STATE BOARD OF EQUALIZATION

September 15, 1950

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Attention: Mr. --- --- ---

Re: --- --- ---

Gentlemen:

At the conclusion of the informal hearing in Los Angeles on your client's petition for redetermination of our determination of sales and use taxes, dated February 18, 1949, you stated that you would forward to this office a statement of legal authorities in support of your contention that the sales and use tax does not apply with respect to the sale of or the storage, use, or other consumption of race horses in this State, together with evidence supporting your client's claim of exemption from the tax with respect to specific transactions. To date we do not appear to have received this additional information and evidence.

Since the hearing in Los Angeles, the application of the tax to transactions involving race horses has been extensively discussed by our legal staff and administrative officials. In general, our conclusions may be summarized as follows:

1. That the 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. That entering a horse in a race for which a purse is offered is a "use" other then retention, demonstration, or display for the purpose of sale and is subject to the use tax in a proper case, regardless of the subsequent sale of the horse.

3. That 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.

With reference to your contention that the entire business of racing is interstate in character and that the imposition of either the sales or use tax on sales of or the use of race horses constitutes and unconstitutional burden on interstate commerce, we call your attention to the recent decision in Church v. City of Los Angeles, 96 A.C.A. 92, in which the court held that the permanent situs of race horses, for taxation purposes (property tax) is the home ranch where they are kept when not away at races. Although the tax there involved differs from the sales and use tax, it appears that the race horses do have a fixed situs.

In view of our conclusions, and in the absence of any evidence in support of your client's claim of exemption with respect to individual transactions, we shall be unable to recommend any adjustment in the measure of the tax upon redetermination. We do not, however, wish to schedule this matter for Board hearing without giving your client every opportunity to present additional evidence to this office for the purpose of establishing the nonapplication of the tax to specific transactions. We shall, accordingly, appreciate your informing us whether or not your client desires to furnish us with additional evidence.

Very truly yours,

R. G. Hamlin
Associate Tax Counsel

RGH:HB

cc: --- --- ---