

ARKANSAS STATE
CLAIMS COMMISSION

F1

JUN 30 2011

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☒ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

David Charles Sherrell, Claimant

vs.

State of Arkansas, Respondent
AR Game & Fish Commission

12-0015-CC

| Do Not Write in These Spaces | |
|------------------------------|---------------------------------------|
| Claim No. | 11-0827-CC |
| Date Filed | July 30, 2011 (Month) (Day) (Year) |
| Amount of Claim \$ | 195,358.00 |
| Fund | AG&FC |

COMPLAINT

Loss of Property/ Loss of
Profit/Refund of Expenses

David Charles Sherrell, the above named Claimant, of 1115 Tri Lakes Road, Oxford, AR 72565, 870-373-0999 County of IZARD represented by Larry J. Steele, Attorney at Law

of P.O. Box 561, Walnut Ridge, AR 72476 870-886-5840 870-886-5873 says:
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Game and Fish Commission Amount sought: \$195,358.00

Month, day, year and place of incident or service: 1995 to present

Explanation: My name is David Charles Sherrell. My address is 1115 Tri Lakes Road, Oxford, Arkansas 72565. In 1995 or 1996, I purchased 33 head of Rocky Mountain elk at \$2,250.00 each, for a total price of \$74,250.00. My intention was to help the state of Arkansas to replenish the elk population and establish a hunting lodge on my 420 acres. I discussed my plans with the IZARD County Sheriff.

Sometime within the first year of purchasing the elk, Brian Gaskins and W.D. Whitehurst, game wardens with the Arkansas Game and Fish Commission, came to my farm and observed my elk. One of the game wardens, I believe Brian Gaskins, informed me I needed to acquire a breeder's permit from the state. No one stated I was in violation of any law, but that I did need the breeder's certificate.

In 1997 or 1998, I spoke to Mike Cartwright with the Arkansas Game and Fish Commission at his office in Calico Rock, Arkansas, about acquiring the breeder's certificate. Mr. Cartwright informed me he would check into it. Several months later, in a telephone conversation with Mr. Cartwright, he informed me the Arkansas Game and Fish Commission had decided not to issue me a breeder's certificate. No explanation was

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? Given.*

No, when? (Month) (Day) (Year) to whom? (Department)

and that the following action was taken thereon:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows:

and was acquired in the following manner:

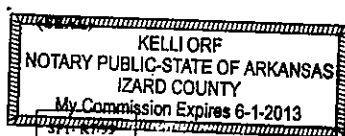
THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believes that they are true.

David C. Sherrell
(Print Claimant/Representative Name)

David C. Sherrell
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Brockwell AR

on this 9-8-10 8th day of September 2010
(Date) (Month) (Year)



My Commission Expires: 6 1 2013
(Month) (Day) (Year)

* continued on attached pages

Approximately five (5) years after I started my business, one of the game wardens told me the Arkansas Game and Fish Commission had passed a regulation requiring a minimum of 500 acres, with 60% dead woods, to establish an elk herd. One of the game wardens told me I could kill and sell the meat to the public, but I could not let the public hunt the elk.

In 2007 or 2008, Officer Chris Majors and Officer Ryan Warner, game wardens with the Arkansas Game and Fish Commission, told me I could be arrested for having the elk illegally. The officers informed me that all I could do with my elk was kill them for my own personal use.

I have been forced to destroy my existing elk herd.

The regulation of the Arkansas Game and Fish Commission requiring 500 acres to raise elk was and is an arbitrary number with no scientific basis which I believed was chosen to specifically eliminate me and my elk operation because the Arkansas Game and Fish Commission knew I had only 420 acres. Numerous articles have been published by the Arkansas Game and Fish Commission which state that "although elk have been back in Arkansas for almost 25 years, little scientific research has been conducted." ("Answers About Elk" by Don White, Jr., Ph.D., Mike Cartwright and Robert C. Weih, Jr., Ph.D., *Arkansas Wildlife*, November/December 2005).

At the time of the article, the above authors could not answer the question, "Which habitats are used?" *Id* at p. 11. The article continues, "Although our data will not permit us to estimate the minimum area of any vegetation type that is necessary before an area is occupied by bull elk our results will provide information about proportions of vegetation types associated with bull elk home ranged." *Id* at p. 12. "Since elk hunting season began in 1998, through the September 2005 hunt, 180 elk have been legally harvested." *Id* at p. 7.

Elk are native to Arkansas. Elk were reintroduced in 1980. Through the 2007 hunting season, 238 elk had been harvested. ("At Home in the Ozarks" by Michael Cartwright and Don White, Jr., *Arkansas Wildlife*, September/October 2008, p. 7).

Mr. Cartwright and Mr. White encourage elk production by private landowners. *Id* at p. 8. One of the stated objectives is to "manage a limited number of elk on private land. *Id* at p. 8. The Arkansas Game and Fish Commission even has a private land elk management program with cost-share options in the program for landowners who want to improve habitat on their property for elk and other wildlife. *Id* at p. 9.

In another article, "Common Questions About Arkansas Elk," by Michael Cartwright and Don White, Jr., *Front Porch*, November/December 2008, p. 7, private elk management programs is encouraged.

Because of the Arkansas Game and Fish Commission's arbitrary treatment of my elk breeding business, I have suffered the following damages:

| | |
|--|--------------|
| 33 original elk purchased at \$2,250.00 each | \$74,250.00 |
| Hay | \$43,316.00 |
| Corn | \$74,440.00 |
| Worm blocks | \$3,150.00 |
| Mineral blocks | \$202.00 |
| TOTAL DAMAGES | \$195,358.00 |

I am requesting judgment against the Arkansas Game and Fish Commission and/or the State of Arkansas for \$195,358.00.

ARKANSAS STATE
CLAIMS COMMISSION
JUN 30 2011
RECEIVED

DCS D.C.S

3

ARKANSAS STATE CLAIMS COMMISSION

JUN 30 2011

RECEIVED

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See page 11.)

| | | | | |
|--|-------------------------------------|---|----------|---------------------------------|
| If a joint return, spouse's first name and initial FERN | | Last name SHERRELL | | Spouse's social security number |
| Home address (number and street). If you have a P.O. box, see page 11: BOX 23 | | | Apt. no. | |
| City, town or post office, state, and ZIP code. If you have a foreign address, see page 11. OXFORD, AR 72565 | | | | |
| Do you want \$3 to go to this fund? If a joint return, does your spouse want \$3 to go to this fund? | | | | |
| Yes | No | Notes: Checking "Yes" will not change your tax or reduce your refund. | | |
| | <input checked="" type="checkbox"/> | | | |
| | <input checked="" type="checkbox"/> | | | |

Filing Status

Check only one box.

- 1 ☐ Single
- 2 ☒ Married filing joint return (even if only one had income)
- 3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here. ▶
- 4 ☐ Head of household (with qualifying person). (See Instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
- 5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See instructions.)

Exemptions

If more than six dependents, see the instructions for line 6c.

| | | | | | | |
|---|-----------|--|-------------------------------------|--|---|---|
| 6a <input checked="" type="checkbox"/> Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. | | | | | No. of boxes checked on lines 6a and 6b | 2 |
| b <input checked="" type="checkbox"/> Spouse | | | | | No. of your children on line 6c who: | 2 |
| c Dependents: | | | | | | |
| (1) First name | Last name | (2) Dependent's social security number, if born in 1996, see inst. | (3) Dependent's relationship to you | (4) No. of months lived in your home in 1996 | | |
| Kelli L. Sherrell | | | daughter | 12 | | |
| Kimberly L. Sherrell | | | daughter | 12 | | |
| d Total number of exemptions claimed | | | | | Add numbers entered on lines above ▶ | 4 |

Income

Attach Copy B of your Forms W-2, W-2G, and 1099-R here.

If you did not get a W-2, see the instructions for line 7.

Enclose, but do not attach, any payment. Also, please enclose Form 1040-V (see the instructions for line 82).

| | | | |
|-----|---|-----|------------|
| 7 | Wages, salaries, tips, etc. Attach Form(s) W-2 | 7 | 31,636 |
| 8a | Taxable interest. Attach Schedule B if over \$400 | 8a | |
| b | Tax-exempt interest. DO NOT include on line 8a | 8b | |
| 9 | Dividend income. Attach Schedule B if over \$400 | 9 | |
| 10 | Taxable refunds, credits, or offsets of state and local income taxes (see Instructions) | 10 | |
| 11 | Alimony received | 11 | |
| 12 | Business income or (loss). Attach Schedule C or C-EZ | 12 | 11,328 |
| 13 | Capital gain or (loss). If required, attach Schedule D | 13 | |
| 14 | Other gains or (losses). Attach Form 4797 | 14 | (22,494.) |
| 15a | Total IRA distributions | 15a | |
| b | Taxable amount (see inst.) | 15b | |
| 16a | Total pensions and annuities | 16a | |
| b | Taxable amount (see inst.) | 16b | |
| 17 | Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E | 17 | 445 |
| 18 | Farm income or (loss). Attach Schedule F | 18 | (16,963.) |
| 19 | Unemployment compensation | 19 | |
| 20a | Social security benefits | 20a | |
| b | Taxable amount (see inst.) | 20b | |
| 21 | Other income. List type and amount—see Instructions | 21 | |
| 22 | Add the amounts in the far right column for lines 7 through 21. This is your total income ▶ | 22 | 3,952 |

Adjusted Gross Income

If line 31 is under \$28,495 (under \$9,500 if a child did not live with

| | | | |
|-----|---|-----|-----|
| 23a | Your IRA deduction (see instructions) | 23a | |
| b | Spouse's IRA deduction (see instructions) | 23b | |
| 24 | Moving expenses. Attach Form 3903 or 3903-F | 24 | |
| 25 | One-half of self-employment tax. Attach Schedule SE | 25 | -0- |
| 26 | Self-employed health insurance deduction (see inst.) | 26 | |
| 27 | Keogh & self-employed SEP plans. If SEP, check ▶ <input type="checkbox"/> | 27 | |
| 28 | Penalty on early withdrawal of savings | 28 | |
| 29 | | 29 | |

4

(Sole Proprietorship)

(Sole Proprietorship)

Partnerships, joint ventures, etc., must file Form 1065.

Department of the Treasury
Internal Revenue Service

(5)

Attach to Form 1040 or Form 1041. See instructions for Schedule C (Form 1040).

Attachment
Sequence No. 09

Name of proprietor

Social security number (SSN)

DAVID

SHERRELL

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (S)

Profit or Loss From Business

(Sole Proprietorship)

Partnerships, joint ventures, etc., must file Form 1041.

Attach to Form 1040 or Form 1041. See instructions for Schedule C (Form 1040).

OMB No. 1545-0046

1996

Attachment
Sequence No. 08

Name of proprietor

DAVID

SHERRELL

Social security number (SSN)

A Principal business or profession, including product or service (see page C-1)

Trucking

3 Enter principal business code

(see page C-6) 638

C Business name, if no separate business name, leave blank.

D Employer ID number (EIN), if any

E Business address (including suite or room no.) Oxford

City, town or post office, state, and ZIP code Oxford, AR

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you "materially participate" in the operation of this business during 1996? If "No," see page C-2 for limit on losses. ☒ Yes ☐ No

H If you started or acquired this business during 1996, check here

Part I Income

| | | |
|---|---|--------|
| 1 Gross receipts or sales. <i>Caution: If this income was reported in your Form W-2 and the "statutory employee" box on that form was checked, see page C-2 and check here.</i> | 1 | 41,411 |
| 2 Returns and allowances | 2 | n/a |
| 3 Subtract line 2 from line 1 | 3 | 41,411 |
| 4 Cost of goods sold (from line 42 on page 2) | 4 | |
| 5 Gross profit. Subtract line 4 from line 3 | 5 | 41,411 |
| 6 Other income, including Federal and state gasoline or fuel tax credit or refund (see page C-2) | 6 | |
| 7 Gross income. Add lines 5 and 6 | 7 | 41,411 |

Part II Expenses. Enter expenses for business use of your home only on line 30.

| | | | | | |
|---|-----|-------|---|-----|--------|
| 8 Advertising | 8 | | 19 Pension and profit-sharing plans | 19 | |
| 9 Bad debts from sales or services (see page C-3) | 9 | | 20 Rent or lease (see page C-4): | 20a | |
| 10 Car and truck expenses (see page C-3) | 10 | | a Vehicles, machinery, and equipment | 20b | |
| 11 Commissions and fees | 11 | | b Other business property | 21 | 8,617 |
| 12 Depreciation | 12 | | 22 Repairs and maintenance | 22 | |
| 13 Depreciation and section 179 expense deduction (not included in Part III) (see page C-3) | 13 | 2,711 | 23 Supplies (not included in Part III) | 23 | |
| 14 Employee benefit programs (other than on line 19) | 14 | | 24 Taxes and licenses | 24 | 2,603 |
| 15 Insurance (other than health) | 15 | 3,509 | 24 Travel, meals, and entertainment: | 24a | |
| 16 Interest: | 16a | | a Travel | 24b | |
| a Mortgage (paid to banks, etc.) | 16b | | b Meals and entertainment | 24c | |
| b Other | 17 | | c Enter 50% of line 24b subject to limitations (see page C-4) | 24d | |
| 17 Legal and professional services | 18 | | d Subtract line 24c from line 24b | 25 | |
| 18 Office expense | 18 | | 25 Utilities | 26 | |
| 26 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns | 26 | | 26 Wages (less employment credits) | 27 | 12,643 |
| 29 Tentative profit (loss). Subtract line 26 from line 7 | 29 | | 27 Other expenses (from line 48 on page 2) | 30 | 30,083 |
| 30 Expenses for business use of your home. Attach Form 8829 | 30 | | | 31 | 11,328 |
| 31 Net profit or (loss). Subtract line 30 from line 29. | 31 | | | | |

• If a profit, enter on Form 1040, line 12, and ALSO on Schedule SE, line 2 (statutory employees, see page C-5). Estates and trusts, enter on Form 1041, line 3.

• If a loss, you MUST go on to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see page C-5).

• If you checked 32a, enter the loss on Form 1040, line 12, and ALSO on Schedule SE, line 2 (statutory employees, see page C-5). Estates and trusts, enter on Form 1041, line 3.

• If you checked 32b, you MUST attach Form 8198.

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Cat. No. 11334P

Schedule C (Form 1040) 1996

ARKANSAS STATE
CLAIMS COMMISSION

JUN 30 2011

6

RECEIVED

SCHEDULE E
(Form 1040)

Supplemental Income
From rental real estate, royalties, income
from corporations, estates, trusts, REMICs, etc.)

OMB No. 1545-0074

1996

Department of the Treasury
Internal Revenue Service

Name(s) shown on return

DAVID & FERN SHERRELL

Attachment
Sequence No. 13

Part I Income or Loss From Rental Real Estate and Royalties *Note: Report income and expenses from your business of renting personal property on Schedule C or C-EZ (see page E-1). Report farm rental income or loss from Form 4835 on page 2, line 39.*

1 Show the kind and location of each rental real estate property:

A House
HWY 9 OXFORD, AR
B
C

2 For each rental real estate property listed on line 1, did you or your family use it for personal purposes for more than the greater of 14 days or 10% of the total days rented at fair rental value during the tax year? (See page E-1.)

| | Yes | No |
|----------|-----|----|
| A | | X |
| B | | |
| C | | |

Income:

3 Rents received
4 Royalties received

| | Properties | | | Totals (Add columns A, B, and C.) |
|----------|-------------------|----------|----------|---|
| | A | B | C | |
| 3 | 1,575 | | | 3 1,575 |
| 4 | | | | 4 |

Expenses:

5 Advertising
6 Auto and travel (see page E-2)
7 Cleaning and maintenance
8 Commissions
9 Insurance
10 Legal and other professional fees
11 Management fees
12 Mortgage interest paid to banks, etc. (see page E-2)
13 Other interest
14 Repairs
15 Supplies
16 Taxes
17 Utilities
18 Other (list)

| | | | | |
|-----------|-------|--|--|-----------------|
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |
| 12 | 1,130 | | | 12 1,130 |
| 13 | | | | |
| 14 | | | | |
| 15 | | | | |
| 16 | | | | |
| 17 | | | | |
| 18 | | | | |

19 Add lines 5 through 18
20 Depreciation expense or depletion (see page E-2)
21 Total expenses. Add lines 19 and 20
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a loss, see page E-2 to find out if you must file Form 8198.
23 Deductible rental real estate loss. Caution: Your rental real estate loss on line 22 may be limited. See page E-3 to find out if you must file Form 8582. Real estate professionals must complete line 42 on page 2

| | | | | |
|-----------|-------|-----|-----|-----------------|
| 19 | 1,130 | | | 19 1,130 |
| 20 | | | | 20 |
| 21 | 1,130 | | | 21 1,130 |
| 22 | 445 | | | 22 445 |
| 23 | () | () | () | 23 |

24 Income. Add positive amounts shown on line 22. Do not include any losses.
25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter the total losses here.
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 39 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 40 on page 2

| | |
|-----------|-----|
| 24 | 445 |
| 25 | () |
| 26 | 445 |

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Cat. No. 11344L

Schedule E (Form 1040) 1996

33 Method(s) used to value closing inventory: ☒ Cost ☐ Lower of cost or market: ☐ Other (attach explanation)

"Yes," attach explanation

☐ Yes ☐ No

35

i 38

37

38

32

43

41

12

45

12,643

SCHEDULE F
(Form 1040)

Department of the Treasury
Internal Revenue Service (8)

Profit or Loss From Farming

▶ Attach to Form 1040, Form 1041, or Form 1065

▶ See instructions for Schedule F (Form 1040).

OMB No. 1545-0074

1996

Attachment
Sequence No. 14

Name of proprietor

DAVID SHERRELL

Social security number (SSN)

A Principal product. Describe in one or two words your principal crop or activity for the current tax year.

Dairy

B Enter principal agricultural activity code (from page 2) ▶ 2 4 0

D Employer ID number (EIN), if any

C Accounting method:

(1) ☒ Cash

(2) ☐ Accrual

E Did you "materially participate" in the operation of this business during 1996? If "No," see page F-2 for limit on passive losses. ☒ Yes ☐ No

Part I Farm Income—Cash Method. Complete Parts I and II (Accrual method taxpayers complete Parts III and IV, and line 11 of Part I.)
Do not include sales of livestock held for draft, breeding, sport, or dairy purposes; report these sales on Form 4797.

| | | | |
|----|---|----|---------------------------|
| 1 | Sales of livestock and other items you bought for resale | 1 | |
| 2 | Cost or other basis of livestock and other items reported on line 1 | 2 | |
| 3 | Subtract line 2 from line 1 | 3 | |
| 4 | Sales of livestock, produce, grains, and other products you raised | 4 | 39,274 |
| 5a | Total cooperative distributions (Form(s) 1099-PATR) | 5a | 2,180 |
| 5b | Taxable amount | 5b | 2,180 |
| 6a | Agricultural program payments (see page F-2) | 6a | 7,410 |
| 6b | Taxable amount | 6b | 7,410 |
| 7 | Commodity Credit Corporation (CCC) loans (see page F-2): | | |
| a | CCC loans reported under election | 7a | |
| b | CCC loans forfeited | 7b | |
| 7c | Taxable amount | 7c | |
| 8 | Crop insurance proceeds and certain disaster payments (see page F-2): | | |
| a | Amount received in 1996 | 8a | |
| 8b | Taxable amount | 8b | |
| c | If election to defer to 1997 is attached, check here <input type="checkbox"/> | 8d | Amount deferred from 1995 |
| 9 | Custom hire (machine work) income | 9 | |
| 10 | Other income, including Federal and state gasoline or fuel tax credit or refund (see page F-2) | 10 | |
| 11 | Gross income. Add amounts in the right column for lines 3 through 10. If accrual method taxpayer, enter the amount from page 2, line 51 | 11 | 48,864 |

Part II Farm Expenses—Cash and Accrual Method. Do not include personal or living expenses such as taxes, insurance, repairs, etc., on your home.

| | | | |
|-----|--|-----|-------------|
| 12 | Car and truck expenses (see page F-3—also attach Form 4562) | 12 | |
| 13 | Chemicals | 13 | |
| 14 | Conservation expenses (see page F-3) | 14 | |
| 15 | Custom hire (machine work) | 15 | |
| 16 | Depreciation and section 179 expense deduction not claimed elsewhere (see page F-4) | 16 | 17,808 |
| 17 | Employee benefit programs other than on line 25 | 17 | |
| 18 | Feed purchased | 18 | 22,568 |
| 19 | Fertilizers and lime | 19 | |
| 20 | Freight and trucking | 20 | |
| 21 | Gasoline, fuel, and oil | 21 | |
| 22 | Insurance (other than health) | 22 | |
| 23 | Interest: | | |
| a | Mortgage (paid to banks, etc.) | 23a | 14,116 |
| b | Other | 23b | |
| 24 | Labor hired (less employment credits) | 24 | |
| 25 | Pension and profit-sharing plans | 25 | |
| 26 | Rent or lease (see page F-4): | | |
| a | Vehicles, machinery, and equipment | 26a | |
| b | Other (land, animals, etc.) | 26b | |
| 27 | Repairs and maintenance | 27 | 2,405 |
| 28 | Seeds and plants purchased | 28 | |
| 29 | Storage and warehousing | 29 | |
| 30 | Supplies purchased | 30 | 163 |
| 31 | Taxes | 31 | |
| 32 | Utilities | 32 | 1,942 |
| 33 | Veterinary, breeding, and medicine | 33 | 1,655 |
| 34 | Other expenses (specify): | | |
| a | milk hauling | 34a | 4,729 |
| b | Dairy promo. | 34b | 441 |
| c | | 34c | |
| d | | 34d | |
| e | | 34e | |
| f | | 34f | |
| 35 | Total expenses. Add lines 12 through 34f | 35 | 65,827 |
| 36 | Net farm profit or (loss). Subtract line 35 from line 11. If a profit, enter on Form 1040, line 18, and ALSO on Schedule SE, line 1. If a loss, you MUST go on to line 37 (estates, trusts, and partnerships, see page F-5). | 36 | (16,963.) |
| 37 | If you have a loss, you MUST check the box that describes your investment in this activity (see page F-5). If you checked 37a, enter the loss on Form 1040, line 18, and ALSO on Schedule SE, line 1. If you checked 37b, you MUST attach Form 6199. | | |
| 37a | <input checked="" type="checkbox"/> All investment is at risk. | | |
| 37b | <input type="checkbox"/> Some investment is not at risk. | | |

SCHEDULE EIC

(Form 1040A or 1040)

Earned Income Credit**(Qualifying Child Information)**

OMB No. 1545-0074

1996Attachment
Sequence No. 43Department of the Treasury
Internal Revenue ServiceAttach to Form 1040A or 1040.
See instructions on back.

Name(s) shown on return: First and initial(s)

DAVID & FERN

Last

SHERRELL

Your social security number

Before You Begin

• See the instructions for Form 1040A, line 29c, or Form 1040, line 54, to find out if you can take this credit.

• If you can take the credit, fill in the Earned Income Credit Worksheet in the Form 1040A or Form 1040. See instructions to figure your credit. But if you want the IRS to figure it for you, see instructions on back.

Then, you must complete and attach Schedule EIC only if you have a qualifying child (see boxes on back).

Information About Your Qualifying Child or Children

If you have more than two qualifying children, you only have to list two to get the maximum credit.

| Caution: If you are filing Schedule EIC and (1) have a child who is not your son or daughter, or (2) have a child who is not your son or daughter, you must attach a statement to your return explaining how you are claiming the credit to protect your refund and to get your refund. | (a) Child 1 | | (b) Child 2 | |
|---|------------------------------|-----------|------------------------------|-----------|
| | First name | Last name | First name | Last name |
| 1. Child's name | KELLI | SHERRELL | KIMBERLY | SHERRELL |
| 2. Child's year of birth | 1980 | | 1982 | |
| 3. (If the child was born before 1976, enter the date the child was born.) | | | | |
| 4. Was under age 24 at the end of 1995 and a student? Check the "Yes" box OR | <input type="checkbox"/> Yes | | <input type="checkbox"/> Yes | |
| 5. Was permanently and totally disabled (see back)? Check the "Yes" box. | <input type="checkbox"/> Yes | | <input type="checkbox"/> Yes | |
| 6. Enter the child's social security number. If born in December 1995, see instructions on back. | | | | |
| 7. Child's relationship to you (for example, son, grandchild, etc.) | Daughter | | Daughter | |
| 8. Number of months child lived with you in the United States in 1995. | 12 months | | 12 months | |

TIP:

Do you want the earned income credit added to your take-home pay in 1997? To see if you qualify, get Form W-5 from your employer or by calling the IRS at 1-800-TAX-FORM (1-800-829-3676).

For Paperwork Reduction Act Notice, see Form 1040A

Cat. No. 13339M

Schedule EIC (Form 1040A or 1040) 1996

separate instructions.

Attach this

form.

Name(s) shown on return

DAVID SHERRELL

Business or activity to which this form relates

SCH "C" Trucking

Part I Election To Expense Certain Tangible Property (Section 179) (Note: If you have any "listed property," complete Part V before you complete Part I.)

| | | | |
|----|---|------------------------------|------------------|
| 1 | Maximum dollar limitation. If an enterprise zone business, see page 2 of the instructions | 1 | \$17,500 |
| 2 | Total cost of section 179 property placed in service. See page 2 of the instructions | 2 | |
| 3 | Threshold cost of section 179 property before reduction in limitation | 3 | \$200,000 |
| 4 | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see page 2 of the instructions | 5 | |
| 6 | (a) Description of property | (b) Cost (business use only) | (c) Elected cost |
| 7 | Listed property. Enter amount from line 27 | 7 | |
| 8 | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 | 8 | |
| 9 | Tentative deduction. Enter the smaller of line 5 or line 8 | 9 | |
| 10 | Carryover of disallowed deduction from 1995. See page 2 of the instructions | 10 | |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions) | 11 | |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 | 12 | |
| 13 | Carryover of disallowed deduction to 1997. Add lines 9 and 10, less line 12 | 13 | |

Note: Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

Part II MACRS Depreciation For Assets Placed in Service ONLY During Your 1996 Tax Year (Do Not Include Listed Property.)

Section A—General Asset Account Election

14 If you are making the election under section 168(f)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box. See page 2 of the instructions ☐

Section B—General Depreciation System (GDS) (See page 3 of the instructions.)

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only—see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|--------------------------------|--------------------------------------|--|---------------------|----------------|------------|----------------------------|
| 15a 3-year property | | | | | | |
| b 5-year property | | | | | | |
| c 7-year property | | 8,990 | 7 yr | HY | S/L | 641 |
| d 10-year property | | | | | | |
| e 15-year property | | | | | | |
| f 20-year property | | | | | | |
| g 25-year property | | | 25 yrs. | | S/L | |
| h Residential rental property | | | 27.5 yrs. | MM | S/L | |
| i Nonresidential real property | | | 27.5 yrs. | MM | S/L | |
| | | | 39 yrs. | MM | S/L | |
| | | | | MM | S/L | |

Section C—Alternative Depreciation System (ADS) (See page 4 of the instructions.)

| | | | | | | |
|----------------|--|--|---------|----|-----|--|
| 16a Class life | | | | | S/L | |
| b 12-year | | | 12 yrs. | | S/L | |
| c 40-year | | | 40 yrs. | MM | S/L | |

Part III Other Depreciation (Do Not Include Listed Property.) (See page 4 of the instructions.)

| | | |
|---|----|--|
| 17 GDS and ADS deductions for assets placed in service in tax years beginning before 1986 | 17 | |
| 18 Property subject to section 168(f)(1) election | 18 | |
| 19 ACRS and other depreciation | 19 | |

Part IV Summary (See page 4 of the instructions.)

| | | |
|---|----|-------|
| 20 Listed property. Enter amount from line 26 | 20 | 2,070 |
| 21 Total. Add deductions on line 12, lines 15 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions | 21 | 2,711 |
| 22 For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs | 22 | |

For Paperwork Reduction Act Notice, see page 1 of the separate instructions.

Cat. No. 12906N

Form 4562 (1995)

ARKANSAS STATE
CLAIMS COMMISSION

JUN 30 2011

11

RECEIVED

Part V**Listed Property—Automobiles, Certain Other Vehicles, Cellular Telephones, Certain Computers, and Property Used for Entertainment, Recreation, or Amusement**

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 23a, 23b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See page 5 of the instructions for limitations for automobiles.)

23a Do you have evidence to support the business/investment use claimed? ☒ Yes ☐ No 23b If "Yes," is the evidence written? ☒ Yes ☐ No

| (a) Type of property (list vehicles first) | (b) Date placed in service | (c) Business/investment use percentage | (d) Cost or other basis | (e) Basis for depreciation (business/investment use only) | (f) Recovery period | (g) Method/Convention | (h) Depreciation deduction | (i) Elected section 179 cost |
|---|-------------------------------|---|----------------------------|--|------------------------|--------------------------|-------------------------------|---------------------------------|
| 24 Property used more than 50% in a qualified business use (See page 5 of the instructions.): | | | | | | | | |
| Blue Semi Trk | 7/22/96 | 100% | 7,700 | 7,700 | 5 yr | S/L | 1,100 | |
| Yellow Semi Trk | 9/7/96 | 100% | 13,000 | 13,000 | 5 yr | S/L | 1,300 | |
| | | % | | | | | | |
| 25 Property used 50% or less in a qualified business use (See page 5 of the instructions.): | | | | | | | | |
| | | % | | | | S/L - | | |
| | | % | | | | S/L - | | |
| | | % | | | | S/L - | | |
| 26 Add amounts in column (h). Enter the total here and on line 29, page 1. | | | | | | | 26 | 2,070. |
| 27 Add amounts in column (i). Enter the total here and on line 7, page 1. | | | | | | | 27 | |

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

| | (a) Vehicle 1 | (b) Vehicle 2 | (c) Vehicle 3 | (d) Vehicle 4 | (e) Vehicle 5 | (f) Vehicle 6 |
|--|------------------|------------------|------------------|------------------|------------------|------------------|
| 28 Total business/investment miles driven during the year (DO NOT include commuting miles) | | | | | | |
| 29 Total commuting miles driven during the year | | | | | | |
| 30 Total other personal (noncommuting) miles driven | | | | | | |
| 31 Total miles driven during the year. Add lines 28 through 30. | | | | | | |
| | Yes | No | Yes | No | Yes | No |
| 32 Was the vehicle available for personal use during off-duty hours? | | | | | | |
| 33 Was the vehicle used primarily by a more than 5% owner or related person? | | | | | | |
| 34 Is another vehicle available for personal use? | | | | | | |

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons.

| | Yes | No |
|---|-----|----|
| 35 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees? | | |
| 36 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See page 6 of the instructions for vehicles used by corporate officers, directors, or 1% or more owners | | |
| 37 Do you treat all use of vehicles by employees as personal use? | | |
| 38 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received? | | |
| 39 Do you meet the requirements concerning qualified automobile demonstration use? See page 6 of the instructions | | |

Note: If your answer to 35, 36, 37, 38, or 39 is "Yes," you need not complete Section B for the covered vehicles.

Part VI Amortization

| (a) Description of costs | (b) Date amortization begins | (c) Amortizable amount | (d) Code section | (e) Amortization period or percentage | (f) Amortization for this year |
|--|---------------------------------|---------------------------|---------------------|--|-----------------------------------|
| 40 Amortization of costs that begins during your 1996 tax year: | | | | | |
| 41 Amortization of costs that began before 1996 | | | | | |
| 42 Total. Enter here and on "Other Deductions" or "Other Expenses" line of your return | | | | 41 | 42 |

Form **4562**

Depreciation and Amortization (Including Information on Listed Property)

OMB No. 1545-0172

1996Attachment
Sequence No. **67**Department of the Treasury
Internal Revenue Service

▶ See separate instructions. ▶ Attach this form to your return.

Name(s) shown on return

DAVID SHERRELL

Business or activity to which this form relates

SCH "F" Lazy D Farm

Preparer's number

Part I Election To Expense Certain Tangible Property (Section 179) (Note: If you have any "listed property," complete Part V before you complete Part I.)

| | | | |
|-----------------------------|---|------------------------------|------------------|
| 1 | Maximum dollar limitation. If an enterprise zone business, see page 2 of the instructions | 1 | \$17,500 |
| 2 | Total cost of section 179 property placed in service. See page 2 of the instructions | 2 | |
| 3 | Threshold cost of section 179 property before reduction in limitation | 3 | \$200,000 |
| 4 | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see page 2 of the instructions | 5 | |
| (a) Description of property | | | |
| 6 | 2 Bull Elk died | (b) Cost (business use only) | (c) Elected cost |
| | | 3,500 | 3,500 |
| | 3 cow Elk died | 7,500 | 7,500 |
| 7 | Listed property. Enter amount from line 27. | 7 | |
| 8 | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 | 8 | 11,000 |
| 9 | Tentative deduction. Enter the smaller of line 5 or line 8 | 9 | 11,000 |
| 10 | Carryover of disallowed deduction from 1995. See page 2 of the instructions | 10 | |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 9 (see instructions) | 11 | |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 | 12 | 10,000 |
| 13 | Carryover of disallowed deduction to 1997. Add lines 9 and 10, less line 12 ▶ | 13 | 1,000 |

Note: Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

Part II MACRS Depreciation For Assets Placed in Service ONLY During Your 1996 Tax Year (Do Not Include Listed Property.)

Section A—General Asset Account Election

14 If you are making the election under section 168(f)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box. See page 2 of the instructions ☐

Section B—General Depreciation System (GDS) (See page 3 of the instructions.)

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only—see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|--------------------------------|--------------------------------------|--|---------------------|----------------|------------|----------------------------|
| 15a 3-year property | | | | | | |
| b 5-year property | | | | | | |
| c 7-year property | | 35,181 | 7 yrs | S/L | S/L | 2,723 |
| d 10-year property | | | | | | |
| e 15-year property | | | | | | |
| f 20-year property | | | | | | |
| g 25-year property | | | 25 yrs. | | S/L | |
| h Residential rental property | | | 27.5 yrs. | MM | S/L | |
| | | | 27.5 yrs. | MM | S/L | |
| i Nonresidential real property | | | 39 yrs. | MM | S/L | |
| | | | | MM | S/L | |

Section C—Alternative Depreciation System (ADS) (See page 4 of the instructions.)

| | | | | | | |
|----------------|--|--|---------|----|-----|--|
| 16a Class life | | | | | S/L | |
| b 12-year | | | 12 yrs. | | S/L | |
| c 40-year | | | 40 yrs. | MM | S/L | |

Part III Other Depreciation (Do Not Include Listed Property.) (See page 4 of the instructions.)

| | | | |
|----|--|----|-------|
| 17 | GDS and ADS deductions for assets placed in service in tax years beginning before 1996 | 17 | 4,710 |
| 18 | Property subject to section 168(f)(1) election | 18 | |
| 19 | ACRS and other depreciation | 19 | |

Part IV Summary (See page 4 of the instructions.)

| | | | |
|----|--|----|--------|
| 20 | Listed property. Enter amount from line 26. | 20 | 375 |
| 21 | Total. Add deductions on line 12, lines 15 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions | 21 | 17,808 |
| 22 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs | 22 | |

For Paperwork Reduction Act Notice, see page 1 of the separate instructions.

Cat. No. 12909N

Form **4562** (1996)

Part V Listed Property—Automobiles, Certain Other Vehicles, Cellular Telephones, Certain Computers, and Property Used for Entertainment, Recreation, or Amusement

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 23a, 23b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See page 5 of the instructions for limitations for automobiles.)

