

Tax Deductions for Advertising and Promotional Expenses

By John Alan Cohan, Attorney at Law

In the horse industry, as in other sports such as car racing and Olympics sports, people will pay to have their business name advertised in connection with certain events. For example, people will establish a new "classic" event, or "cup" to be an annual sporting event for a given sport. There are many horse show events and races that are "funded" by business, individuals or companies that use this venue as a form of advertising.

Tax deductions are available for ordinary and necessary business expenses, and that of course includes advertising costs. A veterinarian, for instance, may want to allocate some funds to advertise his or her business in connection with horse show events, or larger firms may wish to establish a new event, with their company name and logo associated with it. The payments of these fees to horse organizations invariably are tax deductible to the sponsor, whether an individual or a large company.

There is no concrete definition of what constitutes advertising. Advertising includes any devices that get your business name before the public. Advertising consists of pretty much anything that provides a promotional linkage to your business or profession.

Numerous Tax Court cases have upheld the legality of sponsorship-type expenses as deductible to the business for which the taxpayer was seeking promotional exposure. The leading case on this subject is *Menard, Inc. v. Commissioner*, 88 TCM 229, T.C. Memo 2004-207, which involved millions of dollars of race car sponsorships by the Menards Company, based in Wisconsin, one of the nation's leading home improvement chains, third only to Home Depot and Lowe's. There are a number of other Tax Court cases involving the issue of deductions for sponsorship-type expenses in car racing, as well as other sports, such as boat racing.

Generally, the expenses are justified as tax deductions if the expenses are undertaken primarily for a business and not a social or personal purpose, and that there is a proximate, rather than merely a remote or incidental, relationship between the expenditures and the taxpayer's business. This is essentially a question of fact. There is no hard and fast rule as to what constitutes a proximate connection between an activity such as sponsorship of horse show events in horse shows and

establishing new business for the sponsor. More is needed to withstand IRS scrutiny than a showing that the activity affords opportunities to meet people who in turn might want to become clients now or in the future. The fact that the taxpayer has in fact garnered new customers as a result of the advertising suggests a direct nexus. There is no specific procedure or means for proving a direct nexus, but good record-keeping that shows how new customers were referred is likely to be sufficient. Often it is important to obtain a tax opinion letter from a tax attorney to insure that substantial tax deductions are undertaken in accordance with tax laws on the subject.

The legality of sponsorship fees runs the gamut from straightforward advertising (such as print ads in horse show or racing programs) to more esoteric types of promotion. A well known case that upheld the use of sporting advertising expenses is *Rodgers Dairy Co. v. Commissioner*, 14 T.C. 66 (1950). The taxpayer owned a chain of restaurants in Pittsburgh. The company purchased two Russian wolf hounds and kept them in a kennel at the rear of the general offices, and claimed the costs as advertising deductions. The company also bought some show horses "for advertising purposes."

The horses were exhibited in horse shows primarily in places remote from Pittsburgh rather than before local audiences who were familiar with the

company's restaurant chain. The company's logo and blue and white color scheme were used in the decoration of the stables at horse shows. The corporate sponsorship of the horses was prominently indicated in programs that were distributed at the show. Ribbons won by the horses were displayed at the corporate offices. The company's principal shareholders almost never rode the horses, which were shown by professional trainers. Some of the horses were sold at substantial profits, and stud fees were collected as well.

The IRS argued that the purchase of the dogs and horses was primarily for the personal pleasure of the company's principal shareholder. The Tax Court held that the dogs and horses were acquired for advertising purposes, and that the costs involved were not large in relation to the company's business income, so that the deductions were allowed.

Again, if larger advertising deductions are desired, as would be the case in funding a new "cup" or "breeders program" or "classics event"--then it is advised to obtain a tax opinion letter in order to help withstand IRS scrutiny should the issue be audited.

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"Call Me Impressor" a QH bay roping horse owned by Curt Logan and "Rebel," owned by Ann Logan, seem to be "having words" while playing.
- Ann Logan Photograph - Logan Ranch, Swisher, IA