

Bluegrass and Sunshine: Sales and Use Taxation of the Equine Industry in Kentucky and Florida

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The equine industry has a long and esteemed history in the United States, with the first Thoroughbred races dating back to the early days of our nation. Thousands of people still gather each year at the Kentucky Derby, the Preakness Stakes, the Belmont Stakes and the Breeders' Cup to watch some of the most exciting minutes in sports. In 2016, the pari-mutuel handle from horse racing in the United States exceeded \$10.7 billion.² Nearly 38,000 horse races were held that year in the United States alone.³

Not surprisingly, individuals and businesses in the industry regularly buy and sell horses for racing, breeding, and other purposes. The application of sales and use tax statutes and exemptions vary from state to state, and it is important to have an understanding of the applicable laws to take advantage of valuable opportunities for tax planning. This article discusses how sales and use taxes apply to the equine industry in Kentucky and Florida.

Overview of Sales and Use Taxes

Currently, 45 states and the District of Columbia impose state-level sales and use taxes.⁴ Sales taxes are levied on the retail sale of tangible personal property within a state. Every state that imposes a sales tax also imposes a complementary use tax.⁵ The use tax applies to property stored, used or consumed within the taxing state. Some states also impose taxes on the sale of certain enumerated services.

In general, the seller or retailer is required to collect the sales tax due from the purchaser and remit the tax to the taxing authority. By contrast, the purchaser is required to pay the use tax on the purchase of property for storage, use, or consumption within the taxing state where no sales tax was collected and remitted on the sale. Most states allow a credit against the use tax due for sales tax paid to a sister state when the property is purchased outside the taxing state.

There is a presumption that all gross receipts derived from the retail sale of tangible personal property, other than sales for resale, are subject to sales or use tax. However, certain sales may be exempt from tax under state law, such as "occasional sales" or sales made in interstate or foreign commerce. Other, more specific exemptions frequently apply to the equine industry.

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² See The Jockey Club, 2017 Fact Book, "Pari-Mutuel Handle", available at <http://www.jockeyclub.com/default.asp?section=FB&area=8> (last accessed July 31, 2017).

³ See The Jockey Club, 2017 Fact Book, "Number of Races", available at <http://www.jockeyclub.com/default.asp?section=FB&area=6> (last accessed July 31, 2017).

⁴ See Sales Tax Institute, "What States Impose Sales/Use Tax?", available at http://www.salestaxinstitute.com/Sales_Tax_FAQs/What_states_impose_sales_use_tax (last accessed July 31, 2017). Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose state-level sales taxes.

⁵ *Id.*

Kentucky

In 2016, Kentucky hosted over 1,800 horse races and paid over \$78 million in purses.⁶ Kentucky-bred weanlings generated over \$50 million in gross sales, Kentucky-bred yearlings over \$334 million and Kentucky-bred two-year olds over \$118 million.⁷ Current economic impact data is unavailable, but 2012 data reveals an economic impact by the equine industry on the Commonwealth to be in excess of \$3 billion with the industry creating over 46,000 jobs.⁸

Kentucky Sales and Use Taxes

Kentucky imposes upon all retailers a sales tax at the rate of 6% of the gross receipts derived from retail sales of tangible personal property.⁹ The definition of “retailer” is broad and includes every person engaged in the business of making retail sales of tangible personal property.¹⁰ Every person making more than two retail sales of tangible personal property during any 12-month period qualifies as a retailer.¹¹ Kentucky law specifically provides that persons conducting a “horse race meeting”, defined as horse racing run at an association licensed and regulated by the Kentucky Horse Racing Commission¹², is considered to be a retailer with respect to horses claimed during the meeting.¹³ Kentucky levies a complementary use tax on the storage, use or other consumption of tangible personal property purchased outside of Kentucky and brought into the state at the rate of 6% of the purchase price of the property.¹⁴

Sales and Rentals of Horses

In general, sales of horses (both stallions and mares) are subject to Kentucky’s sales tax, and horses stored or used in the Commonwealth are subject to the use tax.¹⁵ This includes horses purchased after a claiming race within the state.¹⁶ Because leases and rentals are considered “retail sales” under Kentucky law¹⁷, the lease or rental of a horse is also taxable. This includes the lease of nurse mares for the purpose of raising foals.¹⁸

Notwithstanding this general rule, Kentucky carves out several exemptions for transactions involving horses. Notably, the sale or use of horses, or interests or shares in horses, for breeding purposes only is exempt from tax.¹⁹ The use of a stallion for breeding

⁶ See The Jockey Club, Kentucky Fact Book, *available at* <http://www.jockeyclub.com/factbook/StateFactBook/Kentucky.pdf>, at 8 (last accessed July 31, 2017).

