



## Equine Law and Business Newsletter

### Welcome !

We are pleased to present to you the first issue of the Equine Law and Business Newsletter as an educational tool for horse men and women involved in the horse business.

According to the American Horse Council of Washington, DC, the U.S. horse industry generates over 10 billion dollars for the nation's economy each year. To help keep you informed, this Newsletter will report on developments that could affect your bottom line--news items dealing with taxes, management, legal issues and economics will be reported each month to you. We encourage your feedback and input dealing with those various matters which also will be valuable to all the readers.

### [Meet Ken](#)

### Topic of the Month: Equine Insurance

This article reviews the various types of insurance available and applicable to horse operations - whether your own one or a hundred of horses.

### [Read on](#)

### Current Affairs in the Equine Industry

Here we cover news items related to the various aspects of the horse industry--economics, legislation, tax, legal, etc.



#### US Federal Taxation:

- ❖ [2010 Small Business Stimulus Bill to benefit the Horse Industry \(11/10\)](#)
- ❖ [P225 Farmers Tax Guide \(11/10\)](#)
- ❖ [Cunningham v IRS : Passive/Active and late filing](#)

### The Trainers Corner

Here we bring selected trainers' perspective in the training, caring and development of horses. Our first trainer article is by **Donna Borba**, a devoted horse enthusiast and trainer for over 30 years.

Articles:

- ❖ [Who is Donna Borba?](#)
- ❖ [Horse or Owner problem?](#)



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Kenneth A. Wood, author

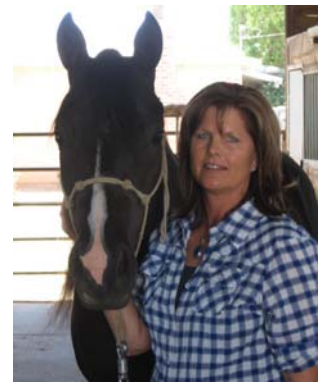
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## A Summary of Equine Insurance coverage

Sincere thanks to [Rancho Santa Fe Insurance and Financial Services of Rancho Santa Fe, California](#) who provided this summary and who are available to review your insurance coverage for all your equine needs.

### Insurance For Equine Operations and Activities:

*As with any business, insurance is an important consideration to protect your assets and your interests. This article reviews most of the types of insurance coverage available to protect the owners of equine operations or providing services in the horse industry. Of course, reviewing your particular operations with a qualified insurance advisor is the best way to be educated on insurance to fit your needs.*

**Full Mortality Coverage** for your horse for death as a result of injury, illness, humane destruction, transportation anywhere in the continental U.S.A. or Canada, and loss or death as a result of theft. Mortality premiums are based on your horse's use, breed and age.

**Automatic Colic Surgery Coverage** is available should your horse ever require colic surgery, having mortality coverage can give you valuable colic coverage benefits.

**Guaranteed Extension Coverage**, which provides that in the event of a condition occurring to your horse and reported during the policy period, mortality coverage will automatically continue for up to 12 months from the expiration date for that specific condition. (Applies to horses' aged 16 years and under.) This type of coverage applies if your policy has been effect for at least 12 months or longer.

**Value Coverage**, which provides that in the event of a mortality claim, if the value of the horse at any time during the policy period was equal to the limit of indemnity, the insured will be paid the amount stated in the policy.

**Major Medical and Surgical** - This option provides your horse with coverage for the cost of covered medical and surgical procedures including diagnostics as a result of accident, illness or disease. This coverage is available for horses' ages 6 months through 15 years. Several limit choices are available. For example, one company offers limits ranging from \$2500 per calendar year up to \$12,500 per calendar year (not to exceed the horse's insured mortality limit and subject to \$325 per claim deductible).



**Surgical Only** - The Surgical Coverage is the same as major medical in that you can buy specified limits of \$2500 to \$10,000, and a \$100 per claim deductible applies. The maximum post operative coverage is 50% of the surgery value. This option provides your horse with coverage or the actual cost of surgery and for up to a maximum of 100% of that cost for approved non-surgical veterinary fees for 30 days aftercare. This coverage generally is available for horses aged 6 months through 15 years.

**Third Party Liability** - If you are sued by a third party for bodily injury or property damage directly caused by your horse, this policy option will defend and pay claims made against you for which you are legally liable up to the annual aggregate limit. (See Personal Horse Owner's Liability coverage for higher limits.)

