



JAN/FEB 2008

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WA AAT CASE 1897 – A TAX WIN FOR BREEDERS

This case, decided by the WA AAT in late October 2007 after a hearing that took place in June 2007, ruled that a husband and wife partnership were conducting a taxation breeding and racing activity, even where limited sales where evident due to perfectly legitimate reasons, in this instance extraordinary bad luck. This case was also a victory for breeders who retain fillies and colts for racing, not only for future breeding purposes, but in instances where it is more commercially appropriate to do so. This decision again makes it clear that such a practice does not automatically mean a tax business is not being conducted and that, as always, all of the “business” factors need to be taken into account.

In the past few months there have been various media comments made in relation to this case and I now take the opportunity to provide my views, especially having regard to:

The ATO declining to appeal the case – any inflammatory comments before the ATO made such an important decision may not have been helpful; and

As is my normal practice in cases of such significance, I have actually spoken to one the people involved, i.e. Mrs. Sally Block.

This is done to give a more rounded and insightful perspective of a case. The resilience and courage of Sally and her husband, Malcolm, should be applauded by all within the industry. Thankfully their substantial costs and time expended in fighting this case bore fruit for them.

As background, the ATO sought to disallow the business status of a husband and wife partnership on the basis that they weren’t carrying on a taxation breeding business. It can be reasonably assumed that the catalyst for the ATO review was an ATO “Horse Breeding” questionnaire completed and submitted by them in May/June 2005.

Arguments of the ATO

The major arguments put up by the ATO in support of their “hobby” view were:

- The partnership consistently made losses;
- No formal business plan;
- Little prospect of profit;
- Too many “home-breds” were raced. The ATO were trying to argue a “racing” hobby activity;
- Mares serviced every second year;
- Expert advice re matings not followed;
- Lack of sales proceeds and volume; and
- Lack of quality of mares, especially in terms of “black type”.

The successful business factors of Sally and Malcolm Block

The factors that won the case for the partnership can be summarized as:

- The lack of sales were due to an incredible run of bad luck with mares and the foals bred for sale;
- Future profit prospects beyond 2004. A strong overall profit intention was in place;
- The “business-like” and “commercial manner” in which the business was conducted;
- The seeking of expert advice, supported by sophisticated breeding programmes, such as the “Pedigree Dynamics” system;
- Excellent record keeping;
- A selling mentality;
- A flexible business plan, especially in terms of regular review and upgrading of mares;
- The previous and subsequent commercial practices of the partnership, outside of the period where the bad luck set in, e.g. buying mares with “black type” in their pedigrees;
- Acquired interests in stallions for the purpose of serving mares;
- They utilised the commercial market for the sale of horses in the “Magic Millions”, Yearling and “Ready to Run” sales, as well as making private sales;

- **The time and money spent on property and pasture improvements,**
- **Their extensive financial, managerial and business experience;**
- **Their extensive experience with thoroughbred horses, including the undertaking of courses in horse management, in the United Kingdom; and**
- **Membership of the WA Bloodhorse Breeders Association since 1996.**



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Comments

As these cases should be decided on a "question of fact", the horse tax community is generally astonished that this case ever got to the AAT. The tribunal had little hesitation in dismissing it. In my opinion, this is an excellent example of an "integrated" racing and breeding activity.

From my discussions with Sally Block, it was her view that the ATO had "closed their minds" to the thought of the horse activity being a business due to the sheer volume of losses incurred in the relevant period – a risky approach given the solid business factors in place. There was also, in her opinion, some serious breaches of process involved, including the ATO providing inappropriate notice of a field visit (resulting in their accountants not being present) and a lack of horse industry savvy of the ATO officers involved.

We can only hope that the ATO takes her views on board as serious industry players can do without this grief in the future. In the words of Sally, "...it was a short, sharp reminder that the ATO should act more appropriately in the future".

This case was a real victory for common sense and further confirms that the courts can again be relied upon to reflect basic tax principles. I will write about this case in detail in my next Australian Bloodhorse Review article, due in February 2008.

I will also be discussing this case further on Sky Racing's "Bred To Win" in the next few weeks and the many horse tax seminars I am presenting all over Australia in the next few months.

You are welcome to contact me if you wish me to clarify or expand upon any of the matters raised in this article.

End of release.

PAUL CARRAZZO CPA

CARRAZZO CONSULTING CPAs

UPCOMING SOCIAL EVENTS

There is plenty happening on the social calendar for the NSWROA over the coming months:

- **Thursday 21st Feb** – Trivia Night – Randwick Racecourse
- **Saturday 23rd Feb** – Canterbury Raceday (Buses available to and from)
- **Thursday 6th March** – Sportsman Lunch (Ken Callander – Guest Speaker)
- **Wednesday 19th March** – Wine Tasting/Cocktail/After work drinks
- **Saturday 12th April** – Rosehill Guineas Raceday (Buses available to and from)
- **Thursday 15th May** – Doomben Cup Calcutta

For further information please contact Sharon Lenton on 0401 290 666 or Brent Crawford 9299 4299

GENERAL BITS AND PIECES

* The NSWROA has just installed a brand new database which has helped us grow our financial membership almost 100% on this time last year. With now a single membership only costing \$50.00 it has been a great decision by the board and a great incentive for all NSW owners to become members.

* We are currently working closing with "RACENET" at the moment in overhauling our website. With the help of "RACENET" our website will

be extremely user friendly and we will be able to follow and congratulate our members when they win a race. Speaking of those, congratulations to our board member, Max Whitby, NSWROA member, Dean Watt and all other connections of the win of Honour in War in last months Group Two Villiers Stakes at Randwick. Although not a victory in the greatest of circumstances (winning on protest from Takeover Target) it was a well deserved win by the iron horse and a great training effort by Chris Waller.

* Our annual Sydney Cup Day luncheon has also been booked for Saturday May 3rd. For initial enquires please contact Brent Crawford on 9299 4299.

* Our annual "Night of Champions" dinner has been penciled in for Thursday 14th August to be held once again at Royal Randwick.

VALE GEORGE MOORE

The New South Wales Racehorse Owners Association and all board members would like to pass on its deepest sympathy to all members of the Moore family and acknowledge what a great legend George was for racing. He will be sadly missed by all, RIP.

Yours in Racing



**Stephen Van Eyk
President**

6th February 2008



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