



Denial dated September 12, 1994. A hearing was held and evidence was taken by way of testimony regarding the issues. On consideration of these matters, it is recommended that these issues be resolved in favor of the taxpayer.

**FINDINGS OF FACT:**

1. TAXPAYER is in the business of mixing fertilizers in its plants, and selling fertilizer, chemicals and seed to farmers. TAXPAYER has six plants, all located in Illinois. (Tr. pp. 14-15, 58)

2. The Department has stipulated that the replacement tax investment credit has been claimed on three categories of tangible personal property: property used in the plants to mix the fertilizer or move it out; property used to transport the fertilizers or chemicals to the farmers' fields; and property used in the application of the chemicals and fertilizers. (Tr. pp. 60-61)

3. Fertilizers are mixed to either the farmer's specification or according to the taxpayer's determination after taking a soil sample. (Tr. pp. 73-79)

4. TAXPAYER sells dry fertilizers and chemicals which the farmer may apply to the field himself or the farmer may have TAXPAYER apply it. Application of the dry fertilizer is included in the price of the fertilizer. (Tr. pp. 21-22)

5. TAXPAYER sells liquid fertilizers which TAXPAYER charges a separate fee to apply. (Tr. p. 22)

6. Most of the product that is purchased from TAXPAYER is applied by TAXPAYER, except for the anhydrous ammonia which the farmers typically apply themselves. The equipment to apply the fertilizers

and chemicals is costly and specialized, so that the farmers would not have the necessary equipment to apply it themselves. (Tr. p. 80)

7. TAXPAYER never applied fertilizers or chemicals if they weren't purchased from TAXPAYER. (Tr. pp. 22-23)

8. TAXPAYER filed Retailers Occupation Tax returns which were accepted as correct by the Department. (Dept. Ex. No. 2)

**CONCLUSIONS OF LAW:**

To qualify for the investment credit, property must 1) be tangible, whether new or used, including buildings and structural components of buildings; 2) be depreciable pursuant to Section 167 of the Internal Revenue Code, except for "3-year property" as defined in Section 168(c)(2)(A); 3) be acquired by purchase as defined in Section 179(d) of the Internal Revenue Code; 4) be used in Illinois by the taxpayer in manufacturing operations, or in mining coal or fluorite, or in retailing<sup>1</sup>; and 5) not previously been used in Illinois in such manner and by such person as would qualify for this credit or the Enterprise Zone investment credit. 35 ILCS 5/201(e)(2). The Department has stipulated that the property at issue falls into one of three categories: equipment used in the plants to mix the fertilizer or move it out; equipment used to transport the fertilizers or chemicals to the farmers' fields; and equipment used in the application of the chemicals and fertilizers.

For purposes of the investment credit, "manufacturing" is defined as

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<sup>1</sup> The statute was amended in 1993 to read "property which is used in Illinois by a taxpayer who is primarily engaged in manufacturing, or in mining coal or fluorite, or in retailing" which is subsequent to the years at issue here.

...the material staging and production of tangible personal property by procedures commonly regarded as manufacturing, processing, fabrication, or assembling which changes some existing material into new shapes, new qualities, or new combinations.  
35 **ILCS** 5/201(e)(3).

Taxpayer's creation of the fertilizer and chemicals it sells is a manufacturing process since it changes existing material into new qualities or new combinations. Chemicals are combined to form fertilizer which has a different use than the chemicals singly. Since a product which is different at least in name and use results from the activity, it qualifies as manufacturing. The pertinent statute allows the credit for tangible personal property used by a taxpayer who is engaged in manufacturing or retailing. Thus, the plant equipment used in the manufacture of the fertilizer will qualify.

The second type of property on which the investment credit was claimed is application equipment. Taxpayer owns certain equipment which is used to apply fertilizer or chemicals to the field. This is specialized equipment which the farmer would not own. Taxpayer's president testified that most of the fertilizers and chemicals that they sell are applied by TAXPAYER.

As defined in Section 201(e)(3) of the Illinois Income Tax Act, "retailing" means "the sale of tangible personal property or services rendered in conjunction with the sale of tangible consumer goods or commodities." According to Regulation Section 100.2100(c)(9) (Admin. Code ch I, Sec. 100.2100(c)(9)):

Retailing is defined as the sale of tangible personal property. It is not required that such

tangible personal property be finished consumer goods, or that the property be sold to its ultimate consumer. For example, sales of tangible personal property for resale are included in the definition of retailing...

The issue here is whether the application of the fertilizer and chemicals is a service which is rendered in conjunction with the sale of tangible consumer goods or commodities. Regulation Section 100.2100(c)(9) goes on to say:

Also included in the definition of retailing for these purposes are any services rendered in conjunction with the sale of tangible consumer goods or commodities such as uncrating, cleaning, assembling, delivery or installation, providing such services are in conjunction with a specific sale. For example, a delivery truck would qualify for the Section 201(g) credit as it is used in conjunction with specific sales but a company jet used by the president of the company for general or personal purposes would not...

TAXPAYER is in the business of selling fertilizer, chemicals, and seed, all of which are commodities that are items of tangible personal property. The application of the fertilizer and chemicals is analogous to the installation of an appliance in a consumer's home, which is clearly contemplated under the regulation. The application of the fertilizer to the field is likewise an installation.

Taxpayer testified that in no case did TAXPAYER provide the service of applying fertilizer or rent the application equipment where the farmer did not first purchase the fertilizer from them. Taxpayer also testified that the fees for applying the fertilizer were less than 5% of the total revenues from the sale of the fertilizer and chemicals.

It is clear that the application of the fertilizer is in conjunction with a specific sale of the fertilizer. The taxpayer only offers the service of applying the fertilizer to customers who purchase fertilizer. In addition, the cost of the service is minimal in relation to the total sales price. This factual situation is distinguishable from a landscaping or lawn service business in which the service component is the majority of the fee and the property transferred is incidental to the service provided. Therefore, I find that taxpayer's application equipment is used in retailing and qualifies for the investment credit.

The third type of property is used in transporting the product to the customer. Since taxpayer's sale of fertilizer and chemicals qualifies as "retailing," the piece of equipment which is used to transport the product to the customer will also qualify for the credit. Department Regulation Section 100.2100(c)(9) specifically states that "any services rendered in conjunction with the sale of tangible consumer goods or commodities such as uncrating, cleaning, assembling, delivery or installation, provided such services are in conjunction with a specific sale" are included in the definition of retailing (emphasis added). Therefore, the transportation equipment also qualifies for the investment credit.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Denial should be disallowed, and taxpayer's claim allowed in full.

Date:

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Linda K. Cliffel  
Administrative Law Judge