**Territorial Limits Including Transit** - Mortality coverage may be extended to include international transportation to and from other approved countries. This coverage option is often selected when a horse is purchased in Europe and imported to the U.S. (Prior notification of transit must be given.)

**Stallion Infertility A, S & D** - This option provides coverage in the event your proven stud becomes permanently incapable of settling mares in foal as a result of an accident, sickness or disease. (Coverage is not normally available to stallions in their first breeding season.)

**External Injury Loss of Use** - This option provides coverage in the event your horse is permanently no longer able to perform its insured use as a result of a visible, external, accidental and violent means injury such as running into a fence or a trailering accident.

**Full Loss of Use Including Economic Destruction** - This option provides coverage in the event your horse suffers an illness or injury, and as a result can no longer fulfil its insured use, or that the cost of surgical or medical support is not economically viable.

## Liability Coverage for your Equine Activities

Equine liability policies are designed to help protect you if you are sued by a third party due to property damage or bodily injury that incurred while involved in any of your covered equestrian exposures. Coverage is provided for defense fees and for claims for which you are legally liable up to the policy limits. One company offers annual policy limits of \$300,000; \$500,000; and \$1,000,000. Ask about double annual aggregate limits and excess coverage.



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**Personal Horse Owner's Liability Coverage (PHO)** - This coverage was designed to provide coverage for bodily injury or property damage to third parties caused by the insured's personally owned horse when used for non-commercial purposes.

**Equine Commercial General Liability (CGL)** - This coverage is important if you perform any commercial equestrian activities such as boarding, instruction, training, breeding, horse sales, etc. Coverage can be extended to activities off premises such as a riding instructor or trainer who travels to clients' facilities but also works out of their own location.

**Equine Professional Liability Coverage** - Provides coverage for claims and defense fees resulting from any negligent act, error or omission arising from your professional equestrian activities.

**Care, Custody & Control (CCC)** - This is legal liability coverage for horses entrusted to you by their owners. Consider this coverage if you board, train, or breed horses for others. If one of these horses is injured or dies while in your care and you are found negligent, this policy will provide coverage for the medical care or replacement cost of the horse up to the policy limits. Defense costs are also covered. Policy limits are on a per horse/per year basis. Trailering is automatically included for up to a certain mile radius from your facility. Additional transit coverage for the continental U.S. and Canada is available.

**Independent Horse Shows & Events** - Liability coverage is available for single horse shows, clinics, or equestrian events. Coverage is provided for the actual event days and includes days for both set up and take down.

**Riding Clubs and Associations** - This coverage is designed to provide liability coverage for member organizations and their public event days. Public event days are those activities to which non-club members or the general public are invited. The basic program provides coverage for up to seven public event days during the year with coverage for additional days available.



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## 2010 Small Business Stimulus Bill to Benefit the Horse Industry

The American Horse Council reports that President Obama signed the Small Business Jobs and Credit bill. The bill continues the bigger write-off for horses and other property purchased and placed in service by a horse business that were originally included in earlier stimulus bills.

**FIRST:** The Bill allows an owner who purchases a horse or other business property used in a horse business and places it in service in 2010 or 2011 to expense up to \$500,000 of the cost. This Section 179 expensing allowance applies to horses, farm equipment and most other depreciable property. Once total purchases of horses and other eligible property reach \$2 million, the expense allowance goes down one dollar for each dollar spent over \$2 million. Without the bill the expensing allowance would have been \$250,000 in 2010 and gone down to \$25,000 for later years.

The Council provides the following example: "let's assume a horse business purchases \$750,000 of depreciable property in 2010, including \$650,000 for horses, and places it all in service. That business can write off \$500,000 on its 2010 tax return and depreciate the balance," explained American Horse Council President Jay Hickey.

This provision will benefit any business involved in the horse industry that purchases and places depreciable property in service in 2010 or 2011.

**SECOND:** The second incentive reinstates the 50% first-year bonus depreciation for horses and most other depreciable property purchased and placed in service during 2010. Bonus depreciation had expired at the end of 2009. This benefit applies to any property that has a depreciable life of 20 years or less. Also, the property must be new, meaning that the original use of the horse or other property must commence with the taxpayer. For a horse to be eligible, it cannot have been used for any purpose before it is purchased.

