

# Horse industry beats tax man

Patrick Durkin

Battling to shake off the financial impact of equine influenza, the horseracing industry has had a major victory over the Australian Taxation Office, which had sought to limit deductions for fees, vet bills, float expenses and race-day costs.

The decision by the Administrative Appeals Tribunal in the case of a Perth horse and sheep breeding farm confirms horse breeders, grape growers and farmers do not need to make a profit to qualify for tax deductions.

Experts claim the case shows the ATO does not understand the difficulties in the horse industry. They want the ATO to engage specialists to handle these cases.

"I find it absolutely amazing that the commissioner would have taken this case to court," a tax specialist

## KEY POINTS

- The ATO tried to cut deductions.
- It thought the horseracing industry was nearly always a hobby.
- The Administrative Appeals Tribunal ruled businesses often lost money.

for the horse industry, Martin O'Connor, said. "It has simply said because the business was making a loss it was a hobby. They seem to think that the horse industry is just a wealthy person's plaything."

Earlier this year the ATO issued a draft tax ruling that cracked down on deductions claimed by horse breeders, owners and trainers. It focused on those who claimed to engage in horseracing as a business, rather than a hobby for which expenses are not deductible.

"It would be a rare case indeed where the racing of horses would amount to the carrying on of a business," the draft ruling said.

The ATO invoked "the significant element of chance", the "very limited prospect of making a profit" and "the pursuit (albeit vigorous in many cases) of a hobby, recreational pursuit or pastime".

The ruling also targeted horse breeders, saying deductions would depend on industry criteria such as "the quality and number of horses" and "whether the mares are being serviced regularly".

But David Coombes, a tax partner at law firm Deacons, said the ruling was the ATO trying to dictate the law, without heed to case law or tax principles.

The 310-hectare farm at Cheverell Park, 45 kilometres north-east of Perth, had bred Suffolk sheep and

thoroughbred horses since 1996, including marketing horses to sell in the Magic Millions and other sales.

The ATO argued the farm was a hobby because the partnership had consistently made a loss since 2001 and had no formal business plan.

However, a senior member of the Administrative Appeals Tribunal, Andre Sweidan, had "no hesitation in rejecting" the ATO's arguments.

"It is clear that the first applicant has incurred significant losses in respect of the business," he said, "because of the capital costs of setting up the business, the subsequent restructuring of the business and as a result of a series of unforeseeable setbacks."

The setbacks included the accidental injury and death of 13 stallions, mares and yearlings — something tax specialist Mr O'Connor said happened quite often.