



NEW YORK  
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE  
ANIMAL LAW COMMITTEE**

**A.5220  
S.2085**

**M. of A. Magee  
Sen. Young**

AN ACT to amend the tax law, in relation to exempting domestic and imported game animals harvested at a game hunting preserve from the sales and compensating use tax.

**THIS LEGISLATION IS OPPOSED**

**1. Summary of the Proposed Law**

A.5220/S.2085 exempts' animals killed at game hunting facilities from sales and compensating use tax. The bill accomplishes this by amending New York Tax Law section 1115(a)(1) to include domestic and imported animals "harvested"<sup>1</sup> at game hunting facilities in the category of food or food products sold for human consumption. Retail sales of tangible personal property, such as birds and other animals, are subject to sales tax unless specifically exempt.<sup>2</sup> Food is exempt from retail sales and compensating use taxes. Therefore, the bill creates a new tax exemption.

**2. The Committee Opposes the Bill**

The Animal Law Committee opposes the bill because (a) animals shot at game hunting facilities are not necessarily used for food; (b) killing animals at game hunting facilities is in conflict with the state's anti-cruelty law; and (c) this is an inappropriate exemption, particularly given New York's fiscal situation.

a. Animals shot at game hunting facilities are not always used for food.

The sponsor's memorandum for A.5220/S.2085 erroneously implies that deer are the only animals included in the sales and use tax exemption. In actuality, all animals killed in a game hunting preserve are included in the exemption - the bill specifically exempts "domestic and imported animals." Many animals used at game hunting facilities would not fit the definition of food.

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<sup>1</sup> The word "harvested" is a euphemism used by hunters for the word "killed." See Mathew Scully, *THE POWER OF MAN, THE SUFFERING OF ANIMALS, AND THE CALL TO MERCY* (2003).

<sup>2</sup> Tax Law § 1105(a).

The term “food” as used in Tax Law section 1115(a)(1) means “edible commodities whether prepared, processed, cooked, raw, canned or in any other form, which are generally regarded as food,” and includes “meat and meat products” and “poultry.”<sup>3</sup> The phrase “sold for human consumption” means that “the items sold are, in their normal use, regarded as being for human consumption.”<sup>4</sup>

Some animals killed at game hunting facilities are not in their normal use, regarded as being for human consumption. Pigeons are among the kinds of birds shot at game hunting facilities in New York. One game hunting facility offers “80 bird pigeon tower shoots” for \$120 a gun with a sixteen gun minimum.<sup>5</sup> Although squabs, very young, flightless pigeons, are eaten in the United States, adult pigeons are not, “in their normal use,” regarded as being for human consumption. Moreover, the pigeon tower shoot is marketed as entertainment on the game hunting facility’s website, not as a source of food.<sup>6</sup> Additionally, predatory animals like coyotes and fox which are also among the animals killed at game hunting facilities,<sup>7</sup> are not in their normal use regarded as being for human consumption.

Many game hunting facilities sell the experience of shooting animals, not the animals themselves.<sup>8</sup> Game hunting facilities such as the one offering pigeon tower shoots above do not charge for the number of actual animals killed; instead they charge for the number of animals released that paying participants have the chance to kill.<sup>9</sup> The New York State Division of Tax Appeals determined that such activities do not qualify for a sales tax exemption even though hunters

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<sup>3</sup> 20 NYCRR § 528.2(a)(2).

<sup>4</sup> 20 NYCRR § 528.2(a)(3).

<sup>5</sup> Wingshooting Destinations, at <http://www.wingshootingdestinations.com/Wingshooting/USA/New-York-Pheasant-Hunting/StonewallBoardingAndGamePreserve>. (Last visited February 1, 2013).

<sup>6</sup> *Id.*

<sup>7</sup> Wild West Trophy Hunts in West Edmeston, NY offers “Predator Hunting,” including fox and coyotes. See <http://www.wildwesttrophyhunts.com/id18.html> (Last visited February 1, 2013).

<sup>8</sup> For example, Cold Brook Hunts in Homer, NY emphasizes the “trophy potential” that its facility offers: “With over 12 years making hunters’ wildest dreams come true, bagging the most exotic of prey animals such as Fallow Deer, Wild Boar, Elk, Big Horn Sheep, Bison and more . . . Here at Cold Brook Hunts, whatever exotic animal it is that you want to hunt, the hunting is never out of season! Even Sunday hunting is permitted, and no license is required ever. And please keep in mind that our one or two day exotic hunt packages also makes a great gift for that special outdoorsman or hunter fisherman in your life. Wouldn’t he just love to take home a prize trophy rack to remember his trip for years to come!” See <http://www.coldbrookhunts.com/coldbrookhunts-aboutus.html> (Last visited February 1, 2013).

<sup>9</sup> The following are some game hunting facilities that charge per the number of birds released: Ringneck Preserve (<http://www.ringneckpreserve.com/Chukar.htm>), Pheasants on the Flats ([http://www.pheasantsontheflats.com/index\\_files/Pricing.htm](http://www.pheasantsontheflats.com/index_files/Pricing.htm)), Catskill Pheasantry (<http://www.catskillpheasantry.com/pricing.html>) (all sites last visited February 1, 2013).

often eat the animals they kill.<sup>10</sup> The Division based its determination on the fact that such birds were sold primarily as prey for a hunt and not as animals intended to be eaten.<sup>11</sup>

b. Killing animals at game hunting facilities violates anti-cruelty laws.