⁷ *Id.* at pp. 13-15.

⁸ 2012 Kentucky Equine Survey, http://equine.ca.uky.edu/files/2012_equine_survey_report_final_4.pdf, at 16 (last accessed July 31, 2017).

⁹ Ky. Rev. Stat. § 139.200.

¹⁰ *Id.* at § 139.010(27)(a)1., 2.

¹¹ *Id.* at § 139.010(27)(a)3.

¹² *Id.* at § 230.210(7).

¹³ *Id.* at § 139.010(27)(a)4.

¹⁴ *Id.* at § 139.310(1).

¹⁵ *Id.* at § 139.531(1)(b).

¹⁶ *Id.* at § 139.531(1)(c).

¹⁷ *Id.* at § 139.010(28).

¹⁸ Commonwealth of Kentucky, Department of Revenue, Sales & Use Tax Manual at 561 (2014) [hereinafter “Sales & Use Tax Manual”].

¹⁹ Ky. Rev. Stat. § 139.531(2)(a). In *Castleton, Inc. v. Revenue Cabinet*, File No. K85-R-10 (Ky. Bd. of Tax App. Apr. 17, 1986), the Kentucky Board of Tax Appeals (now the Kentucky Claims Commission), the administrative agency charged with adjudicating tax appeals, held the taxpayer’s purchase of horses for breeding purposes was

purposes and the trading of stallion services by an owner or shareholder of the stallion are also exempt.²⁰ However, stud fees, or fees paid for breeding a stallion to a mare, are taxable.²¹ The Kentucky Court of Appeals has held that sales of lifetime breeding rights are subject to sales tax as payments of a breeding fee rather than a non-taxable interest in the horse for breeding purposes.²²

The owner of the stallion season, not the stallion manager, is responsible for collecting and remitting the tax on breeding fees.²³ However, the Kentucky Department of Revenue (the Department) has stated that although a stallion manager is not responsible for collecting and remitting tax on sales of seasons by its customers, the stallion manager is required to keep records of the seasons sold and the names of the persons who sold them.²⁴ The names of parties that sold untaxed seasons should be forwarded to the Department's Division of Sales and Use Taxes so that the party owning the seasons can be billed for the tax due.²⁵

Whether tax is due on a commission charged by a bloodstock agent for arranging a breeding contract depends upon the capacity in which the bloodstock agent is acting.²⁶ If the bloodstock agent purchases the breeding contract and adds a price mark-up, the final sales price is subject to sales and use tax.²⁷ However, if the bloodstock agent merely arranges for the sale of the breeding contract and the ultimate purchaser signs the contract, the commission charged by the bloodstock agent to the purchaser is not taxable.²⁸

The tax on breeding fees applies at the time the fee is paid to the owner of the stallion season, regardless of the foaling date.²⁹ The owner of the stallion season is required to file a supplementary schedule entitled "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", Form 51A132, for each sales tax filing period that includes sales tax from sales for breeding a stallion to a mare.³⁰ The supplementary schedule is due the same date as the sales and use tax return.³¹

Kentucky also exempts from tax the sale of horses less than two years of age at the time of sale if the sale is made to a nonresident of Kentucky.³² A nonresident includes an individual who is not a resident of Kentucky, as well as a business that is not commercially domiciled in the state.³³ Receipts from the boarding and training of horses within the Commonwealth are

exempt from sales and use tax notwithstanding the fact the horses were raced temporarily to enhance their marketability as breeding stock.

²⁰ Ky. Rev. Stat. § 139.531(2)(b), (c).

