

**In The Matter of the Petition of "A", et als  
for a Declaratory Ruling**

**DOC #2314, Effective February 17, 1983**

Pursuant to RSA 541-A:2 and New Hampshire Code of Administrative Rules PART Rev 104.04 - 104.07, "A" , et als have petitioned the New Hampshire Department of Revenue Administration for a declaratory ruling as to the applicability to certain transactions described herein of the general rule concerning the taxability under the Business Profits Tax Law (RSA Ch. 77-A) of the proceeds of a sale of agricultural land development rights pursuant to RSA Ch. 36-D, the general rule (Rev 302.06) having been promulgated pursuant to a "Petition for Adoption of Rule" made by the petitioners herein under date of July 28, 1982. The petitioners represent the following:

1. That the basic information regarding the sales of agricultural land development rights here in question provided in the "Petition for Adoption of Rule" states:

(a) that the petitioners each are owners in fee simple of New Hampshire land held for agricultural use within the meaning of N.H. RSA 36-A:2, III (Supp. 1981)

(b) that each of the petitioners owns said agricultural land directly as an individual, either as a sole owner, a tenant in common, or a joint tenant, and not indirectly through a partnership or a corporation.

(c) that each of the petitioners, acting as an individual, has sold the agricultural land development rights pertaining to some or all of their respective agricultural land to the State of New Hampshire pursuant to RSA Ch. 36-D.

2. That the sales of said development rights were accomplished by warranty deeds given by the petitioners to the State of New Hampshire, (copies of deeds attached).

3. That said deeds define the nature of the interest granted as an "agricultural preservation restriction" pursuant to RSA Ch. 36-D and RSA 477:45-47, and that the general terms of this restriction restrain the grantor "from constructing on, selling, leasing or otherwise improving the site for uses that result in rendering the site no longer suitable for agricultural use" in order to retain "the site predominantly in its agricultural use", but otherwise allow the grantor to retain "all customary rights and privileges of ownership including the right to privacy and to carry out all regular agricultural practices...".

4. That the agricultural land to which the restrictions granted the State by the petitioners apply is all currently being utilized for agriculture but in certain instances said land is not being farmed by certain petitioners in their individual capacities, but is being leased to a separate entity which conducts the farming operations.

5. That the appraised total market value of the agricultural land here in question is X Dollars, the appraised value of the agricultural development rights pertaining to the land is Y Dollars and the gross payment received for such rights by the petitioners is Z Dollars.

6. That an agricultural preservation restriction is a unique form of easement, the granting of which effectively severs the development or investment aspect of agricultural land from the land itself, causing the land to be valued solely on the basis of its use for agriculture, i.e., to be valued as an asset in the trade or business of agriculture.

7. That the sale of an agricultural preservation restriction thus divides the entire bundle of real property rights in agricultural land into two groups: one defining an investment asset and the other a business asset; thus, for purposes of the sales here in question, the State established the value of the business asset at the current use property tax assessment value of New

Hampshire agricultural land, and established the value of the development rights acquired as the difference between the land's value as an agricultural business asset, i.e. the land's value as an investment.

8. That the sale of an asset held for investment by an individual and not for use in that individual's trade or business does not result in the realization of "Gross Business Profits", "Taxable Business Profits" or "Gross Business Income" within the meaning of RSA 77-A: 1, III (Supp), RSA 77-A: 1, IV (Supp) and RSA 77-A: 1, VI (Supp) respectively.

9. That each of the petitioners who sold agricultural land development rights in 1981 reported the net income realized on Schedule D of his or her United States income tax return (and not on Form 4797 or Schedules E or F), thus properly treating the net income as a long-term capital gain for the sale of a capital (and personal) asset (I.R.C. Sec. 1221), rather than property used in the trade or business (I.R.C. Sec. 1231) or property held primarily for sale to customers in the ordinary course of the business. (Copies of pertinent schedules are attached to the petition).

