fill no basic need of man. It is common knowledge that the breeding and raising of standardbred horses is one of producing a luxury product and not a product ordinarily considered necessary to man’s needs: standardbred horses have no relation to the land except to occupy it and the fact that they produce waste used to fertilize the soil is the nature of all living creatures.”

2. ***Commonwealth v. Wetzel*, 435 Pa. 468, 257 A.2d 538 (S.Ct. Pa. 1969).**

The Court held that the sale of stud fee services for breeding of standardbred horses later sold in the market was not exempt from sales tax under sale for resale exemption. Taxpayer Wetzel sent mares to Hempt Farms for artificial insemination. Taxpayer’s argument was that “semen provided by Hempt Farms stallion, in uniting with the ovum of appellant’s mare to produce a foal, represents personal property physically incorporated into other personal property to be sold in the regular course of business.”

The Court also noted that since Hanover Shoe prohibits the characterization of artificial insemination and standardbred horse breeding as agricultural or farming, the taxpayer attempted to rely on the more general provisions of the statute for assembly operations. A similar case was argued by the mink breeders of Pennsylvania and failed. A subsequent Tax Act had been adopted in Pennsylvania since Hanover Shoe and the mink case, but did not alter the sections at issue.

3. ***Hempt Brothers, Inc. v. Commonwealth*, 137 Pa.Cmwlt. 188, 585 A.2d 593 (S.Ct. Pa., 1991).**

Court held that the purchase of shares in stallion syndications resulted in acquisition of ownership interests subject to use tax.

Taxpayer attempted to argue, contrary to clear wording of syndication agreement, that the interest was more like a breeding right and was not an “ownership” right.

Notes

Texas

Sales Tax — 6.25% State Rate

Mares

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A
Can buyer take possession in the state?:	N/A

Stallions

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A
Stallion Shares	Probably nontaxable based on Texas Tax Code § 151.316(a)(1) — no authority.

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property; also Texas Tax Code § 151.316(a)(1) exempts horses from sales taxation — no authority.
Exceptions	N/A

Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property; also Texas Tax Code § 151.316(a)(1) exempts horses from sales taxation — no authority.
Exceptions	N/A

Claiming

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A
Short time frame	N/A

Racehorses

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A
Shipping out of state within a short time-frame	N/A
Re-seller (Pinhooker)	N/A
Sales directly by the breeder	N/A
Sales at auction	N/A
By occasional sale	N/A

Use Tax — 6.25% State Rate

Mares

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A

Stallions

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A

Stud Fees

Generally subject?	Probably a non-taxable service or sale of intangible property; also Texas Tax Code § 151.316(a)(1) exempts horses from sales taxation — no authority.
Exceptions	N/A

Breeding Rights

Generally subject?	Probably a non-taxable service or sale of intangible property; also Texas Tax Code § 151.316(a)(1) exempts horses from sales taxation — no authority.
Exceptions	N/A

Racehorses

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A
Re-seller (Pinhooker)	N/A

Claiming

Generally subject?	No. Texas Tax Code § 151.316(a)(1) (all horses exempt).
Exceptions	N/A
Short time frame	N/A

Other

Credit Against Use Tax	N/A
Leasing	Same treatment as a sale. Texas Tax Code § 151.005(2).

West Virginia

Sales Tax — 6% State Rate

Mares

Generally subject?	Yes. W. Va. Code § 11-15-3(a); 11-15-8.
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.
Can buyer take possession in the state?	Nonresident purchaser must take possession outside state to be exempt. Reg. § 110-15-30.3.

Stallions

Generally subject?	Yes. W. Va. Code § 11-15-3(a); 11-15-8.
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.
Stallion Shares	Probably treated the same as stallions – no authority.

Stud Fees

Generally subject?	Probably no. Since the agricultural production starts with the “breeding” of livestock, it can be interpreted that breeding fees would fall under the exemption in W. Va. Code R. § 110-15-9.3.8.
Exceptions	The exemption applies to “commercial production of agricultural products as a business and not to purchases of use or consumption for any other purpose.”

Lifetime Breeding Rights

Generally subject?	Probably no. Since the agricultural production starts with the “breeding” of livestock, it can be interpreted that breeding fees would fall under the exemption in W. Va. Code R. § 110-15-9.3.8.
Exceptions	The exemption applies to “commercial production of agricultural products as a business and not to purchases of use or consumption for any other purpose.”

