# Exotic Game Activities and the Tax Code

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## Overview

Wild game "farms" are big business in the United States. In Texas alone, in excess of four million acres are devoted to wild game farming activities. Interest continues to grow in such activities such as the raising of captive deer, for example, often as a result of the possibility of greater profitability on fewer acres than is presently possible with raising cattle. But, how does the IRS view such activities? Is it a "farm" for purposes of tax Code provisions that provide special tax status to "farm" businesses?

The tax treatment of wild game activities – it's the topic of today's post.

## Definition of "Farming"

I.R.C. § 464(e) broadly defines "farming" to include the feeding, caring for and management of animals. In addition, Treas. Reg. §1.61–4(d) defines "farm" as including stock farms and ranches owned and operated by a corporation. For purposes of the deduction for soil and water conservation expenses, I.R.C. §175(c)(2) defines "land used in farming" to include land used for the sustenance of livestock. Under the uniform capitalization rules, the term "farming business" includes a trade or business involving the raising, feeding, caring for, and management of animals. *Treas. Reg. §1.263A–4T(c)(4)(i)(A).* For purposes of ag labor I.R.C. §3121(g)(1) includes within the meaning of "agricultural labor," service connected with raising wildlife. Taken together, these provisions are broad enough to classify the raising of exotic and wild game as a farm. Likewise, the tax Code defines an exotic game rancher as a "farmer." Work on an exotic game ranch meets the definition as agricultural labor.

## 1996 IRS Technical Advice

In Tech. Adv. Memo. 9615001 (Oct. 17, 1995) involved a taxpayer (an S corporation) that maintained a hunting property where deer were raised and managed for ultimate "harvest" by hunters who paid to come onto the property to hunt. It was a "trophy deer" operation. The taxpayer operated the activity such that each animal attained a body weight and antler size far exceeding that occurring naturally among deer of the same species. The deer were enclosed behind a game fence and all native deer on the enclosed property were then hunted and killed. The taxpayer bought whitetail deer from various locations in the United States, and brought them to the property where they were tagged, medically examined and treated as necessary. The deer were then released into the enclosed property. The taxpayer hired a genetic and nutritional consultant to help assure the economic success of the activity and to structure it as a research project to that it was in compliance with state law. The state exercised substantial control over the activity, deeming the deer to be the state's natural resources that could only be harvested by hunting. The taxpayer culled the deer herd with hunts by paying hunters. The taxpayer sought a private letter ruling which addressed the question of whether the taxpayer was a "farmer" operating a "farm for profit."

The IRS, in answering that question, noted that Treas. Reg. §1.162-12 does not define the terms "farmer," "farms" or the "business of farming." But, the IRS referenced the Code sections discussed above and that I.R.C. §1231 property (characterizing gain or loss realized on the disposition of certain business

property) includes livestock held by the taxpayer for draft, dairy or sporting purposes. *I.R.C. §1231(b)(3).* That's virtually any mammal held for breeding or sporting purposes.

Also, the IRS noted that Treas. Reg. §1.1231-2(a)(3) provides that for purposes of I.R.C. §1231, the term "livestock" is given a broad, rather than a narrow, interpretation and includes cattle, hogs, horses, mules, donkeys, sheep, goats, fur-bearing animals and other mammals. It does not include poultry, chickens, turkeys, geese, pigeons, other birds, fish, frogs, reptiles, etc. When defining the term "gross income of farmers" the term "farm" includes stock, dairy, poultry, fruit and truck farms, as well as plantations, ranches and all other land used for farming operations. *Treas. Reg. 1.61-4(d).* The IRS also pointed out that "agricultural labor" includes services in connection with raising wildlife. *I.R.C. §3121(g)(1).*

Thus, the Code and Regulations broadly classified deer as "livestock," a deer ranch as a "farm," a deer rancher as a "farmer" and work on a deer ranch as agricultural labor. Likewise, the taxpayer's activities involving the importing, breeding, raising, feeding, protecting and harvesting the captive deer involved the operation of a farm by a farmer similar to the production of more conventional livestock such as cattle and hogs. The Code makes no distinction as to the type of livestock or the method of harvest. What is key are the activities the taxpayer engaged in to produce stock of marketable size and quantity.

Thus, the IRS concluded that the taxpayer was engaged in the business of farming for purposes of Treas. Reg. §1.162-12 (deducting from gross income all amounts expended in carrying on the business of farming) if the activities were engaged in for profit.

**Depreciation**

What is the appropriate depreciable recovery period of exotic game animals, including domesticated deer under the Modified Accelerated Cost Recovery System (MACRS)? Under MACRS, cattle, sheep and goats have a five-year recovery period. *Rev. Proc. 87-56, 1987-2 C.B. 647.* Breeding hogs are three-year property. *Id.* Under Rev. Proc. 87-56, 1987-2 C.B. 647, any property that is not described in an asset class or used in a described activity defaults to the seven-year classification under MACRS (12 years for alternative MACRS). Rev. Proc. 87-56, 1987-2 C.B. 647 does not mention exotic game animals, thus the animals would be classified as seven-year property. But, as "farm animals" and, thus, a depreciable asset used in farming, a plausible argument can be made that while they would have a recovery period of seven years, their alternative live would be ten years (rather than twelve). Also, because there is no requirement for depreciation purposes that animals be domesticated, an argument could also be made that a five-year recovery period applies for certain types of exotic sheep and goats. Indeed, perhaps all ruminant exotic game animals could be classified as five-year MACRS property on the basis that the livestock species in the five-year category are ruminant animals – cattle, sheep and goats. Hogs and horses, non-ruminant animals, have different recovery periods than cattle, sheep and goats.

Because the activity is classified as a farming activity, the fencing used in exotic game (including captive deer) activities would be an agricultural asset and classified as seven-year MACRS property. In addition, as livestock that are tangible personal property, the game animals would qualify for expense method depreciation. *I.R.C. §179.* The same is true for qualifying costs of game fences and catch pens.

**Unanswered Question**

A question that the TAM lest unanswered is whether the hunters' activity would meet the definition of "hunting" for tax purposes. That could have implications for the meal and entertainment rules as well as deducting travel and lodging costs.

## Conclusion

With the increase in non-traditional uses of agricultural land, the questions of whether the use of the land is a “farming activity” and the assets involved are “farming” assets has become an important question.