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WHAT IS A “BUILDING”? 
—by Neil E. Harl*

With “buildings” treated uniquely for depreciation purposes, and with numerous structures on farms and ranches arguably classifiable as “buildings,” the guidelines for what is or is not a building take on great importance. A 1999 Tax Court case has provided additional insight into what should be classified as a building.

Classification guidelines

If a facility is a “farm building” it is properly classified as an asset with a 25 year life which means the asset is depreciable over 20 years as 20-year property. Assets classified as 20-year property can be depreciated under 150 percent declining balance depreciation rules as the maximum depreciation rate and with the property subject to mid-year convention rules.

Interestingly, the term “building” is not defined in the statute. The regulations under I.R.C. § 1045 specify that language used to describe property in I.R.C. § 1245(a)(3)(B) (which includes “a building or structural components”) is to have the same meaning as in the investment tax credit regulations. The term “building” was defined for investment tax credit purposes (“buildings” were not eligible for investment tax credit) as follows:

“The term building generally means any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing, or to provide working, office, packing, display, or sales space.”

In deciding whether property is Section 1245 property, the same tests are to be applied as were used in deciding whether property was “Section 38 property” for investment tax credit purposes.

Tobacco barn

In Hart v. Commissioner, the question was whether a tobacco barn was a building, and thus 20-year property; section 1245 property and thus eligible for expense method depreciation; a single purpose horticultural structure and thus eligible for depreciation over 10 years; or a land improvement depreciable over 15 years.

The Tax Court agreed with the Internal Revenue Service that the tobacco barn in question was a building and thus not eligible to be treated as “other property” used in conjunction with manufacturing or production. Had the tobacco barn been considered to be “other property,” it would have been eligible for expense method depreciation.

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The tobacco barn in question was described by the Tax Court as follows:

“The Tobacco Barn is an enclosed structure consisting of wooden walls, a high A-type ceiling, and a dirt floor. It's 36 feet wide and 96 feet long. It has 3 doors on each of two opposite sides large enough to admit large pieces of machinery or farming equipment. The Tobacco Barn is constructed with 42 support beams, four across and thirteen deep, set on concrete piers. There are drop rails running north to south and east to west at a 90-degree angle to the support beams. The drop rails are set at three different heights and are used to hang the tobacco sticks. The Tobacco Barn is not foundationally strong and could not, for example, house cattle. However, the Tobacco Barn could be structurally strengthened with relative ease.

“The Tobacco Barn was constructed to provide for ventilation through the roof, side walls and side doors…There are also cracks between the boards on the sides of the barn. Due to the cracks in the walls, large quantities of grain cannot be stored in the Tobacco Barn.

“The Tobacco Barn is equipped with minimal electrical wiring and lighting fixtures. It is not insulated, nor does it have heating or plumbing.”

The Tax Court proceeded to apply the “appearance test” to determine whether the structure was a building. The Tax Court concluded that the structure in question looked like a building under the appearance test. As for the function test, the Court focused on whether the structure provided working space for employees and concluded that the facility provided working space beyond what would be merely incidental to the function of the structure as a curing facility. Accordingly, the structure was considered to be a building and, therefore, not Section 1245 property.

As for the issue of whether the tobacco barn was a single purpose horticultural structure, the Court approached the question by applying three tests—(1) a “specific design” test, (2) the “exclusive use” test (for horticultural purposes) and (3) an “actual use” test—for horticultural purposes. The Court held that the facility failed the first two tests which rendered the third test moot.

The Tax Court then proceeded to hold that the structure was 20-year property as a building under Class 01.3.

Lessons from the case

Hart v. Commissioner has provided additional guidance on the line between a “building” and non-building structures that were eligible for investment tax credit. Those cases and rulings included a refrigerated storage area for apples, peanut houses, refrigerated fruit storage facilities, citrus processors compartments, cooling and holding rooms for fruit and freezer storage facilities.

Additional litigation is likely.

FOOTNOTES

3 Hart v. Comm'r, T.C. Memo. 1999-236 (tobacco barn).
4 Rev. Rul. 87-56, 1987-2 C.B. 674 (class 01.3).
5 I.R.C. § 168(e)(1).
7 I.R.C. § 168(d)(1).
8 Treas. Reg. § 1.1245-3(c)(2).
9 Treas. Reg. § 1.1245-1(a).
10 Treas. Reg. § 1.48-1(e)(1), (2).
11 Hospital Corp. of America v. Comm'r, 109 T.C. 21, 50-51 (1997), acq and nonacq, I.R.B. 1999—.
12 T.C. Memo. 1999-236.
13 I.R.C. § 168(c)(1).
14 I.R.C. § 179.
18 I.R.C. § 179(d)(1).
20 See Yellow Freight Systems, Inc. v. United States, 538 F.2d 790, 795-796 (8th Cir. 1976).
22 T.C. Memo. 1999-236.
26 T.C. Memo. 1999-236.

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