Racehorses

Generally subject?	Yes. W. Va. Code § 11-15-3(a); 11-15-8
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.

Shipping out of state within a short time-frame

Nonresident purchaser must take possession outside state to be exempt. W. Va. Code R. § 110-15-30.3.

Re-seller (Pinhooker)

Exempt with resale certificate. W. Va. Code § 11-15-9(a).

Sales directly by the breeder

Sales of livestock by producer are exempt if producer is not otherwise engaged of making retail sales of similar tangible personal property. W. Va. Code R. § 110-15-9.2.26.

Sales at auction

Exempt if auction is sponsored by breeders or registry associations or at livestock auction markets. W. Va. Code R. § 110-15-9.2.27.

By occasional sale

Exempt if four or less sales in 12 months. W. Va. Code R. § 110-15-2.39.

Claiming

Generally subject?	Yes. W. Va. Code § 11-15-3(a); 11-15-8.
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.

Shipping out of state within a short time-frame

Nonresident purchaser must take possession outside state to be exempt. W. Va. Code R. § 110-15-30.3.

West Virginia

Use Tax — 6% State Rate

Mares

Generally subject?	Yes. W. Va. Code § 11-15A-2(d).
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.

Stallions

Generally subject?	Yes. W. Va. Code § 11-15A-2(d).
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.

Stud Fees

Generally subject?	Probably no. Since the agricultural production starts with the “breeding” of livestock, it can be interpreted that breeding fees would fall under the exemption in W. Va. Code R. § 110-15-9.3.8.
Exceptions	The exemption applies to “commercial production of agricultural products as a business and not to purchases of use or consumption for any other purpose.”

Breeding Rights

Generally subject?	Probably no. Since the agricultural production starts with the “breeding” of livestock, it can be interpreted that breeding fees would fall under the exemption in W. Va. Code R. § 110-15-9.3.8.
Exceptions	The exemption applies to “commercial production of agricultural products as a business and not to purchases of use or consumption for any other purpose.”

Racehorses

Generally subject?	Yes. W. Va. Code § 11-15A-2(d).
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.
Re-seller (Pinhooker)	Exempt with resale certificate. W. Va. Code § 11-15-9(a)(9).

Other

Credit Against Use Tax Leasing	Yes. W. Va. Code § 11-15A-10a. Same treatment as a sale. W. Va. Code § 11-15-2(b)(17).
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Claiming

Generally subject?	Yes. W. Va. Code § 11-15A-2(d).
Exceptions	Exempt if purchased for use in the commercial production of an agricultural product. W. Va. Code R. § 110-15-9.3.8.
Re-seller (Pinhooker)	Exempt with resale certificate. W. Va. Code § 11-15-9(a)(9).



Equine Industry Group

Located in Kentucky, known for its world-class horse farms, racing, and sales, our firm has provided accounting, tax, and business consulting services to the horse industry for over 35 years. Our clients cover a broad spectrum of organizations involved in the horse industry, from small boarding farms to large multidepartmental farms involved in boarding, breeding, selling, and stallion management; from racing stables to a racetrack; from bloodstock agents to equine veterinary firms; and from industry associations to equine insurance agencies. Not all of our clients are based in Kentucky; horse industry clients from other parts of the country and from outside the United States also gain comfort from having our industry specialists work with them.

As a firm, we endeavor to know the business of horses, not just accounting and tax rules relating to the industry. We accomplish this in a number of ways, including, most usefully, by working with our many clients in the industry on their business matters. We perform a variety of services for our clients involved in the equine industry and we welcome inquiries, whether from new participants in the industry who want assistance in properly structuring and administering their stables or farms or from longtime industry participants seeking to improve the performance and administration of their operations.

The unique attributes of the equine industry demand accounting services with the particular depth of experience and expertise that Dean Dorton delivers. When equine industry participants enlist Dean Dorton to provide tax services, they can be confident they are engaging a firm with in-depth industry experience and know-how. We are interested in our clients' business, know the industry, and can provide a wide range of valuable services designed to both optimize savings opportunities and avoid unanticipated problems.

