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Sandra,

This is what we'd sent to your attorney and another attorney on the Farmland Assessment question:

"As you are aware, the NJ CREAMM Act prohibits cannabis cultivators from "operating or being located on land" valued pursuant to the Farmland Assessment Act. We had interpreted this provision, more succinctly, as meaning that cannabis cultivators could not qualify for Farmland Assessment. Our initial determination then concerned whether properties converting to cannabis cultivation would be subject to roll-back taxes. We had determined that cannabis cultivation was an agricultural use, which meant that landowner devoting acreage to cannabis production would not be changing that land's use. Accordingly, roll-back taxes could not be imposed for the conversion to cannabis cultivation

We have encountered several scenarios similar to those of your client, i.e., that a large property under Farmland Assessment will have a small portion converted to cannabis cultivation. In reviewing the language of the NJ CREAMM Act, the Legislature specified that the cannabis cultivators cannot operate or be located on land which is valued pursuant to the Farmland Assessment Act. Throughout the Farmland Assessment Act, the term "land" has consistently been interpreted to refer to specific acreage rather than the property as a whole. See, e.g., Hamilton Twp. v. Estate of Lyons, 8 N.J. Tax 112 (Tax 1986); Wilson v. Hopewell Twp., 23 N.J. Tax 240 (Tax 2006); and Twp. of Wantage v. Rivlin Corp., 23 N.J. Tax 441 (Tax 2007).

Since the NJ CREAMM Act's restriction on cannabis cultivators concerned their operation on Farmland Assessed land rather than "properties" or "lots", it would follow that only the acreage used for cannabis cultivation or by the cannabis cultivator would lose Farmland Assessment eligibility. Assuming the remaining acreage continued to meet the eligibility criteria of the Farmland Assessment Act, it could continue to be assessed for its agricultural/horticultural productivity, notwithstanding that other acres on the same parcel(s) were used for cannabis cultivation. So for your hypothetical, if five acres are being leased by a cannabis cultivator and they use no other portion of the property, the other 95 acres still in agricultural use by the landowner or other non-cannabis tenant farmer would continue to receive Farmland Assessment so long as the statutory requirements are met.

Our office is currently drafting more formal policy guidance on this topic for the tax assessors and county boards of taxation who administer the Farmland Assessment program until formal regulations can be adopted; the Handbook for NJ Assessors will be updated accordingly. We will also be issuing guidance to be distributed to landowners who are currently in the Farmland Assessment program to be included with their applications next year."

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