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Court Corrects Tax Bill for Horse-Racing Business Owner

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Scott Roberts, The Indiana Lawyer

A man who ran an Indianapolis-area horse-racing business will have his tax deficiencies for the 2005 and 2006 tax years voided by the 7th Circuit Court of Appeals after Judge Richard Posner ripped apart an opinion by the U.S. Tax Court.

The decision was handed down Friday.

Merrill Roberts, who had operated several businesses in Indianapolis over three decades, became interested in horse racing in 1999 and opened a horse breeding and training facility on 45 acres of land he owned on Morris Street.

In 2005, he decided to build a bigger horse-training facility, but he ended up locating it on 180 acres in Mooresville after the city of Indianapolis opposed the construction. Roberts bought the land for \$1 million and spent another \$500,000-plus to open the new facility.

Roberts claimed losses for horse-related activities on his tax returns in the years after opening the new facility. But, in 2011, the U.S. Tax Court found Roberts had erroneously deducted the expenses of his horse business in 2005 and 2006 after it determined the operation was only a hobby during those years.

The court assessed tax deficiencies of \$89,710 for 2005 and \$116,475 for 2006. The court declared the operation became a business in 2007, and it has been considered a business ever since.

Posner wrote the tax court decision was “untenable; it amounts to saying that a business’ start-up costs are not deductible business expenses—that every business starts as a hobby and becomes a business only when it achieves a certain level of profitability.”

Posner determined Roberts’ business began in 2005, when he decided to build a large training facility.

He pointed out an inconsistency in the ruling when the tax court said Roberts did not purchase the Mooresville property to run a business, but said the business didn’t start until it began functioning at the property.

“The judge seems not to have understood that the decision to build the facility, and its construction, are also indications of a profit motive,” Posner wrote. “It may have been a fun business, but fun doesn’t covert a business to a hobby. If it did, Facebook would be a hobby, Microsoft and Apple would be hobbies, Amazon would be a hobby, etc. ad infinitum.”