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Services

Accounting and Assurance

- Directly performing many accounting, payroll, and clerical functions for smaller enterprises.
- Designing and implementing farm accounting and management information systems
- Performing audit, review, and compilation services on client financial statements.
- Performing risk assessments and tailed internal audit functions.

Business Consulting

- Developing financial and business plans for farms, breeding operations, and racing stables.
- Financial analysis of stallion prospects.
- Assessing farm accounting and financial management procedures and practices.
- Providing litigation support and forensic accounting services.
- Providing a wide range of technology solutions, e.g., complete managed services, network design and support, technology assessments, software consulting, accounting software solutions, and business application training.

Tax

- Developing strategies to use the optimum forms of organization.
- Reducing exposure to the hobby loss rules.
- Structuring transactions to avoid or minimize sales and use taxes.
- Avoiding or managing the potential impact of the passive activity loss rules.
- Using current and deferred trades of horses and farms to avoid or postpone income taxes.
- Developing policies to expense or capitalize costs relating to depreciable assets which are in compliance with new tax regulations.
- Using the involuntary conversion tax rules to defer income taxes on insurance recoveries related to horse and farm casualties.
- Estate planning designed to use special-use valuation and family farm conservation incentives, family limited partnership strategies, and deferred tax payments.
- Handling multistate tax issues.
- Helping foreign owners and breeders to minimize exposure to U.S. taxes and comply with filing requirements.
- Developing tax accounting systems to comply, where required, with rules requiring capitalization of preproductive period costs.
- Representing clients with federal and state tax audits.
- Taking advantage of unique tax depreciation rules.
- Maximizing the tax benefit of the qualified production activities deduction.

Jen Shah, CPA

Director of Tax Services

Professional Experience

Jen began her public accounting career at a Big 4 accounting firm, where she specialized in individual international tax matters. She joined Dean Dorton in 2003 and has over thirteen years of experience advising businesses and individual clients on tax and general business consulting matters. She has worked with a variety of clients in many different industries, but spends much of her time working with high-net worth individuals and related entities (businesses, trusts and foundations).

Jen currently leads the firm's equine practice. In addition to working extensively with participants in the equine industry, Jen advises on general international tax matters. She has worked with many clients in diverse industries, with an additional concentration on advising software companies with tax matters including a short-term assignment to Geneva, Switzerland. Jen is often called upon to speak at industry conferences on tax-related topics.

Professional Activities

American Institute of Certified Public Accountants (AICPA)
Kentucky Society of Certified Public Accountants (KYCPA)
Thoroughbred Owners and Breeders Association (TOBA)

Community Involvement

Hospice of the Bluegrass, Executive Committee Member and Treasurer
Women Leading Kentucky, Treasurer
Vision 20/20 Member
Equine Financial Group Member
Horse Country, Inc., Finance Committee Member
Kentucky Equine Education Project, Member
Commerce Lexington, Leadership Lexington Class of 2006 – 2007
University of Kentucky Alumni Association, Lifetime Member



Michael R. Harbold, CPA

Associate Director of Tax Services

Professional Experience

Mike has more than 20 years of experience in providing tax services to Kentucky and Indiana companies, large and small. Mike has experience with a client base including C corporations, S corporations, partnerships and high net worth individuals. Mike has assisted companies in the areas of manufacturing, natural resources, healthcare, equine, and retail as well as service providers. He has consulted with these companies in all areas of tax compliance and planning, with a focus on state and local taxation.

Mike leads the firm's state and local tax group, which deals with tax compliance and consulting in the areas of income and franchise tax, sales tax, property tax and incentives and credits, as well as multi-state tax planning and controversy. Mike is a frequent speaker and author on Kentucky and multi-state tax issues.

Professional Activities

American Institute of Certified Public Accountants
Kentucky Society of Certified Public Accountants, Tax Committee
Greater Louisville, Inc. Tax Committee
Frequent Speaker on Kentucky and Multistate Tax Issues
Regular Contributor to CCH State Income Tax Alert

Community Involvement

American Institute of Certified Public Accountants
Kentucky Society of Certified Public Accountants, Tax Committee
Greater Louisville, Inc. Tax Committee
Frequent Speaker on Kentucky and Multistate Tax Issues
Contributor to Wolters Kluwer *CCH State Income Tax Alert*



View all our publications:

- Thoroughbred Business Year in Review
- Kentucky Equine Industry Survey
- Equine Sales and Use Tax Review
- Dean Dorton Quarterly Newsletter

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Drawing on our extensive experience working with racetracks, account wagering companies and boarding, showing, training and breeding operations, as well as trainers and owners, our team brings a thorough knowledge of the equine industry to the table, enabling them to anticipate challenges and steer our clients toward solutions.

