

## Legal and Tax Issues Associated with Prairie Fires Protecting the Bottom Line when Disaster Strikes

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### Overview

The recent prairie fires across Oklahoma and Kansas have left cattle ranchers facing a complex landscape of legal and tax hurdles. Beyond the immediate devastation of lost forage and livestock, the recovery process involves navigating federal disaster programs, IRS regulations on involuntary conversions, tax issues associated with damaged fences and land, and potential liability issues.

### Forced Sale Rules

When a wildfire destroys grazing land, ranchers are often forced to sell cattle early. The IRS provides two primary mechanisms to manage the resulting tax spike, preventing producers from being taxed on “income” that was actually a forced liquidation.

**IRC §451(g) – one-year deferral.** Ranchers using the cash method of accounting can elect to defer the income from livestock sold in excess of their “normal” business practice for one year. The area must be designated for federal assistance (Presidential or Secretarial) due to the fire. Deferral applies to the income from the number of head sold above the taxpayer’s three-year average.

**Note:** The election must be made by the tax return due date for the year of the sale.

**IRC §1033(e) – involuntary conversion.** For “draft, breeding, or dairy” animals (not feeder calves), ranchers can defer the gain entirely if they replace the livestock within a specific timeframe. Generally, the replacement window is two years, but it is extended to four years if the area receives a federal disaster designation. The period is extended further for regions suffering from drought-linked wildfire risks. For wildfires, the IRS often links the two if the fire destroyed the forage, effectively creating a “drought-like” lack of feed.

**Note:** The tax basis of the new cattle is reduced by the amount of the deferred gain. Also, the replacement livestock must be “functionally similar” (e.g., replacing breeding cows with breeding cows, not using the proceeds to buy a tractor).

### Tax Issues with Damaged/Destroyed Fences

The destruction of thousands of miles of fencing in the Oklahoma and Kansas prairie fires creates a specific set of “basis” challenges. For many multi-generational ranches, the tax basis of a fence is the biggest obstacle to claiming a meaningful tax loss.

A casualty loss deduction is limited to the lesser of the decrease in fair market value (FMV) or the adjusted tax basis of the property. Because most farm fences are depreciated over 7 years (or 15 years depending on the MACRS classification). If the fences were built more than 15 years ago, their tax basis is likely zero. Thus, if a fire destroys a fence with no income tax basis, the deductible tax loss is zero and expenses paid to replace the damaged fence cannot be deduct as a current loss.



The only deduction that can be claimed is what hasn't already been "written off" through depreciation.

For fences entirely destroyed by fire, the IRS generally views any reconstruction as a capital improvement rather than a "repair." As such, the cost of the rebuild would not be currently deductible but would be added to the fence's basis and depreciated. Minor fixes (e.g., replacing a few burnt posts) are deductible in the current year as ordinary business expenses.<sup>[1]</sup>

**Note:** To offset the immediate cost of a destroyed fence, "fast depreciation" methods such as I.R.C. §179 or 100 percent bonus depreciation may be utilized.

Any insurance on a destroyed/damaged fence for which insurance is received that exceeds the fence's basis triggers gain. But the gain may be avoided by treating the destruction as an involuntary conversion and reinvesting the insurance proceeds into the new fence.<sup>[2]</sup>

### Property Value and Related Tax Issues

When a wildfire scorches grazing land, the tax loss isn't as straightforward as a destroyed building. Because the land itself still exists, the IRS looks at the decline in fair market value (FMV) of the entire "Single Identifiable Property" (SIP).

For business property such as a ranch, the IRS requires the taxpayer to calculate the loss for each "unit" (typically the specific tract of land affected). In the case of a ranch, the land and the improvements (e.g., fences or corrals) are often treated as separate SIPs. Thus, the taxpayer must compare the land's adjusted basis with the decline in the FMV of the property. The deduction is the lesser of these two numbers.

Valuing the "scorched" land requires an appraisal.<sup>[3]</sup> The appraiser will look at what a "willing buyer" would pay for scorched earth vs. healthy pasture. Often, the value drops because the buyer cannot run cattle on it for 1–2 growing seasons. Sometimes the cost of "repairs (reseeding, erosion control, debris removal) can be used as a proxy for the decline in FMV. However, the IRS only allows this if the repairs are necessary to restore the land to its pre-casualty condition and the amount spent isn't excessive.

**Note:** Often ranchland has a low income-tax basis. If an appraiser determines that a fire caused, for example, a \$200,000 decline in value but the tax basis in the land is only \$50,000, the maximum tax deduction is \$50,000, not the \$200,000 loss incurred.

### Property Tax Relief

While federal income tax is tied to income tax basis, state property tax is often tied to "productivity." Kansas values ag land based on productivity potential, not market value. If a fire destroys the "landlord share of net income" (because there's no grass to rent), the County Appraiser can be petitioned (by April 15, 2026), for a valuation adjustment. Oklahoma has a constitutional cap on how much a property's assessed value can increase (three to five percent annually).<sup>[4]</sup> If the fire causes the market value to drop *below* the capped value, property taxes should decrease proportionally.

### USDA Disaster Assistance & Legal Compliance

The USDA has several programs designed to assist livestock owners in the event of loss due to prairie fire. The Livestock Indemnity Program (LIP) provides payments for livestock deaths exceeding the normal mortality rate that were caused by the fire. The Emergency Assistance for Livestock (ELAP) program covers the cost of hauling water or feed to livestock and the cost of transporting livestock to new grazing land. The Emergency Conservation Program (ECP) provides funding to repair fences and water facilities destroyed by fire.<sup>[5]</sup>



**Note:** Ranchers must provide “reliable records” of livestock deaths. In the chaos of a fire, this often includes dated photos, veterinary certifications, or rendering plant receipts. Failure to document losses immediately can lead to legal denials of claims.

