

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 10, 1983

Midstate Raceway, Inc.
c/o Frank O. White, Pres.
Vernon Downs
Vernon, NY 13476

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William D. Kiley
First Trust Bldg., P.O. Box 311
Cazenovia, NY 13035
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Midstate Raceway, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 3/1/76-2/28/79. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Midstate Raceway, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Midstate Raceway, Inc.
c/o Frank O. White, Pres.
Vernon Downs
Vernon, NY 13476

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
10th day of November, 1983.

Martha L. Brunelle

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Midstate Raceway, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 3/1/76-2/28/79. :
_____ :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon William D. Kiley the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William D. Kiley
First Trust Bldg., P.O. Box 311
Cazenovia, NY 13035

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
10th day of November, 1983.

Martha L. Sennelle

Connie P. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MIDSTATE RACEWAY, INC.	:	DECISION
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period March 1, 1976	:	
through February 28, 1979.	:	

Petitioner, Midstate Raceway, Inc., c/o Frank O. White, President, Vernon Downs, Vernon, New York 13476, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1976 through February 28, 1979 (File No. 28975).

On February 18, 1983, petitioner filed a waiver of hearing and requested that this matter be decided by the State Tax Commission on the basis of the contents of the file. Petitioner was allowed until April 30, 1983 to file a brief. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner is liable for tax on its purchase of horse manure removal services.

FINDINGS OF FACT

1. Petitioner, Midstate Raceway, Inc., operated Vernon Downs, a harness racing track located in Vernon, New York.
2. On December 20, 1979, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period March 1, 1976 through February 28,

1979 for taxes due of \$3,240.00, plus interest of \$585.18, for a total of \$3,825.18.

3. An audit of petitioner's books and records disclosed additional sales and use taxes due of \$6,588.68. Petitioner agreed to and executed a consent for \$3,348.68. The balance of the deficiency, \$3,240.00, is attributable to petitioner's failure to pay a sales or use tax on the amounts paid to Frangella Mushroom Co. for the removal of horse manure from the racetrack grounds.

4. Petitioner had a contract with Frangella Mushroom Co. which provided that Frangella remove horse manure from Vernon Downs for \$2,250.00 per month.

5. Petitioner is seeking redetermination of the above deficiency on the following grounds:

- (1) manure is an agricultural by-product intended for fertilization or improvement of productive land and not intended to be within the purview of use tax
- (2) used in product (food) ultimately taxed or tax exempt
- (3) contractually assumed, if imposed, by purchasers, Frangella Brothers.

6. Petitioner adduced no evidence to show that it purchased anything other than the service of removing horse manure. Therefore, the grounds stated in (1) and (2) above are irrelevant to the issue.

CONCLUSIONS OF LAW

A. That the removal of horse manure constituted maintaining or servicing real property within the meaning and intent of section 1105(c)(5) of the Tax Law; that petitioner failed to pay sales tax to the vendor of such services and therefore, is liable for the tax in accordance with section 1133(b) of the Tax Law.

B. That the consumer cannot shift the liability for payment of tax to another person nor otherwise relieve himself of such liability, although the


vendor is personally liable for the tax he was responsible for collecting [20 NYCRR 525.2(a)(4)].

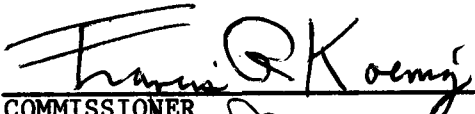
C. That the petition of Midstate Raceway, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1979 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Midstate Raceway, Inc</i>	
Street and No. <i>16 Frank O White</i>	
P.O., State and ZIP Code <i>Vermon New York 13476</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 470 316 218

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>William D Kelly</i>	
Street and No. <i>1 Trust Bld Po Box 31</i>	
P.O., State and ZIP Code <i>Corzencova NY 13038</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982