"The tax benefits in this bill are great for any horse business that has or is planning on making major purchases," said Hickey. "The expensing and bonus



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depreciation provisions can be used together in 2010. For example, let's assume an owner pays \$1,000,000 for a colt to be used for racing and \$100,000 for other depreciable property, bringing total purchases to \$1,100,000 in 2010. If the colt had never been raced or used for any other purpose before the purchase and is placed into service, the owner would be able to expense \$500,000, deduct another \$300,000 of bonus depreciation (50% of the \$600,000 remaining balance), and take regular depreciation on the \$300,000 balance."

"We hope the horse industry will take full advantage of these two tax benefits while they last," said Hickey.

To join the American Horse Council or if you have questions for them, you may contact them at:

American Horse Council  
1616 H. Street NW  
7<sup>th</sup> Floor  
Washington, DC 20006  
Phone: 202-296-4031  
Fax: 202-296-1970  
Email: [ahc@horsecouncil.org](mailto:ahc@horsecouncil.org)



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**DIGEST OF THE RALPH P. CUNNINGHAM V. COMM. OF  
INTERNAL REVENUE**

**Horseman loses to IRS on write off of horse business losses and  
late filing of tax returns.**

**T.C. Memo. 2009-194  
RALPH P. & ANGELA CUNNINGHAM, Petitioners  
v.  
COMMISSIONER OF INTERNAL REVENUE, Respondent.  
No. 22173-07.  
United States Tax Court.  
Filed August 31, 2009.  
(By Judge Cohen)**

**ISSUES:**

Petitioners were given a deficiency of \$11,515 and a late-filing addition to tax of \$1,056.25 in relation to petitioners' 2002 Federal income tax return. The issues were (1) whether or not the petitioners' reported losses from horse activities were limited by Section 469 of the Internal Revenue Code ("IRC") and (2) whether or not petitioners showed reasonable cause for the late filing of their return.

(Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the year in issue.)

**FINDINGS OF FACT**

Petitioners were residents of New York when they filed their petition. During 2002, Ralph P. Cunningham was employed on the dental faculty at New York University and maintained a private dental practice in Peekskill, New York.

Petitioners' joint 2002 Form 1040, U.S. Individual Income Tax Return, was filed on April 21, 2006. On Schedule E, Supplemental Income and Loss, petitioners claimed losses from five separate horse activities located in California apparently under a partnership.

Petitioner asserts in a post-trial memorandum that he was "duped by a charlatan and in essence Robert Gruntz tacitly implied that I should fabricate a log that would show `material participation".

Petitioners did not actively participate in the horse activities and had no knowledge of whether or not the horse activities occurred as represented in the partnership returns. They relied on representations by Gruntz in deducting the partnership losses against their other income. In the notice of deficiency, the partnership losses reported by petitioners were disallowed as passive activities under section 469. Petitioners were advised by Gruntz not to cooperate with respondent's requests for information.



OPINION

(1) LIMITATION OF LOSSES UNDER SECTION 469 OF THE IRC:

The Court stated that Section 469 generally limits deduction of losses from "passive activities" to income generated by such activities and prohibits deduction of such losses against the taxpayer's other income. To avoid the limitations of section 469, taxpayers must establish that they materially participated in the activities. Sec. 469(h). Petitioners have not shown any participation, much less material participation, in the horse activities in issue. They simply signed returns claiming substantial losses without investigation or knowledge of the accuracy of the partnership returns for the horse activities.

Petitioner asserts in a post-trial memorandum that he was "duped by a charlatan and in essence Robert Gruntz tacitly implied that I should fabricate a log that would show `material participation". Petitioners assert that the liability would be a financial burden for their family and "petition the Court to consider reducing the liability, throwing [themselves] at the mercy of the court." They conclude with: "Just Google Robert Gruntz to see more."

This Court cannot reduce a liability without any basis in law and directly contrary to the law applicable to the facts appearing from the record in this case. We cannot "Google" or otherwise consider information outside of the record. It is hard to understand, however, how that information could help petitioners. We have no way of knowing when they discovered adverse information about the alleged charlatan, and that information would be relevant only if an accuracy-related penalty were asserted.

