

## **Opinion No. 72-36**

August 8, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** The Honorable C. B. Trujillo, New Mexico State Senator, Box 905, Taos, New Mexico 87571

### **QUESTIONS**

#### **FACTS**

Each owner of a race horse who is not a trainer pays to a trainer a certain fixed price for the care of that animal. The price varies, depending upon the trainer, from \$ 8.00 to \$ 10.00 a day. Ninety percent of the trainers receive \$ 10.00 per day per animal. From the sum received by the trainers, the following approximate sums are expended per animal per day: feeding and bedding, \$ 3.00; ointments, bandages, cottons, proper grooming and care, \$ 1.25; walkers, \$ 0.25; groom labor, \$ 3.56; gallop boy, \$ 1.00; for a total of \$ 9.06. There are additional items which are not listed that in many cases raise the expenses to \$ 10.06. All of the foregoing are necessary in the industry of horse grooming and racing to keep the animal fit at all times.

Each horse owner raises horses or purchases horses with the idea in mind that the trainer he selects, if he himself is not the trainer, can improve the condition of that animal. By improving the condition of the animal, he enhances the value and receives a higher price than his investment. The selection of trainers is based upon their ability to properly look after and care for the animal. With this in mind, naturally incidental to this goal the horse owner desires to win any horse race that the horse is entered. Winning horses bring higher prices either in claiming races or in private sale. Throughout the United States and particularly in New Mexico there are substantial numbers of claiming races. Throughout the industry in New Mexico of all races conducted at all tracks, 90% are claiming races. This varies with each track. A claiming race is a horse race in which a claimant makes a bona fide offer to buy the race horse for which a claim is made and the horse owner agrees to sell the race horse he owns at a claiming price that is determined when the horse is entered in the race. The decision to purchase the race horse in such a race is based upon the buyer's knowledge of the ability and experience of the trainer and the condition of the animal. The prime objective of each trainer is to care for, look after, and groom each animal prior to sale of a claiming race and/or prior to sale to an individual who is familiar with the care, treatment, and condition of the animal. Other horses who are not in claiming races are generally classified in either allowance, handicap, or invitational races. The condition of the animal is the determining factor in their decision to purchase that animal directly from the owner to be utilized, in many cases, for breeding purposes.

## QUESTIONS

Are trainers of horses in the State of New Mexico exempt from the gross receipts tax of the State of New Mexico from funds they receive from owners of horses for the training of horses?

## CONCLUSION

Yes.

## OPINION

### {\*63} ANALYSIS

The factual situation which you pose in this inquiry cites a great many economic considerations. Our conclusion is not and cannot be based on the economic hardships which may result to owners, trainers or others. Our conclusion is based solely on the law as enacted by the legislature of this state.

Our conclusion in this case is based upon the provisions of Section 72-16A-12.7, which is as follows:

"Exemption -- Gross receipts tax -- Livestock feeding. -- Exempted from the gross receipts tax are the receipts of any person derived from feeding or pasturing livestock.

"Receipts derived from penning or **handling livestock prior to sale** are receipts derived from feeding livestock for the purposes of this section. (Emphasis added).

I believe the provision is self-explanatory. The provision of Section 12.7 concerns receipts from handling livestock prior to sale. Consequently, it exempts the trainers of horses from funds received from owners as such horses are being handled and prepared for sale at claiming races or private sale and these receipts would be received by the trainers "prior to sale" as contemplated by Section 12.7.