

Evans v Federal Commissioner of Taxation (1989) 89 ATC 4540

<https://lawcasesummaries.com/knowledge-base/evans-v-federal-commissioner-of-taxation-1989-fca-205/>

Facts

- The Commissioner alleged the taxpayer was a professional gambler for the income tax years of 1977 to 1981 and assessed his winning on an asset betterment basis.
- Evans received amended assessments pursuant to s 167 of the *Income Tax Assessment Act* (Cth) for 1977 to 1979.
- The 1977 assessment was six years after the tax became payable.
- In Evans' income tax returns for the 1977 and 1978 tax years he declared his interest in horse racing and greyhound racing as a hobby and an estimate of his winnings.
- In October 1978, Evans entered into a partnership agreement with a friend to conduct a wallpaper shop. Evans provided the capital and his friend managed the shop. In December 1979 he purchased a hotel and was actively involved in running the business. Throughout this period he owned a number of racehorses. None of them were successful and were sold at a loss.

Issues

- Was Evans a professional gambler?

Held

- A business should have elements of repetition, permanence, continuity and system.
- The test of whether a business of gambling, or for that matter any business, is carried on will be largely objective, determined by reference to the nature and extent of the activities involved.
- For a punter to be a professional gambler, his betting activities must be conducted as as to get the most favourable odds obtainable.
- Volume and size of punting are not determinative.
- Evans was not a professional gambler because it lacked the element of system or organisation which is characteristic of a business. There was no pre-formulated plan. Did not maintain any office or employ staff

Full Text

The full text is available here: <https://jade.io/j/?a=outline&id=151032>