²¹ *Id.* at § 139.531(1)(a).

²² *See Calumet Farm, Inc. v. Revenue Cabinet*, 793 S.W.2d 830 (Ky. App. 1990).

²³ Sales & Use Tax Manual at 558.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 559.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 558.

³⁰ 103 Ky. Admin. Reg. 27:240 § 1(3).

³¹ *Id.* at § 2.

³² Ky. Rev. Stat. § 139.531(2)(d).

³³ *Id.* With respect to individuals, a "resident" is defined as "an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state." Ky. Rev. Stat. § 141.010(17). A "nonresident" is any individual who is not a resident. Ky. Rev. Stat. § 141.010(18). With respect to a corporation,

exempt from the use tax, as is the *temporary* use of horses within the state for purposes of racing, exhibiting, or performing.³⁴

General Agricultural Exemptions

General agricultural exemptions abound in Kentucky. The Commonwealth exempts feed, farm chemicals, farm machinery and on-farm facilities for raising everything from crops, to poultry, to alpaca to buffalo. However, none of these exemptions apply to the equine industry.³⁵ Most of Kentucky's exemptions that would otherwise be applicable to the equine industry are tied to the raising of "livestock", and "livestock" has been interpreted by the Kentucky Court of Appeals to exclude horses.³⁶

General Sales and Use Tax Exemptions

In addition to these equine-specific exemptions, other more general exemptions from the sales and use taxes may apply to sales of horses. For example, horses purchased for resale are not subject to tax.³⁷ In order to be relieved from the burden of proving the sale was a non-taxable sale for resale, the seller of the horse should be sure to obtain a fully completed resale certificate from the purchaser within 90 days of the date of sale.³⁸

"Occasional sales" are also exempt from sales and use taxes under Kentucky law.³⁹ As noted previously, a "retailer" includes every person making more than two retail sales of tangible personal property during any 12-month period.⁴⁰ A sale of tangible personal property that is *not* held or used by a seller in the course of an activity for which he or she would be considered a retailer and required to hold a seller's permit is considered an "occasional sale" and is exempt from tax.⁴¹ The sale of a horse by an individual or company that is not in the business of selling horses may qualify for the occasional sale exemption. For example, the Kentucky Court of Appeals has held that the transfer of horses by a sole proprietorship to a corporation in exchange for stock in the corporation is a "prime example" of the proper application of the occasional sale exemption.⁴²

Kentucky also provides an exemption from sales and use taxes for sales of tangible personal property made in interstate or foreign commerce.⁴³ However, this exemption will *not* apply if the horses are delivered to the purchaser in Kentucky, even if the purchaser

"commercial domicile" is defined as "the principal place from which the trade or business of the corporation is managed." Ky. Rev. Stat. § 141.120(1)(b). Thus, if a corporation is principally managed from a state other than Kentucky, the corporation is considered a "nonresident" for purposes of the exemption.

³⁴ Ky. Rev. Stat. § 139.531(e), (f).

³⁵ See generally, Ky. Rev. Stat. § 139.480, 103 Ky. Admin. Reg. 30:091, and *Stoner Creek Stud, Inc. v. Revenue Cabinet*, 746 S.W.2d 73, 76 (Ky. App. 1987). (Note: There is a specific exemption for water used in the raising of equine as a business. KRS § 139.470 (14).)

³⁶ *Id.*

³⁷ See Ky. Rev. Stat. § 139.260.

³⁸ See *Id.* at § 139.270(1).

³⁹ *Id.* at § 139.470(4).

⁴⁰ *Id.* at § 139.010(27)(a)3.

⁴¹ See *Id.* at § 139.010(17)(a)1.

⁴² See *Revenue Cabinet v. Myrtlewood Farm*, 87-CA-60-S (Ky. App. July 24, 1987).