In a previous bill comment, the New York City Bar Association expressed its position that killing animals in a game hunting facility is in conflict with the anti-cruelty provisions in Agriculture and Markets Law section 353.<sup>12</sup> Many animals available to kill at game hunting facilities were captive-bred, exotic animals sold by zoos and circuses.<sup>13</sup> Most quails, chukars, and pheasants available at shooting facilities are born and raised in cages or enclosed under nets<sup>14</sup> and are, therefore, more vulnerable to being killed because they are familiar with humans and have not learned how to escape from predators.

We believe that allowing a tax exemption for an activity that causes the suffering of thousands of animals in New York may encourage more such activity and therefore is not sound public policy.

c. New York State cannot afford this tax cut.

The proposed tax exemption is contrary to Governor Cuomo's stated intention to balance the budget because it deprives the state of tax revenues. In announcing his proposed 2013-2014 Executive Budget and Management Plan, Governor Cuomo noted that "[b]y making difficult decisions over the past two years we have brought stability, predictability, and common sense to the state's budget process."<sup>15</sup> However, providing tax exemptions for hunters to kill animals—often captive-bred and exotic animals for which the hunters spend hundreds and sometimes thousands of dollars to kill-- at game hunting facilities flies in the face of common sense.

It is inappropriate to provide a new tax exemption for game hunting. New York already allocates subsidies directly to certain game hunting facilities. The State Department of Environmental Conservation currently uses tax revenue to distribute 60,000 day-old pheasant chicks and 25,000 adult pheasants to game hunting facilities annually in order "to provide pheasant hunting

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<sup>10</sup> New York State Division of Tax Appeals, Determination DTA No. 823157 (Dec. 30, 2010), *available at* <http://www.nysdta.org/Determinations/823157.det.pdf>. (Last visited February 1, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> New York City Bar report available at [http://www.nycbar.org/pdf/report/canned\\_hunts\\_2007.pdf](http://www.nycbar.org/pdf/report/canned_hunts_2007.pdf). (Last visited February 1, 2013).

<sup>13</sup> *Id.*

<sup>14</sup> *See, e.g.*, Ringneck Preserve Web site, photograph of pheasant enclosure, *at* <http://www.ringneckpreserve.com/Photos.htm> (Last visited Feb. 1, 2013).

<sup>15</sup> "Governor Cuomo Outlines 2013-2014 Executive Budget to Maintain Fiscal Responsibility and Continue to Invest in Economic Growth," January 22, 2013, available at <http://www.governor.ny.gov/press/122201-Executive-Budget-2013-2014> (Last visited February 1, 2013).

opportunity not to restore wild pheasant populations.”<sup>16</sup> Other game hunting facilities receive taxpayer dollars to make their land more inviting to game birds.<sup>17</sup> Interestingly, game hunting facility participants are not taxed for admission to a game hunting facility<sup>18</sup>, which might be an appropriate source of revenue for the State, similar to the admission fees charged for state parks. We question whether the state should continue to provide public funds to support these hunting facilities, but it should certainly not add additional costs to the public in the form of a tax exemption. The sums involved are significant, as thousands of animals may be available at certain facilities and the cost per animal from which sales tax is levied in some facilities is \$2500 and up for elk.<sup>19</sup>

### 3. Summary

For the reasons explained above, the Committee opposes A.5220/S.2085.

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<sup>16</sup> New York State Department of Environmental Conservation Web site, Ring-necked Pheasant, at <http://www.dec.ny.gov/animals/7071.html>. (Last visited February 1, 2013).

<sup>17</sup> *Id.*

<sup>18</sup> Charges to a patron for admission to or for the use of sporting facilities or activities in which the patron is to be a participant are excluded from sales tax. Tax Law § 1105(f)(1).

<sup>19</sup> The charge for animals killed at game hunting facilities varies depending on the facility and the type of animal. For example, at certain game hunting facilities, a pheasant is \$25, (Hull-O Farms Pheasant Preserve Web site at <http://www.hunthull-o.com/pheasanthunting.php>); a whitetail doe is \$400 (Battenkill Hunting Preserve Web site at <http://www.battenkillhunt.com/game.php>, a fallow doe is \$650 (Wild West Elk Ranch Web site at <http://wildwesttrophyhunts.com/id1.html>), a bull elk is \$2,500 (Basswood Lodge and Hunting Preserve Web site at <http://www.basswoodhunting.com/biggame.php>), and a Rocky Mountain elk buffalo starts at \$3,900. (Battenkill Hunting Preserve Web site at <http://www.battenkillhunt.com/reservations.php>). At a rate of four percent, New York State would lose sales and use tax of \$1 for each pheasant, \$16 for each whitetail doe, \$26 for each fallow doe, \$100 for each bull elk, and \$156 for each Rocky Mountain elk buffalo exempt from tax under this bill. This could amount to tens of thousands of dollars in lost revenue to the state because game hunting facilities breed and release thousands of animals to be killed each year. For example, in 2010, the Basswood Lodge & Hunting Preserve boasted its stock of 3,000 pheasants, a “large selection of high quality fallow bucks,” and “several nice rams” among other animals. (Basswood Lodge & Hunting Preserve 2010 Newsletter at <http://www.basswoodhunting.com/news.php>). Another game hunting preserve’s Web site states: “We here at Lido’s have thousands of birds at our disposal.” (Lido’s Game Preserve Web site, at <http://www.lidosnyhunts.com>. (All sites last visited February 1, 2013).