

802.2(g)

Verne, B. Michael

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**From:** [REDACTED]  
**Sent:** Tuesday, April 02, 2013 4:28 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** Agricultural Property Exemption

Mike,

[REDACTED] and I are working on the sale of assets comprising a winery, including vineyards, undeveloped land, and wine making facilities, all on the same parcel of real property, and related equipment, trademarks and inventory. We were wondering whether the recent informal interpretation linked below regarding wineries would apply to such a situation, as it is not stated in the interpretation whether or not the vineyards and the "winery" were on the same or contiguous real property. In other words, under 802.2(g) can you deduct the value of the vineyards (but not the actual grapevines) regardless of whether or not the winery is adjacent to or used in conjunction (or in our case, on the same parcel of real property) with the vineyards? (By "winery", I mean the actual complex of buildings where the wine is made, as opposed to the definition under NAICS 312130, which seemingly would include contiguous vineyards).

Also, if the winery and vineyards were found on the same or contiguous real property, it appears to me that the proper NAICS code would be 312130 / "Wineries" (which are defined as "establishments primarily engaged in ... growing grapes and manufacturing wines and brandies"). And if that assumption is correct, does the reference to NAICS Sector 11 in 802.2(g) take it out of 802.2(g) or does the PNO interpret that reference as merely an example and not definitional?

<http://www.ftc.gov/bc/hsr/informal/opinions/1104010.htm>

As always, thank you for your input.

Best regards,

[REDACTED]

[REDACTED]

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The undeveloped land can be exempted as unproductive real property as long as it is not adjacent to non-exempt productive real property (i.e., the land that the winery resides on). The agricultural land (but not the vines) can be exempted as agricultural real property as long as it is not adjacent to or used in conjunction with the winery. The winery itself is not exempt. The reference to NAICS Sector 11 is dispositive, not illustrative. See 67 FR 11898 (March 18, 2002)

Bm  
4/3/13

Kw concurs