

**M e m o r a n d u m****110.0085**

To: Marysville – Compliance (COE)

Date: June 8, 1971

From: Tax Counsel (JM) - Headquarters

Subject: Exotic Game Areas

Your memorandum of April 16, 1971 and the report attached thereto raises questions of application of the tax in connection with a "game" farm.

We will first discuss the questions posed in the report attached to your memorandum.

We understand that the operation will be owned by on K--- H--- dba S--- G--- F---. The prime function of the farm will be the breeding and sale of offspring from:

Zebras, Camels, Llamas, Miniature Horses, Miniature Donkeys, Scotch Cattle, Texas Longhorn Cattle, and Buffalo (no dangerous type animals. That is carnivorous).

A secondary function of operation may be the charging of fees for admission, solely for viewing the animals.

Section 6358 of the sales tax law and regulation 1578 provide that the sale of or the storage, use or other consumption of any form of animal life of a kind, the products of which ordinarily constitute food for human consumption are exempt from tax.

We believe the test is whether the animals qualify as animals the products of which ordinarily constitute food for human consumption.

It is our opinion that the Zebras, Camels, Llamas, Miniature Horses, and Donkeys clearly would not qualify. We believe that the Scotch Cattle and the Longhorn Cattle do qualify since "cattle" is a species the products of which ordinarily constitute food for human consumption.

We have previously ruled that Buffaloes were animal life the products of which ordinarily constitute food for human consumption (Ann. No. 1070.37). This was based on the fact there was an established market (restaurants) purchasing these animals for food. We believe this included only the United States buffalo (Bison).

[Illegible 3-line paragraph here].

The sale of those animals or the offspring which do not qualify under the above test are subject to the tax.

The use tax on the importation of the animals (not exempt under §6358) would apply in the same manner as in the case of any other tangible personal property not exempted from such tax.

Your memorandum also presents the hypothetical situation in which the owners of the game farm may institute controlled hunting on their area. As an example, you state that they might charge \$500 for the privilege of hunting and if the hunter successfully bags an animal there will be an additional charge of \$500. You ask what the sales price should be and how tax should apply as between "edible" and "trophy" animals.

The selling price of the animal in the event one is taken would depend upon the terms of the agreement entered into between the "farm" and the hunter. The services provided in the agreement would be pertinent. The type of animal taken would determine whether or not tax would apply.

We believe that without knowing the actual specific details of the contemplated enterprise, it is inappropriate to speculate on the application of the tax at this point.

JM:smb