Our team is strongly-rooted in the equine industry, featuring attorneys who have helped clients in a variety of matters, including the negotiating and drafting of domestic and international simulcast agreements; the formation and structure of racing partnerships and racing leases; syndication and sale of elite showjumpers, three-day event horses stallions and other bloodstock interests; and the acquisition and sale of numerous commercial horse farms. We also have assisted clients with account wagering licenses and hearings, racetrack issues, media contracts, merchandising, import and export matters, and litigation of all types, including racing and United States Equestrian Federation (USEF) hearings.

Our work extends outside of the racetrack and show ring, as our attorneys are frequent contributors to various publications and educational forums, including being published in *The Blood-Horse*, *Gaming Law & Economics*, *Casino Enterprise Management*, *Casino Lawyer* and *Business Lexington*, and being quoted in *The New York Times*, *Toronto Globe & Mail*, *Thoroughbred Times*, *Lexington Herald-Leader*. Our team also features the Chair of the National Equine Law Conference.

Our attorneys' understanding of the industry not only provides our clients with a unique perspective, but also enables them to weigh both the short and long-term consequences of each decision. We place a premium on partnering with our clients — working together to achieve their goals and keep them moving forward.

Featured Experience

Worked with national account wagering company to acquire various state licenses and ensure regulatory compliance in multiple states to allow for continued operation of multi-million dollar business

Documentation of syndication or sale of stallions, including Kentucky Derby winner BIG BROWN, Breeders' Cup Classic winners GHOSTZAPPER and AWESOME AGAIN, and Eclipse Award winner WAR PASS

Advised international gaming companies on U.S. gaming law (civil and criminal), including the Wire Act, Interstate Horseracing Act of 1978 and Unlawful Internet Gambling Enforcement Act, and proposed federal legislation to legalize, tax and regulate various forms of gaming

Assisted client in purchase of interest in thoroughbred racetrack, including handling regulatory and state racing commission licensing issues for new owner

Drafted rules and regulations for fantasy handicapping tournaments, ensuring compliance with various state and federal laws, including the Unlawful Internet Gambling Enforcement Act

Negotiated and drafted all major contracts for premier racetrack. Contracts ranged from operational contracts, including condition book and stall application, to general business contracts, such as food service and on-track veterinary agreements.

Laura D'Angelo

Leveraging her MBA and law degree with extensive experience representing international and domestic clients and a lifetime in the equine industry, Laura takes a practical, measured approach to find resolutions for her clients. She also has substantial experience acting as lender's counsel on equine and commercial secured lending matters.

Working as lender's counsel, Laura has closed over one billion dollars worth of transactions for clients, including secured transactions, UCC Article 9 work, asset-based lending and work outs, both in conjunction with and independent of the equine industry. She also regarded as a leading attorney in Kentucky on LLC formation, law and governance and currently sits on the American Bar Association's LLC and Partnership Committee, as well as chairing a drafting committee on LLC formation.

In addition to her business acumen, Laura also has a thorough knowledge of gaming law, enabling her to effectively steer clients through the myriad of evolving regulations that govern the industry. She previously served as Associate General Counsel for the Magna Entertainment Corporation and as General Counsel to Gulfstream Park, allowing her to provide clients with the benefits of her unique perspectives into the operations of racing, gaming and entertainment companies. Her work with leading gaming officials and companies across the world, enable her to not only stay abreast of new developments and legislation within the gaming industry, but also to offer proactive insight and counsel to clients to mitigate their risk as they move forward. She is also a member of the International Masters of Gaming Law.

Laura has substantial experience in equine law matters. Representing owners, breeders and trainers (of both show horses and race horses), as well as account wagering companies and racetracks, Laura draws on her passion for the industry to counsel clients toward effective resolutions. She handles a variety of matters for clients, including the structuring of racing partnerships, syndication and sale of stallions and other bloodstock interests, and the acquisition and sale of commercial horse farms. She also guides international and domestic clients through the evolving challenges facing account wagering companies and simulcast agreements, including licensing renewal, compliance and contract negotiation. She recently helped establish simulcast agreements between clients in South America and the United States, using a keen business sense to guide the negotiations through the cultural and philosophical challenges to reach a successful resolution.

