

N.D.A.G. Letter to Engelman (March 18, 1988)

March 18 1988

Mr. Jerald L. Engelman
Mayville City Attorney
P.O. Box 547
Mayville, ND 58257-0547

Dear Mr. Engelman:

Thank you for your letter of January 21, 1988, wherein you inquire about the taxable status of the Larry Domier residence which is located within the city of Mayville. Specifically, your question is whether the residence is exempt as a farm residence under N.D.C.C. § 57-02-08(15).

Procedurally, it is my understanding that Mr. Domier filed an application for an abatement with the Traill County Auditor under N.D.C.C. § 57-23-04 wherein he asked the Traill County Board of Commissioners to declare his home to be exempt as a farm residence under N.D.C.C. § 57-02-08(15). Because the residence had been assessed by the city of Mayville, the city was asked to give its recommendation to the county board. N.D.C.C. § 57-23-06. The city's recommendation was that the abatement should be denied.

Nevertheless, after hearing the matter, the county board granted the abatement, finding that Mr. Domier's home qualified as an exempt farm residence under N.D.C.C. § 57-02-08(15).

Apparently feeling aggrieved by this decision, the city of Mayville has persuaded the county board to have my office review this decision rather than perfecting an appeal to the district court under N.D.C.C. §§ 57-23-04(3), 11-11-39, 11-11-41, 11-11-42, and 11-11-43.

My office has no authority to replace the county board as the finder of fact in this matter. Thus, my response to you will assume that the facts related to me in your letter are the facts as found by the county board.

It is my understanding that Mr. Domier's residence is located on a lot that he owns and is adjacent to land that he rents from his mother. The total acreage is about 13 acres. N.D.C.C. § 57-02-08(15) requires a qualifying residence to be located on a farm. The term farm has been defined by the statute, in part, to mean "a single tract or contiguous tracts of agricultural land containing a minimum of ten acres." The county board has presumably found as a matter of fact that the subject 13 acres are agricultural property under N.D.C.C. § 57-02-01(1).

It is my further understanding that Mr. Domier owns and rents additional agricultural land

located in Traill County, but outside the city of Mayville. This land is farmed by Mr. Domier.

In view of these facts, you have asked for my response to the following questions:

Does Mr. Domier have to be actually farming the land or engaged in the livestock or other similar operations associated with farming and ranching of these 13 acres to qualify for the tax abatement? Furthermore, does Mr. Domier have to have 50% or more of his annual net income to qualify as a farmer from this 10 or more acres that he is requesting a tax abatement on?

For the following reasons, it is my opinion that Mr. Domier does not have to be currently farming the land or raising livestock on the subject land for the residence to qualify for the exemption, as long as the subject land is part of a farming operation. Further, for the following reasons, fifty percent of Mr. Domier's net income does not have to come from the site of his residence in order to qualify him as a farmer.

It is presumed that an entire statute is intended to be effective with a just and reasonable result. N.D.C.C. § 1-02-38(2)(3).

The county board found the subject land to be agricultural. The whole farming operation must be taken into consideration for the purpose of this exemption for both the present use of the subject land and the landowner's income test.

It would be unreasonable to conclude that an otherwise qualifying farm residence should lose the exemption because the tract on which it sits stands unused for a given year.

Therefore, the agricultural land which is the site of a farm residence need not be in production every year in order for the residence to be exempt.

When applying the income test under N.D.C.C. § 57-02-08(15)(b)(2)(3)(4)(5)(6), it is clear that a person's net farm income from all sources must be considered in order to determine whether that person is a farmer under the statute. To construe the statute so that only the net farm income from the tract upon which the residence is located can be considered for the purpose of the exemption would produce an absurd result.

Therefore, a person's net farm income from all sources must be considered when determining whether a person is a farmer for the purpose of the exemption.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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