23a Do you have evidence to support the business/investment use claimed? ☒ Yes ☐ No 23b If "Yes" is the evidence written? ☒ Yes ☐ No

| (a) Type of property (list vehicles first) | (b) Date placed in service | (c) Business/investment use percentage | (d) Cost or other basis | (e) Basis for depreciation (business/investment use only) | (f) Recovery period | (g) Method/Convention | (h) Depreciation deduction | (i) Elected section 179 cost |
|---|-------------------------------|---|----------------------------|--|------------------------|--------------------------|-------------------------------|---------------------------------|
|---|-------------------------------|---|----------------------------|--|------------------------|--------------------------|-------------------------------|---------------------------------|

24 Property used more than 50% in a qualified business use (See page 5 of the instructions.):

| | | | | | | | | |
|------------|------|-------|--------|-------|------|-----|-----|--|
| Dump Truck | 9/93 | 100 % | 1,500. | 1,500 | 3 yr | S/L | 375 | |
| | | % | | | | | | |
| | | % | | | | | | |

25 Property used 50% or less in a qualified business use (See page 5 of the instructions.):

| | | | | | | | | |
|--|--|---|--|--|--|-------|--|--|
| | | % | | | | S/L - | | |
| | | % | | | | S/L - | | |
| | | % | | | | S/L - | | |

26 Add amounts in column (h). Enter the total here and on line 20, page 1.

26 375

27 Add amounts in column (i). Enter the total here and on line 7, page 1.

27

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person.

If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

| | (a) Vehicle 1 | (b) Vehicle 2 | (c) Vehicle 3 | (d) Vehicle 4 | (e) Vehicle 5 | (f) Vehicle 6 |
|--|------------------|------------------|------------------|------------------|------------------|------------------|
| 28 Total business/investment miles driven during the year (DO NOT include commuting miles) | | | | | | |
| 29 Total commuting miles driven during the year | | | | | | |
| 30 Total other personal (noncommuting) miles driven | | | | | | |
| 31 Total miles driven during the year. Add lines 28 through 30. | | | | | | |
| | Yes | No | Yes | No | Yes | No |
| 32 Was the vehicle available for personal use during off-duty hours? | | | | | | |
| 33 Was the vehicle used primarily by a more than 5% owner or related person? | | | | | | |
| 34 Is another vehicle available for personal use? | | | | | | |

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons.

| | Yes | No |
|---|-----|----|
| 35 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees? | | |
| 36 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See page 6 of the instructions for vehicles used by corporate officers, directors, or 1% or more owners | | |
| 37 Do you treat all use of vehicles by employees as personal use? | | |
| 38 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received? | | |
| 39 Do you meet the requirements concerning qualified automobile demonstration use? See page 6 of the instructions | | |

Note: If your answer to 35, 36, 37, 38, or 39 is "Yes," you need not complete Section B for the covered vehicles.

Part VI Amortization

| (a) Description of costs | (b) Date amortization begins | (c) Amortizable amount | (d) Code section | (e) Amortization period or percentage | (f) Amortization for this year |
|--|---------------------------------|---------------------------|---------------------|--|-----------------------------------|
| 40 Amortization of costs that begins during your 1996 tax year. | | | | | |
| 41 Amortization of costs that began before 1996 | | | | 41 | |
| 42 Total. Enter here and on "Other Deductions" or "Other Expenses" line of your return | | | | 42 | |

Name(s) shown on return

DAVID A. FERN SHERRELL

1 Enter here the gross proceeds from the sale or exchange of real estate reported to you for 1996 on Form(s) 1099-S (or a substitute statement) that you will be including on line 2, 11, or 22.

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft—Property Held More Than 1 Year

| (a) Description of property | (b) Date acquired (mo., day, yr.) | (c) Date sold (mo., day, yr.) | (d) Gross sales price | (e) Depreciation allowed or allowable since acquisition | (f) Cost or other basis, plus improvements and expense of sale | (g) LOSS If (f) is more than (d) plus (e), subtract the sum of (d) and (e) from (f) | (h) GAIN If (d) plus (e) is more than (f), subtract (f) from the sum of (d) and (e) |
|-----------------------------|-----------------------------------|-------------------------------|-----------------------|---|--|---|---|
| Vigon Rd Baler | 4/93 | 4/96 | 3,200 | 2,310 | 6,500 | 990 | |
| Milk Tank | 1/94 | 4/96 | 11,000 | 5,036 | 18,802 | 2,766 | |
| Misc. Equip. | 4/92 | 4/96 | 295 | 1,180 | 2,063 | 588 | |
| 5 COWS | 1993 | 3/96 | 2,172 | 2,407 | 5,002 | 423 | |

- 3 Gain, if any, from Form 4884, line 39
- 4 Section 1231 gain from installment sales from Form 5252, line 26 or 37
- 5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824
- 6 Gain, if any, from line 34, from other than casualty or theft
- 7 Add lines 2 through 6 in columns (g) and (h)
- 8 Combine columns (g) and (h) of line 7. Enter gain or (loss) here, and on the appropriate line as follows:
- Partnerships—Enter the gain or (loss) on Form 1065, Schedule K, line 8. Skip lines 9, 10, 12, and 13 below.
- S corporations—Report the gain or (loss) following the instructions for Form 1120S, Schedule K, lines 5 and 6. Skip lines 9, 10, 12, and 13 below, unless line 8 is a gain and the S corporation is subject to the capital gains tax.
- All others—If line 8 is zero or a loss, enter the amount on line 12 below and skip lines 9 and 10. If line 8 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain as a long-term capital gain on Schedule D and skip lines 9, 10, and 13 below.
- 9 Nonrecaptured net section 1231 losses from prior years (see instructions)
- 10 Subtract line 9 from line 8. If zero or less, enter -0-. Also enter on the appropriate line as follows (see instructions):
- S corporations—Enter this amount on Schedule D (Form 1120S), line 13, and skip lines 12 and 13 below.
- All others—If line 10 is zero, enter the amount from line 8 on line 13 below. If line 10 is more than zero, enter the amount from line 9 on line 13 below, and enter the amount from line 10 as a long-term capital gain on Schedule D.

Part II Ordinary Gains and Losses

| 11 Ordinary gains and losses not included on lines 12 through 18 (include property held 1 year or less): | | | | | | |
|--|------|--------|--------|--------|--------|--|
| 25 cows, 2 bulls 94-95 | 4/96 | 9,579 | 4,274 | 26,414 | 12,561 | |
| 55 COWS 94-95 | 4/96 | 27,025 | 14,532 | 56,353 | 14,796 | |

- 12 Loss, if any, from line 8
- 13 Gain, if any, from line 8, or amount from line 9 if applicable
- 14 Gain, if any, from line 33
- 15 Net gain or (loss) from Form 4684, lines 31 and 38a
- 16 Ordinary gain from installment sales from Form 5252, line 25 or 36
- 17 Ordinary gain or (loss) from like-kind exchanges from Form 8824
- 18 Recapture of section 179 expense deduction for partners and S corporation shareholders from property dispositions by partnerships and S corporations (see instructions)
- 19 Add lines 11 through 18 in columns (g) and (h)
- 20 Combine columns (g) and (h) of line 18. Enter gain or (loss) here, and on the appropriate line as follows:
- a For all except individual returns: Enter the gain or (loss) from line 20 on the return being filed.
- b For individual returns:
- (1) If the loss on line 12 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here and on line 22 of Schedule A (Form 1040). Identify as from "Form 4797, line 20b(1)." See instructions
- (2) Redetermine the gain or (loss) on line 20, excluding the loss, if any, on line 20b(1). Enter here and on Form 1040, line 14.

For Paperwork Reduction Act Notice, see page 1 of separate instructions.

Cat. No. 13066A

Form 4797 (1996)

ARKANSAS STATE
CLAIMS COMMISSION

JUN 30 2011

RECEIVED

15

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

| 21 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property: | | (b) Date acquired (mo., day, yr.) | (c) Date sold (mo., day, yr.) | | |
|--|--|--------------------------------------|----------------------------------|------------|------------|
| A 27 Cows | | 1991-1993 | 4/1996 | | |
| a Haymower, 2 tractors, rake | | 1990-1993 | 4/1996 | | |
| c Honeywagon manure spreader, gooseneck trailer | | 1994/1993 | 4/1996 | | |
| D | | | | | |
| Relate lines 21A through 21D to these columns | | Property A | Property B | Property C | Property D |
| 22 | Gross sales price (Note: See line 1 before completing.) | 22 16,421 | 11,850 | 550 | |
| 23 | Cost or other basis plus expense of sale | 23 27,012 | 15,400 | 1,750 | |
| 24 | Depreciation (or depletion) allowed or allowable | 24 12,997 | 10,626 | 1,348 | |
| 25 | Adjusted basis. Subtract line 24 from line 23 | 25 14,015 | 4,774 | 402 | |
| 26 | Total gain. Subtract line 25 from line 22 | 26 2,406 | 7,076 | 148 | |
| 27 If section 1245 property: | | | | | |
| a | Depreciation allowed or allowable from line 24 | 27a 12,997 | 10,626 | 1,348 | |
| b | Enter the smaller of line 25 or 27a | 27b 2,406 | 7,076 | 148 | |
| 28 If section 1250 property: If straight line depreciation was used, enter -0- on line 28g, except for a corporation subject to section 291. | | | | | |
| a | Additional depreciation after 1975 (see instructions) | 28a | | | |
| b | Applicable percentage multiplied by the smaller of line 25 or line 28a (see instructions) | 28b | | | |
| c | Subtract line 28a from line 25. If residential rental property or line 25 is not more than line 28a, skip lines 28d and 28e | 28c | | | |
| d | Additional depreciation after 1989 and before 1976 | 28d | | | |
| e | Enter the smaller of line 28c or 28d | 28e | | | |
| f | Section 291 amount (corporations only) | 28f | | | |
| g | Add lines 28b, 28e, and 28f | 28g | | | |
| 29 If section 1252 property. Skip this section if you did not dispose of farmland or if this form is being completed for a partnership. | | | | | |
| a | Soil, water, and land clearing expenses | 29a | | | |
| b | Line 29a multiplied by applicable percentage (see instructions) | 29b | | | |
| c | Enter the smaller of line 25 or 29b | 29c | | | |
| 30 If section 1254 property: | | | | | |
| a | Intangible drilling and development costs, expenditures for development of mines and other natural deposits, and mining exploration costs (see instructions) | 30a | | | |
| b | Enter the smaller of line 25 or 30a | 30b | | | |
| 31 If section 1255 property: | | | | | |
| a | Applicable percentage of payments excluded from income under section 126 (see instructions) | 31a | | | |
| b | Enter the smaller of line 25 or 31a (see instructions) | 31b | | | |

Summary of Part III Gains. Complete property columns A through D through line 31b before going to line 32.

| | | | |
|----|---|----|-------|
| 32 | Total gains for all properties. Add property columns A through D, line 26 | 32 | 9,630 |
| 33 | Add property columns A through D, lines 27b, 28g, 29c, 30b, and 31b. Enter here and on line 14 | 33 | 9,630 |
| 34 | Subtract line 33 from line 32. Enter the portion from casualty or theft on Form 4584, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6 | 34 | -0- |

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less. See instructions.

| | (a) Section 179 | (b) Section 280F(b) |
|----|---|---------------------|
| 35 | Section 179 expense deduction or depreciation allowable in prior years | 35 |
| 36 | Recaptured depreciation. See instructions | 36 |
| 37 | Recapture amount. Subtract line 36 from line 35. See the instructions for where to report | 37 |

DAVID SHERKELL

SL

| | | | | |
|-------|------------------------|---------|-------|------|
| 7 | 7 ft Bush Hog | 1/93 | 650 | |
| 7 | 9 ft Post Auger | 3/93 | 385 | |
| 7 | Disk Featherweight | 3/93 | 345 | |
| 3 | Dump Truck | 9/93 | 1500 | |
| 7 | Square Baker | 3/93 | 1500 | |
| 7 | 10 ft Barrow | 8/92 | 5200 | |
| 15 | 10 ft Barrow | 3/91 | 10250 | |
| 5 | Tractor (1990) | 3/94 | 1500 | |
| 7 | 15 ft Bush Hog | 10/94 | 400 | |
| 5 | Auto. Longhorn | 12/94 | 1496 | 800 |
| 7 F | Boyer | 1/95 | 15000 | |
| sec 5 | Blue John Truck | 2/23/96 | 17000 | |
| sec 4 | Green John Blue Trk | 2/23/96 | 32500 | |
| sec 5 | Yellow John Blue Trk | 7/17/96 | 13000 | |
| sec 7 | Tractor for yellow Trk | 9/17/96 | 6250 | |
| sec 7 | Handmade rock for Trk | 9/19/96 | 490 | |
| 7 F | 8 Low Elk 2500 | 5/96 | 20000 | |
| 7 F | 7 Bull Elk 1750 | 5/96 | 12250 | |
| F | 3 Bull (died) 2500 ea | 1996 | 7500 | 7500 |
| R | 2 Bull (died) 1750 ea | 1996 | 3500 | 3500 |
| 7 F | Tractor | 5/96 | 2931 | |

377

156

135

105

577

2915

433

472

64

66

6957

93

55

49

375

314

43

1283

214

57

2143

770

160

1310

446

35

1429

875

419

ARKANSAS STATE CLAIMS COMMISSION

JUN 30 2011

RECEIVED

1989 Chev 10/90 13000

13 cattle died 1994 (loss not counted)

Beats farm 1994
planted in 1996

Leased farmland
Jan - Mar 2000

Hand on 12/90

1990 2500

5504
2304 elk

2711

10517

179 11000

JUL 29 2011

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION

Of the State of Arkansas

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

ANSWER AND MOTION TO DISMISS

Comes now Respondent Arkansas Game and Fish Commission ("AGFC"), by and through its undersigned counsel, and for its Answer and Motion to Dismiss Claimant's Complaint, states:

1. On July 12, 2011, Claimant served upon AGFC a Complaint, which had been filed with the Claims Commission on June 30, 2011. AGFC is the state agency charged under the Arkansas Constitution with the conservation and management of the fish and wildlife resources of the State of Arkansas. Ark. Const., Amend. 35, § 1.

2. AGFC denies each and every material allegation contained in Claimant's Complaint unless specifically admitted herein.

3. Claimant alleges his damages arose out of an incident in 1997 or 1998 after Claimant had illegally imported and harbored approximately 33 elk on his property contrary to state wildlife regulations. Thereafter, rather than make arrangements to have the elk transported out of Arkansas, Claimant apparently chose to slaughter his elk. No mention is made in Claimant's Complaint as to whether he kept and/or distributed the elk meat and parts. However, Claimant now seeks compensation from AGFC in the

exorbitant amount of \$195,358.00 representing the original purchase price of the elk (33 elk @ \$2,250.00 each totaling \$74,250.00); hay in the amount of \$43,316.00; corn in the amount of \$74,440.00; worm blocks in the amount of \$3,150.00; and, mineral blocks in the amount of \$202.00.

4. AGFC asserts that Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure based upon: (1) failure to state facts upon which relief can be granted and/or (2) Claimant's complaint was filed outside the applicable three (3) year statute of limitations.

5. AGFC affirmatively pleads in the alternative that any damages sustained by Claimant are due entirely to his own actions, as Claimant chose voluntarily to slaughter the elk rather than make suitable arrangements to remove the elk from Arkansas. No actions on the part of the AGFC or its employees resulted in any taking of the elk, and Plaintiffs' slaughter of the elk is not a compensable taking as a matter of law.

6. Arkansas courts have held that an individual's use and enjoyment of property is always subject to reasonable regulations in order to preserve the welfare of the public at large. See Winters v. State, 301 Ark. 127, 782 S.W.2d 566 (1990) (defendant's horse was required to be branded and quarantined or sold for slaughter; court held "It has already been settled in Arkansas that a police power regulation for the health and welfare of the state which requires destruction of contaminated animals is not a taking, if the regulation is an otherwise valid exercise of the police power and if there is some residual value to the owner."); Yarbrough v. Arkansas State Hwy. Comm'n, 260 Ark. 161 539 S.W.2d 419 (1976) (Regulations promulgated by the State Highway Commission for control of outdoor advertising devices along certain highways did not constitute an

unlawful taking of property without compensation); Bell v. State, 212 Ark. 337, 205 S.W.2d 714 (1947) (Arkansas Supreme Court upheld circuit court's decision ordering destruction of defendants' slot machines, which were seized as contraband subject to state statute making the keeping or exhibiting of any gaming table or gambling device a misdemeanor, punishable by fine and imprisonment).

7. Likewise, the slaughter of elk is not a compensable taking pursuant to applicable federal law either. Federal decisions from other jurisdictions involving claims by owners for property quarantined or destroyed pursuant to the police protection for public health, safety, or welfare, likewise have held that such government action is legitimate and does not result in a compensable taking. See Miller v. Schoene, 276 U.S. 272, 48 S.Ct. 246, 72 L.Ed 568 (1928) (State's destruction of claimant's red cedar trees infected with cedar rust to prevent the spread of the disease to nearby apple orchards did not result in a compensable taking under the U.S. Constitution); Wright v. U.S., 14 Cl. Ct. 819, 824 (U.S. Claims Ct. 1988) ("[W]hen acting under the state police power the destruction of diseased animals requires no compensation."); Empire Kosher Poultry, Inc. v. Hallowell, 816 F.2d 907, 915 (3d Cir. 1987) (Compensation claim under 5th Amendment for poultry losses incurred as a result of quarantine imposed to prevent disease spread denied, citing Miller as authority that government could require slaughter of infected poultry without compensation). Other jurisdictions also have upheld state quarantine measures to prevent the importation of intra-state movement of potentially diseased animals to prevent disease spreading. See Smith v. St. Louis & Southwestern Railway Co. of Texas, 181 U.S. 248, 21 S.Ct. 603, 45 L.Ed. 847 (1901) (Texas Governor's order, pursuant to state livestock regulations, imposing quarantine prohibiting

import of cattle, mules and horses from Louisiana due to anthrax infection in that state held constitutional); Pacific Northwest Venison Producers v. Smith, 20 F.3d 1008 (9th Cir. 1996) (Upholding similar elk and cervid prohibition regulations adopted in Oregon).

8. Other courts have specifically rejected similar claims asserted by elk breeding facility owners, who have challenged on constitutional grounds state regulations that prohibited breeding or releasing of elk due to disease introduction concerns. In Hagener v. Wallace, 309 Mont. 473, 47 P.3d 847 (2002), the Supreme Court of Montana was faced with an operator of an elk farm who wanted to transfer 500 elk to the Crow Indian Tribe for release into the wild on the Crow Reservation in south-central Montana. The trial court granted a preliminary and permanent injunction requested by the Montana Department of Fish, Wildlife and Parks to prevent the transfer and release of the elk. On appeal, the Montana Supreme Court affirmed, holding that the injunction was proper since the elk operator violated state law when attempting the transfer, and the injunction did not violate the Commerce Clause. The court specifically held that the Montana law, which sought to reduce the risk of spreading CWD and prevent other adverse effects upon wildlife, was a quarantine law of the type that has repeatedly been upheld against Commerce Clause challenges by the United States Supreme Court. *Id.* at 487-88, 47 P.3d at 856-57. Additionally, in Schreiner Farms, Inc. v. Smith, 87 Wash. App. 27, 940 P.2d 274 (1997), an elk breeding facility operator challenged a state regulation prohibiting possession, sale, transfer, or release of elk as an unconstitutional taking and sought \$845,714 as just compensation for its investment costs and loss of investment opportunity. The Washington Court of Appeals affirmed summary judgment granted in favor of the Washington Department of Wildlife, holding that the regulation did not go

beyond preventing a harm to provide an affirmative public benefit and did not effect a taking under the 5th Amendment. Schreiner Farms, Inc., 87 Wash. App. at 35-38, 940 P.2d at 278-80. The court specifically noted that the elk facility operator had not been deprived of all economically viable use of his property since it clearly could transport and sell its elk herd out of the state and was capable of using the ranch facility and fixtures to raise other animals.

9. Finally, Claimant's Complaint is barred by the applicable three (3) year statute of limitations as found in Ark. Code Ann. § 16-56-105. Under Arkansas law, an action to recover for injuries to property must be commenced within three (3) years after the cause of action accrues. Thomas v. Westbrook, 206 Ark. 841, 177 S.W.2d 931 (1944). The statute of limitations for property damage claims does not begin to run until plaintiff knows, or reasonably should have known, that he has suffered a remedial injury. Highland Indus. Park, Inc. v. BEI Defense Systems Co., 357 F.3d 794 (2004). Claimant alleges in his complaint that AGFC denied him a Wildlife Breeder/Dealer Permit in "1997 or 1998". Accordingly, the applicable three (3) year statute of limitations would have expired, at the very latest, in 2001.

WHEREFORE, Respondent Arkansas Game and Fish Commission prays that this Commission enter an Order dismissing Claimant's Complaint and award Respondent its costs incurred herein, and grant all additional relief to which it may be entitled.

Respectfully submitted,

ARKANSAS GAME AND FISH COMMISSION

By: 

James F. Goodhart, ABA # 92080

Robert K. Jackson, ABA #85079

Arkansas Game & Fish Commission

Legal Division

#2 Natural Resources Drive

Little Rock, AR 72205

Tele: (501) 223-6327

Fax: (501) 223-6463

Attorneys for Respondent

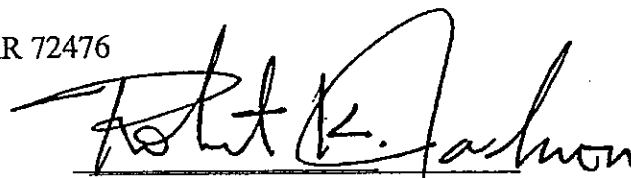
CERTIFICATE OF SERVICE

I, Robert K. Jackson, do hereby certify that on this 29th day of July, 2011, I filed the foregoing Answer and Motion to Dismiss with the Arkansas State Claims Commission and will send notification to the attorney designated below:

Larry J. Steele, Esq.

PO BOX 561

Walnut Ridge, AR 72476


Robert K. Jackson

STATE CLAIMS COMMISSION DECISION
OPINION

Amount of Claim \$ 195,358.00

Claim No. 12-0015-CC

David Charles Sherrell

Attorneys

Larry Steele, Attorney

Claimant

Claimant

vs.

AR Game & Fish Commission

James Goodhart, Attorney &

Robert K. Jackson, Attorney

Respondent

Respondent

State of Arkansas

Date Filed June 30, 2011

Type of Claim Loss of Property/ Loss of Profit/
Refund of Expenses

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss," for the reasons contained therein and for the Claimant's failure to respond. Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss," for the reasons contained therein and for the Claimant's failure to respond. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing September 16, 2011

Date of Disposition September 16, 2011

[Signature] Chairman
[Signature] Commissioner
Bill [Signature] Commissioner



Larry J. Steele PLC

ATTORNEY AT LAW
115 Abbey Road, P.O. Box 561
WALNUT RIDGE, AR 72476-0561
e-mail: steelelaw7622@sbcglobal.net

PHONE: (870) 886-5840

FAX: (870) 886-5873

CERTIFIED
RETURN RECEIPT REQUESTED
7008 3230 0000 7774 4181

December 20, 2011

Mr. Norman L. Hodges, Jr., Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201

RE: David Charles Sherrell v. Arkansas Game and Fish Commission
Claim No. 12-0015-CC

Dear Mr. Hodges:

Please accept this letter as my request to appeal the decision denying and dismissing Mr. Sherrell's claim to the Legislative Sub Committee.

Sincerely,



Larry J. Steele

LJS/jas

cc: Mr. David Sherrell

ARKANSAS STATE
CLAIMS COMMISSION

DEC 21 2011

RECEIVED

25

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

MOTION TO RECONSIDER

Comes now Claimant, David Charles Sherrell, by and through his attorney, Larry J. Steele, and for his Motion to Reconsider, states:

1. On July 12, 2011, the Arkansas State Claims Commission ("Claims Commission") served upon Respondent, Arkansas Game and Fish Commission ("AGFC"), a Complaint which was filed with the Claims Commission on June 30, 2011. AGFC is the state agency charged under the Arkansas Constitution with conservation and management of fish and wildlife resources of the State of Arkansas. Ark. Const., Amend. 35, § 1.

2. Respondent states in its Certificate of Service that it filed its Answer and Motion to Dismiss on July 29, 2011; the pleading reflects it was filed August 2, 2011.

3. Respondent states in its Certificate of Service:

"I, Robert K. Jackson, do hereby certify that on this 29th day of July, 2011, I filed the foregoing Answer and Motion to Dismiss with the Arkansas State Claims Commission and will send notification to the attorney designated below:

Larry J. Steele, Esq.
PO BOX 561
Walnut Ridge, AR 72476"

**ARKANSAS STATE
CLAIMS COMMISSION**

SEP 21 2011

RECEIVED

26

4. Neither the undersigned attorney, nor his office, ever received a copy of Respondent's Answer and Motion to Dismiss.

5. No certificate of service or affidavit has been filed, to this attorney's knowledge, stating the Answer and Motion to Dismiss was served on Claimant.

6. Claimant respectfully requests the right to respond to Respondent's Motion to Dismiss.

WHEREFORE, Claimant requests the Claims Commission enter an order granting him leave to file his response to Defendant's Motion to Dismiss.

Respectfully submitted,

LARRY J. STEELE PLC

By: Larry J. Steele
LARRY J. STEELE (78146)
P.O. Box 561
Walnut Ridge, AR 72476-0561
(870) 886-5840
(870) 886-5873 fax
email: steelelaw7622@sbcglobal.net
Attorney for Claimant

CERTIFICATE OF SERVICE

I, Larry J. Steele, hereby certify that I have faxed and mailed a copy of the foregoing MOTION TO RECONSIDER to the following by U.S. Mail, postage prepaid, this 20th day of September, 2011:

Mr. James F. Goodhart
Mr. Robert K. Jackson
Arkansas Game & Fish Commission
Legal Division
#2 Natural Resources Drive
Little Rock, AR 72205

Larry J. Steele
LARRY J. STEELE

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

**RESPONDENT'S RESPONSE TO
CLAIMANT'S MOTION TO RECONSIDER**

Comes now Respondent Arkansas Game and Fish Commission ("AGFC"), by and through its undersigned counsel, and for its Response to Claimant's Motion to Reconsider, states:

1. AGFC denies each and every material allegation contained in Claimant's Motion to Reconsider unless specifically admitted herein.
2. AGFC admits paragraph 1 of Claimant's Motion to Reconsider.
3. AGFC denies paragraph 2 of Claimant's Motion to Reconsider and asserts its Answer and Motion to Dismiss were, in fact, filed on July 29, 2011, via hand-delivery to the State Claims Commission by the undersigned counsel. See Exhibit 1 attached hereto.
4. AGFC admits paragraph 3 of Claimant's Motion to Reconsider and asserts a copy of the transmittal letter with the Answer and Motion to Dismiss was mailed to Claimant's attorney on July 29, 2011. See Exhibit 2 attached hereto.

**ARKANSAS STATE
CLAIMS COMMISSION**

SEP 27 2011

RECEIVED

5. AGFC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of Claimant's Motion to Reconsider and, therefore, denies same.

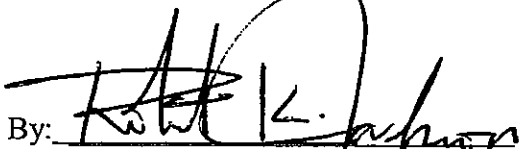
6. AGFC has no objection to allowing extra time for Claimant to file his response to AGFC's Answer and Motion to Dismiss as requested in paragraph 5 of Claimant's Motion to Reconsider.

7. Respondent adopts in its entirety and fully incorporates herein the previous Answer and Motion to Dismiss filed by AGFC on July 29, 2011.

WHEREFORE, Respondent Arkansas Game and Fish Commission prays that this Commission enter an Order dismissing Claimant's Complaint and award Respondent its costs incurred herein, and grant all additional relief to which it may be entitled.

Respectfully submitted,

ARKANSAS GAME AND FISH COMMISSION

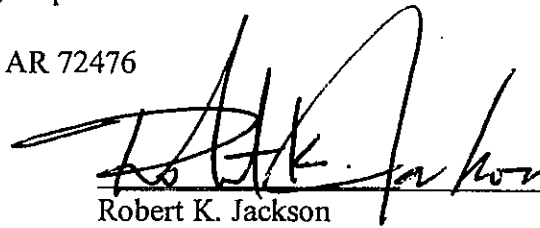
By: 
James F. Goodhart, ABA # 92080
Robert K. Jackson, ABA #85079
Arkansas Game & Fish Commission
Legal Division
#2 Natural Resources Drive
Little Rock, AR 72205
Tele: (501) 223-6327
Fax: (501) 223-6463

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Robert K. Jackson, do hereby certify that on this 27th day of September, 2011, I filed the foregoing Respondent's Response to Motion to Reconsider and will send notification to the attorney designated below:

Larry J. Steele, Esq.
PO BOX 561
Walnut Ridge, AR 72476



Robert K. Jackson

NOV 07 2011

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

CLAIMANT'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS

Comes now Claimant, David Charles Sherrell, by and through his attorney, Larry J. Steele, and submits the following as his Response to Respondent's Motion to Dismiss:

Respondent has filed its Motion to Dismiss pursuant to Ark. R. Civ. P. 12(b)(6), alleging Claimant's Complaint (1) fails to state facts upon which relief can be granted and/or (2) Claimant's Complaint was filed outside the applicable three (3) year statute of limitations.

The distinction between this motion and a motion for summary judgment is that a 12(b)(6) motion alleges the failure to state a claim, while a motion for summary judgment alleges the failure to have a claim. *Joey Brown Interest, Inc. v. Merchants National Bank*, 284 Ark. 418, 683 S.W.2d 601 (1985). A motion under Rule 12(b)(6) can be treated by the court as a motion for summary judgment if matters outside the pleading are presented to the court and not excluded by it. If such a motion is treated as a motion for summary judgment, it is improper for the court to consider allegations made in briefs and attached exhibits in ruling upon the motion, since in ruling upon a motion

for summary judgment, proper considerations are the "pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any." Rule 56(c), Ark. R. Civ. P.; *Guthrie v. Tyson Foods, Inc.*, 285 Ark. 95, 685 S.W.2d 164 (1985).

Under Arkansas law, Rule 12(b)(6) is to be read in conjunction with Rule 8(a), Ark. R. Civ. P., which requires that a pleading setting forth a claim for relief shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief, and a demand for the relief to which he considers himself entitled. Therefore, a complaint containing merely conclusions of law is properly dismissed under Rule 12(b)(6). *Thompson-Holloway Agency, Inc. v. Gribben*, 3 Ark.App. 119, 623 S.W.2d 528 (1981); *Rabalaias v. Barnett*, 284 Ark. 527, 683 S.W.2d 919 (1985); *Big A Warehouse Distributors, Inc. v. Rye Auto Supply, Inc.*, 19 Ark.App. 286, 719 S.W.2d 716 (1986). However, in testing a pleading under this rule, the facts alleged in the complaint are treated as true and are viewed in the light most favorable to the party seeking relief. *McAllister v. Forrest City Street Improvement District, No. 11*, 274 Ark. 372, 626 S.W.2d 194 (1981).

In contrast, the federal version of Rule 12(b)(6) provides for dismissal for failure to state a claim upon which relief can be granted, as opposed to a failure to state facts. For example, the Eighth Circuit Court of Appeals has held that a complaint should not be dismissed merely because the allegations of the complaint do not support the particular legal theory advanced, and the trial court is under a duty to examine the complaint to determine if the allegations provide relief on any possible theory. *Bramlet v. Wilson*, 495 F.2d 714 (8th Cir. 1974). In testing a complaint under federal Rule 12(b)(6),

the complaint should be construed favorably to the pleader, and it should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. *Wright v. Anthony*, 733 F.2d 575 (8th Cir. 1984).

Claimant's Complaint states:

My name is David Charles Sherrell. My address is 1115 Tri Lakes Road, Oxford, Arkansas 72565.

In 1995 or 1996, I purchased 33 head of Rock Mountain elk at \$2,250.00 each, for a total price of \$74,250.00. My intention was to help the state of Arkansas to replenish the elk population and establish a hunting lodge on my 420 acres. I discussed my plans with the sheriff of Izard County.

Sometime within the first year of purchasing the elk, Brian Gaskins and W.D. Whitehurst, game wardens with the Arkansas Game and Fish Commission, came to my farm and observed my elk. One of the game wardens, I believe Brian Gaskins, informed me I needed to acquire a breeder's permit from the state. No one stated I was in violation of any law, but that I did need the breeder's certificate.

In 1997 or 1998, I spoke to Mike Cartwright with the Arkansas Game and Fish Commission at his office in Calico Rock, Arkansas, about acquiring the breeder's certificate. Mr. Cartwright informed me he would check into it. Several months later, in a telephone conversation with Mr. Cartwright, he informed me the Arkansas Game and Fish Commission had decided not to issue me a breeder's certificate. No explanation was given.

Approximately five (5) years after I started my business, one of the game wardens told me the Arkansas Game and Fish Commission had passed a regulation requiring a minimum of 500 acres, with 60% dead woods, to establish an elk herd. One of the game wardens told me I could kill and sell the meat to the public, but I could not let the public hunt the elk.

In 2007 or 2008, Officer Chris Majors and Officer Ryan Warner, game wardens with the Arkansas Game and Fish Commission, told me I could be arrested for having the elk illegally. The officers informed me that all I could do with my elk was kill them for my own personal use.

I have been forced to destroy my existing elk herd.

The regulation of the Arkansas Game and Fish Commission requiring 500 acres to raise elk was and is an arbitrary number with no scientific basis which I believed was chosen to specifically eliminate me and my elk operation because the Arkansas Game and Fish Commission knew I had only 420 acres. Numerous articles have been published by the Arkansas Game and Fish Commission which state that "although elk have been back in Arkansas for almost 25 years, little scientific research has been conducted." ("Answers About Elk" by Don White, Jr., Ph.D., Mike Cartwright and Robert C. Weih, Jr., Ph.D., *Arkansas Wildlife*, November/December 2005).

At the time of the article, the above authors could not answer the question, "Which habitats are used?" *Id* at p. 11. The article continues, "Although our data will not permit us to estimate the minimum area of any vegetation type that is necessary before an area is occupied by bull elk our results will provide information about proportions of vegetation types associated with bull elk home ranged." *Id* at p. 12. "Since elk hunting season began in 1998, through the September 2005 hunt, 180 elk have been legally harvested." *Id* at p. 7.

Elk are native to Arkansas. Elk were reintroduced in 1980. Through the 2007 hunting season, 238 elk had been harvested. ("At Home in the Ozarks" by Michael Cartwright and Don White, Jr., *Arkansas Wildlife*, September/October 2008, p. 7).

Mr. Cartwright and Mr. White encourage elk production by private landowners. *Id* at p. 8. One of the stated objectives is to, "manage a limited number of elk on private land. *Id* at p. 8. The Arkansas Game and Fish Commission even has a private land elk management program with cost-share options in the program for landowners who want to improve habitat on their property for elk and other wildlife. *Id* at p. 9.

In another article, "Common Questions About Arkansas Elk," by Michael Cartwright and Don White, Jr., *Front Porch*, November/December 2008, p. 7, private elk management programs is encouraged.

Because of the Arkansas Game and Fish Commission's arbitrary treatment of my elk breeding business, I have suffered the following damages:

| | |
|--|--------------|
| 33 original elk purchased at \$2,250.00 each | \$74,250.00 |
| Hay | \$43,316.00 |
| Corn | \$74,440.00 |
| Worm blocks | \$3,150.00 |
| Mineral blocks | \$202.00 |
| TOTAL DAMAGES | \$195,358.00 |

I am requesting judgment against the Arkansas Game and Fish Commission and/or the State of Arkansas for \$195,358.00.

Claimant attempted in good faith to comply with state law by discussing his plans for his elk operation, first with the Izard County Sheriff and within the first year with the Arkansas Game & Fish Commission game wardens, Brian Gaskins and W.D. Whitehurst, who personally observed Claimant's elk. No one stated Claimant was in violation of state law.

Claimant next spoke with Mike Cartwright, Arkansas Game & Fish Commission employee, at his office in Calico Rock, Arkansas, about obtaining a breeder's certificate.

Not until 2007 or 2008, was Claimant informed he was in violation of the law, that all he could do is kill the elk for his personal use. Claimant owns 420 acres. Arkansas Game & Fish Commission regulations require 500 acres to establish an elk herd. The regulation requiring 500 acres is arbitrary at best and is not supported by scientific evidence. (See Claimant's brief in his Complaint.)