(2) LATE FILING OF RETURNS:

The addition to tax in issue in this case is for late filing of petitioners' return due April 15, 2003. Petitioners do not deny that the return was filed late. Section 6651(a)(1) provides that, in the case of failure to file a tax return on the date prescribed for filing (including any extension of time for filling), there shall be added to the tax required to be shown on the return an amount equal to 5 percent of that tax for each month or fraction thereof that the failure to file continues, not exceeding 25 percent in the aggregate, unless it is shown that the failure to file timely is due to reasonable cause and not due to willful neglect.

Reasonable cause for delay is established where a taxpayer is unable to file timely despite the exercise of ordinary business care and prudence. United States v. Boyle, 469 U.S. 241, 246 & n.4 (1985); sec. 301.6651-1(c)(1), Proced. & Admin. Regs. Willful neglect has been defined as a "conscious, intentional failure or reckless indifference." United States v. Boyle, supra at 245. Whether a failure to file timely is due to reasonable cause and not willful neglect is a question of fact. See id. at 249 n.8; Commissioner v. Walker, 326 F.2d 261, 264 (9th Cir. 1964), affg. on this issue 37 T.C. 962 (1962).



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Other than their reliance on Gruntz, whose qualifications as a tax adviser are not in the record, petitioners have offered no explanation of the reasons for the late filing of their return or the steps, if any, they took to secure timely filing. They have not established reasonable cause. See generally United States v. Boyle, supra.

**HOLDING OF COURT:**

For the reasons set forth above, the Court held in favor of the IRS on both issues—a passive investment and the late filing.

**LESSONS LEARNED FROM THIS CASE:**

It appears clearly from the Court analysis that Dr. Cunningham used little or no due diligence in analyzing his horse investments in the partnership of which he was part of. It appears further that his only motivation was to receive write offs that would reduce his income tax liability. Investors have a duty to investigate equine investment to determine the profit potential of the enterprise and to document such findings. Dr. Cunningham completely relied on the “charlatan” and his representations. It is hard to be sympathetic for Dr. Cunningham. Not only did he not prepare for his investment if appears that he represented himself in this case.

Thus, it is clear that investors in horses must perform due diligence to determine the potential of the business which would include seeking expert input, conducting basic research in trade journals and performing a pro forma budget for at least 3 years. One will be amazed at how much you learn in preparing such a budge. Further, and, if you are audited, have appropriate tax counsel assist you and guide you in preparing for the audit and having representation with the IRS agents.

By: Kenneth A. Wood for Ehorselaw.com 11/22/10



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## Who is Donna Borba ?

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Donna L. Borba, along with her husband Alvin Borba, own and operate a training facility in Escalon, California. Donna has been involved with training horses for the past 30 years. Introduced to horses at a young age by her Uncle Ken and Aunt Linda Wood, who were breeders of Arabian Horses, Donna developed a close relationship with an Arabian gelding named Abu Khan. Presented this talented gelding as a gift in the 1970's by her beloved Aunt Linda and Uncle Ken, started her career path in the horse training industry.

In the 1960's growing up in Agoura Hills, Ca. the area was mostly ranch land, which opened up opportunities for Donna to work at many different ranches with different breeds of horses and Equestrian disciplines. Learning, early on in the subtle differences in the breeds, helped guide her on a path of starting young horses under saddle. Fortunate to have the renowned Veterinarian Dr. Robert Miller as her vet and adviser, this also helped give her different perspectives for starting colts.

In 1980, Donna went to work for U4EA Training Stables specializing in Snaffle Bit and Cutting Horses. Donna started the young horses under saddle and then on cattle.

In 1983, she went to work for the JMJ Ranch, training Quarter Horses and Paints, again specializing in starting colts under saddle and on cattle. During these years, Donna was introduced to the beginning of the World Team Penning Association through H-Cattle Co. in Somis, California where she would go for some friendly team penning and roping competitions between ranches. Her Arabian gelding Abu Khan was an oddity to these ranchers who were Quarter Horse and Paint breeders. Teamed up with Abu, Donna continued to win consistently and new doors in the horse world were opened.

In 1987, Donna retired Abu Khan from competition as the High Point Champion and continued to offer her services for training horses specializing in starting colts and rehabilitating horses. She is known to say; "It's not so much that I am helping the owner with a problem horse so much as I am helping a horse with a problem owner." Over the years she has been hired to purchase horses for many new owners as well as some Hollywood celebrities. Donna has been working as a Ring Steward since 2000, and working towards becoming a judge with the American Quarter Horse Association.