10. That the sale by an individual of a "capital asset" within the meaning of Section 1221 of the Internal Revenue Code, does not result in the realization of "Gross Business Profits", "Taxable Business Profits" or "Gross Business Income" within the meaning of RSA 77-A: 1, III (Supp), RSA 77-A: 1, IV (Supp), and RSA 77-A: 1, VI (Supp) respectively.

In view of the foregoing representations and specifically based thereon, the Department of Revenue Administration represents and states the following:

1. That each petitioner is a "business organization" within the meaning of RSA 77-A: 1, I (Supp) (Amended 1981, Ch. 445: 1, eff. July 1, 1981) in that each is a proprietorship organized for gain or profit carrying on business activity within the state either in the business of farming or the leasing of farm land.

2. That RSA 77-A: 1, III (c) (Supp) (Amended 1981, Ch. 445: 2, eff. July 1, 1981) defines "Gross Business Profits" in the case of a proprietorship as the amount shown as net profit, net income from rents, and net farm profits on schedules C, E and F of the proprietor's United States income tax return plus the net amount of any gains from the sale of assets held for use in business activity as shown on said return, reduced by any adjustment required by United States Internal Revenue Code (1954) Section 280 C, as amended.

3. That RSA 77-A: 1 IV provides that "Taxable Business Profits" means gross business profits reduced by the method of apportionment provided in RSA 77-A: 3 and the deductions allowable under RSA 77-A: 4.

4. That RSA 77-A: 1, VI (Supp) (Amended 1981, Ch. 445: 3, eff. July 1, 1981) defines "Gross Business Income" as all income for federal income tax purposes from whatever source derived in the conduct of business activity, including but not limited to gross proceeds from sales, compensation for rendering services, gross proceeds realized from trading in stocks, bonds or other evidences of indebtedness, gross proceeds realized from the sale of assets used in a trade or business, interest, discount, gross rents, royalties, fees, commissions, dividends, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense paid or accrued and without any deduction on account of losses.

5. That the sale of an agricultural preservation restriction is a sale of an interest in real property utilized in a trade or business by the petitioners, either as land used in an agricultural business or land leased to others engaged in the farming business.

6. That Sec. 1221 Internal Revenue Code of 1954 defines a "capital asset" and Sec. 1221 (2) Internal Revenue Code of 1954 excludes from the definition of a "capital asset" real property used in a trade or business, as is the case here in question.

7. That Sec. 1231 Internal Revenue Code of 1954 provides that on the sale or exchange of real property used in a trade or business which has been held for more than one year, gains in excess of losses shall be considered gains from sales or exchanges of capital assets (Sec. 1231 (a)).

8. That Revenue Ruling 59-121, C.B. 1959-1, 212 clarified by Revenue Ruling 68-291 has application to the petitioner's questions presented here, in that consideration received for the granting of an easement with respect to agricultural land constitutes the proceeds from a sale of an interest in real property used in a trade or business, and if the land was held for more than one year, any recognized gain from the granting of the easement is to be treated in the manner provided in Section 1231 of the Internal Revenue Code of 1954.

Wherefore, under the specific circumstances represents an conformity with the statutes, rules and regulations cited herein, the Department of Revenue Administration hereby rules that:

(a) The proceeds received by the petitioners from the disposition of agricultural land development rights constitute "Gross Business Income" within the meaning of RSA 77-A: 1, VI (Supp) Laws-of 1981, eff. July 1, 1981.

(b) The gain realized on the disposition of agricultural land development rights reported on each petitioner's U.S. Federal Income Tax return is likewise includable and reportable as "Gross Business Profits" on a New Hampshire Proprietorship Business Profits Tax return as "gains from the sale of assets held for use in business activity" within the meaning of RSA 77-A: 1, III (c) (Supp), Laws of 1981, eff. July 1, 1981.

(c) The "Gross Business Profits" includable and reportable, after apportionment (if applicable) under RSA 77-A: 3 and deductions under RSA 77-A: 4 constitute "Taxable Business Profit" within the meaning of RSA 77-A: 1, IV (Supp).

Lloyd M. Price, Commissioner