⁴³ See *Id.* at § 139.470(1); 103 Ky. Admin. Reg. 30:190.

subsequently transports the horses outside of the state.⁴⁴ In order to qualify for the interstate commerce exemption, the seller must make physical delivery of the horses to a point outside of Kentucky or to a common carrier that delivers the horses to a point outside the state not to be returned to Kentucky.⁴⁵ This exemption also applies to the sale of horses at an auction to an out-of-state buyer, provided the seller is required prior to the sale to deliver any property ultimately sold to the prospective buyer to an out-of-state location.⁴⁶ The Department has stated that a written notice of “intention to bid” form completed by the prospective out-of-state bidder prior to the sale that requires transportation out-of-state by the seller or a common carrier is sufficient.⁴⁷ The seller also must maintain documentation supporting the written agreement prior to the sale and actual out-of-state delivery records after the sale in order to substantiate the exemption.⁴⁸

To qualify for the foreign commerce exemption, the seller must sell the horses to a foreign purchaser for shipment abroad and then deliver the horses to a ship, airplane or other conveyance that actually transports the horses to a foreign destination, where title and control of the horses passes to the foreign purchaser upon delivery.⁴⁹ Horses purchased for and actually placed in use in interstate or foreign commerce prior to entry into Kentucky and thereafter used continuously in interstate or foreign commerce are exempt from the use tax.⁵⁰

The interstate commerce exemption also has implications for the sales and use tax treatment of breeding fees. As the use of artificial insemination becomes more widespread, some mares are no longer brought into the Commonwealth for breeding. The Department has clarified that if a Kentucky seller contracts to sell semen for use in the insemination of a mare located outside of Kentucky, and the semen is delivered to the customer outside the state, the transaction is exempt from sales and use tax as a sale in interstate commerce.⁵¹ The seller must maintain documentation to demonstrate that there was an agreement with the buyer to make delivery outside the state and that a bona fide delivery occurred.⁵² If, however, the mare is bred in Kentucky and then transported out of the state, or the mare owner takes possession of the semen in Kentucky, the breeding fees are subject to Kentucky sales tax.⁵³

Generally, if a horse is purchased in another state and then transported to Kentucky for a purpose other than breeding, the purchaser will be required to pay use tax to Kentucky on the sale price of the horse.⁵⁴ As previously stated, an exemption applies if the horse is used temporarily within the state for racing, exhibiting or performing.⁵⁵ In addition, Kentucky provides a credit against the use tax due equal to the amount of sales tax paid to a sister state, *provided that* the sister state also allows a credit for sales taxes paid to Kentucky.⁵⁶

⁴⁴ *Id.* at § 2(1).

⁴⁵ *Id.* at § 2(2).

⁴⁶ Sales & Use Tax Manual at 560.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 103 Ky. Admin. Reg. 30:190 § 2(4).

⁵⁰ *Id.* at § 3(2).

⁵¹ Sales & Use Tax Manual at 558.

⁵² *Id.* at 559.

⁵³ *Id.*

⁵⁴ See Ky. Rev. Stat. § 139.531(1)(b).

⁵⁵ *Id.* at § 139.531(2)(f).

⁵⁶ *Id.* at § 139.510(1).

Florida

The equine industry plays a prominent role in Florida's culture and economy. Distinct elements of the industry engrained in the Sunshine State include track racing, rodeos, jumping, barrel racing, dressage, harness racing, trail riding and polo.⁵⁷ The equine industry generates over \$6.5 billion per year of gross domestic product in Florida.⁵⁸ Horse racing alone generates approximately \$900 million annually – more than Major League Baseball spring training.⁵⁹ Overall sales of goods and services for horses generate approximately \$2.2 billion annually in the state.⁶⁰

Florida Sales and Use Taxes

Engaging in the business of selling, leasing or renting tangible personal property at retail in Florida is a taxable privilege.⁶¹ Sales tax is levied at the rate of 6% of the sales price of each item of tangible personal property sold in the state.⁶² Use tax is imposed at the rate of 6% of the cost price of each item of tangible personal property that is used, consumed, distributed or stored for use or consumption in Florida.⁶³ The sales tax and the use tax are complementary and combine to provide a uniform tax on both the sale at retail and the use of tangible personal property in Florida, irrespective of where the item was purchased.⁶⁴ Sales and use taxes are collected from “dealers,” a term broadly defined by law.⁶⁵ Dealers are required to document exempt transactions (typically by obtaining an appropriate exemption certificate from the purchaser at the time of sale),⁶⁶ unless otherwise noted.