The State of Arkansas has encouraged the breeding of elk but has arbitrarily denied Claimant a right to lawfully pursue his business interest. Plaintiff was encouraged through his original contacts with Arkansas Game & Fish Commission personnel and continued his breeding operation under the impression that he would

successfully obtain the required breeder's certificate. Once informed he was in violation of the law, Claimant destroyed the elk.

Plaintiff respectfully requests compensation for his attempt to participate in Arkansas' program of reintroduction of elk to the state.

Claimant has filed his Complaint within three (3) years of being notified he was in violation of the law (believed to be in 2008). Until notification of being in violation, Claimant had hopes of receiving his breeder's certificate. But for the Arkansas Game & Fish Commission's arbitrary requirement of 500 acres, Claimant would have successfully obtained the breeder's certificate and this matter would not now be before the Commission.

Claimant appreciates the opportunity to be heard and present his case.

Respectfully submitted,

LARRY J. STEELE PLC
115 Abbey Road
P.O. Box 561
Walnut Ridge, AR 72476-0561
(870) 886-5840
(870) 886-5873 fax
email: steelelaw7622@sbcglobal.net

By: *Larry J. Steele*
LARRY J. STEELE (78146)
Attorney for Claimant

CERTIFICATE OF SERVICE

I, Larry J. Steele, hereby certify that I have mailed a copy of the foregoing CLAIMANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS to the following by U.S. Mail, postage prepaid, this 3rd day of November, 2011:

Mr. James F. Goodhart
Mr. Robert K. Jackson
Arkansas Game & Fish Commission
Legal Division
#2 Natural Resources Drive
Little Rock, AR 72205


LARRY J. STEELE

ARKANSAS STATE
CLAIMS COMMISSION

NOV 07 2011

RECEIVED

STATE CLAIMS COMMISSION DECISION
OPINION

Amount of Claim \$ 195,358.00

Claim No. 12-0015-CC

David Charles Sherrell

Attorneys

Larry Steele, Attorney

Claimant

Claimant

vs.

AR Game & Fish Commission

James Goodhart, Attorney &

Robert K. Jackson, Attorney

Respondent

Respondent

State of Arkansas

Date Filed June 30, 2011

Type of Claim Loss of Property/ Loss of Profit/
Refund of Expenses

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Claimant's "Motion for Reconsideration." Therefore, this claim will be set for hearing and the parties notified accordingly.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Claimant's "Motion for Reconsideration." Therefore, this claim will be set for hearing and the parties notified accordingly.

Date of Hearing October 20, 2011

Date of Disposition October 20, 2011

Chairman

Commissioner

Commissioner

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

**REPLY TO CLAIMANT'S RESPONSE TO ARKANSAS GAME AND FISH
COMMISSION'S MOTION TO DISMISS**

Comes now Respondent Arkansas Game and Fish Commission ("AGFC"), by and through its undersigned counsel, and for its Reply to Claimant's Response to Arkansas Game and Fish Commission's Motion to Dismiss, states:

1. Claimant's Response is nothing more than a regurgitation of the allegations contained in his Complaint. Claimant's Response contributed no new legal or factual basis to state a cause of action that is cognizable under Arkansas law and, therefore, his Complaint should be summarily dismissed by this Claims Commission for the reasons stated herein and those advanced in AGFC's Answer and Motion to Dismiss previously filed herein.

2. AGFC denies each and every material allegation contained in Claimant's Response unless specifically admitted herein.

3. Claimant alleges his damages arose out of an incident in 1997 or 1998 after Claimant had illegally imported and harbored approximately 33 elk on his property in violation of Arkansas State wildlife regulations [Emphasis Added]. Thereafter, rather than make

ARKANSAS STATE
CLAIMS COMMISSION

NOV 17 2011

RECEIVED

arrangements to have the elk transported out of Arkansas, Claimant apparently chose to voluntarily slaughter his elk. No mention is made in Claimant's Complaint as to whether he kept, sold and/or distributed the elk meat and parts. However, Claimant now seeks compensation from AGFC in the exorbitant amount of \$195,358.00 representing the original purchase price of the elk (33 elk @ \$2,250.00 each totaling \$74,250.00; hay in the amount of \$43,316.00; corn in the amount of \$74,440.00; worm blocks in the amount of \$3,150.00; and, mineral blocks in the amount of \$202.000).

4. AGFC asserts that Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure based upon: (1) failure to state facts upon which relief can be granted and/or (2) Claimant's complaint was filed outside the applicable three (3) year statute of limitations.

5. Claimant's Response concedes that any damages sustained by Claimant are due entirely to his own actions, as Claimant chose voluntarily to slaughter the elk rather than make suitable arrangements to remove the elk from Arkansas. No actions on the part of the AGFC or its employees resulted in any physical taking of the elk, and Claimant's slaughter of the elk is not a compensable taking as a matter of law.

6. Likewise, the slaughter of elk is not a compensable taking pursuant to applicable federal law. Federal decisions from other jurisdictions involving claims by owners for property quarantined or destroyed pursuant to the police protection for public health, safety, or welfare, likewise have held that such government action is legitimate and does not result in a compensable taking. See *Miller v. Schoene*, 276 U.S. 272, 48 S.Ct. 246, 72 L.Ed 568 (1928) (State's destruction of claimant's red cedar trees infected with cedar rust to prevent the spread of the disease to nearby apple orchards did not result

in a compensable taking under the U.S. Constitution); Wright v. U.S., 14 Cl. Ct. 819, 824 (U.S. Claims Ct. 1988) (“[W]hen acting under the state police power the destruction of diseased animals requires no compensation.”); Empire Kosher Poultry, Inc. v. Hallowell, 816 F.2d 907, 915 (3d Cir. 1987) (Compensation claim under 5th Amendment for poultry losses incurred as a result of quarantine imposed to prevent disease spread denied, citing *Miller* as authority that government could require slaughter of infected poultry without compensation). Other jurisdictions also have upheld state quarantine measures to prevent the importation of intra-state movement of potentially diseased animals to prevent disease spreading. See Smith v. St. Louis & Southwestern Railway Co. of Texas, 181 U.S. 248, 21 S.Ct. 603, 45 L.Ed. 847 (1901) (Texas Governor’s order, pursuant to state livestock regulations, imposing quarantine prohibiting import of cattle, mules and horses from Louisiana due to anthrax infection in that state held constitutional); Pacific Northwest Venison Producers v. Smith, 20 F.3d 1008 (9th Cir. 1996) (Upholding similar elk and cervid prohibition regulations adopted in Oregon). In the case at hand, it remains undisputed that Claimant voluntarily slaughtered his elk in lieu of facing possible AGFC Code violations.

7. Other courts have specifically rejected similar claims asserted by elk breeding facility owners, who have challenged on constitutional grounds state regulations that prohibited breeding or releasing of elk due to disease introduction concerns. In Hagener v. Wallace, 309 Mont. 473, 47 P.3d 847 (2002), the Supreme Court of Montana was faced with an operator of an elk farm who wanted to transfer 500 elk to the Crow Indian Tribe for release into the wild on the Crow Reservation in south-central Montana. The trial court granted a preliminary and permanent injunction requested by the Montana

Department of Fish, Wildlife and Parks to prevent the transfer and release of the elk. On appeal, the Montana Supreme Court affirmed, holding that the injunction was proper since the elk operator violated state law when attempting the transfer, and the injunction did not violate the Commerce Clause. The court specifically held that the Montana law, which sought to reduce the risk of spreading CWD and prevent other adverse effects upon wildlife, was a quarantine law of the type that has repeatedly been upheld against Commerce Clause challenges by the United States Supreme Court. *Id.* at 487-88, 47 P.3d at 856-57. Additionally, in Schreiner Farms, Inc. v. Smitch, 87 Wash. App. 27, 940 P.2d 274 (1997), an elk breeding facility operator challenged a state regulation prohibiting possession, sale, transfer, or release of elk as an unconstitutional taking and sought \$845,714 as just compensation for its investment costs and loss of investment opportunity. The Washington Court of Appeals affirmed summary judgment granted in favor of the Washington Department of Wildlife, holding that the regulation did not go beyond preventing a harm to provide an affirmative public benefit and did not effect a taking under the 5th Amendment. Schreiner Farms, Inc., 87 Wash. App. at 35-38, 940 P.2d at 278-80. The court specifically noted that the elk facility operator had not been deprived of all economically viable use of his property since it clearly could transport and sell its elk herd out of the state and was capable of using the ranch facility and fixtures to raise other animals.

8. Finally, Claimant's Complaint is barred by the applicable three (3) year statute of limitations as found in Ark. Code Ann. § 16-56-105. Under Arkansas law, an action to recover for injuries to property must be commenced within three (3) years after the cause of action accrues. Thomas v. Westbrook, 206 Ark. 841, 177 S.W.2d 931

(1944). The statute of limitations for property damage claims does not begin to run until plaintiff knows, or reasonably should have known, that he has suffered a remedial injury.

Highland Indus. Park, Inc. v. BEI Defense Systems Co., 357 F.3d 794 (2004). Claimant alleged in his complaint that AGFC denied him a Wildlife Breeder/Dealer Permit in "1997 or 1998". Accordingly, the applicable three (3) year statute of limitations would have expired, at the very latest, in 2001.

WHEREFORE, Respondent Arkansas Game and Fish Commission prays that this Commission enter an Order dismissing Claimant's Complaint and award Respondent its costs incurred herein, and grant all additional relief to which it may be entitled.

Respectfully submitted,

ARKANSAS GAME AND FISH COMMISSION

By: 

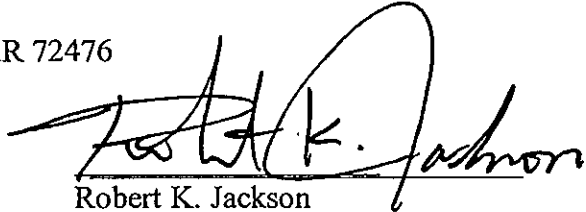
James F. Goodhart, ABA # 92080
Robert K. Jackson, ABA #85079
Arkansas Game & Fish Commission
Legal Division
#2 Natural Resources Drive
Little Rock, AR 72205
Tele: (501) 223-6327
Fax: (501) 223-6463

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Robert K. Jackson, do hereby certify that on this 17th day of November, 2011, I filed the foregoing Reply to Claimant's Response to the Arkansas Game and Fish Commission's Answer and Motion to Dismiss and have transmitted same to the attorney designated below:

Larry J. Steele, Esq.
PO BOX 561
Walnut Ridge, AR 72476


Robert K. Jackson

STATE CLAIMS COMMISSION DECREE
OPINION

Amount of Claim \$ 195,358.00 Claim No. 12-0015-CC

David Sherrell Claimant Larry J. Steele, Attorney Claimant
vs. Robert K. Jackson, Assistant Counsel
AR Game & Fish Commission Respondent James Goodhart, General Counsel Respondent
State of Arkansas

Date Filed June 30, 2011 Type of Claim Loss of property, loss of profit,
refund of expenses

FINDING OF FACTS

This claim was filed for loss of property, loss of profit, and refund of expenses in the amount of \$195,358.00 against Arkansas Game and Fish Commission.

Present at an oral arguments hearing only on Respondent's "Motion to Dismiss" December 15, 2011 was the Claimant, represented by Larry J. Steele, Attorney, and the Respondent, represented by Robert K. Jackson, Assistant Counsel.

The Claims Commission hereby unanimously grants Respondent's "Motion to Dismiss" for reasons contained therein. **Therefore, this claim is hereby unanimously denied and dismissed.**

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously denied and dismissed this claim for reasons contained therein.

Date of Hearing December 15, 2011

Date of Disposition December 15, 2011

[Signature] Chairman
[Signature] Commissioner
Bill Lancaster Commissioner

MAR 14 2013

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

DAVID CHARLES SHERRELL

CLAIMANT

VS.

NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Comes the Arkansas Game and Fish Commission (hereafter the "AGFC"), by and through its undersigned attorneys, and for its Motion for Summary Judgment seeking dismissal of the Complaint of the Claimant, David Charles Sherrell, states:

1. The evidence in this case, as shown by the pleadings, depositions, answers to interrogatories and admissions on file, and affidavits, conclusively demonstrates that there is no genuine issue of material fact and that AGFC is entitled to a judgment as a matter of law in accordance with Rule 56 of the Arkansas Rule of Civil Procedure for either of the following reasons:

- A. Claimant has failed to state a claim upon which relief can be granted because Claimant's own voluntary acts, and not any actions of AGFC, caused his alleged damages; and, alternatively,
- B. Claimant failed to exhaust all applicable administrative remedies; and, alternatively,
- C. Claimant failed to timely file his Complaint and is now barred from pursuing this claim by the applicable three (3) year statute of limitations in Ark. Code Ann. § 16-56-105; and, alternatively,
- D. Claimant's allegation that AGFC Code 15.04 was arbitrary and capricious is moot.

Accordingly, the Claimant's Complaint must be summarily dismissed. Ark. R. Civ. Proc. 56 (c).

2. AGFC attaches the following documents as exhibits to this motion:

Exhibit A – Deposition of David Sherrell;

Exhibit B – Deposition of Fern Sherrell;

Exhibit C – Affidavit of AGFC Wildlife Officer William Ryan Warner;

Exhibit D – Log Book Records of AGFC Wildlife Officer William Ryan Warner for January 12, 2007 and January 19, 2007;

Exhibit E – January 12, 2007 Incident Report prepared by AGFC Wildlife Officer William Ryan Warner;

Exhibit F – January 19, 2007 Supplementary Report prepared by AGFC Wildlife Officer William Ryan Warner;

Exhibit G – Affidavit of AGFC Wildlife Officer Jerry Smith;

Exhibit H – Affidavit of AGFC Wildlife Officer Christopher Majors;

Exhibit I – Affidavit of AGFC Wildlife Officer Brian A. Gaskins;

Exhibit J – July 14, 1999 Letter (with AGFC Regulations attached) to David Sherrell from AGFC Deer/Elk Program Coordinator Michael E. Cartwright; and

Exhibit K – AGFC Minute Order No. 00-130, dated November 16, 2000, with AGFC Captive Wildlife Regulations attached.

3. AGFC has contemporaneously filed a memorandum in support of this motion and incorporates that memorandum herein as if set out word-for-word. AGFC also incorporates by reference its previously filed Motion to Dismiss and Memorandum Brief in Support, Reply Brief, and Respondent's Additional Evidence Supporting Denial and Dismissal of Claim as if set out verbatim herein.

4. AGFC respectfully reserves the right to supplement, as necessary, its Motion for Summary Judgment prior to the hearing of this matter scheduled for April 11, 2013.

WHEREFORE, Respondent Arkansas Game and Fish Commission prays that the claim of the Claimant David Charles Sherrell, as set forth in the Complaint, be denied and that this

Commission enter judgment in favor of Respondent dismissing said Complaint, and order such other general and equitable relief as may be just and appropriate under the circumstances.

Respectfully submitted,

ARKANSAS GAME AND FISH COMMISSION

By: Christian N. Parks
James F. Goodhart, ABA #92080
John P. Marks, ABA #2003132
Jennifer R. Jameson, ABA #2007190
Christian N. Parks, ABA #2009179
Arkansas Game and Fish Commission
2 Natural Resources Drive
Little Rock, Arkansas 72205
(501) 223-6327

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion for Summary Judgment was served upon Claimant's attorney by mailing a copy thereof to him at the address below on this 14th day of March, 2013.

Mr. Larry J. Steele
Attorney at Law
P.O. Box 561
Walnut Ridge, Arkansas 72476-0561

Christian N. Parks
Christian N. Parks

MAR 14 2013

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

RESPONDENT'S PRE-HEARING MEMORANDUM
AND MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

MAY IT PLEASE THE COMMISSION:

I. Introduction

Claimant David Charles Sherrell ("Mr. Sherrell" or "Claimant") asserts that AGFC effected a taking of the elk that he purchased for the purpose of establishing a wildlife hunting resort on his land in IZARD County by (1) adopting a regulation that effectively denied him the necessary permit(s) to possess the elk and/or operate a wildlife hunting resort and (2) ordering or otherwise requiring him to destroy the elk. Accordingly, Mr. Sherrell seeks to be compensated for this alleged taking. However, AGFC is entitled to summary judgment because Mr. Sherrell: (1) failed to state facts upon which the requested relief may be granted; (2) failed to exhaust his administrative remedies; and (3) because his claims are barred by the statute of limitations. Proof of any one of these three bases merits dismissal of Claimant's Complaint.

II. Undisputed Statements of Fact

1. Mr. Sherrell purchased 420 acres of land in IZARD County, Arkansas in 1990. (See Exhibit A (Deposition of David Charles Sherrell) p. 28, lines 5-6).

2. Around 1995 and for a few years afterward, Mr. Sherrell acquired approximately 33 head of Rock Mountain Elk, allegedly for \$2,250 each, with the intent of establishing a game hunting preserve on his land and to replenish the State's elk population by selling elk from his herd. (See Complaint, p. 1, and Exhibit A, p. 44, lines 13-16).

3. Prior to purchasing the elk and transporting them to his property Mr. Sherrell did not consult with AGFC in any way about existing regulation or permitting process established concerning private elk ownership. (See Exhibit A p. 51, lines 8-18).

4. Within a year of his purchase of the elk, AGFC Wildlife Officer Gaskins observed Mr. Sherrell's herd and advised him to apply for and obtain a "breeder's permit" from AGFC. See Exhibit I (Affidavit Bryan Gaskins).

5. In 1997 or 1998, Mr. Sherrell requested information from AGFC biologist Mike Cartwright (now retired) at the AGFC Regional Office in Calico Rock, and Mr. Cartwright informed Mr. Sherrell that "he would check into it." (See Complaint, p. 1).

6. Mr. Sherrell received a letter dated July 14, 1999, and signed by Mr. Cartwright informing him that he would need to acquire a Commercial Game Breeder's Permit available from the main AGFC office in Little Rock in order to raise any elk for sale. (See Exhibit J). The letter also included information regarding the applicable codes concerning elk hunting and encouraging Mr. Sherrell to use caution in making any investment until he was able to review any upcoming regulations. (See *Id.*)

7. In November 2000, AGFC adopted AGFC Code 15.04, which restricted the issuance of Wildlife Commercial Hunting Resort Permits (but not Commercial Game Breeder's Permits) unless the permit applicant possessed 500 or more contiguous acres of high-fenced-enclosed land. (See Exhibit K).

8. In late 2000 or early 2001, Mr. Sherrell became aware of AGFC Code 15.04. (See Complaint, p. 2; Exhibit I).

9. Mr. Sherrell admits that at some point between January 1, 2000 and December 31, 2008, two AGFC Officers, one of whom was AGFC Corporal Warner, visited with Mr. Sherrell on his land in IZARD County regarding the elk. (See Complaint, p. 2).

10. On January 19, 2007, AGFC Corporal Warner filed an incident report and made a notation in his log book memorializing contact made with Mr. Sherrell on his property in IZARD County on the same date. (See Exhibits D and E).

11. The occasion that Corporal Warner and Mr. Sherrell discussed his elk on Claimant's property was the only time that Corporal Warner spoke to Mr. Sherrell about elk. (See Exhibit A, p. 36, lines 12-18).

12. The occasion that Corporal Warner and Mr. Sherrell discussed his elk on Mr. Sherrell's property was the only time that any employee, agent, or officer of AGFC spoke to Mr. Sherrell about elk on Mr. Sherrell's land since approximately one year after Mr. Sherrell began acquiring his elk in 1995. (See Exhibit A, p. 36, lines 12-18).

13. The occasion of Corporal Warner's visit to Mr. Sherrell's property was the last time that any employee, agent or officer of AGFC communicated with Mr. Sherrell about his elk. (See Exhibit A, p. 66, lines 3-7.)

14. Mr. Sherrell never applied to the AGFC for any kind of permit related to his elk. (See Exhibit A, p. 60, lines 12-15 and p. 67, lines 23-25).

15. AGFC never denied Mr. Sherrell a permit related to his elk. (See Exhibit A, p. 58, lines 4-6, p. 60, lines 16-20).

16. No employee, officer, or agent of AGFC ever cited, arrested, or threatened to do the same for Mr. Sherrell's failure to acquire the necessary permits to possess and/or sell his elk or to operate a game hunting preserve on his land. (See Exhibit A, p. 38, 19-25, p. 39, lines 1-15 and Exhibits C, G, H, and I).

17. No employee, officer, or agent of AGFC ever ordered or told Mr. Sherrell to destroy or slaughter his herd of elk. (See Exhibit A, p. 41, lines 10-12, p. 43, lines 14-16; and Exhibits C, G, H, and I).

18. Mr. Sherrell's decision to destroy his heard of elk was his own independent decision made and executed without the knowledge of the AGFC. (See Exhibit A, p. 43, lines 19-25 and Exhibits C, G, H, and I).

III. Summary Judgment Standard.

The standard for summary judgment is now well-settled. The Arkansas Supreme Court has held:

We have ceased referring to summary judgment as a drastic remedy. We now regard it simply as one of the tools in a trial court's efficiency arsenal; however, we only approve the granting of the motion when the state of the evidence as portrayed by the pleadings, affidavits, discovery responses, and admission on file is such that the nonmoving party is not entitled to a day in court, i.e., when there is not any genuine remaining issue of fact and the moving party is entitled to judgment as a matter of law.

Flentje v. First National Bank of Wynne, 340 Ark. 563, 570, 11 S.W.3d 351 (2000) (citing *Wallace v. Broyles*, 332 Ark. 189, 961 S.W.2d 712 (1998)). Once the moving party establishes that it is entitled to a prima facie entitlement to summary judgment, "... the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact." *Morgan v. Turner*, 2010 Ark. 245, 368 S.W.3d 888, 892 (2010).

Arkansas Claims Commission

MAR 14 2013

RECEIVED

52

Here, Claimant's own testimony establishes that he was not denied any right to profit from his elk herd as his own private property. In fact, the Claimant's testimony clearly demonstrates that Claimant never took any action to utilize his elk herd in any commercial way. Moreover, Claimant's testimony clearly demonstrates that any losses he incurred due to the destruction of his elk herd were the direct result of his own actions and not by any action of the AGFC. Finally, even if one were to believe the allegations of the Complaint, the evidence clearly demonstrates that this action was filed outside of the applicable statute of limitations.

IV. Discussion

A. Claimant has not suffered damages as a result of any action on the part of the Respondent.

The nexus of Claimant's Complaint is a theory of liability on the part of the State of Arkansas for the loss of his elk herd. It is not clear from the face of the Complaint specifically what cause of action the Claimant is pleading (although it appears to be a takings theory), but under any cause of action the Claimant is required to prove that some act or omission on the part of the Respondent was the cause of his damages. The undisputed facts of this case do not support any such conclusion.

Claimant purchased his elk in 1995. (See Complaint p. 1 and Exhibit A, p. 44, lines 13-16). Claimant did so without ever communicating to any employee, agent or officer of AGFC his intent to purchase elk or to use them in a commercial manner. (See Exhibit A, p. 51, lines 8-18). In his original filing Claimant alleged that he had been denied a breeder permit by AGFC. (See Complaint p. 1). However, Claimant admits that, despite the fact that he was advised by AGFC personnel to apply for a breeder permit on several occasions, he has never submitted an application for a permit from AGFC for his elk. (See Complaint p.1, ¶ 2, lines 4-5, p. 2, ¶ 1, line 4; Exhibit A, p. 41, lines 13-18, p. 56, lines 21-25, p. 57, lines 1-18, p. 59, lines 16-25, p. 60,

lines 1-15, p. 61, lines 1-4; Exhibit J; Exhibit I). Consequently AGFC has never rejected an application for any permit submitted by the Claimant. (See Exhibit A, p. 58, lines 4-6, p. 60, lines 16-20).

Claimant alleged in his Complaint that in either 2007 or 2008 he was told by AGFC employees that he could only kill his elk for his own personal use and concludes that he was "forced to destroy" his herd of elk. (See Complaint p. 2). However, Claimant admitted in his deposition neither Cpl. Warner nor the other officer who came to visit with him threatened to arrest him or to issue him a citation. (See Exhibit A, p. 38, 19-25 and p. 39, lines 1-15). All AGFC officers relevant to this matter deny that they have ever threatened Claimant or instructed him to slaughter his elk. (See Exhibits C, G, H, and I). Claimant further admitted that neither officer present on that occasion told him that he had to kill his elk. (See Exhibit A, p. 43, lines 14-16). Claimant also acknowledged that he has never received a written communication from AGFC ordering him to kill his elk. (See Exhibit A, p. 41, lines 10-12, and p. 60, lines 16-20). Furthermore, Claimant admitted that one to two months after his encounter with the officers he made his own decision to slaughter his elk herd, and that acting upon his own judgment, he proceeded into his 13-acre pen where, in one day, he shot each one of his approximately 31 elk and then buried them where they lay. (See Exhibit A, p. 29, lines 7-25, p. 30, lines 1-11, p. 31, lines 2-3, p. 41, lines 3-5, and p. 43, lines 19-22). Claimant stated that, during the time pertinent to this claim, he received no further communication of any kind from AGFC and that he did not notify AGFC of his intention to slaughter his elk nor did he inform them when he had. (See Exhibit A, p. 43, lines 23-25, and p. 44, lines 1-4).

In light of these undisputed facts, it is apparent that the Respondent neither acted nor omitted to act in any way that contributed to the destruction of the Claimant's elk herd.

Conversely, it appears from these facts that any loss suffered on the part of the Claimant was a direct result of his own decisions and actions.

B. Claimant failed to exhaust his administrative remedies.

The Arkansas Supreme Court has held that the doctrine of exhaustion of administrative remedies stands for the principal that a party is not entitled to judicial relief for an alleged or threatened injury until that party has exhausted the prescribed statutory administrative remedy. *Arkansas Prof'l Bail Bondsman Licensing Bd. v. Frawley*, 350 Ark. 444, 450, 88 S.W.3d 418, 421-22 (2002). "A basic rule of administrative procedure requires that an agency be given the opportunity to address a question before a complainant resorts to the courts." *Cummings v. Big Mac Mobile Homes, Inc.*, 335 Ark. 216, 220, 980 S.W.2d 550, 552 (1998). The Supreme Court of Arkansas has long held that a failure to exhaust administrative remedies is grounds for dismissal. *Id.*

As clearly illustrated in the arguments above, it is undisputed that Claimant never applied for any permits issued by the AGFC. Nor did the AGFC order or instruct the Claimant to destroy his elk herd; nor did it even have knowledge that Claimant intended to or had destroyed that herd. However, it appears from the allegations contained in the Complaint that the Claimant alleges that, because his property did not meet the stated minimum acreage requirements for issuance of a permit to operate a commercial wildlife hunting resort, he was "forced to destroy" his elk herd. This is simply not the case.

Leaving aside the fact that, despite being urged to do so by several AGFC employees, Claimant refused to apply for a breeder's permit which if granted would have allowed him to maintain and potentially profit from his elk herd, the Claimant had other options. If Claimant had applied for a permit to operate a commercial wildlife hunting resort---which he admittedly never

did---and his application was refused, he would have been afforded further due process by the AGFC. AGFC regulations provide in part:

Upon suspension or revocation of any license, permit, tag or stamp, denial of any application or rights attached thereto, the director, or his designated representative, shall notify the holder or applicant in writing. Any holder or applicant desiring a hearing shall notify the Commission in writing within 20 days after receipt of the suspension, revocation or denial notice. Upon receipt of the hearing request, the Commission shall appoint a hearing officer and notify the holder or applicant of the date, time and location of the hearing.

AGFC Code 01.00-L. The code continues on to state that an official record will be made of the proceedings, the parties may be represented by counsel, submit evidence on their behalf. *Id.* Additionally, at the close of the administrative hearing, the hearing officer shall "affirm, rescind, or *modify* the suspension or revocation of the license, permit, tag or stamp, or the denial of the application." AGFC Code 01.00-L (emphasis added).

Had the Claimant attempted to obtain any permit and was denied, he would then have had the right to demand such a hearing. At that hearing, the Claimant would have been granted the opportunity to plead his case based on his own facts. According to the AGFC's own regulations, it is entirely possible, although obviously not guaranteed, that the Claimant might have been granted a variance or received some other type of relief for his alleged grievance. In either case, if the Claimant were still not satisfied with the ruling of his administrative hearing, he would then still have the right the petition for a review of that ruling by the Circuit Court of Pulaski County or in the county which he resides. *Id.*

Unfortunately, Claimant chose not to avail himself of any of these administrative remedies. Instead of simply applying for either a breeder's license or a commercial wildlife hunting resort permit, the Claimant unilaterally decided to destroy his own property without ever having formally notified AGFC of his desire to obtain a permit. In doing so, the Claimant denied

himself the opportunity to be heard and the possibility to receive injunctive relief from the circuit court, as well as denied AGFC the opportunity to address his grievance and possibly provide a more amenable and less costly alternative than the one that Claimant chose for himself. Consequently, Claimant failed to exhaust all of his administrative remedies prior to unilaterally disposing of his property and seeking relief from the Claims Commission. Due to this failure, this honorable Commission should grant Respondent's Motion for Summary Judgment.

C. Claimant is barred from recovery by action of the Statute of Limitations.

1. Action for regulatory taking is barred by statute of limitations

Although Claimant has not specifically alleged that he has been subject to a regulatory taking, the information contained in his Complaint appears to suggest that he believes that the value of his Elk has been destroyed by a regulatory act of the AGFC. The time limit for commencement of actions for the taking of or damage to goods or chattel is governed by Ark. Code Ann. § 16-56-105: "All actions for taking or injuring any goods or chattels...shall be commenced within three years after the cause of action shall accrue, and not after." *Id.*; *See also Thomas v. Westbrook*, 206 Ark. 841, 177 S.W.2d 931, 932 (1944) (citing Pope's Digest of the Laws of Arkansas). The statute of limitations does not begin to run until a claimant knows, or reasonably should have known, that he has suffered a remedial injury. *Highland Indus. Park, Inc. v. BEI Def. Sys. Co.*, 357 F.3d 794, 796 (8th Cir. 2004) (interpreting the Arkansas Supreme Court's decision in *State v. Diamond Lakes Oil Co.*, 347 Ark. 618, 623, 66 S.W.3d 613, 616 (2002)).

In the Complaint, Claimant alleges that, when he purchased his elk in 1995, it was his intent to profit from his elk by operating a commercial wildlife hunting resort. (See Complaint page 1, p. 44, lines 13-16.) On November 16, 2000 (approximately 5 years after Claimant

acquired his elk), AGFC passed AGFC Code 15.04, which restricted the issuance of commercial wildlife permits to, among other requirements, persons possessing 500 or more contiguous acres of high fenced enclosed land. (See Exhibit K; Complaint p. 2). Claimant admits that he became aware of this regulation shortly after its adoption. (See Complaint, p.2). Yet, Claimant alleges that this regulation denied him the value of his elk, although he admits that he never applied for any commercial permit or engaged in commercial hunting prior to the passing of this regulation.

These undisputed facts can only lead to the conclusion that even if the passage of AGFC Code 15.04 were to have operated as to amount to a regulatory taking of the value of Claimant's elk herd as part of a commercial hunting business, his cause of action would have accrued no later than three years after the regulation in question was enacted. Given that the Claimant was aware of his cause of action by at least 2001 it is clear that the statute of limitations had run by the time he filed his Complaint with the Commission on July 12, 2011. (See Complaint p.1).

2. Action for physical taking or conversion is barred by the statute of limitations.

The Claimant alleges that due to an encounter with AGFC officer's at his home he was forced to destroy his herd of captive elk. (See Complaint p. 1). Based on the reasons and undisputed facts previously discussed above in this Memorandum, Claimant's claim should be barred by the applicable statute of limitations. See Ark. Code Ann. § 16-56-105. Even if one were to disregard the undisputed fact the no officer, agent or employee of AGFC ever ordered or instructed the Claimant to destroy his elk herd reasonable minds could not conclude that a genuine issue of fact remains as to whether the occasion wherein Claimant was visited at his home occurred within the relevant time under A.C.A. § 16-56-105.

In his Complaint, Complainant stated that in "2007 or 2008" Officers Chris Majors and Ryan Warner came to his property, and as a result of their statements, he was forced to destroy

his elk. (See Exhibit A, p. 2 ¶ 2). However, at a deposition conducted following the Legislature remanding the Commission's order dismissing the complaint as barred by the statute of limitations Claimant elaborated upon that allegation. According to his testimony at the time he signed his Complaint he was unsure of the date of that occurrence, but that he had since recollected and he was "reasonably sure" that it was in 2008. (See Exhibit A, p. 35, lines 20-25, p. 36, line 1. and p. 62, lines 4-11). Claimant testified that he based his recollection on the basis of where his wife was working at the time the event occurred and the fact that she had quit that job in 2009. (See Exhibit A, p. 62, lines 12-16, and p. 63, lines 17-23). Claimant's wife, Fern Sherrell was also deposed at that time and she corroborated Claimant's testimony stating that she recalled the event occurred in 2008 because she was thinking of quitting her job at Horseshoe Bend Clinic where she worked from 2006 until 2009. (See Exhibit B (Deposition of Fern Sherrell) p. 8, lines 4-12).

Claimant further refined his recollections in his deposition testimony recalling that the occasion of the officer's visit was in July or August of 2008 due to the fact that he recalled it being hot outside. (See Exhibit A, p. 63, lines 3-11). Upon further questioning, Claimant conceded that it could have also occurred in June due to the fact that it is also often warm in June. (See Exhibit A, p. 63, lines 12-16). Claimant further based his recollection at the deposition by presenting an affidavit executed two days prior by a former employee of his, Eugene Bull, who stated that he was present at the meeting of Claimant and the AGFC officers and that event occurred in July or August of 2008. (See Exhibit A, p. 6, lines 17-23, p. 7, lines 1-22, p. 22, lines 2-7).

Claimant also has testified that the occasion of Cpl. Warner's visit to Claimant's property was the last time that any employee, agent or officer of AGFC communicated with Claimant

about his elk. (See Exhibit A, p. 66, lines 3-7). Additionally, it is also undisputed that the Occasion of Cpl. Warner's visit was the only time that Claimant spoke to an employee, agent or officer of AGFC on Claimant's property. (See Exhibit A, p. 64, lines 23-25).

Contrary to Claimant's new-found recollections, Officer Christopher Majors will testify that he has never interacted with the Claimant and to the best of his knowledge has never interacted with him. (See Exhibit H). Cpl. Warner will testify that on January 19, 2007 he, accompanied by AGFC Lieutenant Jerry Smith, visited the Claimant at his (the Claimant's) residence to gather information about Claimant's captive elk herd. Cpl. Warner has also sworn that the incident in question is the only occasion on which he has ever spoke to Claimant at his property. (See Exhibit C). Lt. Smith's recollection corroborates those of Cpl. Warner. (See Exhibit G). Additionally, on January 19, 2007, Cpl. Warner submitted an incident report to his superior officer reporting his interaction with Claimant at the Claimant's property. (See Exhibit E). Cpl. Warner also contemporaneously recorded his visit to Claimant's property on the January 19, 2007, in his official log book, just as he had on January 12, 2007, when he had previously visited the property in an unsuccessful attempt to make contact with the Claimant. (See Exhibit D).

In light of the evidence presented, it seems clear that there is not a genuine issue of fact remaining as to when the AGFC Officers discussed the Elk on Mr. Sherrell's property. Mr. Sherrell's vacillating recollection of the date of the occurrence was formed after Respondent's Motion to Dismiss and are based on the unverifiable memory of another person. Respondent's evidence clearly documents that an encounter between Cpl. Warner and Mr. Sherrell occurred on January 19, 2007. When this evidence is viewed in light of Mr. Sherrell's on testimony that there was only one encounter between himself and Cpl. Warner or any other employee of AGFC

during the timeperiod pertinent to Mr. Sherrell's claim, it becomes apparent that the documented encounter of January 19, 2007, is the accurate date from which the applicable statute of limitations should run. Resultantly, Mr. Sherrell's claim is barred and this Honorable Commission should grant Respondent's motion to dismiss.

