

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

February 7, 2001

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Third Party Contact:
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CASE MIS No.: TAM-120074-00/CC:TEGE:EOEG:TEB

Director, Tax Exempt Bonds
Attention:

Taxpayer's Name:
Taxpayer's Address:
Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

Date 1 =
Issuer =
Company =
a =
b =
c =
d =

ISSUE:

Whether specially equipped greenhouses and a cold storage building used for growing and storing plants are a manufacturing facility within the meaning of §144(a)(12)(C) of the Internal Revenue Code?

CONCLUSION:

The greenhouses and cold storage building are used for farming purposes on a farm within the meaning of § 6420(c)(2), and they are not manufacturing facilities under § 144(a)(12)(C).

FACTS:

On Date 1, Issuer issued \$a of revenue bonds ("Bonds") and loaned the proceeds to Company. Company used the Bond proceeds to construct the Facility, consisting of b acres of state-of-the-art greenhouses and a c square-foot cold storage

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building. The Facility is located on d acres of land (the "Land"). Company uses the Facility to produce garden plants using a process described below. The Company uses the Facility solely for the plants it grows on the Land.

Company holds a patent for a growing process that results in faster-growing and more durable plants than conventional growing methods. Germination of the plants begins in greenhouses equipped with high-density halogen lighting, heated floors, and robotic arms delivering water and other nutrients. After the plants and root systems grow, the plants are transplanted into special containers that alter the growth process by concentrating nutrients in the crown and in some of the roots of the plants. The plants are then moved into other greenhouses that are equipped with retractable roofs, heated floors, and robotic watering systems.

After several weeks, the plants are moved from the greenhouses to fields on the Land. The plants are kept in the fields until they begin going dormant at which time many of the plants are moved to the cold storage building. In the cold storage building, the plants are trimmed, graded, and chilled until they become dormant. Before shipping, the plants are repotted in biodegradable containers and moved from the cold storage building back to the greenhouses. In the greenhouses, the plants are placed on the heated floors for several weeks to promote root growth and to start the growing process. Then, immediately prior to shipping, the plants are returned to the cold storage building to produce a semi-dormant state to prevent the plants from growing during shipping.

Company does not meet the requirements of § 147(c)(2)(B) for first-time farmers.

LAW AND ANALYSIS:

Section 103(a) provides that gross income does not include interest on a State or local bond. Section 103(b)(1) provides that § 103(a) does not apply to any private activity bond, unless it is a qualified bond. Section 141(e)(1)(D) provides, in part, that a qualified small issue bond is a qualified bond.

Section 144(a)(1) provides that the term "qualified small issue bond" means any bond issued as part of an issue the aggregate authorized face amount of which is \$1,000,000 or less and 95 percent or more of the net proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or to redeem a prior issue that was used for those purposes. Under § 144(a)(4), the issuer may elect to increase the \$1,000,000 limitation to \$10,000,000 provided certain other requirements are also met. The proceeds, however, are still required to be used in the manner described in § 144(a)(1).

Section 144(a)(12) provides, in part, that § 144(a) does not apply to any bond issued after December 31, 1986, unless 95 percent or more of the net bond proceeds

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are to be used to provide any manufacturing facility or any land or property in accordance with § 147(c)(2). Section 144(a)(12)(C) states that the term "manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property).

Section 147(c)(2) provides an exception to the limits on using bond proceeds to acquire land, and to the limits on using bond proceeds to acquire used property. For § 147(c)(2) to apply the land must be 1) used for farming purposes and 2) acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of the farm. If these requirements are met, the limitation on acquiring used property does not apply to property to be used on that land for farming purposes (subject to a dollar limitation). Section 147(c)(2)(D) provides that "farm" has the meaning given such term by § 6420(c)(2). Section 147 does not define the phrase "farming purposes."

Section 6420, in part, describes when gasoline is used on a farm for purposes of an income tax credit. Section 6420(c)(2) provides that farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. Section 48.6420-4(c) of the Manufacturers and Retailers Excise Tax Regulations provides that farm is used in its ordinary and accepted sense and generally means land used for the production of crops, fruits, or other agricultural products. Greenhouses and similar structures that are used primarily for purposes other than the raising of agricultural or horticultural commodities do not constitute farms. For example, structures used primarily for the display, storage, fabrication or sale of wreaths, corsages and bouquets are not farms.

Section 6420(c) also describes when gasoline is used for farming purposes. Section 48.6420-4(d) and (e)(1) provides, in part, that gasoline is used for farming purposes if it is used by certain persons 1) on a farm in connection with cultivating the soil, raising or harvesting any agricultural or horticultural commodity, or 2) in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state, but only if those persons produced more than one-half of the commodity which was so treated during the relevant period.

Section 48.6420-4(e)(2) provides that gasoline is not used for farming purposes when it is used in connection with canning, freezing, packaging, or processing operations. For example, although gasoline used on a farm in connection with the production or harvesting of maple sap or oleoresin from a living tree is considered to be used for farming purposes, gasoline used in the processing of maple sap into maple syrup or used in the processing of oleoresin into gum spirits of turpentine is not used for farming purposes, even though these processing operations are conducted on a farm.

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The Facility is a farm. Section 6420(c)(2) specifically defines farm to include greenhouses and similar structures used primarily for the raising of horticultural commodities. Both the greenhouses and the cold storage building are primarily used for raising horticultural products.

Further, the greenhouses and the cold storage building are used for farming purposes. Section 147 does not define farming purposes. Nevertheless, because § 147(c)(2) looks to § 6420 for the definition of “farm,” it is reasonable to look to § 6420(c) to help define “farming purposes” for § 147(c)(2). The greenhouses are used for farming purposes because they are used to germinate and raise the plants. The activities in the cold storage building, which is used to put plants in a dormant state and for storage, are more akin to drying, packing and grading or storing unmanufactured horticultural products than they are to canning, freezing, packaging or processing operations.

In this case, however, the Facility is not in accordance with § 147(c)(2) because the first-time farmer requirements are not met. The issue then is whether the Facility can be a manufacturing facility. We conclude that it cannot be. Congress made a distinction between manufacturing facilities and land or property described in § 147(c)(2). For land and property used on a farm for farming purposes, Congress provided that they could be financed if the first-time farmer requirements of that section were met. It would be inconsistent with congressional intent to permit land or property used on a farm for farming purposes that does not meet the first-time farmer requirements to be financed as a manufacturing facility.

The taxpayer argues that the process it uses in the Facility creates a better plant (a faster growing and more durable plant) and, thus, the Facility is a manufacturing facility. Section 6420 does not determine whether property is a farm or is used for farming purposes based on the quality of the commodity produced. Thus, the Facility cannot be financed as a manufacturing facility with qualified small issue bonds.

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Rebecca Harrigal