Florida law contains a number of taxing and exemption provisions specific to the equine industry. Beyond these provisions, general exemptions may also be utilized to plan transactions for the purchase and sale of horses, and minimize tax that might otherwise be due.⁶⁷ These opportunities are further discussed below.

⁵⁷ See Naples Florida Weekly, “No horsing around: The industry generates billions in Florida,” available at <http://naples.floridaweekly.com/news/2017-07-13> (last accessed July 13, 2017).

⁵⁸ *Id.* (citing Florida Department of Agriculture and Consumer Services sources).

⁵⁹ *Id.* (citing Florida Thoroughbred Racing Association study).

⁶⁰ *Id.*

⁶¹ Section 212.05, Fla. Stat. (2017). A “sale” includes any transfer of title to or possession of tangible personal property for consideration, and includes barter, license to use, lease and rental transactions. Section 212.02(15)(a).

⁶² *Id.* at 212.05(1)(a)1.a. Local option surtaxes may also be imposed at the additional rate of .5% - 2% of the sales price or cost price. Sections 212.054 and 212.055.

⁶³ Section 212.05(1)(b); see, e.g., *Department of Revenue v. Ocala Breeders' Sales, Inc.*, 725 So. 2d 387 (Fla. 5th DCA 1998)(fees paid by racehorse auctioneer for lineage and race records of horses offered for sale were not included in taxable cost price of auction catalogs).

⁶⁴ Rule 12A-1.091(4). As a corollary to this principle, use tax does not apply to any property the retail sale of which is exempt from Florida sales tax. *Id.*

⁶⁵ Section 212.06(1)(a). See Section 212.06(2)(a)-(l) for the broad definitions of “dealer.”

⁶⁶ See Rule 12A-1.038(1), Fla. Admin. Code (exempt nature of transaction must be established by selling dealer). The Department of Revenue issues resale certificates to registered sales tax dealers. Where required, other exemption certificates are self-generated by the parties. Suggested forms are contained in the Department's administrative regulations addressing specific exemptions.

⁶⁷ “There is nothing illegal or immoral about a taxpayer managing his actions and transactions in order to minimize or avoid taxes.” *Department of Revenue v. B & L Concepts, Inc.*, 612 So. 2d 720, 721 n.2 (Fla. 5th DCA 1993).

Sales and Rentals of Horses

Generally, the retail sale of a horse in Florida by a person other than the breeder is subject to sales tax.⁶⁸ This rule also applies to retail sales of racehorses.⁶⁹ Conversely, the sale of a horse (including a racehorse) by an owner who is also the breeder is exempt from sales and use tax.⁷⁰ The exemption for the sale of a horse by a breeder applies even though the horse may have been registered with a breeders' or registry association prior to the sale and even though the sale takes place at a livestock show or race meeting, so long as the sale is made by the original breeder in Florida.⁷¹ Transactions involving the sale or use of horses in Florida may be structured to take advantage of this exemption.⁷²

Sales of racehorses at claiming races are taxable.⁷³ Tax is due on the claiming price of any horse that is claimed at a race held in Florida.⁷⁴ However, if sufficient information is provided by track officials to enable the Department of Revenue to properly administer the tax, sales tax is only due on the maximum single amount for which a horse is sold at all races at which it is claimed during an entire racing season.⁷⁵ To avoid pyramiding the tax, the first track collects the required tax and furnishes other Florida tracks with a detailed list of all horses sold at claiming races and their prices. Subsequent tracks furnish similar information to all other Florida tracks and collect tax on only the incremental increase in the claiming price of a horse over prior claiming race sales during that race season.⁷⁶

Use tax does not apply to horses bred by a farmer and used on the farm.⁷⁷ Horses are also defined as an "agricultural commodity,"⁷⁸ the sale of which by a non-breeder to any person that purchases the horse for resale or for use in preparing the horse for ultimate retail sale is exempt.⁷⁹ The sale of the horse (by a non-breeder) to the ultimate consumer is taxed, but "in no case shall more than one tax be exacted."⁸⁰

The sale of a horse for breeding purposes is exempt.⁸¹ This regulation does not exclude sales of racehorses and, in a private ruling, the Department of Revenue determined that the

⁶⁸ Section 212.07(5)(a); Rule 12A-1.049(1). *See also*, Rule 12A-1.048(1)(d)(sale of agricultural products by non-producer). "Agricultural production" includes raising livestock. Section 212.02(32).

