

## *Ruling 94-11*

Vermont Department of Taxes

Date: November 7, 1994

Written By: Danforth Cardozo, III, Attorney for the Department

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a formal ruling with respect to the following facts as contained in your letter to Commissioner Joyce Errecart of January 21, 1994:

Your clients, [A and B], are husband and wife respectively, and own a working farm as tenants by the entirety which is enrolled in the Working Farm Tax Abatement Program (WFTAP), 32 V.S.A. § 3764 et. seq. Both are in their 80's and are retired from active farming but lease their farm property to a farmer who is actively engaged in cultivating the property. [A and B] have established a joint revocable trust wherein they are not only the grantors but also designated as joint trustees and the sole beneficiaries during their respective lifetimes. At the death of the survivor of [A and B], all trust assets will be distributed to their three children. [A and B] do not have sufficient assets to be concerned about estate taxes; nevertheless, they do wish to transfer their real property to the trust in order to avoid probate. Since the trust is a grantor trust, all of the trust's income would be includable on the grantors' federal income tax return pursuant to 26 U.S.C. §§ 674 - 677.

You ask for a ruling on the following questions: 1. Would a conveyance by [A and B] to the grantor trust as described above disqualify the property from WFTAP? 2. Would such a transfer result in a land use change tax pursuant to 32 V.S.A. § 3757?

- I. Eligibility for Enrollment in WFTAP. A conveyance by [A and B] to a grantor trust will not necessarily disqualify the property from enrollment in WFTAP. To qualify for enrollment in WFTAP, property must be owned by a farmer or leased to a farmer under a written lease for a term of three years or more. If the trust meets the definition of a farmer or leases the land to a farmer in accordance with the requirements of 32 V.S.A. § 3764(5), and the other requirements for enrollment in WFTAP are met, the transfer to the grantor trust will not disqualify the property for enrollment in WFTAP.
- II. Penalty/Repayment of Benefits. To clarify the discussion that follows, it is helpful to note that the land use change tax imposed by 32 V.S.A. § 3757 does not apply to property enrolled in WFTAP. The land use change tax applies only to land enrolled in the use value appraisal programs for agricultural land or managed forest land. When property enrolled in WFTAP is converted to a nonfarm use, the WFTAP program provides for a repayment of benefits paid by the state for the

five most recent tax years. 32 V.S.A. § 3774(a). When this rollback of benefits is billed by the Department, it is sometimes denominated a land use change tax.

The conveyance by deed of property enrolled in WFTAP is a "conversion to nonfarm use" that will require the repayment of benefits unless the transfer is described in 32 V.S.A. § 3764(2)(second)(A) through (second)(C). These statutes describe certain conveyances that are not considered to be a conversion to nonfarm use.

The exceptions in 32 V.S.A. § 3764(second)(B) and (second)(C) do not apply to the facts you have described. However, the transfer might fall within 32 V.S.A. § 3764(second)(A), which provides that the conveyance of property to a farmer who maintains the property's status as eligible property is not considered to be a conversion to nonfarm use that triggers the repayment of benefits. If the grantor trust meets the definition of farmer in 32 V.S.A. § 3764(5), the transfer of the enrolled property to the trust will not trigger the penalty in 32 V.S.A. § 3774(a).

32 V.S.A. § 3764(5) does not preclude a grantor trust from being a "farmer" for purposes of WFTAP. A grantor trust is a "person" for purposes of 32 V.S.A. § 3752 and it is not a "corporation or other business entity" for purposes of 32 V.S.A. § 3764(5). Therefore, the trust will qualify as a farmer if at least one-half of the annual gross income of the trust is derived from the business of farming, as that term is defined in Reg. 1. 175-3 issued under the Internal Revenue Code of 1954.

A copy of the statutes cited in this ruling is attached to and made a part of this ruling.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.