Managing Storage Commodity Condominium Ownership

Neil E. Harl

Iowa State University

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation


This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digrep@iastate.edu.
Managing Storage Commodity
Condominium Ownership

-by Neil E. Harl*

Rising costs and declining storage fee income have combined to pose an unanticipated income tax issue for owners of commodity condominium storage units – are losses properly treated as trade or business losses (which are fully deductible against farm income) or as passive activity losses which can only be used to offset passive activity income? The issue is of considerable importance if a taxpayer does not have sufficient passive activity income to offset the passive activity losses from the condominium project.

Nature of commodity condominium ownership

The name, “condominium” ownership apparently came from the popular concept developed decades ago for residential units whereby investors typically gained full ownership of the interior, limited ownership of decks and walkways and in-common ownership of roadways, swimming pools, tennis courts and other so-called “common-elements.” The lines separating the various kinds of ownership continue to pose legal problems in many condominium complexes, particularly the line between what is owned in full ownership and what is owned in common. One important feature of a residential condominium project is that the units are clearly separated and conveyed to an investor and the investor exercises ownership and control of the unit interior on an exclusive basis.

Commodity condominium ownership is different in that the investment is in a specified space and the investor does not exercise ownership and control over that space. Indeed, the investor’s commodity, whatever it might be, is typically pooled and is not stored in that investor’s designated space. Accordingly, the ownership interest is not eligible for regular or expense method (Section 179) depreciation.

Whether the investment is amortizable as a general intangible5 over 15-years4 depends upon whether one or more of the requirements specified in the statute5 are met, none of which specifically permits amortization of commodity condominium storage6 but one of which refers to “ . . . any other similar item”7 to the list of eligible assets.8 The intangibles statute specifically excludes “interests in land” from the amortization provisions.9 Farm program quotas,10 milk marketing contracts,11 and Class I milk bases12 have been held to be intangible under earlier authority and, presumably would be amortizable unless involving an interest in land. Peanut acreage allotments were held to be non-depreciable in a 1991 Tax Court decision13 and could not be depreciated or amortized in a 2004 ruling14 because the allotments involved an interest in land.15

* Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University; member of the Iowa Bar.
Relationship of losses to a trade or business

Whether a loss from an investment in a commodity condominium project is deductible as a trade or business loss, which offsets income from the trade or business, or is treated as a passive activity loss, which only offsets passive activity income (until termination of the investment by the taxpayer in a fully taxable transaction), depends upon the relationship of the investment in the condominium storage project.

If the taxpayer is regularly and consistently storing commodities produced in a trade or business in the condominium storage unit, in an amount equal to or in excess of the capacity “owned” by the taxpayer, it would seem that the condominium interest should be considered part of the trade or business for income tax purposes or, as the statute states, the condominium ownership is an activity “. . . in connection with a trade or business.”

However, if the taxpayer is a mere investor in the commodity condominium storage unit, with no commodities stored there or significantly less than the capacity of the unit “owned” by the taxpayer, and no material participation in the project on a “. . . regular, continuous and substantial basis,” the activity is likely to be deemed a passive activity, the deductibility of losses from which are limited to passive investment income.

Disposition by the owner of the commodity condominium facility

Many commodity condominium storage facilities are owned by farm cooperatives or proprietary farm supply firms with commodity purchasing authority. In one recent audit, the question was raised whether the sale or merger of the cooperative or farm supply firm owning the facility would trigger the provision allowing the deduction of accumulated passive activity losses passed through to the investors. The answer to that appears to be in the negative inasmuch as the statute clearly limits the scope of that provision to the “. . . taxpayer [who] disposes of his entire interest in any passive activity (or former passive activity). . . .” That contemplates that it is the taxpayer who is entitled to receive the passive activity loss, not the taxpayer who generates the passive activity loss, who is eligible to claim the accumulated passive activity loss.

ENDNOTES


2 I.R.C. §§ 167(a), 168(a), 179, 1245.

3 I.R.C. § 197(a).

4 I.R.C. § 197(a).

5 I.R.C. § 179(d).

6 I.R.C. § 197(d)(1).


8 I.R.C. § 197(d)(1).

9 I.R.C. § 197(e)(2).

10 I.R.C. § 197(d)(1)(D).


15 I.R.C. § 197(e)(2).

16 I.R.C. § 469(g).

17 I.R.C. § 469(c)(6)(A).

18 I.R.C. § 469(h)(1).

19 I.R.C. § 469(a).

20 I.R.C. § 469(g).

21 Id.

22 Id.