⁶⁹ Section 212.07(5)(a); Rule 12A-1.049(3).

⁷⁰ Section 212.07(5)(a); Rule 12A-1.049(1) and (3). *See also*, Rule 12A-1.048(1)(a)("direct from the farm")(no exemption certificate required). "Farmer" is defined to include horse breeders for purposes of the agricultural exemptions from sales and use tax. Section 212.02(28).

⁷¹ Section 212.07(5)(a); Rule 12A-1.049(1).

⁷² For example, in conjunction with a properly implemented resale exemption (discussed below), no tax would be imposed on intermediate transactions returning ownership of the horse to its original breeder for exempt retail sale. Likewise, importing a horse purchased from the breeder outside of Florida would not be subject to use tax. *See generally*, Rule 12A-1.091(4).

⁷³ Section 212.07(5)(b); Rule 12A-1.049(4).

⁷⁴ Rule 12A-1.049(4).

⁷⁵ Section 212.07(5)(b); Rule 12A-1.049(5). The racing season extends from the opening of the first Florida track in the fall through the closing of the last Florida track in the following spring. Rule 12A-1.049(5).

⁷⁶ *Id.*

⁷⁷ Section 212.07(6); Rule 12A-1.048(1)(b).

⁷⁸ Section 212.02(27) and (29)(defining "livestock" to include "all animals of the equine ... class ... raised for commercial purposes").

⁷⁹ Section 212.07(7); Rule 12A-1.048(1)(c)(no exemption certificate required).

⁸⁰ Section 212.07(7); *see also*, Section 212.12(12)(legislative intent to tax last retail sale and avoid duplication or pyramiding of tax).

⁸¹ Rule 12A-1.049(6).

exemption applied to the sale of an interest in a racehorse for breeding purposes, despite the fact that the horse ran in one final post-sale race (a race to which the horse was committed prior to the sale).⁸² Because a “sale” is broadly defined to include a license, lease or rental of tangible personal property for consideration,⁸³ the lease or rental of a horse for breeding purposes would also not be taxable. The transaction would likewise be exempt from use tax.⁸⁴

The rental of a horse by a riding stable is taxable.⁸⁵

Care of Horses

A number of sales and use tax exemptions apply to items purchased for use in caring for horses. Feed for horses (including racehorses) is exempt from sales and use tax.⁸⁶ Water delivered through pipes or conduits, as well as the sale of drinking water in containers (including mineral-enhanced and naturally carbonated water), is exempt.⁸⁷ Also exempt are sales of “therapeutic veterinary diets” available only from a licensed veterinarian and specially formulated for managing a diagnosed health disorder in a horse.⁸⁸ Drugs sold by veterinarians in connection with medical treatment of horses are exempt.⁸⁹

Effective July 1, 2017, animal health products applied or administered to or consumed by horses to alleviate pain or to cure or prevent sickness, disease or suffering are exempt.⁹⁰ Examples of exempt animal health products include antiseptics, absorbent cotton, gauze for bandages, lotions, vaccines, vitamins and worm remedies.⁹¹ This exemption is remedial and applies retroactively, but does not create a right to refund of or credit for taxes paid prior to the effective date.⁹²

General Agricultural Exemptions

General agricultural exemptions also apply to the equine industry in Florida. Sales and use tax may not be imposed on certain power farm equipment (including trailers) used on horse farms or to transport horses from the farm to a place for sale.⁹³ Certain items purchased for agricultural use are exempt, including specified items for protecting livestock, baling wire

⁸² TAA 92A-013 (Feb. 19, 1992). This private ruling has no precedential value except to the taxpayer who requested it. Section 213.22(1). Nonetheless, TAAs have been cited by courts as contradicting the Department of Revenue’s litigation position, *Department of Revenue v. Quotron Systems, Inc.*, 615 So. 2d 774, 777 (Fla. 3d DCA 1993), and as theoretically supporting a taxpayer’s claim of selective or discriminatory treatment, *Regal Kitchens, Inc. v. Department of Revenue*, 641 So. 2d 158, 164 (Fla. 1st DCA 1994).

