

**N.D.A.G. Letter to Elhard (July 23, 1991)**

July 23, 1991

Mr. Terry W. Elhard  
McIntosh County State's Attorney  
P.O. Box 248  
Ashley, ND 58413

Dear Mr. Elhard:

Thank you for your May 22, 1991, letter wherein you inquire whether a barn located on agricultural land is exempt from ad valorem taxation under N.D.C.C. § 57-02-09(15) if it is used for raising thoroughbred horses which are either raced or sold.

N.D.C.C. § 57-02-08(15)(a) provides as follows:

57-02-08. Property exempt from taxation. All property described in this section to the extent herein limited shall be exempt from taxation:

....

15. a. All farm structures, and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or structures used in connection with a retail or wholesale business other than farming, even though situated on agricultural land, shall not be exempt under this subsection.

It is a question of fact whether the barn is used for a purpose that is exempt under N.D.C.C. § 57-02-08(15)(a). My office has no authority to replace the local taxing authorities as the finders of fact in this matter.

However, the following information may be of assistance to those local authorities who must make the factual determination.

The North Dakota Supreme Court has generally recognized that for the purpose of this exemption, the activity of farming includes the raising of domestic and other animals. Butts Feed Lots, Inc. v. Board of County Commissioners, 261 N.W.2d 667, 671, n. 5 (N.D. 1977). Fredrickson v. Burleigh County, 139 N.W.2d 250, 253 (N.D. 1965); Nevertheless, Butts recognized that the exemption "is largely intended to exclude hobby farms and rural residences. . ." Id. at 671. Further, Butts drew a distinction between a farming operation

and a nonqualifying industrial operation by recognizing that various evolutionary processes, including that of fattening cattle, are involved in present day methods of farming but that when the activity is one by an operator who feeds either breeder or feeder cattle largely on feed purchased by the operator, rather than on feed grown by the operator, the activity is a nonqualifying industrial operation rather than a farming operation. Id. at 670-673.

Other jurisdictions have determined that horse raising is farming, but a riding stable is not farming. Stout v. Mitschele, 52 A.2d 422 (N.J. 1947); Berry v. Recorder's Court of Town of West Orange, 11 A.2d 743 (N.J. 1940) (zoning ordinances); Martin v. Shepard, 365 A.2d 971 (Vt. 1976); Aetna Casualty and Surety Co. v. Brethren Mutual Insurance Co., 379 A.2d 1234 (Md. Ct. Spec. App. 1977) (insurance contracts); In re Wolline, 74 BR 208, 209 (Bankr. E.D. Wis. 1987); In re McKillips, 72 BR 565, 568 (Bankr. N.D. Ill. 1987) (bankruptcy).

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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