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26 CFR Ch. I (4-1-02 Edition)

Thus, if a deduction is allowed for depreciation under section 182 in respect of property used in clearing land, proper adjustment to the basis of the property so used shall be made under section 1016(a).

[T.D. 6794, 30 FR 791, Jan. 26, 1965]

§ 1.182-4 Definition of “land suitable for use in farming”, etc.

For purposes of section 182, the term *land suitable for use in farming* means land which, as a result of the land clearing activities described in paragraph (a) of § 1.182-3, could be used by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products, including fish, or for the sustenance of livestock. The term *livestock* includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. Land used for the sustenance of livestock includes land used for grazing such livestock. Expenditures are considered to be for the purpose of making land suitable for use in farming by the taxpayer or his tenant only if made to prepare the land which is cleared for use by the taxpayer or his tenant in farming. Thus, if the taxpayer pays or incurs expenditures to clear land for the purpose of sale (whether or not for use in farming by the purchaser) or to be held by the taxpayer or his tenant other than for use in farming, section 182 does not apply to such expenditures. Whether the land is cleared for the purpose of making it suitable for use in farming by the taxpayer or his tenant, is a question of fact which must be resolved on the basis of all the relevant facts and circumstances. For purposes of section 182, it is not necessary that the land cleared actually be used in farming following the clearing activities. However, the fact that following the clearing operation, the land is used by the taxpayer or his tenant in the business of farming will, in most cases, constitute evidence that the purpose of the clearing was to make land suitable for use in farming by the taxpayer or his tenant. On the other hand, if the land cleared is sold or converted to nonfarming use soon after the taxpayer has completed his clearing activities, there will be a presumption that the

expenditures were not made for the purpose of making the land suitable for use in farming by the taxpayer or his tenant. Other factors which will be considered in determining the taxpayer's purpose for clearing the land are, for example, the acreage, location, and character of the land cleared, the nature of the taxpayer's farming operation, and the use to which adjoining or nearby land is put.

[T.D. 6794, 30 FR 791, Jan. 26, 1965]

§ 1.182-5 Limitation.

(a) *Limitation*—(1) *General rule*. The amount of land clearing expenditures which the taxpayer may deduct under section 182 in any one taxable year is limited to the lesser of \$5,000 or 25 percent of his “taxable income derived from farming”. Expenditures in excess of the applicable limitation are to be charged to the capital account and constitute additions to the taxpayer's basis in the land.

(2) *Definition of “taxable income derived from farming”*. For purposes of section 182, the term *taxable income derived from farming* means the gross income derived from the business of farming reduced by the deductions attributable to such gross income. Gross income derived from the business of farming is the gross income of the taxpayer derived from the production of crops, fruits, or other agricultural products, including fish, or from livestock (including livestock held for draft, breeding or dairy purposes). It does not include gains from sales of assets such as farm machinery or gains from the disposition of land. The deductions attributable to the business of farming are all the deductions allowed by Chapter 1 of the Code (other than the deduction allowed by section 182) for expenditures or charges (including depreciation and amortization) paid or incurred in connection with the production or raising of crops, fruits, or other agricultural products, including fish, or livestock. However, the deduction under section 1202 (relating to the capital gains deduction) attributable to gain on the sale or other disposition of assets (other than draft, breeding, or dairy stock), and the net operating loss deduction (computed under section 172)

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shall not be taken into account in computing "taxable income derived from farming." Similarly, deductible losses on the sale, disposition, destruction, condemnation, or abandonment of assets (other than draft, breeding, or dairy stock) shall not be considered as deductions attributable to the business of farming. A taxpayer shall compute his gross income from farming in accordance with his accounting method used in determining gross income. (See the regulations under section 61 relating to accounting methods used by farmers in determining gross income.)

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples:

Example 1. For the taxable year 1963, A, who uses the cash receipts and disbursements method of accounting, incurs expenditures to which section 182 applies in the amount of \$2,000 and makes the election under section 182. A has the following items of income and deductions (without regard to section 182 expenditures).

Income:	
Proceeds from sale of his 1963 yield of corn	\$10,000
Proceeds from sales of milk	8,000
Gain from disposition of old breeding cows	500
Gain from sale of tractor	100
Gain from sale of farmland	5,000
Interest on loan to brother	100
	23,700
Deductions:	
Cost of labor	4,000
Cost of feed	3,000
Depreciation on farm equipment and buildings	2,500
Cost of maintenance, fuel, etc	2,000
Interest paid, mortgage on farm buildings	1,000
Interest paid, personal loan	500
Loss on destruction of barn	2,000
Loss on sale of truck	300
Section 1202 deduction—gain on sale of cows (500 × 1/2)	250
Section 1202 deduction—net gain on disposition of section 1231 property, other than cows [\$2,800 (\$5,100 - \$2,300) × 1/2]	1,400
	\$16,950
Net income before section 182 deduction	6,750

For purposes of computing taxable income derived from farming under section 182, the following items of income and deductions are not taken into account:

Income:	
Gain from the sale of tractor	\$100
Gain from the sale of farmland	5,000
Interest on loan to brother	100

Deductions:	
Interest paid, personal loan	\$500
Loss on destruction of barn	2,000
Loss on sale of truck	300
Section 1202 deduction—Net gain from disposition of 1231 assets other than cows	1,400
	\$4,200

A's "taxable income derived from farming" for purposes of section 182 is \$5,750; income of \$18,500 (\$23,700 - \$5,200), less deductions of \$12,750 (\$16,950 - \$4,200). A may deduct \$1,437.50 (25% of \$5,750) under section 182. The excess expenditures in the amount of \$562.50 are to be charged to capital account and serve to increase the taxpayer's basis of the land.

Example 2. Assume the same facts as in *Example 1* and in addition, assume that A is allowed a deduction for a net operating loss carryback from the taxable year 1966 in the amount of \$3,000. The net operating loss deduction will not be taken into account in computing A's "taxable income derived from farming" for 1963. Accordingly, A will not be required to recompute such taxable income for purposes of applying the limitation on the deduction provided in section 182 and the deduction of \$1,437.50 will not be reduced.

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§ 1.182-6 Election to deduct land clearing expenditures.

(a) *Manner of making election.* The election to deduct expenditures for land clearing provided by section 182(a) shall be made by means of a statement attached to the taxpayer's income tax return for the taxable year for which such election is to apply. The statement shall include the name and address of the taxpayer, shall be signed by the taxpayer (or his duly authorized representative), and shall be filed not later than the time prescribed by law for filing the income tax return (including extensions thereof) for the taxable year for which the election is to apply. The statement shall also set forth the amount and description of the expenditures for land clearing claimed as a deduction under section 182, and shall include a computation of "taxable income derived from farming", if the amount of such income is not the same as the net income from farming shown on Schedule F of Form 1040, increased by the amount of the deduction claimed under section 182.

(b) *Scope of election.* An election under section 182(a) shall apply only to