To secure compensation through the LIP, the USDA’s Farm Service Agency (FSA) requires rigorous documentation.

Proof of loss must establish that the livestock died specifically due to the fire or that the animal was injured so severely that it was sold at a reduced price or euthanized. The following are suggested:

- Photographs/Video: High-quality, dated photos of carcasses. If possible, landmarks or ear tags should be included in the frame.
- Veterinary Records: A written certification from a vet stating the death or injury (such as severe respiratory distress from smoke) was caused by the fire.
- Rendering Receipts: If carcasses were hauled away, keep the receipts from the rendering plant or disposal service.
- Third-Party Certification: If no other records exist, a “Disinterested Third Party” (e.g., a neighbor or brand inspector not affiliated with your ranch) can certify the loss in writing.

The FSA calculates payments based on losses *in excess* of normal mortality.<sup>[6]</sup> An affected livestock owner must prove how many head were owned the day before the fire loss occurred. The following are useful in establishing that evidence:

- Purchase Receipts: Bills of sale for cattle bought within the last year.
- Birth Records: Calving logs or “red books” showing the 2025–2026 calf crop.
- Loan Documents: Recent bank inspections or collateral listings that specify head counts.
- Tax Records: The most recent Schedule F or property tax assessments showing livestock numbers.
- Vaccination/Pregnancy Check Records: Modern vet records often include exact head counts for the day of service.

**Note:** The LIP only covers livestock maintained for commercial use (not pets, show animals, or roping steers). Such things as brand inspection records, Uniform Commercial Code (UCC) filings and written leases can all be helpful in establishing legal title, financial interest or possession and control of the animals.

For the LIP and ECP, ranchers must typically file a Notice of Loss within 30 days of the loss becoming apparent. Missing this window is the biggest reason claims are denied, even with perfect records.

**Note:** Ranchers often cannot start fixing fences until an environmental look-back or an on-site inspection is performed by the FSA, or they risk losing ECP eligibility.

### Liability and Property Law Issues

The destruction of hundreds of miles of fencing creates the possibility of legal exposure for escaped livestock. Both Kansas and Oklahoma are “fence in” jurisdictions. This means that the livestock owner has a “duty to fence” animals in. If a fire destroys a perimeter fence and cattle wander onto a highway, causing an accident, the rancher could face negligence claims. However, it would be difficult for an injured party to



establish that a livestock owner was negligent for failing to keep their livestock in under the circumstances. Liability usually only attaches if the livestock owner *knows* the fence is down and fails to make a reasonable effort to restrain the cattle within a reasonable time.

For those who graze cattle on leased land, the legal nature of the agreement matters. A “contract of agistment” (where the landowner cares for the cattle) may shift liability for cattle deaths to the landowner, whereas a standard “real property lease” usually leaves the loss on the cattle owner.

**Note:** In rare cases, the total destruction of historic markers and old fence lines can lead to boundary disputes during the rebuilding phase. It is often recommended to use GPS surveying before installing permanent new fencing.

### State-Specific Tax Incentives

Both Oklahoma and Kansas offer specific relief that ranchers should utilize. In Kansas, the purchase of replacement fencing materials and certain farm equipment is exempt from sales tax.<sup>[7]</sup> Also, it is possible for a disaffected landowner to petition county assessors for a “disaster reassessment” to lower the property tax burden on land that has been temporarily rendered unproductive by fire.

### Conclusion

The path to recovery following the Oklahoma and Kansas prairie fires is as much a matter of meticulous paperwork as it is of physical labor. While the immediate focus naturally remains on the survival of herds and the restoration of grazing land, the long-term viability of a ranching operation often hinges on how effectively its owners navigate the overlapping layers of IRS regulations, state tax incentives, and USDA disaster programs. Success in this “second phase” of the disaster requires proactive documentation – from capturing dated photos of losses to filing timely notices with the FSA – and a strategic approach to tax basis and involuntary conversions. By leveraging available federal assistance and state-specific relief, such as the Kansas sales tax exemptions or Oklahoma’s property tax credits, producers can mitigate the financial sting of the flames. Ultimately, while the scorched earth will eventually see a “green-up,” the financial recovery depends on making informed, timely decisions today to protect the ranch’s bottom line for years to come.



**Notes:**

- [1] If the rancher has a consistent accounting procedure, they may be able to deduct certain lower-cost replacements immediately rather than capitalizing them, even if they seem like “improvements.” A De Minimis Safe Harbor allows for immediate expensing of items under \$2,500 (or \$5,000 with an applicable financial statement) which is highly useful for replacing posts/wire.
- [2] If a rancher receives certain private or public grants specifically for disaster relief, these may be entirely tax-free and not included in gross income.
- [3] The appraisal should ideally happen as soon as possible after the fire to capture the “scorched” state before spring green-up masks the immediate damage to the soil crust and perennial root systems.
- [4] The Natural Disaster Tax Credit (Form 576) allows Oklahoma residents to claim a credit for the difference in property tax paid before and after a disaster.
- [5] Receipt of government payments has tax consequences. For example, ECP cost-share funds received to rebuild fences must be reported into gross income, but a portion (or all) may be excluded from income under I.R.C. §126. To the extent ECP payments are excluded from income, there is no basis increase in the new fence. Only the portion of the fence the taxpayer paid for out of pocket adds to basis and is eligible to be depreciated.
- [6] A “Loss of Value” record is required to show the difference between the sale price and the regional average.
- [7] K.S.A. 79-3606(d). A Project Exemption Certificate (Form PR-70FEN) must be obtained before purchasing materials to avoid paying tax at the point of sale.

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