

**VERMONT DEPARTMENT OF TAXES
TECHNICAL BULLETIN**

TAX: Property

TB-65

SUBJECT: Eligibility of Methane Digesters as Farm
Buildings in the Use Value Appraisal Program

ISSUED: October 22, 2012

STATUTORY REFERENCE: 32 V.S.A. §3752, §3755, §3757

Introduction

“Farm buildings” may be enrolled in the use value appraisal (current use) program and taxed at zero percent of fair market value. This bulletin discusses what methane digesters are “farm buildings” under the provisions of Chapter 124 of Title 32 (Agricultural and Forest Lands).

Methane Digesters

Methane digesters are used to convert manure into electric power through an anaerobic digesting process. Manure is collected from the barn and put into the digester. “Within an oxygen free space, bacteria breaks down the manure in about 21 days. Broken down manure emits biogas that is fed into a methane motor that turns a generator to produce electricity...A solids separator takes the remains and separates them into solid and liquid components.” Halpin, John, “Alternative Energy on the Farm: Methane Digesters (2008), www.vlt.org/news-publications. The liquid may then be used as a fertilizer to be spread on the fields and the solids may then be used as bedding for the cows. The methane can be burned to produce both heat and electricity. The electricity can be sold to the power grid or net metered and used on the farm. Thus, there are four possible end products: electricity, fertilizer, compost and bedding.

Statutory Framework

For a methane digester to be enrolled in current use, it must qualify as a farm building.

“Farm buildings” are defined as “all farm buildings and other farm improvements which are actively used by a farmer as part of a farming operation, are owned by a farmer or leased to a farmer under a written lease of three years or more, and are situated on land that is enrolled in a use value appraisal program or on a housesite adjoining enrolled land.” 32 V.S.A. 3752(14).

A "farmer" is defined in relevant part as a person who earns at least one-half of the person's income from the "business of farming" as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986." 32 V.S.A. §3752 (7).

"Person" includes any individual, firm, corporation, partnership or other form of organization or group of individuals." 32 V.S.A. §3752 (11).

The term "farm" is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit and truck farms, and also plantations, ranches, ranges and orchards. Regulation 1.175-3.

Requirements to Be a Farm Building

All elements of the following three part test must be met in order for a methane digester to be considered to be a farm building.

1. Ownership by a Farmer. The building must be owned by or leased to a farmer under a written lease of three years or more. A farmer is a person who earns more than half of his income from the business of farming. A person includes any "individual, firm, corporation, partnership or other form of organization or group of individuals".
2. Actively Used as Part of a Farming Operation. In the case of the digester, the active use is the management of manure from farm operation. The amount of on farm manure must exceed the amount of off farm manure at all times.
3. Situated on Enrolled Land or on a Housesite Adjacent to Enrolled Land. 32 V.S.A. §3752(14).

Methane Digesters That Are Not Eligible for Enrollment in Current Use Program

1. The methane digester is not processing manure or feedstock from the farm but instead acquires it from outside sources. In this case, the digester does not satisfy part 2 of the test which requires that the digester be used as part of a farm operation.
2. The land is owned and enrolled by a farmer, but the methane digester is owned by a corporation. The farmer owns the corporation. Unless the corporation has a written lease with the farmer, part 1 of the test is not satisfied because the corporation does not earn more than half of its income from farming. Rather all of its income is derived from the sale of electricity.
3. The farm and the methane digester are both owned by the same corporation. The majority of the corporation's income comes from the sale of electricity. Since the sale of electricity is not the business of farming, the income test (part 1) is not satisfied.

Example 1

John Smith is the president of White Farm, LLC. The farm has 250 milking cows, plus 50 young stock. He grows hay and corn on 125 acres of land that is enrolled as agricultural land in the current use program. He has three barns that are also enrolled in the program as farm buildings. He has decided to install a methane digester for several reasons. It would give him a good way to manage the manure which, until now, he has been spreading on his fields and storing in a manure lagoon. It will produce four products: solid bedding, compost, liquid fertilizer and electricity. It will also supplement his farm income. All of the electricity generated will be sold to the power grid. The digester will be housed under a permanent quonset type tent. Seventy percent of his income is derived from his dairy cows and crops; 30 percent comes from the sale of electricity.

Mr. Smith's digester facility qualifies as a farm building because he is a farmer under the income test; he uses the digester in his farming operation to manage manure; and his facility is located on his enrolled land. He will have to complete an application and provide copies of his tax returns in order to show that more than half of his income comes from the business of farming.

Example 2

Mary Johnson is the owner of Riveredge Farm. It is a small family farm with 100 milking cows.

She has 100 acres of land on which she grows hay and corn. All but 2 acres are enrolled in the current use program. She also has two barns that are enrolled as farm buildings. She has built a methane digester on the enrolled land. She takes manure from other farms in addition to using manure generated on her farm. She generates \$20,000 (\$240,000 annually) in electricity sales each month. Farm sales total about \$120,000 annually.

Ms. Johnson does not meet the definition of a farmer because more than one half of her annual income comes from the sale of electricity. Thus, the methane digester cannot be enrolled as a farm building.

Example 3

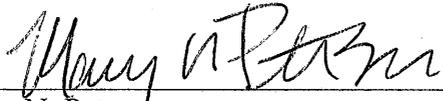
Mark Jenkins owns White Acres Farm. They have 500 milking cows and own 300 acres, all of which is enrolled in current use. Last year Mr. Jenkins had a methane digester built on 1 acre that is not contiguous with enrolled acreage. His digester is not eligible to be a farm building since it is not situated on or adjoining enrolled land.



Barbara Ripley
Attorney for the Department

10/23/12
Date

Approved:



Mary N. Peterson
Commissioner of Taxes

10/23/12
Date