D. Claimant's allegation that AGFC Code 15.04 was arbitrary and capricious is moot.

The Arkansas Supreme Court has held that as a general rule courts of this state will not review any issue that is moot because to do so would result in the issuance of advisory opinions. *Warren Wholesale Co., Inc. v. McLane Co., Inc.*, 374 Ark. 171, 174, 286 S.W.3d 709, 711 (2008). "A case becomes moot when any judgment rendered would have no practical legal effect upon a then-existing legal controversy." *Honeycutt v. Foster*, 371 Ark. 545, 548, 268 S.W.3d 875, 878 (2007). In Arkansas there are two recognized exceptions to the mootness doctrine. The first exception occurs when an issue is capable of repetition but has evaded review, and the second concerns issues that raise a substantial public interest which, if addressed, would prevent future litigation. *Id.*

In the Complaint, Claimant alleges that the requirements for a commercial wildlife hunting resort were arbitrary and were chosen to specifically prevent him from obtaining such a license. In light of the facts discussed above in this Memorandum, these allegations are clearly baseless. Primarily, because aside from a few requests for information that Claimant made to AGFC personnel working at the Calico Rock Regional office, Claimant admittedly made absolutely no effort to formally notify Respondent that he desired to obtain a commercial wildlife hunting permit. (See Exhibit A, p. 41, lines 13-18, p. 56, lines 21-25, p. 57, lines 1-18, p. 59, lines 16-25, p. 60, lines 1-15, and p. 61, lines 1-4). Respondent concedes that Claimant apparently did ask AGFC employee Mike Cartwright for information about commercial

licensing concerning captive elk. However, it is also undisputed that AGFC personnel provided this information to him in writing and Respondent chose not to utilize it by submitting an application for a permit. (See Exhibit J). Additionally, Claimant failed to avail himself of the opportunity to have any of his opinions in opposition to the regulation be heard at the public committee meeting at which the proposed regulation was discussed. (See Exhibit A, p. 72, lines 17-20).

Unfortunately, due to many of the same facts discussed above on Claimant's failure to exhaust his administrative remedies, none of the above facts need to be applied in an analysis of whether Respondent's permit requirements were arbitrary or capricious. As discussed above, if Claimant felt that the regulations in question were arbitrary, he should have applied for a permit, requested an administrative hearing if his application was rejected, and then petitioned the Circuit Court for relief on those grounds. Instead of doing any of those things, Claimant independently and unilaterally elected to destroy his elk without notifying or receiving any such instruction from Respondent. Consequently, any ruling that the regulation was arbitrary and capricious would currently have no practical effect on Claimant because he voluntarily chose to destroy his property prior to instituting any legal action.

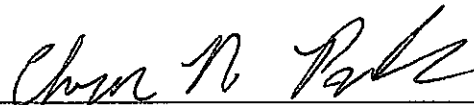
Additionally, neither exception to the mootness doctrine is applicable to this matter. This matter does not involve an issue capable of repetition nor does it involve a matter of substantial interest that may prevent future litigation if resolved here. This is necessarily so due to the fact that AGFC no longer issues commercial wildlife hunting resort permits to *any* facility for the hunting of any member of the Family Cervidea that has not been continuously permitted and operated since that date. Code Ark. R. 002 (emphasis added). For the above stated reasons, this honorable Commission should dismiss Complainant's claim due to mootness.

E. Conclusion

Mr. Sherrell's own testimony has sealed his fate. He admits that he never applied for any permit from AGFC. He admits that no employee, agent or officer of AGFC ever instructed or ordered him to destroy his elk. Furthermore, he admits that the decision to destroy his elk herd was his own and done without any knowledge on the part of AGFC. Given these admissions, it is clear that the Respondent is not the cause for any of Mr. Sherrell's alleged damages. In addition, Mr. Sherrell failed to exhaust any of the administrative remedies available to him, and because he chose to destroy his elk rather than pursue those remedies, he should be barred from seeking recovery now. Further, even if Mr. Sherrell could show that AGFC is the cause of his alleged damage and that he exhausted all available administrative remedies, the statute of limitations bars any theory of recovery that Mr. Sherrell could conceivably allege. Finally, any claim based on the allegation that AGFC Code 15.04 was arbitrary is clearly moot. Mr. Sherrell chose not to avail himself of administrative remedies or to challenge the statute and instead slaughtered his elk. Because Mr. Sherrell no longer possesses elk and AGFC no longer issues permits under Code 15.04, the regulation is moot as it applies to him and the public at large. For the above described reasons, AGFC requests that the Commission to dismiss David Sherrell's claim in its entirety and for such relief to which the respondent is entitled.

Respectfully submitted,

ARKANSAS GAME AND FISH COMMISSION

By: 

James F. Goodhart, ABA #92080

John P. Marks, ABA #2003132

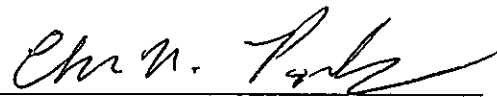
Jennifer R. Jameson, ABA #2007190
Christian N. Parks, ABA #2009179
Arkansas Game & Fish Commission
2 Natural Resources Drive
Little Rock, AR 72205
Tele: (501) 223-6327
Fax: (501) 223-6463

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion for Summary Judgment was served upon Claimant's attorney by mailing a copy thereof to him at the address below on this 14th day of March, 2013.

Mr. Larry J. Steele
Attorney at Law
P.O. Box 561
Walnut Ridge, Arkansas 72476-0561



Christian N. Parks

APR 29 2013

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

CLAIMANT'S RESPONSE TO
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Comes Claimant, David Charles Sherrell ("Sherrell"), by and through his attorney, Larry J. Steele, and for his Response to Respondent's Motion for Summary Judgment, states:

1. This matter is once again before the Claims Commission as a result of the Legislative Committee's vote to return the matter for the taking of testimony. Therefore, any motion to dismiss or for summary judgment is res judicata and moot.

2. Respondent's pleading entitled Respondent's Motion for Summary Judgment is a hybrid Ark. R. Civ. Pro. 12 motion for judgment as a matter of law and Ark. R. Civ. Pro. 56 motion for summary judgment.

3. Arkansas Game & Fish Commission's ("AGFC") acts over a period of thirteen years, 1995 to 2008, led Claimant Sherrell to rely on its tacit approval of his elk business.

4. Claimant exhausted all applicable administrative remedies. Only after thirteen (13) years was Claimant informed he could be arrested for possessing the elk.

5. Admittedly, Claimant never formerly filled out an application, but he went through proper channels, Mr. Cartwright of the AGFC, to acquire a breeder's certificate.

6. Claimant filed his Complaint within the three-year statute of limitation in Ark. Code Ann. § 16-56-105; AGFC documents, affidavits on the eve of the case being determined, are the only evidence contradicting Claimant.

7. AGFC Code 15.04 is arbitrary and capricious pursuant to AGFC's own articles on the subject written by AGFC officials.

8. Based on AGFC affidavits a material issue of genuine fact exists as a matter of law.

9. In support of his Response to Respondent's Motion for Summary Judgment, Claimant relies on his Statement of Material Facts in Dispute, his Brief in Support of this Response to Respondent's Motion for Summary Judgment, and on the following pleadings and documents:

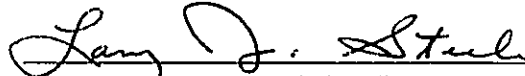
- (1) Complaint
- (2) Deposition of David Charles Sherrell
- (3) Deposition of Fern Sherrell
- (4) Affidavit of David Charles Sherrell
- (5) Letter of Michael Cartwright dated July 14, 1999
- (6) Tax returns for 2006, 2007 and 2008

WHEREFORE, Claimant prays that Respondent's Motion for Summary Judgment be dismissed and for judgment as prayed in his Complaint.

Respectfully submitted,

LARRY J. STEELE PLC

By:



LARRY J. STEELE (78146)

115 Abbey Road

P.O. Box 561

Walnut Ridge, AR 72476-0561

(870) 886-5840

(870) 886-5873 fax

email: steelelaw7622@sbcglobal.net

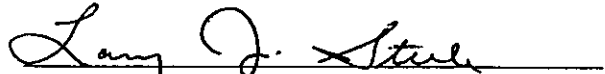
Attorney for Claimant,

David Charles Sherrell

CERTIFICATE OF SERVICE

I, Larry J. Steele, hereby certify that a copy of the foregoing CLAIMANT'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, was faxed April 19, 2013, and mailed by U.S. Mail, postage prepaid, this 24th day of April, 2013, to the following:

Mr. James F. Goodhart
Arkansas Game & Fish Commission
Legal Division
#2 Natural Resources Drive
Little Rock, AR 72205


LARRY J. STEELE

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☒ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

David Charles Sherrell, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. _____

Date Filed _____
(Month) (Day) (Year)

Amount of Claim \$ _____

Fund _____

COMPLAINT

David Charles Sherrell, the above named Claimant, of 1115 Tri Lakes Road, Oxford
(Name) (Street or R.F.D. & No.) (City)

AR 72565 870-373-0999 County of Izard, represented by Larry J. Steele, Attorney at Law
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claimant)

of P.O. Box 561, Walnut Ridge, AR 72476 870-886-5840 870-886-5873 says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Game and Fish Commission Amount sought: \$195,358.00

Month, day, year and place of incident or service: 1995 to present

Explanation: My name is David Charles Sherrell. My address is 1115 Tri Lakes Road, Oxford, Arkansas 72565. In 1995 or 1996, I purchased 33 head of Rocky Mountain elk at \$2,250.00 each, for a total price of \$74,250.00. My intention was to help the state of Arkansas to replenish the elk population and establish a hunting lodge on my 420 acres. I discussed my plans with the Izard County Sheriff.

Sometime within the first year of purchasing the elk, Brian Gaskins and W.D. Whitehurst, game wardens with the Arkansas Game and Fish Commission, came to my farm and observed my elk. One of the game wardens, I believe Brian Gaskins, informed me I needed to acquire a breeder's permit from the state. No one stated I was in violation of any law, but that I did need the breeder's certificate.

In 1997 or 1998, I spoke to Mike Cartwright with the Arkansas Game and Fish Commission at his office in Calico Rock, Arkansas, about acquiring the breeder's certificate. Mr. Cartwright informed me he would check into it. Several months later, in a telephone conversation with Mr. Cartwright, he informed me the Arkansas Game and Fish Commission had decided not to issue me a breeder's certificate. No explanation was given.*

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

No ; when? ; to whom? ; and that the following action was taken thereon: (Department)

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? No ; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

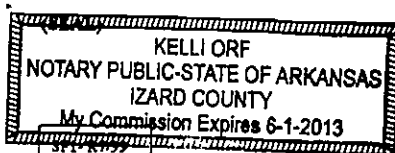
and that the nature thereof is as follows: ; and was acquired on ; in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

David C. Sherrell
(Print Claimant/Representative Name)

David C. Sherrell
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Brockwell AR
(City) (State)



on this 9-8-10 8th day of September 2010
(Date) (Month) (Year)

(Notary Public)

My Commission Expires: 6 1 2013
(Month) (Day) (Year)

*continued on attached pages

Approximately five (5) years after I started my business, one of the game wardens told me the Arkansas Game and Fish Commission had passed a regulation requiring a minimum of 500 acres, with 60% dead woods, to establish an elk herd. One of the game wardens told me I could kill and sell the meat to the public, but I could not let the public hunt the elk.

In 2007 or 2008, Officer Chris Majors and Officer Ryan Warner, game wardens with the Arkansas Game and Fish Commission, told me I could be arrested for having the elk illegally. The officers informed me that all I could do with my elk was kill them for my own personal use.

I have been forced to destroy my existing elk herd.

The regulation of the Arkansas Game and Fish Commission requiring 500 acres to raise elk was and is an arbitrary number with no scientific basis which I believed was chosen to specifically eliminate me and my elk operation because the Arkansas Game and Fish Commission knew I had only 420 acres. Numerous articles have been published by the Arkansas Game and Fish Commission which state that "although elk have been back in Arkansas for almost 25 years, little scientific research has been conducted." ("Answers About Elk" by Don White, Jr., Ph.D., Mike Cartwright and Robert C. Weih, Jr., Ph.D., *Arkansas Wildlife*, November/December 2005).

At the time of the article, the above authors could not answer the question, "Which habitats are used?" *Id* at p. 11. The article continues, "Although our data will not permit us to estimate the minimum area of any vegetation type that is necessary before an area is occupied by bull elk our results will provide information about proportions of vegetation types associated with bull elk home ranged." *Id* at p. 12. "Since elk hunting season began in 1998, through the September 2005 hunt, 180 elk have been legally harvested." *Id* at p. 7.

Elk are native to Arkansas. Elk were reintroduced in 1980. Through the 2007 hunting season, 238 elk had been harvested. ("At Home in the Ozarks" by Michael Cartwright and Don White, Jr., *Arkansas Wildlife*, September/October 2008, p. 7).

Mr. Cartwright and Mr. White encourage elk production by private landowners. *Id* at p. 8. One of the stated objectives is to "manage a limited number of elk on private land. *Id* at p. 8. The Arkansas Game and Fish Commission even has a private land elk management program with cost-share options in the program for landowners who want to improve habitat on their property for elk and other wildlife. *Id* at p. 9.

In another article, "Common Questions About Arkansas Elk," by Michael Cartwright and Don White, Jr., *Front Porch*, November/December 2008, p. 7, private elk management programs is encouraged.

Because of the Arkansas Game and Fish Commission's arbitrary treatment of my elk breeding business, I have suffered the following damages:

| | |
|--|--------------|
| 33 original elk purchased at \$2,250.00 each | \$74,250.00 |
| Hay | \$43,316.00 |
| Corn | \$74,440.00 |
| Worm blocks | \$3,150.00 |
| Mineral blocks | \$202.00 |
| TOTAL DAMAGES | \$195,358.00 |

I am requesting judgment against the Arkansas Game and Fish Commission and/or the State of Arkansas for \$195,358.00.

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

AFFIDAVIT

I am David Charles Sherrell, Claimant in this matter. I am over the age of eighteen (18). I affirmatively state that I have never met Jerry Smith and have no idea who he is. As I testified previously, under oath, Ryan Warner and Chris Majors visited my farm and viewed my elk herd in the hot part of the summer of 2008. I strongly dispute that Ryan Warner and Jerry Smith discussed with me on January 19, 2007 my elk herd and AGFC regulations.

I have read the affidavit of William Ryan Warner (Exhibit C dated February 8, 2013, and attached Exhibits D, E and F), the affidavit of Jerry Smith (Exhibit G dated February 12, 2013), and the affidavit of Christopher Majors (Exhibit H dated February 26, 2013), which are attached to the AGFC's Motion for Summary Judgment and dispute their allegations that I met with Ryan Warner and Jerry Smith on or about January 19, 2007.

I repeat my statement, under oath, that I met Ryan Warner and Chris Majors in the summer months of 2008 when they discussed the AGFC regulations concerning elk.

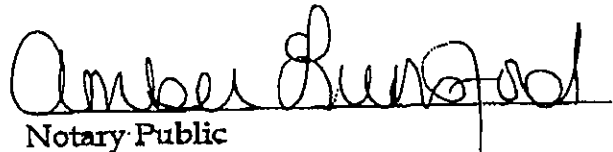

David Charles Sherrell



ACKNOWLEDGMENT

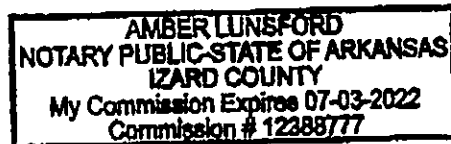
STATE OF ARKANSAS)
)ss
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me, a Notary Public, this 17 day of April, 2013.


Notary Public

My Commission Expires:

07-03-2022



Arkansas Game & Fish Commission

2 Natural Resources Drive Little Rock, Arkansas 72205

Scott Henderson
Assistant Director



Steve N. Wilson
Director

Scott Yalch
Assistant Director

July 14, 1999

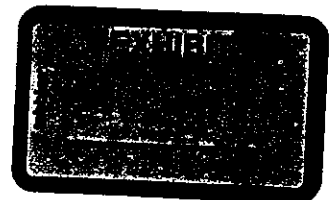
Mr. David Sherrill
P.O. Box 57
Brockwell, AR 72517

Dear Mr. Sherrill:

I have checked with our legal counsel in Little Rock, Mr. Jim Goodhart, regarding your request for information on Arkansas regulations pertaining to hunting elk within an enclosure. Mr. Goodhart advised that you would need a Commercial Game Breeder's Permit from the Commission (available from the main AFGC office in Little Rock) to raise for sale any elk in accordance with Commission Code 15.01 (Commercial Game Breeder's Permit Requirements - see attachment).

Our Commission Code 18.16 (Taking of Elk Prohibited - see attachment) specifies that it shall be unlawful to take, attempt to take, or possess an elk or any part thereof at any time with the following exceptions: 1) when legally obtained outside the state and accompanied by verification; 2) in compliance with Commission Code 02.21, Elk Hunting Season (see attachment). It is lawful to possess elk so long as the elk have been obtained from outside the state and accompanied by written verification. The Commission interprets Code 18.16 to require that any taking or attempt to take such elk by means of hunting must also take place in compliance with Commission Code 02.21, which specifies the open seasons for elk hunting.

The Commission currently has no regulations specifying requirements for high fence enclosures or restricting private permitted game breeders from raffling or auctioning the animals that they raise. A private game preserve work group composed of Commission staff and chaired by Mr. Goodhart is presently looking into game farming and is expected to propose regulations within the next six months which could affect the




Mr. David Sherrill

July 14, 1999

Page 2

requirements for private game breeding and hunting, possibly including fence enclosure requirements. Currently, there is no way to guarantee that any investment made at this time will necessarily satisfy any future regulations. At present, you can take any action you choose regarding enclosures. Mr. Goodhart advised that you might consider delaying any planned action until after you have an opportunity to review the anticipated regulations if you want to be certain that your plans will conform to any new requirements. Hopefully this information is of some help to you in making future decisions regarding your captive elk herd.

Cordially,



Michael E. Cartwright

Deer/Elk Program Coordinator

MC: mcr

Attachments

cc: Mr. Steve N. Wilson
Mr. Scott Henderson
Mr. Scott Yaich
Mr. Donnie Harris
Mr. Don McKenzie
Mr. Bob Conley
Mr. Jim Goodhart
Mr. Loren Hitchcock
Mr. Brian Gaskins
Mr. Y.D. Whitehurst
Mr. John Crisman
Mr. Jim Hinkle
Elk Committee
Private Game Preserves Work Group
File

- (4) An alligator may be possessed for display and educational purposes pursuant to written permit issued by the Commission Chief of Wildlife Management.

PENALTY: \$500.00 to \$1,000.00, and suspension of hunting and fishing privileges may be imposed in accordance with Code 11.05, Revocation of Privileges. Equipment used in such violations (including but not limited to killing devices and lights) may be confiscated by the court, forfeited to the State, and disposed of according to law.

18.15
03-90

TAKING OF MOUNTAIN LION PROHIBITED.

It shall be unlawful to take, attempt to take, or possess a mountain lion, cougar, or panther (*Felis concolor*) at any time.

EXCEPTION:

- (1) When legally obtained and accompanied by verification and in accordance with USDA regulations.

PENALTY: \$100.00 to \$1,000.00.

18.16
02-81/04-98

TAKING OF ELK PROHIBITED. It shall be unlawful to take, attempt to take, or possess an elk or any part thereof at any time.

EXCEPTION:

- (1) When legally obtained outside the state and accompanied by verification.
- (2) In compliance with Commission Code 02.21, Elk Hunting Season..

PENALTY: Not less than \$5,000.00.

18.17
02-98

WILDLIFE PET RESTRICTIONS. It shall be unlawful to take or attempt to take by any method other than by hands and possess alive any wildlife species other than six (6) each of the animals specified herein, and the sale, purchase, barter, or transporting of such animals from the state or the progeny thereof is prohibited.

- (A) Bobcat, coyote, deer, gray fox, red fox, opossum, quail, rabbit, raccoon and squirrel.
- (B) Any native nongame wildlife excluding birds, bats, alligator snapping turtles, ornate box turtles, hellbenders, troglodytic (cave-dwelling) species or those animals defined as endangered species.

EXCEPTION:

- (1) Wildlife exchanged with other states by the Commission.

PENALTY: \$100.00 to \$1,000.00.

18.18
07-80

WATERFOWL HUNTING RESTRICTIONS ON LAKES HARRIS

BRAKE, HAMILTON. It shall be unlawful to take or attempt to take any migratory waterfowl from any watercraft or other floating device on Lake Hamilton in Garland County and Harris Brake Lake in Perry County.

PENALTY: \$100.00 to \$1,000.00.

Section 15.00 Game Breeders

- 15.01 Commercial Game Breeder's Permit Requirements.
- 15.02 Commercial Game Breeder's Report Requirements.
- 15.03 Commercial Wildlife Shipping Requirements.
- 15.04 Special Commercial Quail Permit Requirements.
- 15.05 Commercial Nongame Breeder's Permit Requirements.
- 15.06 Commercial Nongame Breeder's report requirements.

- 15.01**
03-90 **COMMERCIAL GAME BREEDER'S PERMIT REQUIREMENTS.** It shall be unlawful to raise for sale any fur-bearing animals, game animals, game birds, or bullfrogs, or for bullfrogs to be kept or reared in other than escape-proof pens without first obtaining a Commercial Game Breeder's Permit from the Commission. Such permits may be granted in accordance with Commission requirements which include that the applicant must supply satisfactory evidence that stock will be secured from a legal source other than the wild stock of the state, a bill of sale must be maintained on all stock purchased and sold; and applicable USDA permits must be obtained.
PENALTY: \$100.00 to \$1,000.00. Second offense, penalty not less than \$500.00.
- 15.02**
07-80 **GAME BREEDER'S REPORT REQUIREMENTS.** It shall be unlawful for game breeders to fail to mail or deliver to the Commission on the first of each month an itemized inventory of all species covered under Commercial Game Breeder's Permit.
PENALTY: \$100.00 to \$1,000.00. Second offense, penalty not less than \$500.00.
- 15.03**
07-80 **COMMERCIAL WILDLIFE SHIPPING REQUIREMENTS.** It shall be unlawful to ship species possessed under Commercial Game Breeder's Permit or Commercial Nongame Breeder's Permit without label indicating contents, consignor, consignee and shipper's permit number.
PENALTY: \$100.00 to \$1,000.00.
- 15.04**
07-80 **SPECIAL COMMERCIAL QUAIL PERMIT REQUIREMENTS.** It shall be unlawful to engage in the business of selling or offering for sale the dressed carcass of pen-raised quail without first obtaining a Special Commercial Quail Permit and stamp in addition to a Commercial Game Breeder's Permit. (Ref: Section 01.00-C "Pen-Raised Quail"). It is further provided that:
(1) Quail must be killed by means other than shot;
(2) Each dressed carcass must be stamped with special stamp with permit number prior to selling or offering for sale.
PENALTY: \$100.00 to \$1,000.00.

02.20

04-98

HUNTING BEAR OVER BAIT PROHIBITED. It shall be unlawful to take or attempt to take bear by hunting on or over a baited area. Bait is considered any substance that may be an attractant.
PENALTY: \$100.00 to \$1,000.00.

02.21

04-98

ELK HUNTING SEASON. It shall be unlawful to take, attempt to take, or possess elk other than during the open seasons as specified herein:

September 21-25, 1998. No dogs. Four bull permits (valid in elk zones 1 and 4), 2 bull permits (valid in elk zones 2 and 4), 1 bull permit (valid in elk zones 3 and 4).

December 7-11, 1998. No dogs. One bull permit (valid in elk zones 1 and 4), 1 bull permit (valid in elk zones 2 and 4), 1 bull permit (valid in elk zones 3 and 4), 3 antlerless permits (valid in elk zone 1), 1 antlerless permit (valid in elk zone 2), and 1 antlerless permit (valid in elk zone 3).

September 21-25, 1998 and December 7-11, 1998. No dogs. Five antlerless permits will be valid for use in elk zone 4.

EXCEPTION:

- (1) When legally obtained outside the state and accompanied by verification.

PENALTY: Not less than \$5,000.00.

Form 1040

Department of the Treasury — Internal Revenue Service

U.S. Individual Income Tax Return 2006

(99) IRS Use Only — Do not write or staple in this space.

Label
(See instructions.)Use the
IRS label.
Otherwise,
please print
or type.Presidential
Election
Campaign

| | | | | |
|---|----|--------------|---------------------------------|-------------------|
| For the year Jan 1 - Dec 31, 2006, or other tax year beginning | | 2006, ending | 20 | OMB No. 1545-0074 |
| Your first name | MI | Last name | Your social security number | |
| David | | Sherrell | | |
| If a joint return, spouse's first name | MI | Last name | Spouse's social security number | |
| Fern | | Sherrell | | |
| Home address (number and street). If you have a P.O. box, see instructions. | | | Apartment no. | |
| HC 82 Box 61 | | | | |
| City, town or post office. If you have a foreign address, see instructions. | | | State | ZIP code |
| Oxford | | | AR | 72565 |
| Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions) <input type="checkbox"/> You <input type="checkbox"/> Spouse | | | | |

Filing Status

Check only
one box.

- 1 ☐ Single
- 2 ☒ Married filing jointly (even if only one had income)
- 3 ☐ Married filing separately. Enter spouse's SSN above & full name here . . . ▶
- 4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here . . . ▶
- 5 ☐ Qualifying widow(er) with dependent child (see instructions)

Exemptions

If more than
four dependents,
see instructions.

| | | | | |
|---|-----------|--|-------------------------------------|---|
| 6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a | | | | Boxes checked on 6a and 6b |
| b <input checked="" type="checkbox"/> Spouse | | | | 2 |
| c Dependents: | | (2) Dependent's social security number | (3) Dependent's relationship to you | (4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see instrs) |
| (1) First name | Last name | | | |
| | | | | |
| | | | | |
| | | | | |
| d Total number of exemptions claimed | | | | 2 |

Income

Attach Form(s)
W-2 here. Also
attach Forms
W-2G and 1099-R
if tax was withheld.If you did not
get a W-2,
see instructions.Enclose, but do
not attach, any
payment. Also,
please use
Form 1040-V.

| | | |
|--|---|----------|
| 7 Wages, salaries, tips, etc. Attach Form(s) W-2 | 7 | 76,947. |
| 8a Taxable interest. Attach Schedule B if required | 8a | 82. |
| b Tax-exempt interest. Do not include on line 8a | 8b | |
| 9a Ordinary dividends. Attach Schedule B if required | 9a | |
| b Qualified dividends (see instrs) | 9b | |
| 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) | 10 | |
| 11 Alimony received | 11 | |
| 12 Business income or (loss). Attach Schedule C or C-EZ | 12 | -12,061. |
| 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here <input type="checkbox"/> | 13 | 8,250. |
| 14 Other gains or (losses). Attach Form 4797 | 14 | |
| 15a IRA distributions 15a | b Taxable amount (see instrs) 15b | |
| 16a Pensions and annuities 16a | b Taxable amount (see instrs) 16b | |
| 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E | 17 | 3,000. |
| 18 Farm income or (loss). Attach Schedule F | 18 | -50,874. |
| 19 Unemployment compensation | 19 | |
| 20a Social security benefits 20a | b Taxable amount (see instrs) 20b | |
| 21 Other income | 21 | |
| 22 Add the amounts in the far right column for lines 7 through 21. This is your total income | 22 | 25,344. |

Adjusted
Gross
Income

| | | |
|---|-----|---------|
| 23 Archer MSA deduction. Attach Form 8853 | 23 | |
| 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ | 24 | |
| 25 Health savings account deduction. Attach Form 8889 | 25 | |
| 26 Moving expenses. Attach Form 3903 | 26 | |
| 27 One-half of self-employment tax. Attach Schedule SE | 27 | |
| 28 Self-employed SEP, SIMPLE, and qualified plans | 28 | |
| 29 Self-employed health insurance deduction (see instructions) | 29 | |
| 30 Penalty on early withdrawal of savings | 30 | |
| 31a Alimony paid b Recipient's SSN | 31a | |
| 32 IRA deduction (see instructions) | 32 | 250. |
| 33 Student loan interest deduction (see instructions) | 33 | 800. |
| 34 Jury duty pay you gave to your employer | 34 | |
| 35 Domestic production activities deduction. Attach Form 8803 | 35 | |
| 36 Add lines 23 - 31a and 32 - 35 | 36 | 1,050. |
| 37 Subtract line 36 from line 22. This is your adjusted gross income | 37 | 24,294. |

Tax and Credits**Standard Deduction for —**

• People who checked any box on line 39a or 39b or who can be claimed as a dependent, see instructions.

• All others:

Single or Married filing separately, \$5,150

Married filing jointly or Qualifying widow(er), \$10,300

Head of household, \$7,550

| | | | |
|-----|--|----|---------|
| 38 | Amount from line 37 (adjusted gross income) | 38 | 24,294. |
| 39a | Check if: <input type="checkbox"/> You were born before January 2, 1942, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1942, <input type="checkbox"/> Blind. Total boxes checked 39a | | |
| | b If your spouse itemizes on a separate return, or you were a dual-status alien, see instrs and ck here 39b | | |
| 40 | Itemized deductions (from Schedule A) or your standard deduction (see left margin) | 40 | 10,990. |
| 41 | Subtract line 40 from line 38 | 41 | 13,304. |
| 42 | If line 38 is over \$112,875, or you provided housing to a person displaced by Hurricane Katrina, see instructions. Otherwise, multiply \$3,300 by the total number of exemptions claimed on line 6d | 42 | 6,600. |
| 43 | Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- | 43 | 6,704. |
| 44 | Tax (see instrs). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 | 44 | 503. |
| 45 | Alternative minimum tax (see instructions). Attach Form 6251 | 45 | 0. |
| 46 | Add lines 44 and 45 | 46 | 503. |
| 47 | Foreign tax credit. Attach Form 1116 if required | 47 | |
| 48 | Credit for child and dependent care expenses. Attach Form 2441 | 48 | |
| 49 | Credit for the elderly or the disabled. Attach Schedule R | 49 | |
| 50 | Education credits. Attach Form 8863 | 50 | |
| 51 | Retirement savings contributions credit. Attach Form 8880 | 51 | 503. |
| 52 | Residential energy credits. Attach Form 5695 | 52 | |
| 53 | Child tax credit (see instructions). Attach Form 8801 if required | 53 | |
| 54 | Credits from: a <input type="checkbox"/> Form 8396 b <input type="checkbox"/> Form 8839 c <input type="checkbox"/> Form 8859 | 54 | |
| 55 | Other credits. Check applicable box(es): a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8801 c <input type="checkbox"/> Form | 55 | |
| 56 | Add lines 47 through 55. These are your total credits | 56 | 503. |
| 57 | Subtract line 56 from line 46. If line 56 is more than line 46, enter -0- | 57 | 0. |

Other Taxes

| | | | |
|----|---|----|----|
| 58 | Self-employment tax. Attach Schedule SE | 58 | |
| 59 | Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 | 59 | |
| 60 | Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required | 60 | |
| 61 | Advance earned income credit payments from Form(s) W-2, box 9 | 61 | |
| 62 | Household employment taxes. Attach Schedule H | 62 | |
| 63 | Add lines 57-62. This is your total tax | 63 | 0. |

Payments

If you have a qualifying child, attach Schedule EIC.

| | | | |
|-----|---|-----|--------|
| 64 | Federal income tax withheld from Forms W-2 and 1099 | 64 | 7,582. |
| 65 | 2006 estimated tax payments and amount applied from 2005 return | 65 | |
| 66a | Earned income credit (EIC) | 66a | |
| | b Nontaxable combat pay election 66b | | |
| 67 | Excess social security and tier 1 RRTA tax withheld (see instructions) | 67 | |
| 68 | Additional child tax credit. Attach Form 8812 | 68 | |
| 69 | Amount paid with request for extension to file (see instructions) | 69 | |
| 70 | Payments from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 c <input type="checkbox"/> Form 8885 | 70 | |
| 71 | Credit for federal telephone excise tax paid. Attach Form 8913 if required | 71 | 40. |
| 72 | Add lines 64, 65, 66a, and 67 through 71. These are your total payments | 72 | 7,622. |

Refund

Direct deposit? See instructions and fill in 74b, 74c, and 74d or Form 8888.

| | | | |
|-----|---|-----|--------|
| 73 | If line 72 is more than line 63, subtract line 63 from line 72. This is the amount you overpaid | 73 | 7,622. |
| 74a | Amount of line 73 you want refunded to you. If Form 8888 is attached, check here <input type="checkbox"/> | 74a | 7,622. |
| | b Routing number <input type="checkbox"/> c Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings | | |
| | d Account number <input type="checkbox"/> | | |

Amount You Owe

| | | | |
|----|--|----|--|
| 75 | Amount of line 73 you want applied to your 2007 estimated tax | 75 | |
| 76 | Amount you owe. Subtract line 72 from line 63. For details on how to pay, see instructions | 76 | |
| 77 | Estimated tax penalty (see instructions) | 77 | |

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? ☐ Yes. Complete the following. ☒ No

Sign Here

Joint return? See instructions.

Keep a copy for your records.

| | | | |
|--|------|---------------------|----------------------|
| Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. | | | |
| Your signature | Date | Your occupation | Daytime phone number |
| | | Truck Driver/Farmer | |
| Spouse's signature. If a joint return, both must sign. | Date | Spouse's occupation | |
| | | Nurse Practitioner | |

Paid Preparer's Use Only

| | | | |
|---|---|--|------------------------|
| Preparer's signature | Date | Check if self-employed <input checked="" type="checkbox"/> | Preparer's SSN or PTIN |
| | 2/20/07 | | |
| Firm's name (or yours if self-employed) address, and ZIP code | Melba Cooper HC 79 Box 350 Pineville AR 72566 | | EIN |
| | | | Phone no. 870-297-8676 |

SCHEDULE A
(Form 1040)Department of the Treasury
Internal Revenue Service (99)**Itemized Deductions**▶ Attach to Form 1040.
▶ See Instructions for Schedule A (Form 1040).

OMB No. 1545-0074

2006Attachment
Sequence No. **07**

Name(s) shown on Form 1040

Your social security number

David & Fern Sherrell

| Caution. Do not include expenses reimbursed or paid by others. | | | | |
|--|----|--|----|---------|
| Medical and Dental Expenses | 1 | Medical and dental expenses (see instructions) | 1 | 3,238. |
| | 2 | Enter amount from Form 1040, line 38 | 2 | 24,294. |
| | 3 | Multiply line 2 by 7.5% (.075) | 3 | 1,822. |
| | 4 | Subtract line 3 from line 1. If line 3 is more than line 1, enter -0- | 4 | 1,416. |
| Taxes You Paid | 5 | State and local income taxes | 5 | 4,227. |
| | 6 | Real estate taxes (see instructions) | 6 | 80. |
| | 7 | Personal property taxes | 7 | 160. |
| | 8 | Other taxes. List type and amount ▶ | 8 | |
| (See instructions.) | 9 | Add lines 5 through 8 | 9 | 4,467. |
| Interest You Paid | 10 | Home mtg interest and points reported to you on Form 1098 | 10 | 2,116. |
| | 11 | Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ▶ | 11 | |
| | 12 | Points not reported to you on Form 1098. See instrs for spcl rules | 12 | |
| | 13 | Investment interest. Attach Form 4952 if required. (See instrs.) | 13 | |
| Note. Personal interest is not deductible. | 14 | Add lines 10 through 13 | 14 | 2,116. |
| Gifts to Charity | 15 | Gifts by cash or check. If you made any gift of \$250 or more, see instrs | 15 | 875. |
| | 16 | Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500 | 16 | |
| | 17 | Carryover from prior year | 17 | |
| | 18 | Add lines 15 through 17 | 18 | 875. |
| Casualty and Theft Losses | 19 | Casualty or theft loss(es). Attach Form 4684. (See instructions.) | 19 | |
| Job Expenses and Certain Miscellaneous Deductions | 20 | Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ▶ | 20 | 2,602. |
| | 21 | Tax preparation fees | 21 | |
| | 22 | Other expenses — investment, safe deposit box, etc. List type and amount ▶ | 22 | |
| | 23 | Add lines 20 through 22 | 23 | 2,602. |
| | 24 | Enter amount from Form 1040, line 38 | 24 | 24,294. |
| | 25 | Multiply line 24 by 2% (.02) | 25 | 486. |
| (See instructions.) | 26 | Subtract line 25 from line 23. If line 25 is more than line 23, enter -0- | 26 | 2,116. |
| Other Miscellaneous Deductions | 27 | Other — from list in the instructions. List type and amount ▶ | 27 | |
| Total Itemized Deductions | 28 | Is Form 1040, line 38, over \$150,500 (over \$75,250 if married filing separately)? <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 40. <input type="checkbox"/> Yes. Your deduction may be limited. See instructions for the amount to enter. | 28 | 10,990. |
| | 29 | If you elect to itemize deductions even though they are less than your standard deduction, check here ▶ | | |

2006

Attachment Sequence No. 09

Social security number (SSN)

1B Enter code from instructions

► 484120

D Employer ID number (EIN), if any

E Business address (including suite or room no.) HC 82 Box 61
City, town or post office, state, and ZIP code Oxford, AR 72565

H If you started or acquired this business during 2006, check here

| | | |
|--|----------|---------------|
| 7 Gross income. Add lines 5 and 6 | 7 | 35,775 |
|--|----------|---------------|

32b ☐ Some investment is not at risk.

