

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

February 16, 2016

Third Party Communication: None
Date of Communication: Not Applicable

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CASE-MIS No: TAM-127804-15

Taxpayer's Name:
Taxpayer's Address:
Taxpayer's Identification No
Year(s) Involved:
Date of Conference:

LEGEND:

Sub =
X =

This technical advice memorandum (TAM) incorporates by reference the issues, conclusions, facts, law, and analyses for issues 1,3, 4, and 5 provided in TAM 201532034 (April 8, 2015) (TAM1). This TAM, although in agreement with the conclusion under Issue 2 of TAM1, replaces the analysis regarding that issue with the following:

Section 45O(b) provides a limit on the amount of credit that may be claimed with respect to any facility for any taxable year. Thus, the § 45O credit is accrued on a per facility basis. The term facility is not specifically defined in the statute, and the Service has not issued guidance concerning what constitutes a facility for purposes of § 45O. Tax credits are a matter of legislative grace and are allowed only as clearly provided by statute. Therefore, we believe that the best approach is to narrowly define the term “facility” within the plain meaning of the statute.¹ To the extent the statute is unclear, we look to the accompanying statutory background to determine whether X constitutes a facility under § 45O(d).

¹ *Helvering v. Northwest Steel Rolling Mills, Inc.*, 311 U.S. 46, 49 (1940); see also *New Colonial Ice, Co. v. Helvering*, 292 U.S. 435, 440 (1934); *U.S. v. McFerrin Stinson*, 570 F.3d 672, 675 (5th Cir. 2009).

Section 45O(d) provides, in part, that qualified chemical security expenditures include the following: limitation and prevention of access to controls of specified chemicals stored at the facility, protecting the perimeter of specified agricultural chemicals, installation of security lighting, cameras, recording equipment, and intrusion detection sensors, implementation of measures to increase computer or computer network security, and implementing a site security plan. These types of expenses usually involve security measures for protecting on-site facilities located at the taxpayer's physical location.

This interpretation is supported by the statutory background as reflected in Congressman Lewis' remarks which specifically refer to enhancement of on-site security, and not to security costs related to transportation units. Congressman Lewis, stated that: "The legislation that I have proposed, The Agricultural Business Security Tax Credit Act, extends tax initiatives to help defray the high costs agricultural businesses now face enhancing on-site security. . . . I believe the incentives offered in The Agricultural Business Security Tax Credit Act will promote improved security at agricultural facilities that handle chemicals and fertilizers, helping them take the necessary steps to better protect U.S. agriculture and the American public from potential threats and other illegal activity." 153 Cong. Rec. E728-02 (2007). Thus, § 45O intends to promote the enhanced protection of specified agricultural chemicals at on-site agricultural business facilities. X is not a facility at a site that stores or handles chemicals, such as a chemical plant, or warehouse or farm building. Therefore, it is not reasonable to consider X as a separate facility under § 45O since to do so would expand the scope of the statute.

In addition, as discussed above, the applicable statute must be narrowly construed, and there is simply no authority under the statute or accompanying statutory background for expanding the plain meaning of "facility." Because a narrow interpretation of the statute is required, we believe that categorizing X as a facility is too far reaching under a strict interpretation of this statute. The nature of the qualifying expenses listed in the statute are indicative of the intent of the statute and are consistent with Congressman Lewis' remarks relating to the enhancement of *on-site* security. Therefore, the transportation units used by the taxpayer in transporting chemicals do not qualify as facilities under the provisions of § 45O and the costs of security measures taken with respect to such transportation units do not qualify for the credit. Thus, we conclude that Sub may not treat certain expenditures incurred as qualified chemical security expenditures under § 45O(d) because X is not a facility for purposes of § 45O.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) provides that it may not be used or cited as precedent.