*Have any questions for Donna? Ask her in our Forum page on <http://MyForum.ehorselaw.com>*





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## Problem “Horse” or Problem “Owner” ? by Donna Borba

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“My horse acts up every time I ride away from home and she keeps speeding up every time we turn in the direction of home.” Thus are the symptoms of what we call “Barn Sour”. In short, the barn or home represents many things to the horse--security, food, comfort and rest. Then we walk in, throw on the tack, and ride out to unfamiliar territory and exercise. I have some horses that seem to enjoy this and others who show fear or resentment.

Many factors can aggravate the problem. For example, I had taken one of my horses with me on a trip back home to visit my family in Thousand Oaks area. While there, my sister and I went out for a nice trail ride. We noticed 3 riders walking down the trail toward us. I knew one of the riders as a friend of my sisters named Mindy. She was riding a nice buckskin Quarter horse that I had actually found for her several years previous. The rider in the middle was introduced to me as the one with the “problem horse “. I had noticed the mare as they rode up. She was a nice looking mare. However, she was prancing, chomping at the bit and all in all, not a happy camper. The other thing I noticed was how she was being ridden. It was apparent to me that the rider was a beginner, nervous and not a good match for this mare. Mindy spoke up and asked me how to “fix” the problem with the mare.

I am always hesitant to give advice in these circumstances. I don't know the horse or the rider, only what I briefly viewed and was told. I have admired the saying; “Better to be silent and be thought a fool, then to speak and remove all doubt.” So feeling a bit stuck I asked some questions of my own. “How long have you owned this mare?” “When did this problem start?”

“Does it happen every time you ride away from home?” “What do you do with the mare once you get home?” I wanted to know if this mare was one with a nervous temperament or was she more dominate? Regardless, at this moment, clearly the mare was in charge. If the mare was a nervous one who did not have many miles out on the trail, then riding with other more seasoned horses was beneficial. Usually the nervous horse will find it easier to feed off the calm attitude of the more seasoned horse and relax. It takes time and miles. One of the suggestions I made is that as she leaves her barn or home, that she go just far enough away to where the mare may begin to start acting up. Stop and rest, then go back to her home. Once there however, ask the mare to work, get those feet moving. Trot circles, figure eights, cloverleaf patterns, or whatever--just mix it up and keep her going. Once she felt her mare

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relaxed and tired, go back out to the trail where she left, and again let her mare rest. Repeat this time and again, getting further out each time to rest. This helps to picture “home” as not so relaxing and fun and “away” much more comforting. When I asked her;” What do you do when you get home from one of these awful rides?” She told me that her normal routine was to get off her horse, unsaddle and groom her, then give her some treats and put her away...Bingo! My reply was–“If your child spouted off to you and showed you disrespect, would you give him a pat on the head and a treat and send him on his way? Because, that is in essence of what you are doing with your mare. She has been disrespectful, demanding to go home, and home you go to give her everything she has demanded from you.” After a moment I offered her another option. “Would it be possible for you to take this mare home, give her water so that she is hydrated, loosen the saddle just slightly to give her some air, but not enough to be moved if she shakes? Then leave her tied up for a while. Go out from time to time to check on her, more water if needed, maybe even cinch her back up and ride around the property, then tie her back up again.” Needless to say, the owner was not very motivated to go through all that work. I found out many months later that she sold the horse as a “problem” horse. It was most likely a good thing for her to have sold the mare. It’s typical and shameful that the mare now was labeled as a “problem horse.” The mare had her owner’s number because she was a smart horse who had been conditioned by the lack of the owner’s knowledge or drive to teach the mare better manners.

Horses learn from repetition. If you allow them to get away with something once, you can be sure they will test you ten times more. Our horses on the ranch don’t know if they will be ridden for a short ride or be working cattle from dawn to dusk. This has taught them to conserve their energy, just in case. Her mare learned that if she was disrespectful enough, she could stop working and go home to a massage and a treat. So, as it happens many a time, my words went unheeded. What was it Will Rogers said....” If you find yourself in a hole, the first thing to do is stop digging.” This is the advice I should have left her with. Good riding!



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