FDIZ0112 11/03/06

Part III Cost of Goods Sold (see instructions)33 Method(s) used to value closing inventory: a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory?
If 'Yes,' attach explanation☐ Yes ☐ No35 Inventory at beginning of year. If different from last year's closing inventory,
attach explanation

35

36 Purchases less cost of items withdrawn for personal use

36

37 Cost of labor. Do not include any amounts paid to yourself.

37

38 Materials and supplies

38

39 Other costs

39

40 Add lines 35 through 39

40

41 Inventory at end of year

41

42 Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4

42

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year)

44 Of the total number of miles you drove your vehicle during 2006, enter the number of miles you used your vehicle for:

a Business

b Commuting (see instructions)

c Other

45 Do you (or your spouse) have another vehicle available for personal use?

☐ Yes ☐ No

46 Was your vehicle available for personal use during off-duty hours?

☐ Yes ☐ No

47 a Do you have evidence to support your deduction?

☐ Yes ☐ No

b If 'Yes,' is the evidence written?

☐ Yes ☐ No**Part V Other Expenses.** List below business expenses not included on lines 8-26 or line 30.

Diesel Fuel

20,493.

Cell phone

744.

tax preparation

60.

48 Total other expenses. Enter here and on page 1, line 27

48

21,297.

SCHEDULE D

(Form 1040)

OMB No. 1545-0074

Capital Gains and LossesDepartment of the Treasury
Internal Revenue Service (99)▶ Attach to Form 1040 or Form 1040NR. ▶ See instructions for Schedule D (Form 1040).
▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.**2006**Attachment
Sequence No. **12**

Name(s) shown on Form 1040

David & Fern Sherrell

Your social security number

Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less

| (a) Description of property (Example: 100 shares XYZ Co) | (b) Date acquired (Mo, day, yr) | (c) Date sold (Mo, day, yr) | (d) Sales price (see instructions) | (e) Cost or other basis (see instructions) | (f) Gain or (loss) Subtract (e) from (d) |
|--|---------------------------------|-----------------------------|------------------------------------|--|--|
| 1 5 acres land in Baxter County, AR | 09/12/05 | 05/10/06 | 29,850. | 25,000. | 4,850. |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 2 Enter your short-term totals, if any, from Schedule D-1, line 2 | 2 | | | | |
| 3 Total short-term sales price amounts. Add lines 1 and 2 in column (d) | 3 | | 29,850. | | |
| 4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824 | 4 | | | | |
| 5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 | 5 | | | | |
| 6 Short-term capital loss carryover. Enter the amount, if any, from line 10 of your Capital Loss Carryover Worksheet in the instructions | 6 | | | | |
| 7 Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f) | 7 | | | | 4,850. |

Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year

| (a) Description of property (Example: 100 shares XYZ Co) | (b) Date acquired (Mo, day, yr) | (c) Date sold (Mo, day, yr) | (d) Sales price (see instructions) | (e) Cost or other basis (see instructions) | (f) Gain or (loss) Subtract (e) from (d) |
|--|---------------------------------|-----------------------------|------------------------------------|--|--|
| 8 48 acres land in Baxter County, AR | 09/12/05 | 11/10/06 | 129,900. | 126,500. | 3,400. |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 9 Enter your long-term totals, if any, from Schedule D-1, line 9 | 9 | | | | |
| 10 Total long-term sales price amounts. Add lines 8 and 9 in column (d) | 10 | | 129,900. | | |
| 11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824 | 11 | | | | |
| 12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 | 12 | | | | |
| 13 Capital gain distributions. See instrs | 13 | | | | |
| 14 Long-term capital loss carryover. Enter the amount, if any, from line 15 of your Capital Loss Carryover Worksheet in the instructions | 14 | | | | |
| 15 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f). Then go to Part III on page 2 | 15 | | | | 3,400. |

BAA For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions.

Schedule D (Form 1040) 2006

Part III Summary

| | | |
|--|----|--------|
| 16 Combine lines 7 and 15 and enter the result. If line 16 is a loss, skip lines 17 through 20, and go to line 21. If a gain, enter the gain on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. | 16 | 8,250. |
| 17 Are lines 15 and 16 both gains? <input checked="" type="checkbox"/> Yes. Go to line 18. <input type="checkbox"/> No. Skip lines 18 through 21, and go to line 22. | | |
| 18 Enter the amount, if any, from line 7 of the 28% Rate Gain Worksheet in the instructions | 18 | |
| 19 Enter the amount, if any, from line 18 of the Unrecaptured Section 1250 Gain Worksheet in the instructions | 19 | |
| 20 Are lines 18 and 19 both zero or blank? <input checked="" type="checkbox"/> Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet in the Instructions for Form 1040 (or in the Instructions for Form 1040NR). Do not complete lines 21 and 22 below. <input type="checkbox"/> No. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Schedule D Tax Worksheet in the instructions. Do not complete lines 21 and 22 below. | | |
| 21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the smaller of: <ul style="list-style-type: none"> • The loss on line 16 or • (\$3,000), or if married filing separately, (\$1,500) Note. When figuring which amount is smaller, treat both amounts as positive numbers. | 21 | |
| 22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? <input type="checkbox"/> Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet in the Instructions for Form 1040 (or in the Instructions for Form 1040NR). <input type="checkbox"/> No. Complete the rest of Form 1040 or Form 1040NR. | | |

Schedule D (Form 1040) 2006

SCHEDULE E

(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc)

- ▶ Attach to Form 1040, 1040NR, or Form 1041.
- ▶ See instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2006

Attachment
Sequence No. **13**

Name(s) shown on return

David & Fern Sherrell

Your social security number

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use **Schedule C** or **C-EZ** (see instructions). Report farm rental income or loss from **Form 4835** on page 2, line 40.

| 1 | List the type and location of each rental real estate property: | 2 | For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.) | Yes | No |
|---|---|---|---|-----|----|
| A | Rental House Hwy 9 Oxford, AR | | | | X |
| B | | | | | |
| C | | | | | |

| Income: | Properties | | | Totals (Add columns A, B, and C.) |
|--|------------|---|---|--------------------------------------|
| | A | B | C | |
| 3 Rents received | 3,000. | | | 3,000. |
| 4 Royalties received | | | | |
| Expenses: | | | | |
| 5 Advertising | | | | |
| 6 Auto and travel (see instructions) | | | | |
| 7 Cleaning and maintenance | | | | |
| 8 Commissions | | | | |
| 9 Insurance | | | | |
| 10 Legal and other professional fees | | | | |
| 11 Management fees | | | | |
| 12 Mortgage interest paid to banks, etc (see instructions) | | | | |
| 13 Other interest | | | | |
| 14 Repairs | | | | |
| 15 Supplies | | | | |
| 16 Taxes | | | | |
| 17 Utilities | | | | |
| 18 Other (list) ▶ | | | | |
| 19 Add lines 5 through 18 | | | | |
| 20 Depreciation expense or depletion (see instructions) | | | | |
| 21 Total expenses. Add lines 19 and 20 | | | | |
| 22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198 | 3,000. | | | |
| 23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2 | | | | |
| 24 Income. Add positive amounts shown on line 22. Do not include any losses | | | | 3,000. |
| 25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here | | | | |
| 26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2 | | | | 3,000. |

85

SCHEDULE F
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Name of proprietor

David Sherrell

A Principal product. Describe it.

Cattle & Elk

C Accounting method:

Profit or Loss From Farming
Schedule F (Form 1040), Form 1040NR, Form 1041, Form 1065, or Form 1065-B.
▶ See Instructions for Schedule F (Form 1040).

OMB No. 1545-0074

2006

Attachment
Sequence No. **14**

Social security number (SSN)

Enter your principal crop or activity for the current tax year.

☒ Cash ☐ (2) ☐ Accrual

B Enter code from Part IV

▶ **112111**

D Employer ID number (EIN), if any

E Did you materially participate in this business during 2006? If 'No,' see instructions for limit on passive losses

☒ Yes ☐ No

Part I Farm Income
Do not include:

- 1 Sales of livestock and other items bought for resale
- 2 Cost or other basis of livestock held for draft, breeding, sport, or dairy purposes
- 3 Subtract line 2 from line 1
- 4 Sales of livestock, poultry, and other products you raised
- 5a Cooperative distribution (Form 99-PATR)
- 6a Agricultural program (see instructions)
- 7 Commodity Credit Corporation (CCC) loans reported
- 8 Crop insurance proceeds
- 9 Custom hire (machinery and equipment)
- 10 Other income, including tax credit or refund
- 11 **Gross income.** Add the amount from Part I, line 11.

Part II Farm Expenses
Do not include:

- 12 Car and truck expenses (Also attach Form 4562)
- 13 Chemicals
- 14 Conservation expenses (see instructions)
- 15 Custom hire (machinery and equipment)
- 16 Depreciation and depletion deduction (see instructions)
- 17 Employee benefit payments other than on line 17
- 18 Feed
- 19 Fertilizers and lime
- 20 Freight and trucking
- 21 Gasoline, fuel, and oil
- 22 Insurance (other than life)
- 23 Interest:
 - a Mortgage (paid to lender)
 - b Other
- 24 Labor hired (less employer's contribution)
- 35 **Total expenses.** Add lines 12 through 24.
- 36 **Net farm profit or loss.** If a profit, enter the amount. If a loss, you must attach Form 6198.
- 37 If you have a loss, check the box that describes your investment in this activity (see instructions).
 - a If you checked the box on Form 1040, line 18, and also on Schedule SE, line 1.
 - b If you checked the box on Form 1040NR, line 19.
 - c If you checked the box on Form 6198. Your loss may be limited.

Method. Complete Parts I and II (Accrual method. Complete Parts II & III, & Part I, line 11.)
Stock held for draft, breeding, sport, or dairy purposes. Report these sales on Form 4797.

| | | | |
|----|------------------------------|----|--------|
| 1 | 2 | 3 | 4 |
| 5a | 5b Taxable amount | 5b | 5b |
| 6a | 6b Taxable amount | 6b | 3,912. |
| 7a | 7c Taxable amount | 7c | |
| 8a | 8b Taxable amount | 8b | |
| 8d | 8d Amount deferred from 2005 | 8d | |
| 9 | | 9 | 5,000. |
| 10 | | 10 | |
| 11 | | 11 | 8,912. |

and Accrual Method.
Expenses such as taxes, insurance, or repairs on your home.

| | | | |
|-----|---------------------------------------|-----|--------|
| 12 | 25 Pension and profit-sharing plans | 25 | |
| 13 | 26 Rent or lease (see instructions): | | |
| 14 | a Vehicles, machinery, and equipment | 26a | |
| 15 | b Other (land, animals, etc) | 26b | |
| 16 | 27 Repairs and maintenance | 27 | 9,074. |
| 17 | 28 Seeds and plants | 28 | |
| 18 | 29 Storage and warehousing | 29 | |
| 19 | 30 Supplies | 30 | |
| 20 | 31 Taxes | 31 | 1,334. |
| 21 | 32 Utilities | 32 | 450. |
| 22 | 33 Veterinary, breeding, and medicine | 33 | 181. |
| 23 | 34 Other expenses (specify): | | |
| 23a | a | 34a | |
| 23b | b | 34b | |
| 23c | c | 34c | |
| 23d | d | 34d | |
| 23e | e | 34e | |
| 23f | f | 34f | |

34f. If line 34f is negative, see instructions

| | | | |
|----|--|----|----------|
| 35 | 35 from line 11. | 35 | 59,786. |
| 36 | Form 1040, line 18, and also on Schedule SE, line 1. Form 1040NR, line 19. Trusts, and partnerships, see instructions. | 36 | -50,874. |

box that describes your investment in this activity (see instructions).
Form 1040, line 18, and also on Schedule SE, line 1.
Form 1040NR, line 19.
Form 6198. Your loss may be limited.

37a ☒ All investment is at risk.
37b ☐ Some investment is not at risk.

Form **4562**Department of the Treasury
Internal Revenue Service**Depreciation and Amortization**
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172

2006Attachment
Sequence No. **67**

Name(s) shown on return

David & Fern Sherrell

Business or activity to which this form relates

Sch C Trucking

Identifying number

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

| | | | |
|----|---|------------------------------|------------------|
| 1 | Maximum amount. See the instructions for a higher limit for certain businesses | 1 | \$108,000. |
| 2 | Total cost of section 179 property placed in service (see instructions) | 2 | |
| 3 | Threshold cost of section 179 property before reduction in limitation | 3 | \$430,000. |
| 4 | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions | 5 | |
| 6 | (a) Description of property | (b) Cost (business use only) | (c) Elected cost |
| 7 | Listed property. Enter the amount from line 29 | 7 | |
| 8 | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 | 8 | |
| 9 | Tentative deduction. Enter the smaller of line 5 or line 8 | 9 | |
| 10 | Carryover of disallowed deduction from line 13 of your 2005 Form 4562 | 10 | |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs) | 11 | |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 | 12 | |
| 13 | Carryover of disallowed deduction to 2007. Add lines 9 and 10, less line 12 | 13 | |

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

| | | | |
|----|--|----|--|
| 14 | Special allowance for qualified New York Liberty or Gulf Opportunity Zone property (other than listed property) placed in service during the tax year (see instructions) | 14 | |
| 15 | Property subject to section 168(f)(1) election | 15 | |
| 16 | Other depreciation (including ACRS) | 16 | |

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)**Section A**

| | | | |
|----|---|----|------|
| 17 | MACRS deductions for assets placed in service in tax years beginning before 2006 | 17 | 928. |
| 18 | If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here | | |

Section B — Assets Placed in Service During 2006 Tax Year Using the General Depreciation System

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only — see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|---|--|--|------------------------|-------------------|---------------|-------------------------------|
| 19a 3-year property | | | | | | |
| b 5-year property | | | | | | |
| c 7-year property | | | | | | |
| d 10-year property | | | | | | |
| e 15-year property | | | | | | |
| f 20-year property | | | | | | |
| g 25-year property | | | 25 yrs | | S/L | |
| h Residential rental property | | | 27.5 yrs | MM | S/L | |
| i Nonresidential real property | | | 27.5 yrs | MM | S/L | |
| | | | 39 yrs | MM | S/L | |
| | | | | MM | S/L | |

Section C — Assets Placed in Service During 2006 Tax Year Using the Alternative Depreciation System

| | | | | | | |
|----------------------|--|--|--------|----|-----|--|
| 20a Class life | | | | | S/L | |
| b 12-year | | | 12 yrs | | S/L | |
| c 40-year | | | 40 yrs | MM | S/L | |

Part IV Summary (see instructions)

| | | | |
|----|--|----|------|
| 21 | Listed property. Enter amount from line 28 | 21 | |
| 22 | Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions | 22 | 928. |
| 23 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs | 23 | |

BAA For Paperwork Reduction Act Notice, see separate instructions.

FD120812 06/22/06

Form 4562 (2006)

8

Form **4562**Department of the Treasury
Internal Revenue Service**Depreciation and Amortization**
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172

2006Attachment
Sequence No. **67**

Name(s) shown on return

David & Fern Sherrell

Business or activity to which this form relates

Sch F**Part I Election To Expense Certain Property Under Section 179**

Note: If you have any listed property, complete Part V before you complete Part I.

| | | | |
|----|---|------------------------------|------------------|
| 1 | Maximum amount. See the instructions for a higher limit for certain businesses | 1 | \$108,000. |
| 2 | Total cost of section 179 property placed in service (see instructions) | 2 | |
| 3 | Threshold cost of section 179 property before reduction in limitation | 3 | \$430,000. |
| 4 | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions | 5 | |
| 6 | (a) Description of property | (b) Cost (business use only) | (c) Elected cost |
| 7 | Listed property. Enter the amount from line 29 | 7 | |
| 8 | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 | 8 | |
| 9 | Tentative deduction. Enter the smaller of line 5 or line 8 | 9 | |
| 10 | Carryover of disallowed deduction from line 13 of your 2005 Form 4562 | 10 | |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs) | 11 | |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 | 12 | |
| 13 | Carryover of disallowed deduction to 2007. Add lines 9 and 10, less line 12 | 13 | |

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

| | | | |
|----|--|----|--|
| 14 | Special allowance for qualified New York Liberty or Gulf Opportunity Zone property (other than listed property) placed in service during the tax year (see instructions) | 14 | |
| 15 | Property subject to section 168(f)(1) election | 15 | |
| 16 | Other depreciation (including ACRS) | 16 | |

Part III MACRS Depreciation (Do not include listed property.) (See instructions)**Section A**

| | | | |
|----|--|----|--------|
| 17 | MACRS deductions for assets placed in service in tax years beginning before 2006 | 17 | 8,723. |
| 18 | If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here <input type="checkbox"/> | | |

Section B - Assets Placed in Service During 2006 Tax Year Using the General Depreciation System

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only - see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|-----------------------------------|--|--|------------------------|-------------------|---------------|-------------------------------|
| 19a 3-year property | | | | | | |
| b 5-year property | | 57,006. | 5.0 yrs | HY | SL | 5,701. |
| c 7-year property | | | | | | |
| d 10-year property | | | | | | |
| e 15-year property | | | | | | |
| f 20-year property | | | | | | |
| g 25-year property | | | 25 yrs | | S/L | |
| h Residential rental property | | | 27.5 yrs | MM | S/L | |
| i Nonresidential real property | | | 27.5 yrs | MM | S/L | |
| | | | 39 yrs | MM | S/L | |
| | | | | MM | S/L | |

Section C - Assets Placed in Service During 2006 Tax Year Using the Alternative Depreciation System

| | | | | | |
|----------------|--|--------|----|-----|--|
| 20a Class life | | | | S/L | |
| b 12-year | | 12 yrs | | S/L | |
| c 40-year | | 40 yrs | MM | S/L | |

Part IV Summary (see instructions)

| | | | |
|----|--|----|---------|
| 21 | Listed property. Enter amount from line 28 | 21 | |
| 22 | Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instructions | 22 | 14,424. |
| 23 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs | 23 | |

BAA For Paperwork Reduction Act Notice, see separate instructions.

FD120812 06/22/06

Form 4562 (2006)

Department of the Treasury
Internal Revenue Service▶ Attach to Form 1040, Form 1040A, or Form 1040NR.
▶ See instructions.

2006

Attachment
Sequence No. 129

Name(s) shown on return

Your social security number

David & Fern Sherrell

CAUTION: You cannot take this credit if either of the following applies.

- The amount on Form 1040, line 38, Form 1040A, line 22, or Form 1040NR, line 36 is more than \$25,000 (\$37,500 if head of household; \$50,000 if married filing jointly).
- The person(s) who made the qualified contribution or elective deferral (a) was born after January 1, 1989, (b) is claimed as a dependent on someone else's 2006 tax return, or (c) was a student (see instructions).

| | (a) You | (b) Your spouse |
|--|---------|-----------------|
| 1 Traditional and Roth IRA contributions for 2006. Do not include rollover contributions | 1 | 250. |
| 2 Elective deferrals to a 401(k) or other qualified employer plan, voluntary employee contributions, and 501(c)(18)(D) plan contributions for 2006 (see instructions) | 2 | 1,618. |
| 3 Add lines 1 and 2 | 3 | 1,868. |
| 4 Certain distributions received after 2003 and before the due date (including extensions) of your 2006 tax return (see instructions). If married filing jointly, include both spouses' amounts in both columns. See instructions for an exception | 4 | |
| 5 Subtract line 4 from line 3. If zero or less, enter -0- | 5 | 1,868. |
| 6 In each column, enter the smaller of line 5 or \$2,000 | 6 | 1,868. |
| 7 Add the amounts on line 6. If zero, stop; you cannot take this credit | 7 | 1,868. |
| 8 Enter the amount from Form 1040, line 38*, or Form 1040A, line 22, or Form 1040NR, line 36 | 8 | 24,294. |
| 9 Enter the applicable decimal amount shown below: | | |

| If line 8 is— | | And your filing status is— | | |
|---------------|---------------|----------------------------|-------------------|--|
| Over— | But not over— | Married filing jointly | Head of household | Single, Married filing separately, or Qualifying widow(er) |
| --- | \$15,000 | .5 | .5 | .5 |
| \$15,000 | \$16,250 | .5 | .5 | .2 |
| \$16,250 | \$22,500 | .5 | .5 | .1 |
| \$22,500 | \$24,375 | .5 | .2 | .1 |
| \$24,375 | \$25,000 | .5 | .1 | .1 |
| \$25,000 | \$30,000 | .5 | .1 | .0 |
| \$30,000 | \$32,500 | .2 | .1 | .0 |
| \$32,500 | \$37,500 | .1 | .1 | .0 |
| \$37,500 | \$50,000 | .1 | .0 | .0 |
| \$50,000 | --- | .0 | .0 | .0 |

Note: If line 9 is zero, stop; you cannot take this credit.

| | | |
|--|----|------|
| 10 Multiply line 7 by line 9 | 10 | 934. |
| 11 Enter the amount from Form 1040, line 46, or Form 1040A, line 28, or Form 1040NR, line 43 | 11 | 503. |
| 12 1040 filers: Enter the total of your credits from lines 47 through 50. 1040A filers: Enter the total of your credits from lines 29 through 31. 1040NR filers: Enter the total of your credits from lines 44 and 45. | 12 | |
| 13 Subtract line 12 from line 11. If zero, stop; you cannot take this credit | 13 | 503. |
| 14 Credit for qualified retirement savings contributions. Enter the smaller of line 10 or line 13 here and on Form 1040, line 51, or Form 1040A, line 32, or Form 1040NR, line 46 | 14 | 503. |

*See Publication 590 for the amount to enter if you are filing Form 2555, 2555-EZ, or 4563 or you are excluding income from Puerto Rico.

BAA For Paperwork Reduction Act Notice, see instructions.

Form 8880 (2006)

| | | | | | |
|---|--|--|---|----------------------------|--|
| a Control number 22222 | | Void <input type="checkbox"/> | | OMB No. 1545-0008 | |
| b Employer identification number (EIN) | | | 1 Wages, tips, other compensation 40107.13 | | 2 Federal income tax withheld 5210.54 |
| c Employer's name, address, and ZIP code WHITE RIVER HEALTH PO BOX 2197 1710 HARRISON STREET EATEVILLE AR 72502 | | | 3 Social security wages 34574.7 | | 4 Social security tax withheld 3408.34 |
| | | | 5 Medicare wages and tips 34574.71 | | 6 Medicare tax withheld 797.16 |
| | | | 7 Social security tips | | 8 Allocated tips |
| d Employee's social security number | | | 9 Advance EIC payment | | 10 Dependent care benefits |
| e Employee's name, address, and ZIP code PIERN SHERRELL P O BOX 57 BROCKWELL AR 72517 | | | 11 Nonqualified plans | | 12a See instructions for box 12 1612.18 |
| | | | 13 Statutory employee Retirement plan Third-party sick pay <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> | | 12b |
| | | | 14 Other | | 12c |
| | | | | | 12d |
| 15 State Employer's state ID number AR | | 16 State wages, tips, etc. 52358.53 | 17 State income tax 3051.67 | 18 Local wages, tips, etc. | 19 Local income tax |
| | | | | | 20 Locality name |

Form **W-2** Wage and Tax Statement
 Copy D - For Employer or
 Copy 1 - For State, City, or Local Tax Department


2006

Department of the Treasury—Internal Revenue Service
 For Privacy Act and Paperwork Reduction
 Act Notice, see back of Copy D.

| | | | | | | | |
|---|--|---------------------------------------|---------------------|--|---------------------|--|--|
| a Control number | | OMB No. 1545-0008 | | This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it. | | | |
| b Employer identification number (EIN) | | | | 1 Wages, tips, other compensation 3516.96 | | 2 Federal income tax withheld 0.00 | |
| c Employer's name, address, and ZIP code County Of Izard P. O. Box 95 McDonnell, Arkansas 72556 | | | | 3 Social security wages 3516.96 | | 4 Social security tax withheld 218.04 | |
| | | | | 5 Medicare wages and tips 3516.96 | | 6 Medicare tax withheld 51.00 | |
| | | | | 7 Social security tips | | 8 Allocated tips | |
| d Employee's social security number | | | | 9 Advance EIC payment | | 10 Dependent care benefits | |
| e Employee's name, address, and ZIP code DAVID SHERRELL P. O. BOX 57 BROCKWELL, AR 72517 | | | | 11 Nonqualified plans | | 12a See instructions for box 12 | |
| | | | | 13 Statutory employee Retirement plan Third-party sick pay <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | | 12b | |
| | | | | 14 Other | | 12c | |
| | | | | | | 12d | |
| 15 State Employer's state ID number AR | | 16 State wages, tips, etc. 3516.96 | 17 State income tax | 18 Local wages, tips, etc. | 19 Local income tax | 20 Locality name | |
| | | | | | | | |

Form **W-2** Wage and Tax Statement
 Copy C—For EMPLOYER'S RECORDS (see Manual)

2006

Department of the Treasury—Internal Revenue Service
 Safe, accurate, 

90

| | | | | | | | |
|---|--|--|--|--|--|--|--|
| a Control number | | OMB No. 1545-0008 | | This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it. | | | |
| b Employer identification number (EIN) | | | | 1 Wages, tips, other compensation 53952.50 | | 2 Federal income tax withheld 5710.54 | |
| c Employer's name, address, and ZIP code WHITE RIVER HEALTH SYSTEM PO BOX 2197 1710 HARRISON STREET EATEBVILLE AR 72508 | | | | 3 Social security wages 54974.71 | | 4 Social security tax withheld 8409.56 | |
| | | | | 5 Medicare wages and tips 54974.71 | | 6 Medicare tax withheld 797.16 | |
| | | | | 7 Social security tips | | 8 Allocated tips | |
| d Employee's social security number | | | | 9 Advance EIC payment | | 10 Dependent care benefits | |
| e Employee's name, address, and ZIP code FERN SHERRELL P O BOX 57 BROCKWELL AR 72517 | | | | 11 Nonqualified plans | | 12a See instructions for box 12 1615.18 | |
| | | | | 13 Statutory employee Retirement plan Third-party sick pay X | | 12b | |
| | | | | 14 Other | | 12c | |
| | | | | | | 12d | |
| 15 State Employer's state ID number AR | | 16 State wages, tips, etc. 53358.50 | | 17 State income tax 3051.67 | | 18 Local wages, tips, etc. | |
| | | | | | | 19 Local income tax | |
| | | | | | | 20 Locality name | |

Form **W-2** Wage and Tax Statement
Copy C - For EMPLOYEE'S RECORDS (see Notice to Employee on back of Copy B.)

2006

Department of the Treasury—Internal Revenue Service

Safe, accurate,
FAST! Use



| | | | | | | | |
|--|--|--|--|--|--|---|--|
| a Control number | | OMB No. 1545-0008 | | This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it. | | | |
| b Employer identification number (EIN) | | | | 1 Wages, tips, other compensation 20072.00 | | 2 Federal income tax withheld 1271.25 | |
| c Employer's name, address, and ZIP code COMMUNITY MED CTR OF LAMAR CO P O BOX 435 CALICO ROCK AR 72515 | | | | 3 Social security wages 20072.00 | | 4 Social security tax withheld 2888.48 | |
| | | | | 5 Medicare wages and tips 20072.00 | | 6 Medicare tax withheld 281.61 | |
| | | | | 7 Social security tips | | 8 Allocated tips | |
| d Employee's social security number | | | | 9 Advance EIC payment | | 10 Dependent care benefits | |
| e Employee's name, address, and ZIP code FERN SHERRELL P O BOX 57 BROCKWELL AR 72517 | | | | 11 Nonqualified plans | | 12a See instructions for box 12 | |
| | | | | 13 Statutory employee Retirement plan Third-party sick pay | | 12b | |
| | | | | 14 Other | | 12c | |
| | | | | | | 12d | |
| 15 State Employer's state ID number | | 16 State wages, tips, etc. 20072.00 | | 17 State income tax 1075.90 | | 18 Local wages, tips, etc. | |
| | | | | | | 19 Local income tax | |
| | | | | | | 20 Locality name | |

Form **W-2** Wage and Tax Statement

2006

Department of the Treasury—Internal Revenue Service

Safe, accurate,



al

Form **1040** Department of the Treasury — Internal Revenue Service **U.S. Individual Income Tax Return 2007**

IRS Use Only — Do not write or staple in this space.

Label
(See instructions.)

Use the IRS label.
Otherwise, please print or type.

Presidential Election Campaign

| | | |
|--|----|--|
| For the year Jan 1 - Dec 31, 2007, or other tax year beginning , 2007, ending , 20 | | OMB No. 1545-0074 |
| Your first name | MI | Last name |
| David | | Sherrell |
| If a joint return, spouse's first name | | MI |
| Fern | | Sherrell |
| Home address (number and street). If you have a P.O. box, see instructions. | | Apartment no. |
| HC 82 Box 61 | | |
| City, town or post office. If you have a foreign address, see instructions. | | State ZIP code |
| Oxford | | AR 72565 |
| Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions) | | <input type="checkbox"/> You <input type="checkbox"/> Spouse |

You must enter your social security number(s) above.
▲ Checking a box below will not change your tax or refund.

Filing Status

- 1 ☐ Single
 2 ☒ Married filing jointly (even if only one had income)
 3 ☐ Married filing separately. Enter spouse's SSN above & full name here . . .
 4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here . . .
 5 ☐ Qualifying widow(er) with dependent child (see instructions).

Check only one box.

Exemptions

6a ☒ Yourself. If someone can claim you as a dependent, do not check box 6a
 b ☒ Spouse

| (1) First name | Last name | (2) Dependent's social security number | (3) Dependent's relationship to you | (4) <input checked="" type="checkbox"/> If qualifying child for child tax credit (see instrs) |
|----------------|-----------|--|-------------------------------------|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

d Total number of exemptions claimed 2

If more than four dependents, see instructions.

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

| | | |
|---|-----|----------|
| 7 Wages, salaries, tips, etc. Attach Form(s) W-2 | 7 | 69,382. |
| 8a Taxable interest. Attach Schedule B if required | 8a | 126. |
| b Tax-exempt interest. Do not include on line 8a | 8b | |
| 9a Ordinary dividends. Attach Schedule B if required | 9a | |
| b Qualified dividends (see instrs) | 9b | |
| 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) | 10 | 690. |
| 11 Alimony received | 11 | |
| 12 Business income or (loss). Attach Schedule C or C-EZ | 12 | |
| 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here | 13 | 4,725. |
| 14 Other gains or (losses). Attach Form 4797 | 14 | |
| 15a IRA distributions | 15a | |
| b Taxable amount (see instrs) | 15b | |
| 16a Pensions and annuities | 16a | |
| b Taxable amount (see instrs) | 16b | |
| 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E | 17 | |
| 18 Farm income or (loss). Attach Schedule F | 18 | -49,933. |
| 19 Unemployment compensation | 19 | |
| 20a Social security benefits | 20a | |
| b Taxable amount (see instrs) | 20b | |
| 21 Other income | 21 | |
| 22 Add the amounts in the far right column for lines 7 through 21. This is your total income. | 22 | 24,990. |
| 23 Educator expenses (see instructions) | 23 | |
| 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ | 24 | |
| 25 Health savings account deduction. Attach Form 8889 | 25 | |
| 26 Moving expenses. Attach Form 3903 | 26 | |
| 27 One-half of self-employment tax. Attach Schedule SE | 27 | |
| 28 Self-employed SEP, SIMPLE, and qualified plans | 28 | |
| 29 Self-employed health insurance deduction (see instructions) | 29 | |
| 30 Penalty on early withdrawal of savings | 30 | |
| 31a Alimony paid b Recipient's SSN | 31a | |
| 32 IRA deduction (see instructions) | 32 | |
| 33 Student loan interest deduction (see instructions) | 33 | 775. |
| 34 Tuition and fees deduction. Attach Form 8917 | 34 | |
| 35 Domestic production activities deduction. Attach Form 8903 | 35 | |
| 36 Add lines 23 - 31a and 32 - 35 | 36 | 775. |
| 37 Subtract line 36 from line 22. This is your adjusted gross income | 37 | 24,215. |

Adjusted Gross Income

92

SCHEDULE D
(Form 1040)

Department of the Treasury
Internal Revenue Service

Name(s) shown on return

David & Fern Sherrell

Capital Gains and Losses

► Attach to Form 1040 or Form 1040NR. ► See instructions for Schedule D (Form 1040).
► Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

2007

Attachment
Sequence No. **12**

Your social security number

Part I Short-Term Capital Gains and Losses — Assets Held One Year or Less

| (a) Description of property (Example: 100 shares XYZ Co) | (b) Date acquired (Mo, day, yr) | (c) Date sold (Mo, day, yr) | (d) Sales price (see instructions) | (e) Cost or other basis (see instructions) | (f) Gain or (loss) Subtract (e) from (d) |
|--|---------------------------------|-----------------------------|------------------------------------|--|--|
| 1 | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 2 Enter your short-term totals, if any, from Schedule D-1, line 2 | 2 | | | | |
| 3 Total short-term sales price amounts. Add lines 1 and 2 in column (d) | 3 | | | | |
| 4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824 | 4 | | | | |
| 5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 | 5 | | | | |
| 6 Short-term capital loss carryover. Enter the amount, if any, from line 10 of your Capital Loss Carryover Worksheet in the instructions | 6 | | | | |
| 7 Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f) | 7 | | | | |

Part II Long-Term Capital Gains and Losses — Assets Held More Than One Year

| (a) Description of property (Example: 100 shares XYZ Co) | (b) Date acquired (Mo, day, yr) | (c) Date sold (Mo, day, yr) | (d) Sales price (see instructions) | (e) Cost or other basis (see instructions) | (f) Gain or (loss) Subtract (e) from (d) |
|--|---------------------------------|-----------------------------|------------------------------------|--|--|
| 8 1 lot in Baxter County, AR | 09/12/05 | 04/10/07 | 10,000.00 | 5,275.00 | 4,725.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 9 Enter your long-term totals, if any, from Schedule D-1, line 9 | 9 | | | | |
| 10 Total long-term sales price amounts. Add lines 8 and 9 in column (d) | 10 | | 10,000. | | |
| 11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824 | 11 | | | | |
| 12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 | 12 | | | | |
| 13 Capital gain distributions. See Instrs | 13 | | | | |
| 14 Long-term capital loss carryover. Enter the amount, if any, from line 15 of your Capital Loss Carryover Worksheet in the instructions | 14 | | | | |
| 15 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f). Then go to Part III on page 2 | 15 | | | | 4,725. |

BAA For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions.