⁸³ Section 212.02(15)(a).

⁸⁴ Rule 12A-1.091(4)(use tax does not apply to any property the retail sale of which is exempt from sales tax).

⁸⁵ Rule 12A-1.071(27); *see also*, Rule 12A-1.005(3)(f)(charges for pony rides are admissions to a place of amusement or recreation and subject to tax).

⁸⁶ Section 212.08(7)(d).

⁸⁷ Section 212.08(4)(a)1.

⁸⁸ Section 212.08(2)(i).

⁸⁹ Section 212.08(2)(f).

⁹⁰ Section 212.08(5)(a) (2017), added by Ch. 2017-36, Laws of Fla. (HB 7109). *See also*, Taxpayer Information Publication No. 17A01-08 (July 21, 2017).

⁹¹ *Id.* This list is not exhaustive.

⁹² *Id.* Under prior law, these items were exempt only when purchased and dispensed by a licensed veterinarian. *See* Section 212.08(2)(h).

⁹³ Section 212.08(3)(a) and (b). “Agricultural production” includes raising livestock. Section 212.02(32). The exemption does not apply to the lease or rental of a trailer. Section 212.08(3)(b).

and twine used to bail hay.⁹⁴ Liquefied petroleum gases used in horse farm equipment that is not operated on public highways are exempt.⁹⁵ Separately metered electricity used directly or indirectly in raising horses on a farm is exempt (but not electricity used in buildings or structures where horses are sold at retail).⁹⁶

General Sales and Use Tax Exemptions

General sales and use tax exemptions, exclusions and limitations may also apply to what would otherwise be taxable transactions in the equine industry. These provisions afford opportunities for structuring transactions to minimize sales and use tax exposure. For example, sales for resale are excluded from taxable retail sales.⁹⁷ Occasional (i.e., casual) sales are excluded from the definition of “business,”⁹⁸ and such sales are not subject to tax. Sales of horses for export are exempt, provided that the horse is delivered to a licensed exporter or common carrier for shipment outside of Florida.⁹⁹ Sales of horses to nonresident dealers for resale outside of Florida are exempt.¹⁰⁰ Florida use tax will not apply to the importation of a horse into Florida, to the extent that a like tax was lawfully imposed and paid on the purchase of the horse in another state or territory of the U.S. (including D.C.) prior to importation of the horse into Florida.¹⁰¹ There is a presumption that use of a horse in another state or territory of the U.S. (including D.C.) for six months or longer prior to being imported into Florida was not purchased for use in Florida.¹⁰²

Conclusion

Sales and use taxes may significantly impact the purchase and sale of horses and other transactions in the equine industry. A thorough understanding of the tax laws can facilitate legitimate tax planning to minimize these taxes. Kentucky and Florida are two leading states in the equine industry, and the laws summarized here afford ample opportunities for tax savings in these states.

⁹⁴ Section 212.08(5)(a).

⁹⁵ Section 212.08(5)(e)1.

⁹⁶ Section 212.08(5)(e)2.

⁹⁷ Section 212.02(14)(a). *See* Section 212.07(1)(b) for requirements; *see also*, Rule 12A-1.039.

⁹⁸ Section 212.02(2). *See* Rule 12A-1.037 for requirements and limitations; for example, not more than two sales by a non-dealer within any 12-month period are allowed to be made tax-free.

⁹⁹ Section 212.06(5)(a)1.

¹⁰⁰ Section 212.06(5)(b)1.

¹⁰¹ Section 212.06(7).

¹⁰² Section 212.06(8)(a)(excluded from the exemption are rentals and leases, which are taxable regardless of prior use or tax paid outside of Florida). Note that the presumption is rebuttable.