

**LETTER OPINION
2004-L-41**

June 16, 2004

Mr. Peter D. Welte
Grand Forks County State's Attorney
PO Box 5607
Grand Forks, ND 58206-5607

Dear Mr. Welte:

Thank you for your letter asking about the ad valorem tax exemption for a farm residence under N.D.C.C. § 57-02-08(15). Specifically, you state that there are a number of farms in Grand Forks County that are no longer owned by individuals because those individuals have either incorporated the farm or formed some other similar entity that has legal ownership. The legal entity owning the farm provides a residence and pays wages to the individual for services rendered as an employee, subjecting those wages to withholding for income tax purposes, among other things. You ask whether this type of residence qualifies as an exempt farm residence under N.D.C.C. § 57-02-08(15). For the reasons stated below, it is my opinion that the residence would not qualify as an exempt farm residence because it is not occupied by a "farmer" as defined under the statute, but, it may be eligible for an exemption under the statute as a farm structure located on agricultural lands.

ANALYSIS

This office recently issued an opinion concluding "that since there is no requirement that the owner live in an exempt farm home, incorporating a farming operation by itself does not disqualify a residence from the ad valorem tax exemption under N.D.C.C. § 57-02-08(15)." N.D.A.G. 2004-L-32. This conclusion is qualified by the statement that "the residence must be used or occupied by a farmer." Id.

Section 57-02-08(15)(b)(2), N.D.C.C., defines "farmer" for the purpose of the farm residence exemption and provides:

It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a

person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:

. . . .
“Farmer” means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products’ unmanufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years. “Farmer” includes a “retired farmer” who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed. “Farmer” includes a “beginning farmer” who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products’ unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.

(Emphasis supplied.)

Section 57-02-08(15)(b)(3), N.D.C.C., defines “net income from farming activities” for the purpose of the farm residence exemption as:

[T]axable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:

- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
- (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (c) Depreciation expenses from farming activities which have been deducted in computing taxable income.

For North Dakota income tax purposes, “taxable income” for individuals is computed the same as it is computed for federal income tax purposes, plus or minus any state adjustments. N.D.C.C. § 57-38-01(12). “Wages,” on the other hand, are remuneration for services performed by an employee for an employer and are subject to income tax withholding. 26 U.S.C. § 3401; see N.D.C.C. §§ 57-38-01(14) and 57-38-59.

Thus, it is my opinion that a farm residence occupied by an individual receiving wages for services performed as a farm worker, rather than net income from farming activities, would not qualify for the farm residence exemption.

In addition to the farm residence exemption, N.D.C.C. § 57-02-08(15)(a) exempts “[a]ll farm structures and improvements located on agricultural lands” so long as they are “intended for use as part of a farm plant.” The Tax Commissioner’s Office reviewed the exemption provisions of N.D.C.C. § 57-02-08(15) and issued guidelines entitled “Property Tax Exemption of Farm Buildings and Other Improvements” (Dec. 2003). Provision 7 of the guidelines provides “[b]uildings located on agricultural land used by a farmer to provide housing for that farmer’s workers are exempt, provided they are used as part of a farm plant.” The Tax Commissioner’s Office further advised in its April 2004 issue of the Property Tax Newsletter, that while a residence that is occupied by an individual who is not a farmer, as defined by the statute, would not qualify for the farm residence exemption, a residence that is occupied by an individual who receives wages from the owning entity for performing farm labor would qualify for the exemption as a structure located on agricultural land and used as part of the farm plant. *Id.* at p. 3. The North Dakota Supreme Court gives weight to property tax guidelines issued by the Tax Commissioner’s Office that give practical construction to an ambiguous statute. Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712, 720 (N.D. 1984). This office also recognizes the Tax Commissioner’s authority to issue guidelines related to the ad valorem taxation of property. N.D.A.G. 2004-L-15.

Therefore, it is my further opinion that a residence is eligible for exemption as a farm structure if it is located on agricultural lands, is part of a farm plant, and is used to provide housing for an employee who is paid wages as a farm worker.

Sincerely,

Wayne Stenehjem
Attorney General

rww/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).