Schedule D (Form 1040) 2007

93

Form **4562**Department of the Treasury
Internal Revenue Service**Depreciation and Amortization**
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172

2007Attachment
Sequence No. **67**

Name(s) shown on return

David & Fern Sherrell

Identifying number

Business or activity to which this form relates

Sch F Sherrell Farm

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

| | | | |
|----|---|------------------------------|------------------|
| 1 | Maximum amount. See the instructions for a higher limit for certain businesses | 1 | \$125,000. |
| 2 | Total cost of section 179 property placed in service (see instructions) | 2 | |
| 3 | Threshold cost of section 179 property before reduction in limitation | 3 | \$500,000. |
| 4 | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions | 5 | |
| 6 | (a) Description of property | (b) Cost (business use only) | (c) Elected cost |
| 7 | Listed property. Enter the amount from line 29 | 7 | |
| 8 | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 | 8 | |
| 9 | Tentative deduction. Enter the smaller of line 5 or line 8 | 9 | |
| 10 | Carryover of disallowed deduction from line 13 of your 2006 Form 4562 | 10 | |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs) | 11 | |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 | 12 | |
| 13 | Carryover of disallowed deduction to 2008. Add lines 9 and 10, less line 12 | 13 | |

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

| | | | |
|----|--|----|--|
| 14 | Special allowance for qualified New York Liberty or Gulf Opportunity Zone property (other than listed property) and cellulosic biomass ethanol plant property placed in service during the tax year (see instructions) | 14 | |
| 15 | Property subject to section 168(f)(1) election | 15 | |
| 16 | Other depreciation (including ACRS) | 16 | |

Part III MACRS Depreciation (Do not include listed property.) (See instructions)**Section A**

| | | | |
|----|--|----|---------|
| 17 | MACRS deductions for assets placed in service in tax years beginning before 2007 | 17 | 17,206. |
| 18 | If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here <input type="checkbox"/> | | |

Section B — Assets Placed in Service During 2007 Tax Year Using the General Depreciation System

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only — see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|-----------------------------------|--------------------------------------|--|---------------------|----------------|------------|----------------------------|
| 19a 3-year property | | | | | | |
| b 5-year property | | | | | | |
| c 7-year property | | | | | | |
| d 10-year property | | | | | | |
| e 15-year property | | | | | | |
| f 20-year property | | | | | | |
| g 25-year property | | | 25 yrs | | S/L | |
| h Residential rental property | | | 27.5 yrs | MM | S/L | |
| i Nonresidential real property | | | 27.5 yrs | MM | S/L | |
| | | | 39 yrs | MM | S/L | |

Section C — Assets Placed in Service During 2007 Tax Year Using the Alternative Depreciation System

| | | | | | |
|----------------|--|--|--------|-----|-----|
| 20a Class life | | | | S/L | |
| b 12-year | | | 12 yrs | S/L | |
| c 40-year | | | 40 yrs | MM | S/L |

Part IV Summary (see instructions)

| | | | |
|----|--|----|---------|
| 21 | Listed property. Enter amount from line 28 | 21 | |
| 22 | Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions | 22 | 17,206. |
| 23 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs | 23 | |

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1040, Form 1040A, or Form 1040NR.

▶ See instructions.

2007Attachment
Sequence No. **55**

Name(s) shown on return

Your social security number

David & Fern Sherrell**CAUTION!** You cannot take this credit if **either** of the following applies.

- The amount on Form 1040, line 38, Form 1040A, line 22, or Form 1040NR, line 36 is more than \$26,000 (\$39,000 if head of household; \$52,000 if married filing jointly).
- The person(s) who made the qualified contribution or elective deferral **(a)** was born after January 1, 1990, **(b)** is claimed as a dependent on someone else's 2007 tax return, or **(c)** was a **student** (see instructions).

| | (a) You | (b) Your spouse |
|--|---------|-----------------|
| 1 Traditional and Roth IRA contributions for 2007. Do not include rollover contributions | 1 | |
| 2 Elective deferrals to a 401(k) or other qualified employer plan, voluntary employee contributions, and 501(c)(18)(D) plan contributions for 2007 (see instructions) | 2 | 779. |
| 3 Add lines 1 and 2 | 3 | 779. |
| 4 Certain distributions received after 2004 and before the due date (including extensions) of your 2007 tax return (see instructions). If married filing jointly, include both spouses' amounts in both columns. See instructions for an exception | 4 | |
| 5 Subtract line 4 from line 3. If zero or less, enter -0- | 5 | 779. |
| 6 In each column, enter the smaller of line 5 or \$2,000 | 6 | 779. |
| 7 Add the amounts on line 6. If zero, stop ; you cannot take this credit | 7 | 779. |
| 8 Enter the amount from Form 1040, line 38*; Form 1040A, line 22; or Form 1040NR, line 36 | 8 | 24,215. |
| 9 Enter the applicable decimal amount shown below: | | |

| If line 8 is— | | And your filing status is— | | |
|------------------|---------------|----------------------------|-------------------|--|
| Over— | But not over— | Married filing jointly | Head of household | Single, Married filing separately, or Qualifying widow(er) |
| Enter on line 9— | | | | |
| --- | \$15,500 | .5 | .5 | .5 |
| \$15,500 | \$17,000 | .5 | .5 | .2 |
| \$17,000 | \$23,250 | .5 | .5 | .1 |
| \$23,250 | \$25,500 | .5 | .2 | .1 |
| \$25,500 | \$26,000 | .5 | .1 | .1 |
| \$26,000 | \$31,000 | .5 | .1 | .0 |
| \$31,000 | \$34,000 | .2 | .1 | .0 |
| \$34,000 | \$39,000 | .1 | .1 | .0 |
| \$39,000 | \$52,000 | .1 | .0 | .0 |
| \$52,000 | --- | .0 | .0 | .0 |

Note: If line 9 is zero, **stop**; you cannot take this credit.

| | | |
|---|----|------|
| 10 Multiply line 7 by line 9 | 10 | 390. |
| 11 Enter the amount from Form 1040, line 46; Form 1040A, line 28; or Form 1040NR, line 43 | 11 | 89. |
| 12 1040 filers: Enter the total of your credits from lines 47 through 49, and 51. 1040A filers: Enter the total of your credits from lines 29 through 31. 1040NR filers: Enter the total of your credits from lines 44 and 46. | 12 | |
| 13 Subtract line 12 from line 11. If zero, stop ; you cannot take this credit | 13 | 89. |
| 14 Credit for qualified retirement savings contributions. Enter the smaller of line 10 or line 13 here and on Form 1040, line 53; or Form 1040A, line 33; or Form 1040NR, line 48 | 14 | 89. |

*See Publication 590 for the amount to enter if you are filing Form 2555, 2555-EZ, or 4563 or you are excluding income from Puerto Rico.

BAA For Paperwork Reduction Act Notice, see instructions.Form **8880** (2007)

95

SCHEDULE A
(Form 1040)

Department of the Treasury
Internal Revenue Service

Itemized Deductions

► Attach to Form 1040.
► See instructions for Schedule A (Form 1040).

OMB No. 1545-0074

2007

Attachment
Sequence No. **07**

Name(s) shown on Form 1040

Your social security number

David & Fern Sherrell

| | | | | |
|---|---|--|----|---------|
| Medical and Dental Expenses | Caution. Do not include expenses reimbursed or paid by others. | | | |
| | 1 | Medical and dental expenses (see instructions) | 1 | 1,845. |
| | 2 | Enter amount from Form 1040, line 38 2 24,215. | | |
| | 3 | Multiply line 2 by 7.5% (.075) | 3 | 1,816. |
| | 4 | Subtract line 3 from line 1. If line 3 is more than line 1, enter -0- | 4 | 29. |
| Taxes You Paid (See instructions.) | 5 State and local (check only one box): | | | |
| | a | <input checked="" type="checkbox"/> Income taxes, or | 5 | 3,369. |
| | b | <input type="checkbox"/> General sales taxes. | | |
| | 6 | Real estate taxes (see instructions) | 6 | 2,276. |
| | 7 | Personal property taxes | 7 | 622. |
| | 8 | Other taxes. List type and amount ► | 8 | |
| | 9 | Add lines 5 through 8 | 9 | 6,267. |
| Interest You Paid | 10 | Home mtg interest and points reported to you on Form 1098 | 10 | 6,256. |
| | 11 | Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ► | | |
| | | | | |
| | | | | |
| Note. Personal interest is not deductible. | 12 | Points not reported to you on Form 1098. See instrs for spl rules | 12 | |
| | 13 | Qualified mortgage insurance premiums (see instructions) | 13 | |
| | 14 | Investment interest. Attach Form 4952 if required. (See instrs.) | 14 | |
| | 15 | Add lines 10 through 14 | 15 | 6,256. |
| Gifts to Charity If you made a gift and got a benefit for it, see instructions. | 16 | Gifts by cash or check. If you made any gift of \$250 or more, see instrs | 16 | 1,765. |
| | 17 | Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500 | 17 | |
| | 18 | Carryover from prior year | 18 | |
| | 19 | Add lines 16 through 18 | 19 | 1,765. |
| Casualty and Theft Losses | 20 | Casualty or theft loss(es). Attach Form 4684. (See instructions.) | 20 | |
| | 21 | Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ► | | |
| | | See Statement 1,750. | 21 | 1,750. |
| | 22 | Tax preparation fees | 22 | 60. |
| (See instructions.) | 23 | Other expenses — investment, safe deposit box, etc. List type and amount ► | 23 | |
| | | | | |
| | 24 | Add lines 21 through 23 | 24 | 1,810. |
| | 25 | Enter amount from Form 1040, line 38 25 24,215. | | |
| | 26 | Multiply line 25 by 2% (.02) | 26 | 484. |
| | 27 | Subtract line 26 from line 24. If line 26 is more than line 24, enter -0- | 27 | 1,326. |
| Other Miscellaneous Deductions | 28 | Other — from list in the instructions. List type and amount ► | 28 | |
| | | | | |
| Total Itemized Deductions | 29 | Is Form 1040, line 38, over \$156,400 (over \$78,200 if married filing separately)? <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. <input type="checkbox"/> Yes. Your deduction may be limited. See instructions for the amount to enter. | 29 | 15,643. |
| | 30 | If you elect to itemize deductions even though they are less than your standard deduction, check here ► <input type="checkbox"/> | | |

96

SCHEDULE F
(Form 1040)

Department of the Treasury
Internal Revenue Service

Profit or Loss From Farming

▶ Attach to Form 1040, Form 1040NR, Form 1041, Form 1065, or Form 1065-B.
▶ See instructions for Schedule F (Form 1040).

OMB No. 1545-0074

2007

Attachment
Sequence No. **14**

Name of proprietor

David Sherrell

Social security number (SSN)

A Principal product. Describe in one or two words your principal crop or activity for the current tax year.

Cattle & Elk

☒ Enter code from Part IV

▶ **112111**

C Accounting method:

(1) ☒ Cash

(2) ☐ Accrual

D Employer ID number (EIN), if any

E Did you 'materially participate' in the operation of this business during 2007? If 'No,' see instructions for limit on passive losses ☒ Yes ☐ No

Part I Farm Income – Cash Method. Complete Parts I and II (Accrual method. Complete Parts II & III, & Part I, line 11.)
Do not include sales of livestock held for draft, breeding, sport, or dairy purposes. Report these sales on Form 4797.

| | | | | |
|----|--|----|--|---------|
| 1 | Sales of livestock and other items you bought for resale | 1 | | |
| 2 | Cost or other basis of livestock and other items reported on line 1 | 2 | | |
| 3 | Subtract line 2 from line 1 | 3 | | |
| 4 | Sales of livestock, produce, grains, and other products you raised | 4 | | 24,650. |
| 5a | Cooperative distributions (Form(s) 1099-PATR) | 5a | | |
| 5b | Taxable amount | 5b | | |
| 6a | Agricultural program payments (see instructions) | 6a | | |
| 6b | Taxable amount | 6b | | |
| 7 | Commodity Credit Corporation (CCC) loans (see instructions): | | | |
| a | CCC loans reported under election | 7a | | |
| b | CCC loans forfeited | 7b | | |
| 7c | Taxable amount | 7c | | |
| 8 | Crop insurance proceeds and federal crop disaster payments (see instructions): | | | |
| a | Amount received in 2007 | 8a | | |
| 8b | Taxable amount | 8b | | |
| c | If election to defer to 2008 is attached, check here <input type="checkbox"/> | | | |
| 8d | Amount deferred from 2006 | 8d | | |
| 9 | Custom hire (machine work) income | 9 | | |
| 10 | Other income, including federal and state gasoline or fuel tax credit or refund (see instructions) | 10 | | |
| 11 | Gross income. Add amounts in the right column for lines 3 through 10. If you use the accrual method, enter the amount from Part III, line 51 | 11 | | 24,650. |

Part II Farm Expenses – Cash and Accrual Method.

Do not include personal or living expenses such as taxes, insurance, or repairs on your home.

| | | | | | | | | |
|----|---|-----|--|---------|----|------------------------------------|-----|----------|
| 12 | Car and truck expenses (see instructions). Also attach Form 4562 | 12 | | | 25 | Pension and profit-sharing plans | 25 | |
| 13 | Chemicals | 13 | | | 26 | Rent or lease (see instructions): | | |
| 14 | Conservation expenses (see instructions) | 14 | | | a | Vehicles, machinery, and equipment | 26a | |
| 15 | Custom hire (machine work) | 15 | | 6,550. | b | Other (land, animals, etc) | 26b | |
| 16 | Depreciation and section 179 expense deduction not claimed elsewhere (see instructions) | 16 | | 17,206. | 27 | Repairs and maintenance | 27 | 6,325. |
| 17 | Employee benefit programs other than on line 25 | 17 | | | 28 | Seeds and plants | 28 | |
| 18 | Feed | 18 | | 5,540. | 29 | Storage and warehousing | 29 | |
| 19 | Fertilizers and lime | 19 | | | 30 | Supplies | 30 | |
| 20 | Freight and trucking | 20 | | | 31 | Taxes | 31 | 2,105. |
| 21 | Gasoline, fuel, and oil | 21 | | 2,935. | 32 | Utilities | 32 | 450. |
| 22 | Insurance (other than health) | 22 | | 1,696. | 33 | Veterinary, breeding, and medicine | 33 | 1,075. |
| 23 | Interest: | | | | 34 | Other expenses (specify): | | |
| a | Mortgage (paid to banks, etc) | 23a | | 30,701. | a | | 34a | |
| b | Other | 23b | | | b | | 34b | |
| 24 | Labor hired (less employment credits) | 24 | | | c | | 34c | |
| | | | | | d | | 34d | |
| | | | | | e | | 34e | |
| | | | | | f | | 34f | |
| 35 | Total expenses. Add lines 12 through 34f. If line 34f is negative, see instructions | 35 | | | | | | 74,583. |
| 36 | Net farm profit or (loss). Subtract line 35 from line 11. | 36 | | | | | | -49,933. |

37 If you have a loss, you must check the box that describes your investment in this activity (see instructions).
• If you checked 37a, enter the loss on Form 1040, line 18, and also on Schedule SE, line 1.
• If you file Form 1040NR, enter the loss on Form 1040NR, line 19.
• If you checked 37b, you must attach Form 6198. Your loss may be limited.

37a ☒ All investment is at risk.

37b ☐ Some investment is not at risk.

97

Unreimbursed Employee Business Expenses

OMB No. 1545-0074

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1040 or Form 1040NR.

2007Attachment
Sequence No. **54A**

Your name

Fern Sherrell

Occupation in which you incurred expenses

Nurse Practitioner

Social security number

You May Use This Form Only if All of the Following Apply.

- You are an employee deducting ordinary and necessary expenses attributable to your job. An ordinary expense is one that is common and accepted in your field of trade, business, or profession. A necessary expense is one that is helpful and appropriate for your business. An expense does not have to be required to be considered necessary.
- You **do not** get reimbursed by your employer for any expenses (amounts your employer included in box 1 of your Form W-2 are not considered reimbursements for this purpose).
- If you are claiming vehicle expense, you are using the standard mileage rate for 2007.

Caution: You can use the standard mileage rate for 2007 only if: (a) you owned the vehicle and used the standard mileage rate for the first year you placed the vehicle in service, or (b) you leased the vehicle and used the standard mileage rate for the portion of the lease period after 1997.

Part I Figure Your Expenses

| | | | |
|---|---|---|------|
| 1 | Vehicle expense using the standard mileage rate. Complete Part II and multiply line 8a by 48.5¢ (.485) | 1 | |
| 2 | Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work | 2 | |
| 3 | Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment | 3 | |
| 4 | Business expenses not included on lines 1 through 3. Do not include meals and entertainment | 4 | 125. |
| 5 | Meals and entertainment expenses: \$ _____ x 50% (.50) (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses incurred while away from home on business by 75% (.75) instead of 50%. For details, see instructions.) | 5 | |
| 6 | Total expenses. Add lines 1 through 5. Enter here and on Schedule A (Form 1040), line 21 (or on Schedule A (Form 1040NR), line 9). (Armed Forces reservists, fee-basis state or local government officials, qualified performing artists, and individuals with disabilities: See the instructions for special rules on where to enter this amount.) | 6 | 125. |

Part II Information on Your Vehicle. Complete this part only if you are claiming vehicle expense on line 1.

7 When did you place your vehicle in service for business use? (month, day, year) ▶

8 Of the total number of miles you drove your vehicle during 2007, enter the number of miles you used your vehicle for:

a Business _____ b Commuting (see instr) _____ c Other _____

9 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

10 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

11 a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If 'Yes,' is the evidence written? ☐ Yes ☐ No

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 2106-EZ (2007)

Form **1040** U.S. Individual Income Tax Return **2008**

Department of the Treasury — Internal Revenue Service

(99) IRS Use Only — Do not write or staple in this space.

Label
(See instructions.)

Use the
IRS label.
Otherwise,
please print
or type.

**Presidential
Election
Campaign**

| | | |
|--|-----------------------|--|
| For the year Jan 1 - Dec 31, 2008, or other tax year beginning , 2008, ending , 20 | | OMB No. 1545-0074 |
| Your first name DAVID | MI SHERRELL | Last name SHERRELL |
| If a joint return, spouse's first name FERN | | MI SHERRELL |
| Last name SHERRELL | | Spouse's social security number |
| Home address (number and street). If you have a P.O. box, see instructions. HC 82 BOX 61 | | Apartment no. |
| City, town or post office. If you have a foreign address, see instructions. OXFORD | | State ZIP code AR 72565 |
| Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions) | | <input type="checkbox"/> You <input type="checkbox"/> Spouse |

YOU must enter your
social security
number(s) above.

Checking a box below will not
change your tax or refund.

Filing Status

Check only
one box.

- | | |
|---|---|
| 1 <input type="checkbox"/> Single | 4 <input type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here . |
| 2 <input checked="" type="checkbox"/> Married filing jointly (even if only one had income) | |
| 3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above & full name here . | 5 <input type="checkbox"/> Qualifying widow(er) with dependent child (see instructions) |

Exemptions

If more than
four dependents,
see instructions.

| | | |
|---|--|--|
| 6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a | Boxes checked on 6a and 6b | 2 |
| b <input checked="" type="checkbox"/> Spouse | No. of children on 6c who: | |
| c Dependents: | | |
| (1) First name Last name | (2) Dependent's social security number | (3) Dependent's relationship to you |
| | | (4) <input type="checkbox"/> if qualifying child for child tax credit (see instrs) |
| | | <input type="checkbox"/> lived with you |
| | | <input type="checkbox"/> did not live with you due to divorce or separation (see instrs) |
| | | <input type="checkbox"/> Dependents on 6c not entered above |
| d Total number of exemptions claimed | | 2 |

Income

Attach Form(s)
W-2 here. Also
attach Forms
W-2G and 1099-R
if tax was withheld.

If you did not
get a W-2,
see instructions.

Enclose, but do
not attach, any
payment. Also,
please use
Form 1040-V.

| | | |
|--|-----|----------|
| 7 Wages, salaries, tips, etc. Attach Form(s) W-2 | 7 | 111,610. |
| 8a Taxable interest. Attach Schedule B if required | 8a | 93. |
| b Tax-exempt interest. Do not include on line 8a | 8b | |
| 9a Ordinary dividends. Attach Schedule B if required | 9a | |
| b Qualified dividends (see instrs) | 9b | |
| 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) | 10 | 0. |
| 11 Alimony received | 11 | |
| 12 Business income or (loss). Attach Schedule C or C-EZ | 12 | |
| 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here | 13 | 18,573. |
| 14 Other gains or (losses). Attach Form 4797 | 14 | -4,954. |
| 15a IRA distributions | 15a | |
| b Taxable amount (see instrs) | 15b | |
| 16a Pensions and annuities | 16a | |
| b Taxable amount (see instrs) | 16b | |
| 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E | 17 | 800. |
| 18 Farm income or (loss). Attach Schedule F | 18 | -50,674. |
| 19 Unemployment compensation | 19 | |
| 20a Social security benefits | 20a | |
| b Taxable amount (see instrs) | 20b | |
| 21 Other income | 21 | |
| 22 Add the amounts in the far right column for lines 7 through 21. This is your total income. | 22 | 75,448. |

**Adjusted
Gross
Income**

| | | |
|---|-----|---------|
| 23 Educator expenses (see instructions) | 23 | |
| 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ | 24 | |
| 25 Health savings account deduction. Attach Form 8889 | 25 | |
| 26 Moving expenses. Attach Form 3903 | 26 | |
| 27 One-half of self-employment tax. Attach Schedule SE | 27 | |
| 28 Self-employed SEP, SIMPLE, and qualified plans | 28 | |
| 29 Self-employed health insurance deduction (see instructions) | 29 | |
| 30 Penalty on early withdrawal of savings | 30 | |
| 31a Alimony paid b Recipient's SSN | 31a | |
| 32 IRA deduction (see instructions) | 32 | |
| 33 Student loan interest deduction (see instructions) | 33 | |
| 34 Tuition and fees deduction. Attach Form 8917 | 34 | |
| 35 Domestic production activities deduction. Attach Form 8903 | 35 | |
| 36 Add lines 23 - 31a and 32 - 35 | 36 | |
| 37 Subtract line 36 from line 22. This is your adjusted gross income | 37 | 75,448. |

Tax and Credits

38 Amount from line 37 (adjusted gross income) 38 75,448.

39a Check ☐ You were born before January 2, 1944, ☐ Blind. Total boxes checked ☐ 39a
if: ☐ Spouse was born before January 2, 1944, ☐ Blind. ☐ 39bb If your spouse itemizes on a separate return, or you were a dual-status alien, see instrs and ck here ☐ 39bc Check if standard deduction includes real estate taxes or disaster loss (see instructions) ☐ 39c**Standard Deduction for —**

- People who checked any box on line 39a, 39b, or 39c or who can be claimed as a dependent, see instructions.

- All others:

Single or Married filing separately, \$5,450

Married filing jointly or Qualifying widow(er), \$10,900

Head of household, \$8,000

40 Itemized deductions (from Schedule A) or your standard deduction (see left margin) 40 16,734.

41 Subtract line 40 from line 38 41 58,714.

42 If line 38 is over \$119,975, or you provided housing to a Midwestern displaced individual, see instructions. Otherwise, multiply \$3,500 by the total number of exemptions claimed on line 6d 42 7,000.

43 Taxable Income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- 43 51,714.

44 Tax (see instrs). Check if any tax is from: a ☐ Form(s) 8814 b ☐ Form 4972 44 4,166.

45 Alternative minimum tax (see instructions). Attach Form 6251 45

46 Add lines 44 and 45 46 4,166.

47 Foreign tax credit. Attach Form 1116 if required 47

48 Credit for child and dependent care expenses. Attach Form 2441 48

49 Credit for the elderly or the disabled. Attach Schedule R 49

50 Education credits. Attach Form 8863 50

51 Retirement savings contributions credit. Attach Form 8880 51

52 Child tax credit (see instructions). Attach Form 8901 if required 52

53 Credits from Form: a ☐ 8396 b ☐ 8839 c ☐ 5695 5354 Other crs from Form: a ☐ 3800 b ☐ 8801 c ☐ 54

55 Add lines 47 through 54. These are your total credits 55

56 Subtract line 55 from line 46. If line 55 is more than line 46, enter -0- 56 4,166.

57 Self-employment tax. Attach Schedule SE 57

58 Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919 58

59 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required 59

60 Additional taxes: a ☐ AEIC payments b ☐ Household employment taxes. Attach Schedule H 60

61 Add lines 56-60. This is your total tax 61 4,166.

Other Taxes**Payments**

If you have a qualifying child, attach Schedule EIC.

62 Federal income tax withheld from Forms W-2 and 1099 62 10,879.

63 2008 estimated tax payments and amount applied from 2007 return 63

64a Earned income credit (EIC) 64a

b Nontaxable combat pay election ☐ 64b

65 Excess social security and tier 1 RRTA tax withheld (see instructions) 65 8.

66 Additional child tax credit. Attach Form 8812 66

67 Amount paid with request for extension to file (see instructions) 67

68 Credits from Form: a ☐ 2439 b ☐ 4136 c ☐ 8801 d ☐ 8885 68

69 First-time homebuyer credit. Attach Form 5405 69

70 Recovery rebate credit (see worksheet) 70 0.

71 Add lines 62 through 70. These are your total payments 71 10,887.

72 If line 71 is more than line 61, subtract line 61 from line 71. This is the amount you overpaid 72 6,721.

73a Amount of line 72 you want refunded to you. If Form 8888 is attached, check here ☐ 73a 6,721.b Routing number ☐ c Type: ☒ Checking ☐ Savingsd Account number ☐ 74

75 Amount you owe. Subtract line 71 from line 61. For details on how to pay, see instructions 75

76 Estimated tax penalty (see instructions) 76

Refund

Direct deposit? See instructions and fill in 73b, 73c, and 73d or Form 8888.

Amount You Owe**Third Party Designee**Do you want to allow another person to discuss this return with the IRS (see instructions)? ☐ Yes. Complete the following. ☒ No
Designee's name ☐ Phone no. ☐ Personal identification number (PIN) ☐**Sign Here**

Joint return? See instructions.

Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature ☐ Date ☐ Your occupation ☐ Daytime phone number ☐Spouse's signature. If a joint return, both must sign. ☐ Date ☐ Spouse's occupation ☐NURSE PRACTITIONER ☐Preparer's signature ☐ Date ☐ Check if self-employed ☐ Preparer's SSN or PTIN ☐**Paid Preparer's Use Only**

Non-Paid Preparer

Preparer's name (or yours if self-employed) ☐ EIN ☐

address, and ZIP code ☐ Phone no. ☐

100

SCHEDULE A
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Itemized Deductions

► Attach to Form 1040.
► See Instructions for Schedule A (Form 1040).

OMB No. 1545-0074

2008

Attachment
Sequence No. **07**

Name(s) shown on Form 1040

Your social security number

DAVID & FERN SHERRELL

| | | | | | |
|---------------------------------------|---|---|--|---------|--|
| Medical and Dental Expenses | | Caution. Do not include expenses reimbursed or paid by others. | | | |
| 1 | Medical and dental expenses (see instructions) | 1 | | | |
| 2 | Enter amount from Form 1040, line 38 | 2 | | | |
| 3 | Multiply line 2 by 7.5% (.075) | 3 | | | |
| 4 | Subtract line 3 from line 1. If line 3 is more than line 1, enter -0- | 4 | | | |
| Taxes You Paid | | 5 State and local (check only one box): | | | |
| a | <input checked="" type="checkbox"/> Income taxes, or | 5 | | 5,723. | |
| b | <input type="checkbox"/> General sales taxes | 6 | | 1,287. | |
| 6 | Real estate taxes (see instructions) | 7 | | 609. | |
| 7 | Personal property taxes | 8 | | | |
| 8 | Other taxes. List type and amount ► | 9 | | 7,619. | |
| 9 | Add lines 5 through 8 | | | | |
| Interest You Paid | | 10 | | 6,239. | |
| 10 | Home mtg interest and points reported to you on Form 1098 | 11 | | | |
| 11 | Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ► | 12 | | | |
| 12 | Points not reported to you on Form 1098. See instrs for spcl rules | 13 | | | |
| 13 | Qualified mortgage insurance premiums (see instructions) | 14 | | | |
| 14 | Investment interest. Attach Form 4952 if required. (See instrs.) | 15 | | 6,239. | |
| 15 | Add lines 10 through 14 | | | | |
| Gifts to Charity | | 16 | | 1,940. | |
| 16 | Gifts by cash or check. If you made any gift of \$250 or more, see instrs | 17 | | | |
| 17 | Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500 | 18 | | | |
| 18 | Carryover from prior year | 19 | | 1,940. | |
| 19 | Add lines 16 through 18 | | | | |
| Casualty and Theft Losses | | 20 | | | |
| 20 | Casualty or theft loss(es). Attach Form 4684. (See instructions.) | 21 | | 2,385. | |
| 21 | Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ► | 22 | | 60. | |
| 22 | Tax preparation fees | 23 | | | |
| 23 | Other expenses — investment, safe deposit box, etc. List type and amount ► | 24 | | 2,445. | |
| 24 | Add lines 21 through 23 | 25 | | 75,448. | |
| 25 | Enter amount from Form 1040, line 38 | 26 | | 1,509. | |
| 26 | Multiply line 25 by 2% (.02) | 27 | | 936. | |
| 27 | Subtract line 26 from line 24. If line 26 is more than line 24, enter -0- | 28 | | | |
| 28 | Other — from list in the instructions. List type and amount ► | | | | |
| Other Miscellaneous Deductions | | | | | |
| 29 | Is Form 1040, line 38, over \$159,950 (over \$79,975 if married filing separately)? | | | | |
| | <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. | 29 | | 16,734. | |
| | <input type="checkbox"/> Yes. Your deduction may be limited. See instructions for the amount to enter. | | | | |
| 30 | If you elect to itemize deductions even though they are less than your standard deduction, check here ► | | | | |

SCHEDULE D
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on return

DAVID & FERN SHERRELL

Capital Gains and Losses

► Attach to Form 1040 or Form 1040NR. ► See instructions for Schedule D (Form 1040).
► Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

2008

Attachment
Sequence No. **12**

Your social security number

Short-Term Capital Gains and Losses – Assets Held One Year or Less

| (a) Description of property (Example: 100 shares XYZ Co) | (b) Date acquired (Mo, day, yr) | (c) Date sold (Mo, day, yr) | (d) Sales price (see instructions) | (e) Cost or other basis (see instructions) | (f) Gain or (loss) Subtract (e) from (d) |
|---|---------------------------------|-----------------------------|------------------------------------|--|--|
| 1 | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 2 Enter your short-term totals, if any, from Schedule D-1, line 2 | 2 | | | | |
| 3 Total short-term sales price amounts. Add lines 1 and 2 in column (d) | 3 | | | | |
| 4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824 | 4 | | | | |
| 5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 | 5 | | | | |
| 6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your Capital Loss Carryover Worksheet in the instructions | 6 | | | | |
| 7 Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f) | 7 | | | | |

Long-Term Capital Gains and Losses – Assets Held More Than One Year

| (a) Description of property (Example: 100 shares XYZ Co) | (b) Date acquired (Mo, day, yr) | (c) Date sold (Mo, day, yr) | (d) Sales price (see instructions) | (e) Cost or other basis (see instructions) | (f) Gain or (loss) Subtract (e) from (d) |
|--|---------------------------------|-----------------------------|------------------------------------|--|--|
| 8 5 LOTS IN BAXTER COUNTY | 09/12/05 | 07/15/08 | 275,000. | 256,427. | 18,573. |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 9 Enter your long-term totals, if any, from Schedule D-1, line 9 | 9 | | | | |
| 10 Total long-term sales price amounts. Add lines 8 and 9 in column (d) | 10 | | 275,000. | | |
| 11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824 | 11 | | | | |
| 12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 | 12 | | | | |
| 13 Capital gain distributions. See instrs | 13 | | | | |
| 14 Long-term capital loss carryover. Enter the amount, if any, from line 15 of your Capital Loss Carryover Worksheet in the instructions | 14 | | | | |
| 15 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f). Then go to Part III on page 2 | 15 | | | | 18,573. |

BAA For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions.

Schedule D (Form 1040) 2008

Summary

16 Combine lines 7 and 15 and enter the result **16** 18,573.

If line 16 is:

- A **gain**, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below.
- A **loss**, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22.
- **Zero**, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.

17 Are lines 15 and 16 both gains?

☒ **Yes.** Go to line 18.

☐ **No.** Skip lines 18 through 21, and go to line 22.

18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions **18**

19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions **19**

20 Are lines 18 and 19 both zero or blank?

☒ **Yes.** Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the Instructions for Form 1040 (or in the Instructions for Form 1040NR). **Do not** complete lines 21 and 22 below.

☐ **No.** Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.

21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of:

- The loss on line 16 or
- (\$3,000), or if married filing separately, (\$1,500)]

21

Note. When figuring which amount is smaller, treat both amounts as positive numbers.

22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b?

☐ **Yes.** Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the Instructions for Form 1040 (or in the Instructions for Form 1040NR).

☐ **No.** Complete the rest of Form 1040 or Form 1040NR.

Schedule D (Form 1040) 2008

SCHEDULE E

(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc)
▶ Attach to Form 1040, 1040NR, or Form 1041.
▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2008

Attachment
Sequence No. **13**

Name(s) shown on return

Your social security number

DAVID & FERN SHERRELL

Income or Loss From Rental Real Estate and Royalties

Note. If you are in the business of renting personal property, use
Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

| | | | | | |
|----------|--|----------|--|-----|----|
| 1 | List the type and address of each rental real estate property: | 2 | For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.) | Yes | No |
| A | DWELLING HWY 9 OXFORD, AR 72565 | | | | X |
| B | | | | | |
| C | | | | | |

| Income: | | Properties | | | Totals |
|------------------|---|------------|---|---|----------------------------|
| | | A | B | C | (Add columns A, B, and C.) |
| 3 | Rents received | 800. | | | 800. |
| 4 | Royalties received | | | | |
| Expenses: | | | | | |
| 5 | Advertising | | | | |
| 6 | Auto and travel (see instructions) | | | | |
| 7 | Cleaning and maintenance | | | | |
| 8 | Commissions | | | | |
| 9 | Insurance | | | | |
| 10 | Legal and other professional fees | | | | |
| 11 | Management fees | | | | |
| 12 | Mortgage interest paid to banks, etc (see instructions) | | | | |
| 13 | Other interest | | | | |
| 14 | Repairs | | | | |
| 15 | Supplies | | | | |
| 16 | Taxes | | | | |
| 17 | Utilities | | | | |
| 18 | Other (list) ▶ | | | | |
| 19 | Add lines 5 through 18 | | | | |
| 20 | Depreciation expense or depletion (see instructions) | | | | |
| 21 | Total expenses. Add lines 19 and 20 | | | | |
| 22 | Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198 | 800. | | | |
| 23 | Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2 | | | | |
| 24 | Income. Add positive amounts shown on line 22. Do not include any losses | | | | 800. |
| 25 | Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here | | | | |
| 26 | Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2 | | | | 800. |

101

SCHEDULE F

(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Farming

▶ Attach to Form 1040, Form 1040NR, Form 1041, Form 1065, or Form 1065-B.
▶ See instructions for Schedule F (Form 1040).

OMB No. 1545-0074

2008

Attachment
Sequence No. **14**

Name of proprietor

DAVID SHERRELL

Social security number (SSN)

A Principal product. Describe in one or two words your principal crop or activity for the current tax year.

CATTLE AND ELK

Enter code from part IV

112111

C Accounting method:

(1) ☒ Cash

(2) ☐ Accrual

D Employer ID number (EIN), if any

E Did you 'materially participate' in the operation of this business during 2008? If 'No,' see instructions for limit on passive losses ☒ Yes ☐ No

Farm Income — Cash Method. Complete Parts I and II (Accrual method. Complete Parts II & III, & Part I, line 11.)

