

## **N.D.A.G. Letter to McBeth (April 23, 1992)**

April 23, 1992

Mr. Ronald W. McBeth  
Richland County Assistant  
State's Attorney  
413 3rd Avenue North  
Wahpeton, ND 58075

Dear Mr. McBeth:

Thank you for your February 27, 1992, letter in which you request clarification of the word "age" for purposes of the farm residence property tax exemption in N.D.C.C. § 57-02-08(15).

N.D.C.C. § 57-02-08(15) provides that all farm structures and improvements, including farm residences located on agricultural lands, are exempt from ad valorem taxation. Only "[a] residence which is situated on a farm and which is occupied or used by a person who is a farmer" is exempt. N.D.C.C. § 57-02-08(15)(b). Your inquiry involves the definition of "farmer" for purposes of the farm residence exemption. The term is defined as follows:

2. "Farmer" means an individual who normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty percent of his annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which he lives and for which the exemption is claimed.

N.D.C.C. § 57-02-08(15)(b)(2). (Emphasis supplied.)

Your letter indicates that there is not a consistent application of the term "age" between the counties or between the state and the counties for purposes of determining whether an individual's property qualifies for the farm residence tax exemption. Therefore, you request clarification of the term "age" for purposes of the tax exemption.

An Attorney General's opinion to Mr. James W. Wold addressed the question as to the meaning of the word "retired" as used in N.D.C.C. § 57-02-08(15). Letter from Attorney General Nicholas J. Spaeth to James W. Wold (May 31, 1990). The opinion concluded that it is the duty of the local taxing authorities to make the findings of fact necessary to determine whether a particular residence is exempt under N.D.C.C. § 57-02-08(15).

Similarly, an opinion issued to Mr. Joseph A. Vogel indicated that a determination of whether a residence qualified for the exemption provided in N.D.C.C. § 57-02-08(15) was in the hands of the county officials and, therefore, the officials could reasonably request information that would assist them in making that determination. Letter from Attorney General Allen I. Olson to Joseph A. Vogel (March 15, 1979).

Based upon the foregoing, it is my opinion that the determination of whether an individual farmer is retired because of "age" is a determination that must be made by local taxing authorities. While the legislative history of N.D.C.C. § 57-02-08(15) does not provide guidance in this area, the rules of statutory interpretation require that words be given their plain, ordinary and commonly understood meaning. Coldwell Banker - First Realty, Inc. v. Meide & Son, Inc., 422 N.W.2d 375, 379 (N.D. 1988).

I trust this responds to your inquiry.

Sincerely,

Nicholas J. Spaeth

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