



STATE BOARD OF EQUALIZATION

April 6, 1964

Dear Mr. "S":

Your letter of January 28 addressed to our San Bernardino office has been transmitted to this office for a reply.

In the above letter you asked several questions regarding the application of tax on sales of feed for horses. The certificate cited by you reads in part:

"We hereby certify that all commodities purchased by us from you are to be used for feeding poultry or livestock, and the products from same are to be resold."

The certificate is vague and would be inadequate with respect to the following:

1. Feed for horses used for breeding purposes may be purchased ex tax since the products (the foals) therefrom are sold in the regular course of business. There may be situations where the horses are raced before they are sold in which case the tax would apply because racing a horse for a purse has been held to be a taxable use.
2. A person who boards horses would be the consumer of feed fed to the horses and tax would apply to sales of feed to the boarding stable unless the manner in which the boarding stable charged its customers indicated clearly (segregated charges) that the stable was retailing feed used for boarding the horses. In this case, the stable would be liable for tax on retail sales of feed to its customers, but they could buy the feed ex tax for resale. They could not buy feed ex tax for horses that are being boarded.
3. A person who buys feed to be fed to livestock that is held for resale may purchase the feed ex tax. There is a distinction for tax purposes between foals held for sale and those that are raced before they are sold. Some general rules with respect to the application of tax on sales of race horses follow:
 - (1) Sales or use tax, as the case may be, applies with respect to sales of, and the storage, use, or other consumption of race horses in this state to the same extent as to other tangible personal property, the sale, storage, use, or other consumption of which is not specifically exempted from the tax.

(2) Entering a horse in a race for which a purse is offered is a "use" other than retention, demonstration, or display for purposes of sale, and is subject to the use tax in a proper case, regardless of the subsequent sale of the horse.

(3) The owner is the "seller" of horses sold through claiming races prior to July 1, 1943, the effective date of the amendment to Section 6015 of the Sales and Use Tax Law which provides that the person conducting the race is the retailer of horses claimed.

A race horse breeder is not entitled to buy feed ex tax to feed to his race horses where the horses are sold in claiming races because the retailer is the person conducting the race. The owner of horses being raced is thus holding the horses for racing purposes and not for sale. Horses that are raised from breeding stock and held for sale through channels other than claiming races and are, in fact, sold in other channels, fall into a category under which hay may be purchased ex tax for their feeding because, under Ruling 47, they would be "animal life" held for sale in the regular course of business". As a practical matter, it would appear to be difficult to segregate hay fed to breeding stock and racing stock from the foals that are never raced before they are sold.

Very truly yours,

Robert H. Anderson
Associate Tax Counsel

RHA:md [lb]