Do not include sales of livestock held for draft, breeding, sport, or dairy purposes. Report these sales on Form 4797.

| | | | |
|----|--|----|---------------------------|
| 1 | Sales of livestock and other items you bought for resale | 1 | |
| 2 | Cost or other basis of livestock and other items reported on line 1 | 2 | |
| 3 | Subtract line 2 from line 1 | 3 | |
| 4 | Sales of livestock, produce, grains, and other products you raised | 4 | 18,000. |
| 5a | Cooperative distributions (Form(s) 1099-PATR) | 5a | |
| 5b | Taxable amount | 5b | |
| 6a | Agricultural program payments (see instructions) | 6a | |
| 6b | Taxable amount | 6b | |
| 7 | Commodity Credit Corporation (CCC) loans (see instructions): | | |
| a | CCC loans reported under election | 7a | |
| b | CCC loans forfeited | 7b | |
| 7c | Taxable amount | 7c | |
| 8 | Crop insurance proceeds and federal crop disaster payments (see instructions): | | |
| a | Amount received in 2008 | 8a | |
| 8b | Taxable amount | 8b | |
| c | If election to defer to 2009 is attached, check here <input type="checkbox"/> | 8d | Amount deferred from 2007 |
| 9 | Custom hire (machine work) income | 9 | |
| 10 | Other income, including federal and state gasoline or fuel tax credit or refund (see instructions) | 10 | |
| 11 | Gross income. Add amounts in the right column for lines 3 through 10. If you use the accrual method to figure your income, enter the amount from Part III, line 51 | 11 | 18,000. |

Farm Expenses — Cash and Accrual Method.

Do not include personal or living expenses such as taxes, insurance, or repairs on your home.

| | | | | | | | |
|----|---|-----|---------|----|------------------------------------|-----|--------|
| 12 | Car and truck expenses (see instructions). Also attach Form 4562 | 12 | 457. | 25 | Pension and profit-sharing plans | 25 | |
| 13 | Chemicals | 13 | | 26 | Rent or lease (see instructions): | | |
| 14 | Conservation expenses (see instructions) | 14 | | a | Vehicles, machinery, and equipment | 26a | |
| 15 | Custom hire (machine work) | 15 | 6,500. | b | Other (land, animals, etc) | 26b | |
| 16 | Depreciation and section 179 expense deduction not claimed elsewhere (see instructions) | 16 | 14,519. | 27 | Repairs and maintenance | 27 | 4,467. |
| 17 | Employee benefit programs other than on line 25 | 17 | | 28 | Seeds and plants | 28 | |
| 18 | Feed | 18 | 7,835. | 29 | Storage and warehousing | 29 | |
| 19 | Fertilizers and lime | 19 | | 30 | Supplies | 30 | |
| 20 | Freight and trucking | 20 | | 31 | Taxes | 31 | 567. |
| 21 | Gasoline, fuel, and oil | 21 | 1,200. | 32 | Utilities | 32 | 450. |
| 22 | Insurance (other than health) | 22 | 774. | 33 | Veterinary, breeding, and medicine | 33 | 941. |
| 23 | Interest: | | | 34 | Other expenses (specify): | | |
| a | Mortgage (paid to banks, etc) | 23a | 30,964. | a | | 34a | |
| b | Other | 23b | | b | | 34b | |
| 24 | Labor hired (less employment credits) | 24 | | c | | 34c | |
| | | | | d | | 34d | |
| | | | | e | | 34e | |
| | | | | f | | 34f | |

35 Total expenses. Add lines 12 through 34f. If line 34f is negative, see instructions

36 Net farm profit or (loss). Subtract line 35 from line 11. Partnerships, see instructions.

- If a profit, enter the profit on both Form 1040, line 18, and Schedule SE, line 1a; on Form 1040NR, line 19; or on Form 1041, line 6.
- If a loss, you must go on to line 37.

37 If you have a loss, you must check the box that describes your investment in this activity (see instructions).

- If you checked 37a, enter the loss on both Form 1040, line 18, and Schedule SE, line 1a; on Form 1040NR, line 19; or on Form 1041, line 6.
- If you checked 37b, you must attach Form 6198. Your loss may be limited.

37a ☒ All investment is at risk.

37b ☐ Some investment is not at risk.

105

Form **4797****Sales of Business Property**(Also Involuntary Conversions and Recapture Amounts
Under Sections 179 and 280F(b)(2))

▶ Attach to your tax return. ▶ See separate instructions.

OMB No. 1545-0184

2008Attachment
Sequence No. **27**Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on return

Identifying number

DAVID & FERN SHERRELL

- 1 Enter the gross proceeds from sales or exchanges reported to you for 2008 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) **1**

Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft – Most Property Held More Than 1 Year (see instructions)

| 2 | (a) Description of property | (b) Date acquired (month, day, year) | (c) Date sold (month, day, year) | (d) Gross sales price | (e) Depreciation allowed or allowable since acquisition | (f) Cost or other basis, plus improvements and expense of sale | (g) Gain or (loss) Subtract (f) from the sum of (d) and (e) |
|---|-----------------------------|--------------------------------------|----------------------------------|-----------------------|---|--|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

- 3 Gain, if any, from Form 4684, line 45 **3**
- 4 Section 1231 gain from installment sales from Form 6252, line 26 or 37 **4**
- 5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824 **5**
- 6 Gain, if any, from line 32, from other than casualty or theft **6**
- 7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows **7**
- Partnerships (except electing large partnerships) and S corporations.** Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.
- Individuals, partners, S corporation shareholders, and all others.** If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.
- 8 Nonrecaptured net section 1231 losses from prior years (see instructions) **8**
- 9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions) **9**

Ordinary Gains and Losses (see instructions)

- 10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

| | | | | | | |
|----------------|----------|----------|----|--------|--------|---------|
| DLOC BULL DIED | 09/20/06 | 04/22/08 | 0. | 600. | 1,500. | -900. |
| 8 COWS DIED | 09/01/06 | 06/10/08 | 0. | 2,704. | 6,758. | -4,054. |
| | | | | | | |
| | | | | | | |

- 11 Loss, if any, from line 7 **11**
- 12 Gain, if any, from line 7 or amount from line 8, if applicable **12**
- 13 Gain, if any, from line 31 **13**
- 14 Net gain or (loss) from Form 4684, lines 37 and 44a **14**
- 15 Ordinary gain from installment sales from Form 6252, line 25 or 36 **15**
- 16 Ordinary gain or (loss) from like-kind exchanges from Form 8824 **16**
- 17 Combine lines 10 through 16 **17** **-4,954.**
- 18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:
- a If the loss on line 11 includes a loss from Form 4684, line 41, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from 'Form 4797, line 18a.' See instructions **18a**
- b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14 **18b** **-4,954.**

BAA For Paperwork Reduction Act Notice, see separate instructions.Form **4797** (2008)

Form **4562**Department of the Treasury
Internal Revenue Service (99)**Depreciation and Amortization**
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172

2008Attachment
Sequence No. **67**

Name(s) shown on return

Identifying number

DAVID & FERN SHERRELL

Business or activity to which this form relates

Sch F DAVID SHERRELL FARM**Election To Expense Certain Property Under Section 179**

Note: If you have any listed property, complete Part V before you complete Part I.

| | | | |
|----|---|------------------------------|------------------|
| 1 | Maximum amount. See the instructions for a higher limit for certain businesses | 1 | \$250,000. |
| 2 | Total cost of section 179 property placed in service (see instructions) | 2 | |
| 3 | Threshold cost of section 179 property before reduction in limitation (see instructions) | 3 | \$800,000. |
| 4 | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions | 5 | |
| 6 | (a) Description of property | (b) Cost (business use only) | (c) Elected cost |
| 7 | Listed property. Enter the amount from line 29 | 7 | |
| 8 | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 | 8 | |
| 9 | Tentative deduction. Enter the smaller of line 5 or line 8 | 9 | |
| 10 | Carryover of disallowed deduction from line 13 of your 2007 Form 4562 | 10 | |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs) | 11 | |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 | 12 | |
| 13 | Carryover of disallowed deduction to 2009. Add lines 9 and 10, less line 12 | 13 | |

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

| | | | |
|----|---|----|--|
| 14 | Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions) | 14 | |
| 15 | Property subject to section 168(f)(1) election | 15 | |
| 16 | Other depreciation (including ACRS) | 16 | |

MACRS Depreciation (Do not include listed property.) (See instructions.)**Section A**

| | | | |
|----|--|----|---------|
| 17 | MACRS deductions for assets placed in service in tax years beginning before 2008 | 17 | 14,519. |
| 18 | If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here <input type="checkbox"/> | | |

Section B — Assets Placed in Service During 2008 Tax Year Using the General Depreciation System

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only — see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|-----------------------------------|--------------------------------------|--|---------------------|----------------|------------|----------------------------|
| 19a 3-year property | | | | | | |
| b 5-year property | | | | | | |
| c 7-year property | | | | | | |
| d 10-year property | | | | | | |
| e 15-year property | | | | | | |
| f 20-year property | | | | | | |
| g 25-year property | | | 25 yrs | | S/L | |
| h Residential rental property | | | 27.5 yrs | MM | S/L | |
| i Nonresidential real property | | | 27.5 yrs | MM | S/L | |
| | | | 39 yrs | MM | S/L | |
| | | | | MM | S/L | |

Section C — Assets Placed in Service During 2008 Tax Year Using the Alternative Depreciation System

| | | | | | | |
|----------------|--|--|--------|----|-----|--|
| 20a Class life | | | | | S/L | |
| b 12-year | | | 12 yrs | | S/L | |
| c 40-year | | | 40 yrs | MM | S/L | |

Summary (See instructions.)

| | | | |
|----|--|----|---------|
| 21 | Listed property. Enter amount from line 28 | 21 | |
| 22 | Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions | 22 | 14,519. |
| 23 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs | 23 | |

BAA For Paperwork Reduction Act Notice, see separate Instructions.

FDZ0812 06/12/08

Form **4562** (2008)

101

Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A – Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? ☒ Yes ☐ No **24b** If 'Yes,' is the evidence written? ☒ Yes ☐ No

| (a) Type of property (list vehicles first) | (b) Date placed in service | (c) Business/investment use percentage | (d) Cost or other basis | (e) Basis for depreciation (business/investment use only) | (f) Recovery period | (g) Method/Convention | (h) Depreciation deduction | (i) Elected section 179 cost |
|---|-------------------------------|---|----------------------------|--|------------------------|--------------------------|-------------------------------|---------------------------------|
|---|-------------------------------|---|----------------------------|--|------------------------|--------------------------|-------------------------------|---------------------------------|

25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions) **25**

26 Property used more than 50% in a qualified business use:

| | | | | | | | | |
|--|--|--|--|--|--|--|--|--|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

27 Property used 50% or less in a qualified business use:

| | | | | | | | | |
|------------------|----------|------|--|--|--|--|--|--|
| 2004 CHEV PICKUP | 05/24/04 | 6.68 | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1 **28**

29 Add amounts in column (i), line 26. Enter here and on line 7, page 1 **29**

Section B – Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other 'more than 5% owner,' or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

| | (a) Vehicle 1 | (b) Vehicle 2 | (c) Vehicle 3 | (d) Vehicle 4 | (e) Vehicle 5 | (f) Vehicle 6 |
|---|------------------|------------------|------------------|------------------|------------------|------------------|
| 30 Total business/investment miles driven during the year (do not include commuting miles) | 832 | | | | | |
| 31 Total commuting miles driven during the year | | | | | | |
| 32 Total other personal (noncommuting) miles driven | 11,626 | | | | | |
| 33 Total miles driven during the year. Add lines 30 through 32 | 12,458 | | | | | |
| | Yes No | Yes No | Yes No | Yes No | Yes No | Yes No |
| 34 Was the vehicle available for personal use during off-duty hours? | X | | | | | |
| 35 Was the vehicle used primarily by a more than 5% owner or related person? | X | | | | | |
| 36 Is another vehicle available for personal use? | X | | | | | |

Section C – Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions).

| | Yes | No |
|--|-----|----|
| 37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees? | | |
| 38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners | | |
| 39 Do you treat all use of vehicles by employees as personal use? | | |
| 40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received? | | |
| 41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.) | | |

Note: If your answer to 37, 38, 39, 40, or 41 is 'Yes,' do not complete Section B for the covered vehicles.

Amortization

| (a) Description of costs | (b) Date amortization begins | (c) Amortizable amount | (d) Code section | (e) Amortization period or percentage | (f) Amortization for this year |
|-----------------------------|---------------------------------|---------------------------|---------------------|--|-----------------------------------|
|-----------------------------|---------------------------------|---------------------------|---------------------|--|-----------------------------------|

42 Amortization of costs that begins during your 2008 tax year (see instructions):

| | | | | | |
|--|--|--|--|--|--|
| | | | | | |
| | | | | | |

43 Amortization of costs that began before your 2008 tax year **43**

44 Total. Add amounts in column (f). See the instructions for where to report **44**

APR 29 2013

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

**BRIEF IN SUPPORT OF CLAIMANT'S RESPONSE TO
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Respondent's pleading entitled Respondent's Motion for Summary Judgment is a hybrid Ark. R. Civ. Pro. 12(b)(6) motion for judgment as a matter of law and Ark. R. Civ. Pro. 56 motion for summary judgment.

This matter was returned to the Claims Commission by a vote of the Legislative Committee, in essence a reversal of the Claims Commission's previous decision. Issues raised by the Arkansas Game & Fish Commission ("AGFC" or "Respondent") are res judicata and are moot.

II. ARKANSAS RULE OF CIVIL PROCEDURE 12(b)(6)

The Arkansas State Claims Commission "shall make no reward for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity." Ark. Code Ann. § 19-10-204(b)(3)(A). "Specifically, if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction, then the commission shall make no award on the claim."

Ark. Code Ann. § 19-10-205(b)(3)(B). The Arkansas Rules of Civil Procedure apply in cases before the Commission, unless the Commission's Rules of Practice and Procedure are to the contrary. See Rule 8.1 of the General Rules of Practice and Procedure Before the Arkansas State Claims Commission.

Created to comply with a constitutional requirement that the legislature provide for payment of all just debts of the state,¹ the Arkansas State Claims Commission has exclusive jurisdiction over all claims against the State of Arkansas and its agencies, departments, and institutions.² Due process is satisfied with the availability of compensation through the State Claims Commission and review of its decisions through the General Assembly.³

The Commission has jurisdiction to hear claims alleging that the State of Arkansas has breached contracts.⁴

Under Arkansas law, Rule 12(b)(6) is to be read in conjunction with Rule 8(a), Ark. R. Civ. P., which requires that a pleading setting forth a claim for relief shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief, and a demand for the relief to which he considers himself entitled. In testing a pleading under this rule, the facts alleged in the complaint are treated as

¹ Ark. Const. Art. 16 § 2. See *James A. Ross, Jr., State Immunity and the Arkansas Claims Commission*, 21 Ark. L. Rev. 180, 186 (1967).

² Ark. Code Ann. § 19-10-204.

³ *Fireman's Ins. Co. v. Arkansas State Claims Com'n.*, 301 Ark. 451, 784 S.W.2d 771 (1990, cert. denied 498 U.S. 824, 111 S.Ct. 76, 112 L.Ed.2d 50 (1990)).

⁴ *Arkansas Tech University v. Link*, 341 Ark. 495, 17 S.W.3d 809 (2000) (allegation that university had breached agreement to pay health insurance benefits); *Hanley v. Arkansas State Claims Commission*, 333 Ark. 159, 970 S.W.2d 198 (1998).

true and are viewed in the light most favorable to the party seeking relief. *McAllister v. Forrest City Street Improvement District*, No. 11, 274 Ark. 372, 626 S.W.2d 194 (1981).

Respondent's motion to dismiss is identical to its previous motion to dismiss and is moot by the action taken by the Legislative Committee. Claimant apologizes to the Commission for the redundancy of his Brief, but is required to repeat his prior brief, out of caution, because of the nature of Respondent's motion.

Respondent has filed its motion to dismiss pursuant to Ark. R. Civ. P. 12(b)(6), alleging Claimant's Complaint (1) fails to state facts upon which relief can be granted and/or (2) Claimant's Complaint was filed outside the applicable three (3) year statute of limitations.

The distinction between this motion and a motion for summary judgment is that a 12(b)(6) motion alleges the failure to state a claim, while a motion for summary judgment alleges the failure to have a claim. *Joey Brown Interest, Inc. v. Merchants National Bank*, 284 Ark. 418, 683 S.W.2d 601 (1985). A motion under Rule 12(b)(6) can be treated by the court as a motion for summary judgment if matters outside the pleading are presented to the court and not excluded by it. If such a motion is treated as a motion for summary judgment, it is proper for the court to consider allegations made in briefs and attached exhibits in ruling upon the motion, since in ruling upon a motion for summary judgment, proper considerations are the "pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any." Rule 56(c), Ark. R. Civ. P.; *Guthrie v. Tyson Foods, Inc.*, 285 Ark. 95, 685 S.W.2d 164 (1985).

Under Arkansas law, Rule 12(b)(6) is to be read in conjunction with Rule 8(a), Ark. R. Civ. P., which requires that a pleading setting forth a claim for relief shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief, and a demand for the relief to which he considers himself entitled. Therefore, a complaint containing merely conclusions of law is properly dismissed under Rule 12(b)(6). *Thompson-Holloway Agency, Inc. v. Gribben*, 3 Ark.App. 119, 623 S.W.2d 528 (1981); *Rabalaia v. Barnett*, 284 Ark. 527, 683 S.W.2d 919 (1985); *Big A Warehouse Distributors, Inc. v. Rye Auto Supply, Inc.*, 19 Ark.App. 286, 719 S.W.2d 716 (1986). However, in testing a pleading under this rule, the facts alleged in the complaint are treated as true and are viewed in the light most favorable to the party seeking relief. *McAllister v. Forrest City Street Improvement District, No. 11*, 274 Ark. 372, 626 S.W.2d 194 (1981).

In contrast, the federal version of Rule 12(b)(6) provides for dismissal for failure to state a claim upon which relief can be granted, as opposed to a failure to state facts. For example, the Eighth Circuit Court of Appeals has held that a complaint should not be dismissed merely because the allegations of the complaint do not support the particular legal theory advanced, and the trial court is under a duty to examine the complaint to determine if the allegations provide relief on any possible theory. *Bramlet v. Wilson*, 495 F.2d 714 (8th Cir. 1974). In testing a complaint under Federal Rule 12(b)(6), the complaint should be construed favorably to the pleader, and it should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. *Wright v. Anthony*, 733 F.2d 575 (8th Cir. 1984).

Claimant's Complaint states:

My name is David Charles Sherrell. My address is 1115 Tri Lakes Road, Oxford, Arkansas 72565.

In 1995 or 1996, I purchased 33 head of Rock Mountain elk at \$2,250.00 each, for a total price of \$74,250.00. My intention was to help the state of Arkansas to replenish the elk population and establish a hunting lodge on my 420 acres. I discussed my plans with the sheriff of Izard County.

Sometime within the first year of purchasing the elk, Brian Gaskins and W.D. Whitehurst, game wardens with the Arkansas Game and Fish Commission, came to my farm and observed my elk. One of the game wardens, I believe Brian Gaskins, informed me I needed to acquire a breeder's permit from the state. No one stated I was in violation of any law, but that I did need the breeder's certificate.

In 1997 or 1998, I spoke to Mike Cartwright with the Arkansas Game and Fish Commission at his office in Calico Rock, Arkansas, about acquiring the breeder's certificate. Mr. Cartwright informed me he would check into it. Several months later, in a telephone conversation with Mr. Cartwright, he informed me the Arkansas Game and Fish Commission had decided not to issue me a breeder's certificate. No explanation was given.

Approximately five (5) years after I started my business, one of the game wardens told me the Arkansas Game and Fish Commission had passed a regulation requiring a minimum of 500 acres, with 60% dead woods, to establish an elk herd. One of the game wardens told me I could kill and sell the meat to the public, but I could not let the public hunt the elk.

In 2007 or 2008, Officer Chris Majors and Officer Ryan Warner, game wardens with the Arkansas Game and Fish Commission, told me I could be arrested for having the elk illegally. The officers informed me that all I could do with my elk was kill them for my own personal use.

I have been forced to destroy my existing elk herd.

The regulation of the Arkansas Game and Fish Commission requiring 500 acres to raise elk was and is an arbitrary number with no scientific basis which I believed was chosen to specifically eliminate me and my elk operation because the Arkansas Game and Fish Commission

knew I had only 420 acres. Numerous articles have been published by the Arkansas Game and Fish Commission which state that "although elk have been back in Arkansas for almost 25 years, little scientific research has been conducted." ("Answers About Elk" by Don White, Jr., Ph.D., Mike Cartwright and Robert C. Weih, Jr., Ph.D., *Arkansas Wildlife*, November/December 2005).

At the time of the article, the above authors could not answer the question, "Which habitats are used?" *Id* at p. 11. The article continues, "Although our data will not permit us to estimate the minimum area of any vegetation type that is necessary before an area is occupied by bull elk our results will provide information about proportions of vegetation types associated with bull elk home ranged." *Id* at p. 12. "Since elk hunting season began in 1998, through the September 2005 hunt, 180 elk have been legally harvested." *Id* at p. 7.

Elk are native to Arkansas. Elk were reintroduced in 1980. Through the 2007 hunting season, 238 elk had been harvested. ("At Home in the Ozarks" by Michael Cartwright and Don White, Jr., *Arkansas Wildlife*, September/October 2008, p. 7).

Mr. Cartwright and Mr. White encourage elk production by private landowners. *Id* at p. 8. One of the stated objectives is to, "manage a limited number of elk on private land. *Id* at p. 8. The Arkansas Game and Fish Commission even has a private land elk management program with cost-share options in the program for landowners who want to improve habitat on their property for elk and other wildlife. *Id* at p. 9.

In another article, "Common Questions About Arkansas Elk," by Michael Cartwright and Don White, Jr., *Front Porch*, November/December 2008, p. 7, private elk management programs is encouraged.

Because of the Arkansas Game and Fish Commission's arbitrary treatment of my elk breeding business, I have suffered the following damages:

| | |
|--|--------------|
| 33 original elk purchased at \$2,250.00 each | \$74,250.00 |
| Hay | \$43,316.00 |
| Corn | \$74,440.00 |
| Worm blocks | \$3,150.00 |
| Mineral blocks | \$202.00 |
| TOTAL DAMAGES | \$195,358.00 |

I am requesting judgment against the Arkansas Game and Fish Commission and/or the State of Arkansas for \$195,358.00.

Claimant attempted in good faith to comply with state law by discussing his plans for his elk operation, first with the Izard County Sheriff and within the first year with the Arkansas Game & Fish Commission game wardens, Brian Gaskins and W.D. Whitehurst, who personally observed Claimant's elk. No one stated Claimant was in violation of state law.

Claimant next spoke with Mike Cartwright, Arkansas Game & Fish Commission employee, at his office in Calico Rock, Arkansas, about obtaining a breeder's certificate.

Not until 2007 or 2008, was Claimant informed he was in violation of the law, that all he could do is kill the elk for his personal use. Claimant owns 420 acres. Arkansas Game & Fish Commission regulations require 500 acres to establish an elk herd. The regulation requiring 500 acres is arbitrary at best and is not supported by scientific evidence. (See Claimant's brief in his Complaint.)

The State of Arkansas has encouraged the breeding of elk but has arbitrarily denied Claimant a right to lawfully pursue his business interest. Plaintiff was encouraged through his original contacts with Arkansas Game & Fish Commission personnel and continued his breeding operation under the impression that he would successfully obtain the required breeder's certificate. Once informed he was in violation of the law, Claimant destroyed the elk.

Plaintiff respectfully requests compensation for his attempt to participate in Arkansas' program of reintroduction of elk to the state.

Claimant has filed his Complaint within three (3) years of being notified he was in violation of the law (believed to be in 2008). Until notification of being in violation, Claimant had hopes of receiving his breeder's certificate. But for the Arkansas Game & Fish Commission's arbitrary requirement of 500 acres, Claimant would have successfully obtained the breeder's certificate and this matter would not now be before the Commission.

Claimant appreciates the opportunity to be heard and present his case.

III. ARKANSAS RULE OF CIVIL PROCEDURE 56 STANDARDS

A. Standard of Review

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided solely on legal grounds. *Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56. The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

The inquiry is the threshold inquiry of determining whether there is a need for trial -- whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

Claimant is the nonmoving parties and is not obligated to prove his case at this point. Rather, Respondents must present sufficient information to create an inference that Claimant may not be able to make his case at trial. Claimant's burden at the summary judgment stage is to demonstrate that there is sufficient evidence to put a material fact in play.

Summary judgment is only appropriate if the information found in pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue as to any material fact left for final resolution. Fed. R. Civ. P. 56. Only disputes over facts that might affect the outcome of the suit under the governing law will preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. *Longen v. Waterous Co.*, 347 F.3d 685 (8th Cir. 2003).

The materiality standard is distinct from the evidentiary standard. A materiality determination rests on substantive law that identifies what facts are critical to the outcome of the case. Materiality categorizes factual disputes and is not a basis for evaluating the evidentiary foundation of those disputes. Once a fact is shown to be material, it must have a sufficient evidentiary support.

Summary judgment is not called for if there exists a dispute about a material fact that is "genuine." In other words, granting a summary judgment motion is not appropriate if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Fenney v. Dakota Minn. & E. R. R. Co.*, 327 F.3d 707, 711 (8th Cir. 2003). The burden of showing that there is a genuine issue of material fact for trial is on the party opposing summary judgment. *First Nat. Bank of Ariz. v. Cities Service Co.*, 391 U.S. 253, 270 (1968). Since Claimant is the party opposing the motion, he has the burden, but is also given all favorable inferences.

To determine if Claimant defeats the motion, the Commission should consider the record as a whole, viewing the facts and inferences in the light most favorable to Claimant. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A motion should be denied if, in reviewing the evidence in this light, reasonable people can differ as to the conclusions to be drawn from it. *Cargill v. Liberty Mutual Ins. Co.*, 488 F.Supp. 49, *affd.* 621 F.2d 275 (8th Cir. 1975); *Greenwood v. Dittimer*, 596 F.Supp. 235 *affd.* 776 F.2d 785 (8th Cir. 1984).

In order to prove that his firing resulted from race discrimination, plaintiff must first establish a *prima facie* case of disparate treatment. As pointed out earlier, that burden is not heavy. *Texas Dept. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). In 1973, the Supreme Court first set forth the elements of a *prima facie* case in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). This suggested method of analysis was never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a "sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination."

The district court in *Richardson v. Sugg*, 325 F.Supp.2d 919, citing *U.S. Postal Service Bd. of Govs. v. Aikens*, 460 U.S. 711, 715, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983).

Summary judgment is proper if, after viewing the evidence in the light most favorable to Claimant, no genuine issue of material fact exists and Respondent is entitled to judgment as a matter of law. *Nelson v. Corr. Med. Servs.*, 533 F.3d 958, 961 (8th Cir. 2008). Claimant cannot survive the motion for summary judgment merely by pointing to disputed facts; the facts in dispute must be material to the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). If the facts alleged by Claimant, when viewed in the light most favorable to his case, would not allow a

reasonable jury to find in his favor, then summary judgment should be granted in favor of Respondent. *Bloom v. Metro Heart Group of St. Louis, Inc.*, 440 F.3d 1025, 1029 (8th Cir. 2006).

Claimant's Complaint contained sufficient facts which must be accepted as true, which are plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Claimant's claims were plausible as he plead factual content that would allow a court to draw the reasonable inference that Respondent is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

IV. FACTS AND ARGUMENT

An understanding of the facts is crucial to the argument. The one controverted fact that defeats Respondent's Motion for Summary Judgment is whether a conversation between Claimant and AGFC game wardens, Ryan Warner and Chris Majors,⁵ took place in July or August of 2008, or December 19, 2007. A question of law is whether Claimant relied upon representations made by the AGFC officials which implied that he would eventually be successful in acquiring a breeder's certificate for his elk herd. Claimant's strongest evidence that he did rely to his detriment upon representations made by the AGFC is a letter dated July 14, 1999 (*Ex.5*). This letter was received after consultations with the IZard County Sheriff concerning Claimant's purchase of the elk, observation of Claimant's elk by two game wardens, Brian Gaskins and W.D. "Whitey"

⁵ Respondent contends the second game warden was Jerry Smith, not Chris Majors, and that the conversation took place on December 19, 2007.

Whitehurst, and numerous conversations with Mike Cartwright, AGFC Deer/Elk Program Coordinator. The letter follows:

July 14, 1999

Mr. David Sherrill
P.O. Box 57
Brockwell, AR 72517

Dear Mr. Sherrill:

I have checked with our legal counsel in Little Rock, Mr. Jim Goodhart, regarding your request for information on Arkansas regulations pertaining to hunting elk within an enclosure. Mr. Goodhart advised that you would need a Commercial Game Breeder's Permit from the Commission (available from the main AGFC office in Little Rock) to raise for sale any elk in accordance with Commission Code 15.01 (Commercial Game Breeder's permit Requirements - see attachment).

Our Commission Code 18.16 (Taking of Elk Prohibited - see attachment) specifies that it shall be unlawful to take, attempt to take, or possess an elk or any part thereof at any time with the following exceptions: 1) when legally obtained outside the state and accompanied by verification; 2) in compliance with Commission Code 02.21, Elk Hunting Season (see attachment). It is lawful to possess elk so long as the elk have been obtained from outside the state and accompanied by written verification. The Commission interprets Code 18.16 to require that any taking or attempt to take such elk by means of hunting must also take place in compliance with Commission Code 02.21, which specifies the open seasons for elk hunting.

The Commission currently has no regulations specifying requirements for high fence enclosures or restricting private permitted game breeders from raffling or auctioning the animals that they raise. A private game preserve work group composed of Commission staff and chaired by Mr. Goodhart is presently looking into game farming and is expected to propose regulations within the next six months which could affect the requirements for private game breeding and hunting, possible including fence enclosure requirements. Currently, there is no way to guarantee that any investment made at this time will necessarily satisfy and future regulations. At present, you can take any action you choose

regarding enclosures. Mr. Goodhart advised that you might consider delaying any planned action until after you have an opportunity to review the anticipated regulations if you want to be certain that your plans will conform to any new requirements. Hopefully this information is of some help to you in making future decisions regarding your captive elk herd.

Cordially,
/s/ Mike
Michael E. Cartwright
Deer/Elk Program Coordinator
(Ex.5)

The following facts are taken from the sworn testimony, depositions, of David Sherrell and Fern Sherrell, his wife:

The Claimant, David Charles Sherrell, raised beef cattle off and on. (Ex.2,P.4,L.4; P.17,L.18) Claimant Sherrell was elected IZARD County Judge in 2010. (Ex.2,P.18,L.25-P.19,L.1)(Ex.2,P.36,L.5-24) Claimant has met and talked with Ryan Warner on more than one occasion. Before being elected IZARD County Judge, Claimant was elected Justice of the Peace for 18 years. (Ex.2,P.23,L.6)

Claimant owned 420 acres, all in IZARD County, except for sixty something acres in Fulton County. (Ex.2,P.25,L.23) In addition to dairy and beef cattle, Claimant raised elk on his 420 acres. (Ex.2,P.27,L.24) Claimant's intention was to help the State of Arkansas to replenish the elk population and establish a hunting lodge. (Ex.2,P.56,L.2-13) Before Claimant bought the elk he discussed his plans for elk with Jack Yancy, the sheriff in IZARD County. (Ex.2,P.50,L.22)

Claimant bought 33 elk in 1995 as an investment, for profit. (Ex.2,P.44,L.16-18,21) Claimant bought 22 elk from Rick Hoover in West Plains, Missouri for \$43,000.00. (Ex.2,P.45,L.8;P.46,L.23) The rest of the elk came from a woman in Siloam Springs.

(Ex.2,P.46,L.8) Claimant paid \$2,250.00 per head for the elk and borrowed the money to pay for them. (Ex.2,P.47,L.13,20) There were no regulations on elk at the time Claimant bought the elk. (Ex.2,P.5,L.13)

Within the first year of purchasing the elk, Brian Gaskins and W.D. "Whitey" Whitehurst, game wardens with the AGFC, came to Claimant's farm and observed the elk. (Ex.2,P.56,L.20-P.57,L.1)

Claimant talked to Mike Cartwright, AGFC Deer/Elk Program Coordinator, about obtaining a breeder's permit, to legally have the elk, and called him several times about acquiring a breeder's permit. (Ex.2,P.41,L.16;P.57,L.15) Claimant spoke personally with Mr. Cartwright in his office in Calico Rock, Arkansas about acquiring a breeder's certificate. (Ex.2,P.57,L.20-P.58,L.3) Claimant alleged Mr. Cartwright told him he would inquire into it (the permit). (Ex.2,P.58,L.11) Claimant assumed Mr. Cartwright would have given him an application if one had existed. (Ex.2,P.59,L.6) No one with the AGFC told Claimant to submit an application. (Ex.2,P.42,L.8)

Claimant identified a letter from Michael Cartwright, AGFC Deer/Elk Program Coordinator, dated July 14, 1999. (Ex.2,P.8,L.16;P.9,L.22-P.10,L.1;P.58,L.16)(Ex.5) According to the letter, Claimant wasn't breaking any laws. (Ex.2,P.41,L.23)

In the summer of 2008, Claimant recalled a visit he had by two representatives of the AGFC, Chris Majors and Ryan Warner, telling him they could arrest him for having elk. (Ex.2,P.8,L.6;P.38,L.14) Eugene Bull, a diesel mechanic who works on Claimant's equipment, was present when the AGFC representatives stated they could arrest Claimant for having elk. (Ex.2,P.8,L.9) Eugene Bull was 15 feet behind Claimant when

the conversation took place. (Ex.2,P.40,L.22) Claimant is certain the two game wardens were Officers Majors and Warner. (Ex.2,P.38,L.22) When Ryan Warner told Claimant he could arrest him, Claimant said, "You might as well hook me up," and Majors got out of the truck and said, "We're not arresting nobody." (Ex.2,P.39,L.13) This was the only time Officers Warner and Majors visited Claimant, when they told him they could have him arrested. (Ex.2,P.64,L.21-25)

Claimant identified a statement written by Eugene Bull,. (Ex.2,P.6,L.21;P.7,L.2) The statement corroborated Claimant's recollection of the conversation with Chris Majors and Ryan Warner.

The Claimant did not sell any elk; he and his wife ate one or two. (Ex.2,P.49,L.11) Based on Ryan Warner's statement, Claimant decided to kill the elk. Claimant killed the elk because the game wardens, Ryan Warner and Chris Majors, told him he could do zero with them. (Ex.2,P.29,L.3;P.38,L.18;P.43,L.5) Claimant buried the elk with a backhoe after destroying them. (Ex.2,P.29,L.25) Claimant killed the elk near the time his wife quit her job in 2009. (Ex.2,P.64,L.9) He shot the elk one or two months after the visit by Officers Warner and Majors. (Ex.2,P.64,L.17)

Claimant fed the elk corn, hay and all grain, and bought feed from at least three different mills. (Ex.2,P.52,L.23;P.54,L.9) He also kept records on costs for the elk for tax purposes. (Ex.2,P.53,L.2)

Claimant contends one of the game wardens told him he could kill and sell the elk meat to the public, but could not let the public hunt the elk. (Ex.2,P.61,L.23) Claimant disagreed with Mr. Warner if Mr. Warner testified the meeting with Claimant

happened in 2007. (Ex.2,P.62,L.24) Claimant has met and talked with Ryan Warner on more than one occasion. (Ex.2,P.36,L.5-24)

Claimant filed a complaint against the AGFC at the advice of W.D. "Whitey" Whitehurst. (Ex.2,P.66,L.11) Claimant did not file a complaint earlier because suing people is not his nature. (Ex.2,P.66,L.20) Mr. Whitehurst told Claimant the AGFC did him wrong. (Ex.2,P.66,L.25-P.67,L.3)

Claimant destroyed his elk because of statements by Mr. Cartwright and Officer Ryan Warner. (Ex.2,P.67,L.16) Claimant calculated the cost of his elk and arrived at the figure in his claim, \$195,000.00. (Ex.2,P.69,L.5) Claimant figured the cost per day and how long he kept the elk. (Ex.2,P.69,L.12) Claimant never told an officer he wanted to get rid of his elk. (Ex.2,P.71,L.8) The AGFC made rules and regulations after Claimant purchased his elk which prevented him from selling them. (Ex.2,P.71,L.15)

Fern Sherrell is the wife of Claimant, David Sherrell. (Ex.3,P.5,L.5) Mrs. Sherrell believed her husband paid Twenty-Two Hundred and Fifty Dollars per head for the elk. (Ex.3,P.5,L.22)

Mrs. Sherrell knew that her husband had several conversations with AGFC officials on their place, especially when they threatened to arrest him. (Ex.3,P.6,L.20) Mrs. Sherrell testified the events/conversations between the AGFC officials and her husband took place in the summer of 2008. (Ex.3,P.7,L.3) Mrs. Sherrell knew the visit from the AGFC officials was in 2008 because she was working at Horseshoe Bend Clinic at that time and she was contemplating changing jobs, and she remembers because they said they were going to arrest him. (Ex.3,P.8,L.5;P.12,L.19) Mrs. Sherrell also

remembered Eugene Bull was present during the conversations with the AGFC officials. (Ex.3,P.8,L.19) Mrs. Sherrell remembered the incident with the AGFC because it was hot weather, June, July or August 2008. (Ex.3,P.11,L.20;P.12,L.8-10) The Claimant slaughtered the elk not long after the AGFC threatened to arrest him. (Ex.3,P.8,L.25-P.9,L.1)

Claimant offers the following affidavit in addition to his sworn deposition:

I am David Charles Sherrell, Claimant in this matter. I am over the age of eighteen (18). I affirmatively state that I have never met Jerry Smith and have no idea who he is. As I testified previously, under oath, Ryan Warner and Chris Majors visited my farm and viewed my elk herd in the hot part of the summer of 2008. I strongly dispute that Ryan Warner and Jerry Smith discussed with me on January 19, 2007 my elk herd and AGFC regulations.

