

In The Matter of the Petition of "C"

for a Declaratory Ruling

DOC #4337, Effective November 3, 1987

Pursuant to RSA 541-A:1, I-b., 541-A:2, I., (c), and Rev PART 209 of the New Hampshire Code of Administrative Rules, "C", a New Hampshire tax practitioner having his principle office at New Hampshire 03, has petitioned the Department of Revenue Administration for a Declaratory Ruling stating that a family farm property, the use of which as a farm business ceased prior to January 1, 1970, and has since been used exclusively as a personal residence is not subject to the Business Profits Tax of RSA 77-A.

The petitioner presents no additional facts, aside from those recited in the question above, which are necessary to a resolution of the issues presented.

In the early days of the Business Profits Tax (RSA 77-A) two cases went before the New Hampshire Supreme Court which shed considerable light on the taxpayer's question, Shangri-La, Inc. v State of New Hampshire, 113 NH 440; 390 A2d 285 (1973) and Estate of Frank E. Kennett v State of New Hampshire, 115 NH 50; 333 A2d 452 (1975). Both of these cases involved returns filed in the first year of the Business Profits Tax.

Shangri-La involved the taxability of the sale of a resort business on April 28, 1970. The Business Profits Tax was enacted to take effect on April 22, 1970, applicable to all Gross Business Profits earned since January 1, 1970. The taxpayer argued that most of the gain reported on the Federal Tax Return reflected appreciation over allowable depreciation on the business assets which occurred before the effective date of the tax.

In Estate of Kennett, the taxpayer sold timber lands, a business asset. An option to purchase the lands was exercised by the United States on October 29, 1969, the deed was delivered and recorded January 13, 1970, and the purchase price received February 4, 1970. This taxpayer argued that the whole land transaction occurred prior to the effective date of the tax.

In each case the State, through Attorney Charles G. Cleveland for then Attorney General Warren B. Rudman, persuaded the Court that RSA 77-A looked to the Federal Tax Form to determine the amount of tax due. (See: State's Brief, Shangri-La, page 2-4, No. 6624, 1973 Session). In like manner, we would look to the taxpayer's Federal Tax Return, Schedule F of form 1040 to determine if a sale in 1986 of formerly farm property would be taxable as a gain from the sale of farm business assets, or whether the sale would be properly reported as the sale of a residence on Form 2119. In this respect it is clear that the Reg. §1.1034-1 (c)(3) encourages the taxpayer to report the sale on Form 2119 and that Regs. §1.175-3 and §1.175.4, defining both the "business of farming" and "land used in farming", as well, as other sections of the Code and Regulations discourage the "Schedule F" treatment.

Thus, in traditional Business Profits Tax analysis it is clear that the sale contemplated is, (1) an "amount received" during this tax year, however, (2) the federal form on

which this 11 amount received" will be reported is not 1040 Schedule F or supporting Schedule of Form 4797, and consequently, (3) no New Hampshire Business Profits Tax is due on this sale.

Although similar sales after 1986 will transpire under new language in RSA 77-A:1, III whereby the Business Profits Tax is linked to the Internal Revenue Code of 1986 in effect on January 1, 1987 (See: N.H. Laws Chapter 407:2 and 3) rather than the IRS forms issued to effectuate the Code of 1954 (as amended), the results in the instance of this ruling would be the same.

Everett V. Taylor, Commissioner