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 Publisher/Editor
 Robert P. Achenbach, Jr.
 Contributing Editor
 Dr. Neil E. Harl, Esq.
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Single-Purpose Agricultural and Horticultural Structures: What's Included?

-by Neil E. Harl*

The Tax Reform Act of 1986, in enacting MACRS (the Modified Accelerated Cost Recovery System)¹ created a classification for property with an A.D.R. midpoint life of 16 years or more and less than 20 years as “ten-year property.” The 10-year property classification includes – (1) any single purpose agricultural or horticultural structure (within the meaning of I.R.C. § 168(i)(13); (2) any tree or vine bearing fruit or nuts; (3) any qualified smart electric meter; and (4) any smart electric grid system.²

The question that keeps coming up is . . . what property is eligible for the “single purpose agricultural or horticultural structure” tax treatment?

What is the meaning of “single purpose agricultural or horticultural structure”?

The term “10-year property” includes, according to the statute providing a definition,³ the following definition of “single purpose livestock structure” -- “. . . any enclosure or structure specifically designed, constructed, and used – (I) for housing, raising and feeding a particular type of livestock and their produce; and (II) for housing the equipment (including any replacements) for the housing, raising and feeding referred to in clause I.” The same subsection states that the term “livestock” includes poultry.⁴ Beyond that, the definitional statute states that “an enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for – (I) the stocking, caring for or collecting of livestock or plants (as the case may be) or their produce, (II) the maintenance of the enclosure or structure, and (III) the maintenance or replacement of the equipment or stock enclosed or housed therein.”⁵ Thus, any space devoted to other uses (such as an office for managing a farming operation) would be ineligible to be treated as a “single purpose agricultural structure.”

Definition of “livestock”

To be eligible to be classified as “10-year” property, the key issue is whether particular animals are considered as “livestock.” The Code section in question (I.R.C. § 168(e), (i)) does not define “livestock.” However, the term livestock is defined elsewhere in the Internal Revenue Code and regulations in a similar but not identical setting. The unusual income tax treatment of gains and losses for property “used in the trade or business” is perhaps the most widely quoted definition of “livestock.”⁶ That subsection, I.R.C. § 1231(b)

* Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University; member of the Iowa Bar.

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1(b), defines “livestock” to include “. . . cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held . . . for 24 months or more from the date of acquisition, and . . . other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, . . . and held for 12 months or more from the date of acquisition. Such term does not include poultry.”⁷ The regulations promulgated under I.R.C. § 1231(b)(3) go a step further –

“In the case of cattle, horses or other livestock –(3)” . . . 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. However, it does not include poultry, chickens, turkeys, pigeons, geese,⁸ other birds, fish, frogs, reptiles, etc.”⁹

That passage in the regulations is important by emphasizing that the term “livestock” is to be given “. . . a broad, rather than a narrow interpretation” and by stating that “other mammals” are eligible to be considered livestock.

In support of the argument that the positions taken in the regulations under I.R.C. § 1231(b) should be extended to other animals used in a trade or business, the Tax Court has held that dogs produced or held for a trade or business purpose and used for advertising purposes are depreciable and the costs associated therewith are deductible.¹⁰ Likewise, in a more recent Tax Court decision, a guard dog was deemed a capital asset with a 10-year useful life and was eligible for investment tax credit and depreciation.¹¹ In both cases, the dogs were considered to have been used in a trade or business.

In conclusion

It appears that any animal that is a member of the mammalian order and is used in a trade or business should be eligible for

§ 1231(b)(3) treatment in figuring gains and losses and should also be considered eligible for occupancy of a “single purpose agricultural structure”¹² based on presently available authorities. It should be noted that § 168(e), (i) authorizing “single purpose agricultural structures” as 10-year property does not explicitly require “trade or business” status but because it is well known that dogs and cats, for example, are also owned and held as pets, that would make them ineligible in that capacity for § 1231(b) status.¹³

ENDNOTES

¹ Pub. L. No. 99-514, § 201(a), 100 Stat. 1986, *amending* I.R.C. § 168(e)(1) (classification rule; 168(b)(1) (depreciation rate).

² I.R.C. § 168(e)(3)(D).

³ I.R.C. § 168(i)(13).

⁴ I.R.C. § 168(i)(13)(B)(iv).

⁵ I.R.C. § 168(i)(13)(B)(iii).

⁶ I.R.C. § 1231(b)(3).

⁷ I.R.C. § 1231(b)(3)(A), (B).

⁸ The statute excludes “poultry” from the definition of livestock and is perhaps responsible for the bar in the regulations for ‘poultry, chickens, turkeys, pigeons [and] geese.’

⁹ Treas. Reg. § 1.1231-2(a)(1). See I.R.C. § 1231(b)(3).

¹⁰ *Rodgers Dairy Co. v. Comm’r*, 14 T.C. 66 (1950).

¹¹ *Slawek v. Comm’r*, T.C. Memo. 1987-438.

¹² I.R.C. §§ 168(e), (i), 168(e)(3)(D).

¹³ Some states for state tax purposes, for example, do not include dogs, cats and birds kept as pets for pleasure or recreation as livestock. See *Colorado Sales Tax Guide*, Reg. 39-266-716.4. Compare *Ohio Bull. No. 15* which specifies that dogs are included in livestock. Keep in mind that the issue in this article is one of federal tax law, not state tax law.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

DISMISSAL. The debtors, husband and wife, filed for Chapter 12 in April 2013. The debtors obtained a confirmed plan which contained the following provision: “If the Debtors default in the terms of this Stipulation, which default continues for 21 days after notice of same, then, upon the filing with the Court of an affidavit of default by . . . [the secured creditor], it shall be automatically entitled to an order lifting the automatic stay, without the necessity of any hearing.” The debtors defaulted on their plan payments to two secured creditors and the creditors filed a notice of default with the court after several weeks. Prior to the secured creditors’ filing of default notices with the court, the debtors filed a voluntary dismissal of the case. A hearing on the voluntary dismissal was held at the same time that the Bankruptcy court ruled on the notices of default. The court granted the dismissal and entered an order lifting the bankruptcy stay. The debtors refiled for Chapter 12 one month later and the creditors objected that, under Section 109(g)(2), the

debtors were no longer eligible for Chapter 12. Section 109(g) prohibits a debtor from filing a Chapter 12 case within 180 days after a prior case if the debtor requested and obtained a voluntary dismissal of the case following the filing of a request for relief from the automatic stay. The creditors argued that the stipulation in the confirmed plan operated as the “request for relief from the automatic stay.” The debtors argued that the stipulation in the plan required the creditors to file a notice of default as the “request for relief from the automatic stay.” The court noted that a request for relief from the automatic stay required a filing of a motion and that the stipulation did not provide for the granting of the relief from the automatic stay but provided only for the filing of notice of default as a means to obtain relief from the automatic stay. Because the debtors filed their dismissal motion prior to the filings of the notices of default, the court held that Section 109(g) did not prevent the debtors from refiled their case within 180 days after the voluntary dismissal. *In re Herremans*, 2015 Bankr. LEXIS 2201 (Bankr. W.D. Mich. 2015).

FEDERAL TAX

SALE OF CHAPTER 12 PROPERTY. The debtors, husband and wife, filed for Chapter 12 and obtained a confirmed plan. The