***McKenzie v. Commissioner*, T.C. Memo. 1983-540**

Structures used for temporary boarding of pets or general-purpose barns do not qualify for the investment tax credit as single-purpose livestock structures; these credits are intended for structures integral to agricultural or food production.

Summary

Petitioners, operating a dog and cat kennel and a horse breeding business, claimed investment tax credits for a kennel facility and a horse barn. The Tax Court disallowed these credits, holding that the kennel was not a "single purpose livestock structure" because it was used for temporary pet boarding, not agricultural production. The court also found the boarding structure to be an inherently permanent building, not machinery or equipment. The horse barn was deemed a general-purpose structure, not specifically designed for livestock, and horses were excluded from the definition of "livestock" for investment credit purposes. Thus, neither structure qualified for the investment tax credit.

Facts

Petitioners owned a property with a residence, a dog and cat kennel, and a shed.

The kennel facility was a concrete and cinder-block structure used for boarding pets.

The kennel had a front structure (reception, office, cat room) and a rear boarding structure with dog pens.

Petitioners also constructed a horse barn, a general-purpose metal building, used for their Arabian horse breeding and training business.

Petitioners claimed investment tax credits for both the kennel facility and the horse barn.

Procedural History

The IRS determined deficiencies in petitioners' federal income taxes and denied their investment tax credit claims.

Petitioners challenged the IRS's determination in Tax Court.

Petitioners argued that the kennel and horse barn were "single purpose livestock structures" eligible for investment tax credits.

Petitioners alternatively argued that the kennel's boarding structure was "tangible personal property" or "machinery or equipment."

Issue(s)

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1. Whether the petitioners' dog and cat kennel qualifies as a "single purpose agricultural or horticultural structure," specifically a "single purpose livestock structure," under section 48(a)(1)(D) and 48(p)(2) of the Internal Revenue Code.

2. If not, whether the boarding area of the kennel is "tangible personal property" under section 48(a)(1)(A) or a structure "essentially an item of machinery or equipment" under Treasury Regulation § 1.48-1(e)(1).

3. Whether the petitioners' horse barn qualifies as a "single purpose agricultural or horticultural structure," specifically a "single purpose livestock structure," under section 48(a)(1)(D) and 48(p)(2).

Holding

1. No, the kennel facility is not a "single purpose livestock structure" because temporary pet boarding is not considered "housing, raising, and feeding a particular type of livestock" in an agricultural production context.

2. No, the boarding structure is an "inherently permanent structure" and a "building," not "tangible personal property" or "machinery or equipment," and therefore does not qualify as section 38 property.

3. No, the horse barn is not a "single purpose livestock structure" because it is a general-purpose building adaptable to other uses, and horses are not considered "livestock" for the purposes of this investment credit.

Court's Reasoning

Kennel Facility as Single Purpose Livestock Structure: The court reviewed the legislative history of section 48(p)(2), emphasizing that Congress intended the investment credit for "single purpose livestock structures" to apply to structures used in agricultural or food production. The court stated, "This legislative history makes it crystal clear that the term 'single purpose livestock structure' as defined in section 48(p)(2) is not intended to encompass structures such as petitioners' kennel facility, which is used for the temporary boarding of household pets and is not a structure used in agricultural or food production." The court concluded that temporary pet boarding does not constitute "housing, raising, and feeding a particular type of livestock" within the meaning of the statute.

Boarding Structure as Machinery or Equipment: The court applied the six factors from *Whiteco Industries, Inc. v. Commissioner* to determine if the boarding structure was "inherently permanent." Given its concrete foundation, permanent nature, and stipulation that it could not be moved without destruction, the court found it to be an inherently permanent structure. The court reasoned that even if not a "building," it was still an "inherently permanent structure" and thus not "tangible personal property." Furthermore, the court held that the boarding structure was a building, not "machinery or equipment," because it merely provided

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the setting for petitioners' pet care activities, stating it was "no more an item of machinery to [feed, care for, and otherwise maintain the boarded animals] than the building in which the Tax Court is housed is an item of equipment to produce our opinions."

Horse Barn as Single Purpose Livestock Structure: The court found the horse barn to be a general-purpose structure because petitioners admitted it could be economically used for other purposes. Quoting legislative history, the court noted the credit was "not intended to apply to general purpose agricultural structures such as barns and other farm structures which can be adopted to a variety of uses." Additionally, relying on Treasury Regulations §§ 1.48-10(b)(3) and 1.48-1(l)(1), the court held that horses are explicitly excluded from the definition of "livestock" for investment credit purposes. The court reasoned that it was illogical for Congress to grant a credit for structures housing horses if horses themselves did not qualify for the credit.

Practical Implications

McKenzie v. Commissioner clarifies the narrow scope of the investment tax credit for "single purpose agricultural or horticultural structures." It emphasizes that these credits are specifically targeted at structures directly involved in agricultural or food production activities, not ancillary or commercial activities like pet boarding. Legal professionals should understand that to qualify for this credit, a structure must be: (1) specifically designed and constructed for a qualifying purpose and (2) used solely for that purpose. General-purpose farm buildings and structures used for non-agricultural livestock activities, such as pet kennels or horse barns (in the context of sport or recreation rather than food production), will likely not qualify. This case underscores the importance of examining legislative history and Treasury Regulations when interpreting tax code provisions related to investment credits and property classifications.

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