Laura is a frequent author and speaker on gaming and equine law. She has been published in *Gaming Law & Economics*, *Casino Enterprise Management*, *Casino Lawyer* and *Business Lexington*, and has been quoted in *The New York Times*, the *Toronto Globe & Mail*, *The Blood Horse*, the *Thoroughbred Times*, and the *Lexington Herald-Leader*. She also is currently Chair of the National Equine Law Conference. Laura is also a community leader and is presently an active Board Member of the Kentucky Chamber of Commerce, Commerce Lexington and OperaLex.



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Kerry Irwin

A lifelong horsewoman, Kerry grew up fox hunting and was a Jefferson and Echols scholar at the University of Virginia where she rode at the Barracks with Claiborne Bishop. After college, Kerry taught riding at Chatham Hall, a boarding school in Virginia, before attending Law School at the University of Kentucky, where she focused her studies on equine and transactional law.

Kerry counsels clients in a wide variety of industries on corporate matters, including governance, mergers and acquisitions, financing, and other transactions. She also works with for-profit and non-profit organizations, as well as several trade organizations, tailoring her approach to meet each client's unique corporate needs.

A member of Dinsmore's Equine Law Group, Kerry has translated her passion for horses into her practice, where she counsels clients on equine law matters related to both the Thoroughbred and sport horse industries. Prior to joining the firm, she worked as a Staff Attorney for the Honorable Thomas D. Wingate in Franklin Circuit Court, where she gained experience in handling regulatory matters, including administrative appeals from the Kentucky Horse Racing Commission. She also has extensive experience in drafting equine contracts, specifically sale and lease contracts, as well as Thoroughbred and sporthorse syndication agreements.

Understanding the ties between the equine and gaming worlds, she also is adept at advising clients on internet gaming matters, including compliance with constantly-evolving rules and regulations. She has helped clients secure internet wagering licenses, and her gaming work also extends into the world of pari-mutuel wagering, charitable gaming, and sweepstakes and giveaways.

PROFESSIONAL ACTIVITIES

Dinsmore Leadership Academy Faculty

Kentucky Bar Association

Fayette County Bar Association

United States Equestrian Federation

United States Hunter Jumpers Association

Kentucky Horse Council



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Dinsm^ôre

Luke Swain

Luke focuses his practice primarily on taxation, as well as trust & estate issues. He has experience handling a variety of tax issues for clients, including federal and state estate tax matters, as well as local and state tax matters for corporate and individual clients. Luke also has counseled clients on a variety of general corporate and traditional business matters, including transactions, executive compensation and employee benefits.

Luke earned his J.D. from the University of Kentucky College of Law and his LL.M. in taxation from New York University School of Law. While in law school, Luke worked as a tax preparer and site coordinator for the Volunteer Income Tax Assistance Program. Prior to joining Dinsmore, Luke worked as an associate at LexisNexis, where he advised on research efficiency methods.

PROFESSIONAL ACTIVITIES

American Bar Association, Section of Taxation

Kentucky Bar Association, Taxation Section

Kentucky Bar Association, Young Lawyers Division

COMMUNITY INVOLVEMENT

Co-Author: UK Law Estate Planning CLE: Employee Benefits Chapter

American Sociological Association



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Laura A. D'Angelo ▶
Attorney | Horsewoman | (859) 425-1058

Over the fence. Around the globe.

Insight is invaluable.

As equine attorneys, our personal and professional insights help you to see all sides of the issues facing your industry:

- State and Federal Regulatory counsel
- Litigation and Dispute Resolution
- Stallion and Performance Horse Syndications
- Purchase and Sales of Thoroughbreds and Sport Horses
- Horse Farm Real Estate
- LLC's and Partnerships
- Equine Tax

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EQUINE | Sales & Use Tax REVIEW

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This information is intended to be a guide and reference tool for practitioners. State legislation and regulation are subject to frequent change. Every practitioner should research their specific facts and verify the various state provisions at that time.

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