I have read the affidavit of William Ryan Warner (Exhibit C dated February 8, 2013, and attached Exhibits D, E and F), the affidavit of Jerry Smith (Exhibit G dated February 12, 2013), and the affidavit of Christopher Majors (Exhibit H dated February 26, 2013), which are attached to the AGFC's Motion for Summary Judgment and dispute their allegations that I met with Ryan Warner and Jerry Smith on or about January 19, 2007.

I repeat my statement, under oath, that I met Ryan Warner and Chris Majors in the summer months of 2008 when they discussed the AGFC regulations concerning elk.

/s/ David Sherrell (Ex.4)

A. Claimant has suffered damages as a result of the action of Respondent.

Claimant has documented both by his testimony, corroborated by the evidence submitted by Respondent that he was led to believe he could operate an elk reserve to benefit himself and the State of Arkansas. Numerous articles written by Respondent's representatives encouraged citizens like Claimant to pursue the elk industry. As late as

1999, Claimant was told he could sell the meat. Not until 2008 was Claimant told he was in violation of the law and could be arrested. Respondent's own brief and affidavits, stating no one told Claimant to destroy the elk confirmed his belief he could keep them and fall within state regulations.

Respondent's application of the law to the facts is misplaced. Claimant believed he was getting help from various members of Respondent regarding his breeder's certificate.

B. Claimant exhausted his administrative remedies.

Claimant's purchase and ownership of his elk in 1995 was clearly within the law as observed by Officers Gaskins and Whitehurst with no objection. According to articles written by Respondent's representatives, the elk was a new venture and studies were incomplete on ground and space needed. 500 acres was an arbitrary number which eliminated Claimant with 420 acres. Claimant pursued help from Respondent's Deer/Elk Program Coordinator, Mike Cartwright, and was encouraged with Mr. Cartwright's letter of July 14, 1999, evidentially after Cartwright spoke with Respondent's attorney, Jim Goodhart. Claimant is now pursuing his due process rights, applying for help from the Commission.

Why 500 acres was needed for an elk operation is unclear. Other people in the state were allowed to operate.

C. Claimant is not barred by the statute of limitations.

Claimant was notified in July or August 2008 that he was in violation of the law for possessing elk and could be arrested. Claimant filed his claim in June 2011, within the statute of limitations.

D. AGFC Code 15.04 is arbitrary and capricious.

Respondent's own articles on the subject states that the subject of raising of elk, "little scientific research has been conducted." "Answers About Elk" by Don White, Jr., Ph.D., Mike Cartwright and Robert C. Weih, Jr., Ph.D., *supra*.

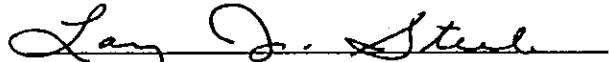
V. CONCLUSION

Claimant has testified truthfully. His documents, tax records, created before this claim was presented, corroborate the time line. Claimant's wife's testimony corroborates the time line. Respondent's documents corroborate Claimant's time line, with the exception of affidavits created upon the eve of this matters' briefing schedule. Even the undated photographs appear to have green grass in the background which would not be present in cold month of December 2007.

Respectfully submitted,

LARRY J. STEELE PLC

By:



LARRY J. STEELE (78146)

115 Abbey Road

P.O. Box 561

Walnut Ridge, AR 72476-0561

(870) 886-5840

(870) 886-5873 fax

email: steelelaw7622@sbcglobal.net


Attorney for Claimant,

David Charles Sherrell

CERTIFICATE OF SERVICE

I, Larry J. Steele, hereby certify that a copy of the foregoing BRIEF IN SUPPORT OF CLAIMANT'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, was faxed April 19, 2013, and mailed by U.S. Mail, postage prepaid, this 24th day of April, 2013, to the following:

Mr. James F. Goodhart
Arkansas Game & Fish Commission
Legal Division
#2 Natural Resources Drive
Little Rock, AR 72205



LARRY J. STEELE

APR 29 2013

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

DAVID CHARLES SHERRELL

CLAIMANT

VS.

CLAIM NO. 12-0015-CC

ARKANSAS GAME & FISH COMMISSION

RESPONDENT

RESPONDENT'S REPLY TO CLAIMANT'S RESPONSE TO
ARKANSAS GAME AND FISH COMMISSION'S MOTION FOR SUMMARY
JUDGMENT

Respondent Arkansas Game and Fish Commission ("AGFC"), by and through its undersigned counsel, filed on March 14, 2013, its Motion for Summary Judgment, based on evidence acquired in the discovery process which proves that there is no valid cause of action existing between the Claimant, David C. Sherrell, and the AGFC. Mr. Sherrell responded by filing documents styled "Claimant's Response to Respondent's Motion For Summary Judgment," "Brief in Support of Claimant's Response To Respondent's Motion for Summary Judgment," and "Claimant's Statement of Material Facts in Dispute." AGFC now respectfully submits this brief in reply to Mr. Sherrell's Response and renews its request that the Claims Commission dismiss Claimant's Complaint under Ark. R. Civ. Proc. 56(c) because there are no genuine issues of material fact and because AGFC is entitled to a judgment as a matter of law for Claimant's failure to state a claim upon which relief can be granted, for failure to exhaust administrative remedies, for failure to timely file this matter, and for mootness.

ARGUMENT

Despite Mr. Sherrell's mischaracterization of the facts and arguments at issue, the *evidence* in this matter clearly demonstrates that there are no genuine issues of material fact and that no cause of action exists between Mr. Sherrell and AGFC on the undisputed facts.

Mr. Sherrell attempts to address AGFC's statements of material fact in his document entitled "Claimant's Statement of Material Facts in Dispute," however, even where Mr. Sherrell denies a statement, his explanation of that denial amounts to an admission of the very facts proffered by AGFC. For example, Mr. Sherrell denies in paragraph 10 of his statement of facts that AGFC Officer Warner made a record of his meeting with Mr. Sherrell on January 19, 2007, by stating that, "filing an incident report and actually meeting are two separate facts." Either Mr. Sherrell fails to recognize the distinction between memorializing an event in writing contemporaneously and the event itself, or he is suggesting that Officer Warner, in anticipation of litigation that would not be filed until more than four years in the future, falsified records to provide evidence in this matter, which is blatantly false. In either case, Mr. Sherrell does not deny that the report exists and was dated more than four years before he filed his Complaint on June 30, 2011.

In addition, Mr. Sherrell denies in paragraph 12 of his statement of facts that the occasion of Officer Warner's and Officer Jerry Smith's visit to his property was the only time that Mr. Sherrell spoke with an employee of AGFC *on his property* about his elk by referring to a letter he received from AGFC well after that event. Mr. Sherrell misunderstands the statement of fact proffered by the Respondent. Obviously a letter received by Mr. Sherrell through the postal service would not constitute an employee physically entering onto his property to speak with

him. Thus, Mr. Sherrell's response is less of a "denial" and more of an avoidance of the actual facts.

Similarly, Mr. Sherrell denies in paragraph 13 of his statement of facts that the occasion of Officer Warner's visit to his property was the last time that any employee of AGFC communicated with him about his elk prior to the filing of this action by stating, "Claimant discussed with Whitey Whitehurst." Mr. Sherrell seems to be unaware of the fact that Officer Y.D. "Whitey" Whitehurst, retired from his employment with AGFC in 2004, and therefore, any conversation with Mr. Whitehurst that may have occurred after Officer Warner's and Officer Smith's visit in January 2007 would clearly not constitute a communication with an employee or agent of AGFC. (*See Exhibit A*). Again, Mr. Sherrell has side-stepped the material fact.

Moreover, Mr. Sherrell's attempt to manufacture a dispute concerning the date of the meeting does not defeat AGFC's Motion for Summary Judgment. Mr. Sherrell's assertion overlooks the fundamental flaw in his case: the uncontroverted fact that AGFC never took any action towards Mr. Sherrell in any way. Mr. Sherrell denies in paragraph 14 of his statement of facts that Mr. Sherrell never applied to AGFC for any kind of permit related to his elk by stating that, "Claimant wrote letters and discussed with various officials about acquiring a breeder's certificate... This was equivalent to a layperson's application." What Mr. Sherrell does not deny is that, despite being specifically instructed what to do if he was indeed interested in applying for a breeder permit, he never actually obtained an application form from AGFC's Little Rock office,¹ filled it out, and submitted it to AGFC for consideration. Mr. Sherrell does not deny this because, as he admitted in paragraph 5 of his "Response to Respondent's Motion for Summary

¹ Mr. Sherrell was specifically instructed to obtain an application from the Little Rock office in the 1999 letter sent to him by AGFC Biologist Mike Cartwright. *See Exhibit B*.

Judgment,” “Claimant *never* formerly [sic] filled out an application.”² Consequently, Mr. Sherrell has admitted that he never *applied* for any permit related to his elk herd, and any assertion to the effect that asking random AGFC employees *about* permits is somehow the same as actually applying for a permit is mistaken and misleading.

Furthermore, when Mr. Sherrell denies in paragraph 15 of his statement of facts that AGFC never denied Mr. Sherrell a permit related to his elk by stating that “AGFC, *in effect*, denied the claimant the right through arbitrary regulation regarding the 500 acre requirement,” Mr. Sherrell is asking this honorable Commission to overlook not only the fact that he, by his own admission, never actually applied for a permit, but he also asks that this Commission overlook that there has never been a five hundred acre requirement for the breeder’s permit.³ This denial is based upon Mr. Sherrell’s misunderstanding of AGFC’s regulations and his personal decision not to apply for any permit whatsoever. In effect, Mr. Sherrell is stating that he believed that his application for a “Game Hunting Resort Permit” would be rejected due to acreage requirements, and therefore, he chose not to apply for *any* permit related to his elk. Reading Mr. Sherrell’s statements altogether, it is clear that he admits that AGFC never denied him any permits because Mr. Sherrell never applied to AGFC for anything.

Mr. Sherrell denies in paragraph 16 of his statement of facts that no employee of AGFC ever cited, arrested, or threatened to arrest Mr. Sherrell by stating that “Officer Warner stated that he *could* arrest Claimant...” Mr. Sherrell once again is asking this Commission to overlook the plain meaning of common words, as well as his own deposition testimony, when making this denial. Obviously, stating that someone potentially could be arrested for illegal

² That paragraph goes on to erroneously state that Claimant went through proper channels by speaking to AGFC Biologist Mike Cartwright about permitting despite the fact that the 1999 letter from Mike Cartwright to the Mr. Sherrell informed him that the proper channel for obtaining a permit would be by applying for a permit available at the Little Rock office.

³ There is, however, a 500 acre requirement for game hunting resorts.

conduct is not the same thing as stating that someone actually will be arrested. Additionally when questioned about this matter at his deposition, Mr. Sherrell plainly stated that Officer Warner *did not* say that he was going to arrest him. (See Deposition of David Sherrell, p. 39 lines 11-13). Thus, there is really no dispute about this fact.

Mr. Sherrell denies in paragraph 17 of his statement of facts that no employee of AGFC ever ordered him to destroy his elk by stating, "Although, *they never ordered Claimant to kill the elk*, this was his only option." This denial not only asks this Commission to overlook the fact that Mr. Sherrell is clearly admitting that he was never ordered to destroy his elk, it also asks the Commission to accept the patently false premise that he did not have the option of simply applying for a breeder's permit and legally operating under the permit conditions as an elk breeder. It is undisputed that Mr. Sherrell had such option but *chose* to destroy his elk instead.

Mr. Sherrell denies in paragraph 18 of his statement of facts that his decision to destroy his elk was his own independent decision by stating that "*Claimant's decision* to destroy the elk was not an independent decision, but made with the knowledge that he could be arrested and could do zero with them." This denial asks that the Commission once again accept Mr. Sherrell's unfounded conclusion that he had no other option than to slaughter his elk herd, despite the fact that he admits he had been urged on several occasions to apply for a breeder's permit, which would have allowed him to legally continue breeding elk.

Finally, Mr. Sherrell argues that he exhausted his administrative remedies yet offers no law or facts supporting this assertion. Mr. Sherrell's allegations that AGFC regulations are arbitrary and capricious are wholly irrelevant to this matter, as the State Claims Commission is not an appropriate forum for deciding the validity of duly-adopted state regulations. Mr. Sherrell was free to challenge these regulations, first through the agency administrative review process

and then by appeal to the Pulaski County Circuit Court, but he failed to ever pursue such remedy and, instead, simply opted to destroy his elk and then wait to file this claim for monetary damages some 4-plus years later. He has attempted to create a dispute concerning the date of the encounter between Officer Warner (accompanied by Officer Smith) and Mr. Sherrell, and the date when he destroyed his elk; however, reasonable persons would not find Mr. Sherrell's latest explanation credible in light of the pleadings and deposition testimony in this case.

Mr. Sherrell has failed to provide credible evidence in response to AGFC's proof demonstrating that the 3-year Arkansas statute of limitation applicable to his claim alleging "forced destruction" of his elk had clearly run out before he filed his Complaint on June 30, 2011. He tendered only the unsubstantiated (and unverifiable), general recollections of his wife and a former employee, which are contradicted by his own uncertain, vacillating testimony and his original contrary assertions contained in the Complaint (*See* Page 2 of the Complaint alleging under oath before a Notary that "In 2007 or 2008 The officers informed me that all I could do with my elk was kill them for my own personal use.").

With there being no genuine issue of material fact as to the questions concerning exhaustion of administrative remedies, the reasonableness of AGFC's regulations, or the statute of limitations -- all of which have all been fully briefed in the Motion for Summary Judgment -- a hearing that would include further testimony is unnecessary to deciding this matter.

CONCLUSION

This honorable Commission has been presented ample evidence upon which to grant AGFC's Motion for Summary Judgment. The Claimant, David C. Sherrell, has not met "proof with proof" as required by Ark. R. Civ. P. 56(c) and has not shown the existence of any genuine issue of material fact. Accordingly, this case should be summarily disposed of based solely on

the undisputed facts gathered from Claimant's sworn statements: (1) Mr. Sherrell never applied for any permit related to his elk herd; (2) AGFC never denied Mr. Sherrell a permit related to his elk herd; and (3) AGFC never ordered Mr. Sherrell to destroy his elk herd. This case can readily be decided based upon a fundamental rule of torts: in order for there to be a cause of action, there must be an "act" caused by the defendant that injured the moving party. The evidence here clearly proves that no such act ever occurred because AGFC took no action, either positively or negatively, towards the Claimant other than to urge him to obtain proper permitting for his elk. Plainly speaking, AGFC did not cause any damage to Mr. Sherrell's property. AGFC did not order him to destroy his elk; it did not threaten to arrest him if he did not destroy his elk; and it did not reject a valid application for a permit concerning his elk. Once those facts are established, it becomes clear that this is purely a matter of the Claimant making a voluntary decision to destroy his elk and then, after waiting more than four years, filing this claim (now barred by the applicable 3-year statute of limitation) with the Commission in an attempt to have the State of Arkansas pay for his own errant actions. Based on the foregoing, Respondent Arkansas Game and Fish Commission is entitled to summary judgment.

Respectfully submitted,

ARKANSAS GAME AND FISH COMMISSION

By: 

James F. Goodhart, ABA # 92080

Jennifer R. Jameson, ABA #2007190

Christian N. Parks ABA #2009179

Arkansas Game & Fish Commission

Legal Division

#2 Natural Resources Drive

Little Rock, AR 72205

Tele: (501) 223-6327


Fax: (501) 223-6463

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Christian N. Parks, do hereby certify that on this 26th day of April, 2013, I filed the foregoing Respondent's Reply to Claimant's Response to Arkansas Game and Fish Commission's Motion for Summary Judgment and have transmitted same to the attorney designated below:

Larry J. Steele, Esq.
P.O. Box 561
Walnut Ridge, AR 72476


Christian N. Parks

State of Arkansas

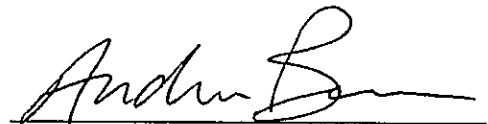
County of Pulaski

AFFIDAVIT OF ANDREW BASS

I, Andrew Bass, am employed by the Arkansas State Game and Fish Commission as Chief of Human Resources. I am competent to testify and have personal knowledge regarding the statements contained in this affidavit.

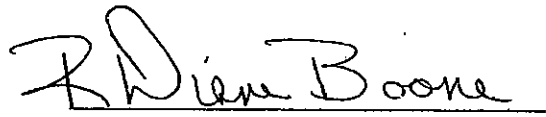
I have reviewed the Human Resources Records for AGFC and have verified that Officer Y.D. Whitehurst retired from his employment with AGFC effective 8/31/2004.

In witness whereof, I hereunto set my hand this 26th day of April, 2013.


Andrew Bass

Before the undersigned notary public, duly qualified and acting in and for said county and state, appeared Andrew Bass, who is to me well known to be or who has sufficiently proven to be the affiant herein, who signed this affidavit under oath.

Subscribed to and sworn to before me this 26th day of April, 2013.


Notary Public

My Commission Expires: June 7, 2021

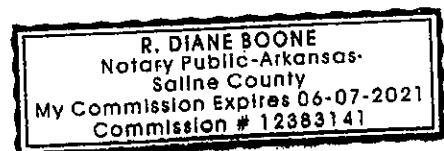


Exhibit
A
Arkansas
Game & Fish Comm

137

Arkansas Game & Fish Commission
2 Natural Resources Drive Little Rock, Arkansas 72205

Scott Henderson
Assistant Director



Steve N. Wilson
Director

Scott Yalch
Assistant Director

July 14, 1999

State Claims Commission

Mr. David Sherrill
P.O. Box 57
Brockwell, AR 72517

Dear Mr. Sherrill:

I have checked with our legal counsel in Little Rock, Mr. Jim Goodhart, regarding your request for information on Arkansas regulations pertaining to hunting elk within an enclosure. Mr. Goodhart advised that you would need a Commercial Game Breeder's Permit from the Commission (available from the main AFGC office in Little Rock) to raise for sale any elk in accordance with Commission Code 15.01 (Commercial Game Breeder's Permit Requirements - see attachment).

Our Commission Code 18.16 (Taking of Elk Prohibited - see attachment) specifies that it shall be unlawful to take, attempt to take, or possess an elk or any part thereof at any time with the following exceptions: 1) when legally obtained outside the state and accompanied by verification; 2) in compliance with Commission Code 02.21, Elk Hunting Season (see attachment). It is lawful to possess elk so long as the elk have been obtained from outside the state and accompanied by written verification. The Commission interprets Code 18.16 to require that any taking or attempt to take such elk by means of hunting must also take place in compliance with Commission Code 02.21, which specifies the open seasons for elk hunting.

The Commission currently has no regulations specifying requirements for high fence enclosures or restricting private permitted game breeders from raffling or auctioning the animals that they raise. A private game preserve work group composed of Commission staff and chaired by Mr. Goodhart is presently looking into game farming and is expected to propose regulations within the next six months which could affect the

DEPOSITION
EXHIBIT

Exhibit
B

138

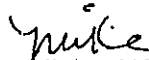
Mr. David Sherrill

July 14, 1999

Page 2

requirements for private game breeding and hunting, possibly including fence enclosure requirements. Currently, there is no way to guarantee that any investment made at this time will necessarily satisfy any future regulations. At present, you can take any action you choose regarding enclosures. Mr. Goodhart advised that you might consider delaying any planned action until after you have an opportunity to review the anticipated regulations if you want to be certain that your plans will conform to any new requirements. Hopefully this information is of some help to you in making future decisions regarding your captive elk herd.

Cordially,



Michael E. Cartwright

Deer/Elk Program Coordinator

MC: mcr

Attachments

cc: Mr. Steve N. Wilson

Mr. Scott Henderson

Mr. Scott Yaich

Mr. Donnie Harris

Mr. Don McKenzie

Mr. Bob Conley

Mr. Jim Goodhart

Mr. Loren Hitchcock

Mr. Brian Gaskins

Mr. Y.D. Whitehurst

Mr. John Crisman

Mr. Jim Hinkle

Elk Committee

Private Game Preserves Work Group

File

- (4) An alligator may be possessed for display and educational purposes pursuant to written permit issued by the Commission Chief of Wildlife Management.

PENALTY: \$500.00 to \$1,000.00, and suspension of hunting and fishing privileges may be imposed in accordance with Code 11.05, Revocation of Privileges. Equipment used in such violations (including but not limited to killing devices and lights) may be confiscated by the court, forfeited to the State, and disposed of according to law.

18.15
03-90

TAKING OF MOUNTAIN LION PROHIBITED.

It shall be unlawful to take, attempt to take, or possess a mountain lion, cougar, or panther (*Felis concolor*) at any time.

EXCEPTION:

- (1) When legally obtained and accompanied by verification and in accordance with USDA regulations.

PENALTY: \$100.00 to \$1,000.00.

18.16
02-81/04-98

TAKING OF ELK PROHIBITED. It shall be unlawful to take, attempt to take, or possess an elk or any part thereof at any time.

EXCEPTION:

- (1) When legally obtained outside the state and accompanied by verification.
(2) In compliance with Commission Code 02.21, Elk Hunting Season..

PENALTY: Not less than \$5,000.00.

18.17
02-98

WILDLIFE PET RESTRICTIONS. It shall be unlawful to take or attempt to take by any method other than by hands and possess alive any wildlife species other than six (6) each of the animals specified herein, and the sale, purchase, barter, or transporting of such animals from the state or the progeny thereof is prohibited.

- (A) Bobcat, coyote, deer, gray fox, red fox, opossum, quail, rabbit, raccoon and squirrel.
(B) Any native nongame wildlife excluding birds, bats, alligator snapping turtles, ornate box turtles, hellbenders, troglodytic (cave-dwelling) species or those animals defined as endangered species.

EXCEPTION:

- (1) Wildlife exchanged with other states by the Commission.

PENALTY: \$100.00 to \$1,000.00.

18.18
07-80

WATERFOWL HUNTING RESTRICTIONS ON LAKES HARRIS

BRAKE, HAMILTON. It shall be unlawful to take or attempt to take any migratory waterfowl from any watercraft or other floating device on Lake Hamilton in Garland County and Harris Brake Lake in Perry County.

PENALTY: \$100.00 to \$1,000.00.

Section 15.00 Game Breeders

- 15.01 Commercial Game Breeder's Permit Requirements.
- 15.02 Commercial Game Breeder's Report Requirements.
- 15.03 Commercial Wildlife Shipping Requirements.
- 15.04 Special Commercial Quail Permit Requirements.
- 15.05 Commercial Nongame Breeder's Permit Requirements.
- 15.06 Commercial Nongame Breeder's report requirements.

15.01

03-90

COMMERCIAL GAME BREEDER'S PERMIT REQUIREMENTS. It shall be unlawful to raise for sale any fur-bearing animals, game animals, game birds, or bullfrogs, or for bullfrogs to be kept or reared in other than escape-proof pens without first obtaining a Commercial Game Breeder's Permit from the Commission. Such permits may be granted in accordance with Commission requirements which include that the applicant must supply satisfactory evidence that stock will be secured from a legal source other than the wild stock of the state, a bill of sale must be maintained on all stock purchased and sold; and applicable USDA permits must be obtained.

PENALTY: \$100.00 to \$1,000.00. Second offense, penalty not less than \$500.00.

15.02

07-80

GAME BREEDER'S REPORT REQUIREMENTS. It shall be unlawful for game breeders to fail to mail or deliver to the Commission on the first of each month an itemized inventory of all species covered under Commercial Game Breeder's Permit.

PENALTY: \$100.00 to \$1,000.00. Second offense, penalty not less than \$500.00.

15.03

07-80

COMMERCIAL WILDLIFE SHIPPING REQUIREMENTS. It shall be unlawful to ship species possessed under Commercial Game Breeder's Permit or Commercial Nongame Breeder's Permit without label indicating contents, consignor, consignee and shipper's permit number.

PENALTY: \$100.00 to \$1,000.00.

15.04

07-80

SPECIAL COMMERCIAL QUAIL PERMIT REQUIREMENTS. It shall be unlawful to engage in the business of selling or offering for sale the dressed carcass of pen-raised quail without first obtaining a Special Commercial Quail Permit and stamp in addition to a Commercial Game Breeder's Permit. (Ref: Section 01.00-C "Pen-Raised Quail"). It is further provided that:

- (1) Quail must be killed by means other than shot;
- (2) Each dressed carcass must be stamped with special stamp with permit number prior to selling or offering for sale.

PENALTY: \$100.00 to \$1,000.00.

02.20

04-98

HUNTING BEAR OVER BAIT PROHIBITED. It shall be unlawful to take or attempt to take bear by hunting on or over a baited area. Bait is considered any substance that may be an attractant.
PENALTY: \$100.00 to \$1,000.00.

02.21

04-98

ELK HUNTING SEASON. It shall be unlawful to take, attempt to take, or possess elk other than during the open seasons as specified herein:

September 21-25, 1998. No dogs. Four bull permits (valid in elk zones 1 and 4), 2 bull permits (valid in elk zones 2 and 4), 1 bull permit (valid in elk zones 3 and 4).

December 7-11, 1998. No dogs. One bull permit (valid in elk zones 1 and 4), 1 bull permit (valid in elk zones 2 and 4), 1 bull permit (valid in elk zones 3 and 4), 3 antlerless permits (valid in elk zone 1), 1 antlerless permit (valid in elk zone 2), and 1 antlerless permit (valid in elk zone 3).

September 21-25, 1998 and December 7-11, 1998. No dogs. Five antlerless permits will be valid for use in elk zone 4.

EXCEPTION:

- (1) When legally obtained outside the state and accompanied by verification.

PENALTY: Not less than \$5,000.00.

STATE CLAIMS COMMISSION DECISION
OPINION

Amount of Claim \$ 195,358.00

Claim No. 12-0015-CC

| | | | |
|---|--|--|--|
| <u>David Charles Sherrell</u> Claimant | | <u>Larry Steele, Attorney</u> Claimant | |
| vs. | | | |
| <u>AR Game & Fish Commission</u> Respondent | | <u>James Goodhart, Attorney &</u> Respondent | |
| <u>State of Arkansas</u> | | <u>Robert K. Jackson, Attorney</u> | |
| Date Filed <u>June 30, 2011</u> | | Type of Claim <u>Loss of Property, Loss of Profit & Refund of Expenses</u> | |

FINDING OF FACTS

The Claims Commission hereby unanimously denies and dismisses the Respondent's "Motion for Summary Judgment." Therefore, this claim will proceed to hearing as scheduled.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies and dismisses the Respondent's "Motion for Summary Judgment." Therefore, this claim will proceed to hearing as scheduled.

Date of Hearing May 16, 2013

Date of Disposition May 16, 2013

| | |
|--------------------|--------------|
| <u>[Signature]</u> | Chairman |
| <u>[Signature]</u> | Commissioner |
| <u>[Signature]</u> | Commissioner |

Parks, Christian N.

From: Day, John E (Enforcement)
Sent: Friday, January 12, 2007 3:43 PM
To: Gray, Cory; Gallagher, John; Sasse, Blake; Carpenter, Chris; Weatherington, Stephanie; Carner, Brad; Shook, Doyle L.; Aaron, Ron
Cc: Legal Division; Hitchcock, Loren; Goad, David
Subject: FW: 15.01 David Sherrill Elk

Importance: High

All,
Houston we have a problem....

Look at the provided information. As you can see we are looking at multiple violations of section 15.00 requirements. Please provide Captain Aaron and myself your emailed thoughts concerning violations to cite and methods of cervid disposal.

We need to start resolution of this situation that has obviously existed for a while.
John

From: Aaron, Ronald J.
Sent: Friday, January 12, 2007 3:02 PM
To: Day, John E (Enforcement); Weatherington, Stephanie K.
Subject: 15.01 David Sherrill Elk

From: Warner, William R.
Sent: Friday, January 12, 2007 1:28 PM
To: Aaron, Ronald J.
Cc: Smith, Jerry D.
Subject: David Sherrill Elk

Arkansas Claims Commission

JUL 03 2013

RECEIVED



B1-43665-048.doc



MVC-016S.JPG



MVC-017S.JPG



MVC-018S.JPG



HPIM0311.JPG



HPIM0312.JPG



HPIM0313.JPG



HPIM0314.JPG



HPIM0315.JPG



HPIM0316.JPG

MVC-016S, 017S, and 018S are photos taken Oct. 7, 2005

HPIM0312 thru 0316 are photos taken Jan. 12, 2007



Sherrill Elk Pen
Izard Co.pdf

This is a map of his farm where the elk/deer are and how to get there from junction of Hwy. 9 and Hwy 354 at Oxford.

Arkansas Claims Commission

JUL 03 2013

RECEIVED

145

INCIDENT REPORT

ARKANSAS GAME & FISH COMMISSION

ENFORCEMENT DIVISION

| | | | | | | | | | | | |
|---|-----|--|--------------|--|-------------|-------------------|----------------------------|-----------|-------------------------------|---------------------------|------------|
| How Reported | | <input type="checkbox"/> Radio <input type="checkbox"/> Phone <input type="checkbox"/> Person <input type="checkbox"/> Mail <input type="checkbox"/> Other | | | | | Report No. B1-43665-048 | | | | |
| Type of Incident | | Date Occurred: | | | | | Time : AM | | | | |
| 1 David Sherrill Elk/Fallow Deer Without Permit | | Date Reported: | | | | | Time : AM | | | | |
| Location of Incident | | GPS N36.2512 W091.8861 | | | Code Number | | 15.01 | | | | |
| 2 David Sherrill Residence Just Northeast Of Oxford In IZARD County | | | | | | | | | | | |
| 3 Complainant's Name (Last - First - Mi) | | Address: | | | Zip: | Phone | Res: | - | | | |
| | | | | | | | Work: | - | | | |
| 4 Suspect's Name (Last - First - Mi) | | Address: | | | Zip: | Phone | Res: | - | | | |
| | | | | | | | Work: | - | | | |
| Race | Sex | D.O.B. | Age | Height | Weight | Hair | Eyes | Build | Complexion | Tattoos-Scars-Marks | |
| 5 N/A | N/A | | | | | N/A | N/A | N/A | N/A | | |
| 6 Hat | | Coat/Jacket | | Shirt/Blouse | | Pants/Skirt | | Foot Wear | | Driver's Lic. (State & #) | NCIC Check |
| | | | | | | | | | | | N/A |
| 7 Vehicle | | Year | Make & Model | | Color | VIN/Serial Number | | | License Number (Year & State) | | |
| N/A | | | | | | | | | | | |
| 8 Owner's Name (Last - First - Mi) | | Address: | | | Zip: | Phone | Res: | () - | | | |
| | | | | | | | Work: | () - | | | |
| 9 NCIC Check | | Evidence Seized | | Type of Evidence and Identifying Numbers | | | | | | | |
| N/A | | N/A | | | | | | | | | |
| 10 Location Where Evidence is Stored (Address) | | Evidence Tag Number | | | | | | | | | |
| | | | | | | | | | | | |

NARRATIVE

I have received several reports of David Sherrill having elk and fallow deer without permits. I've tried on several occasions to make contact with him to discuss this matter but have been unsuccessful. On 12th January 2007 I went to where the elk and fallow deer are and photographed them. I then went to Mr. Sherrill's house and rang the doorbell but no one appeared to be home. He has had the elk for several years now (photographs dating back to October 2005) without having a wildlife breeder/dealer permit. I contacted licensing on the 12th January 2007 and they did not have him listed as a wildlife breeder/dealer permit holder.

| | | | | | |
|--|--|-----------|--------------|------------------|---------------|
| Reporting Officers | | Date | County/Dist. | Reviewing Supvr. | Date Received |
| 11 Warner | | 1/12/2007 | Izard / B1 | | |
| Case Status | | | | | |
| 12 <input type="checkbox"/> Referred to Other Jurisdiction <input type="checkbox"/> Cleared by Arrest <input type="checkbox"/> Closed <input checked="" type="checkbox"/> Pending <input type="checkbox"/> Unfounded | | | | | |

146

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 195,358.00

Claim No. 12-00015-CC

David Sherrell Claimant

vs.

Attorneys

Larry Steele, Attorney Claimant

AR Game & Fish Commission
Respondent

James Goodhart, Attorney
Respondent

State of Arkansas

Date Filed July 1, 2011

Type of Claim Loss of property/Refund
of expenses

FINDING OF FACTS

This claim was filed for loss of property and refund of expenses in the amount of \$195,358.00 against Arkansas Game & Fish Commission.

Present at a hearing August 16, 2013 was the Claimant, represented by Larry Steele, Attorney and the Respondent, represented by James Goodhart, Attorney.

The Arkansas State Claims Commission unanimously finds no liability on the part of the Respondent. The Claimant, Mr. Sherrell, failed to obtain required Arkansas breeder/dealer and commercial hunting permits, even after being notified of the need to do so by the Respondent. The Claimant could have applied to keep the elk for his own use, but hunting of the elk would not have been legal under the Respondent's acreage provisions. The Claimant stated under oath that he never attempted to sell the elk to anyone during the years he owned them or when he decided to dispose of them. The Claimant, acting on his own, chose to destroy the penned herd of 31 elk and in the Commission's opinion was not "forced" by Respondent or anyone else to take such action. In fact, the Claimant's wife testified that she did not know the elk had been shot and buried by her husband (the Claimant) until two or three weeks after the shooting occurred. The Respondent was not responsible for initiating contact with Claimant to explain the permitting process and consequently the Respondent is not liable for damages in this matter and should not be blamed for Claimant's failure to investigate the permitting process or seek legal advice before venturing into an elk raising business effort.

Therefore, this claim is hereby unanimously dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission unanimously denied and dismissed this claim for Claimant's failure to file in a timely manner to exhaust his administrative remedy and file with the Arkansas Supreme Court.

Date of Hearing August 16, 2013

Date of Disposition August 16, 2013

Patricia Chairman
Bill Lancaster Commissioner
Jim Baker Commissioner

Larry J. Steele PLC

ATTORNEY AT LAW
115 Abbey Road, P.O. Box 561
WALNUT RIDGE, AR 72476-0561
e-mail: steelelaw7622@shcgloba.net

PHONE: (870) 886-5840

FAX: (870) 886-5873

CERTIFIED
RETURN RECEIPT REQUESTED
7010 2780 0002 6167 2182

August 23, 2013

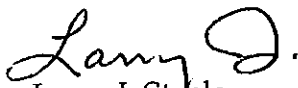
Mr. Norman L. Hodges, Jr., Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72203-3823

RE: David Charles Sherrell v. Arkansas Game and Fish Commission
Claim No. 12-00015-CC

Dear Mr. Hodges:

Please accept this letter as my request to appeal the decision denying and dismissing Mr. Sherrell's claim to the Legislative Sub Committee.

Sincerely,


Larry J. Steele

LJS/jas

cc: Mr. David Sherrell

Arkansas
State Claims Commission
AUG 26 2013
RECEIVED