

**OPINION
69-427**

November 14, 1969 (OPINION)

Mr. Eugene A. Kruger

State's Attorney

Cass County

RE: Taxation - Homestead Credit - Application

This is in reply to your letter of October 20, 1969, with regard to Section 57-02-08.1 of the North Dakota Century Code, as amended. Your letter relates to a letter which you received from Mr. Robert V. Rostad, City Assessor of the City of Fargo, in which Mr. Rostad presents six (6) questions dealing with the application of Section 57-02-08.1. These questions are quoted as follows:

- "1. Since Section 57-02-11(1) provides that real estate shall be assessed in the odd-numbered year and shall not be reassessed in the even-numbered year, will this homestead credit apply to the 1970 assessment that is carried over from 1969?
- "2. By what date must a person have reached his sixty-fifth birthday in order to be entitled to the credit on his assessment? Because April first is considered the assessment date, would a person who reached his sixty-fifth birthday on or before April first be entitled to the credit insofar as this age test is concerned?
- "3. One of the conditions for the credit is that the person have 'an income of three thousand dollars or less per annum. . .' Is it the annual income period that should be used the previous calendar year, or the twelve month period ending on March thirty-first (which is the day before the assessment date), or some other twelve month period?
- "4. Does this homestead credit apply to the rural homestead of a farmer whose farm buildings and other farm improvements are exempt from real estate taxes under Section 57-02-08(15)? In other words, does the credit apply to the assessment on the land that a farmer claims as his homestead? In this regard there seems to be considerable doubt that the legislature intended the credit to apply to the assessed value on land that is a part of the rural homestead of a farmer, but, if it did, there is the further question of whether it has the constitutional authority under Section 176 of the State Constitution to make this credit applicable to the land part of the assessed value of any homestead regardless of whether it is located in a city or in a rural area.
- "5. If this homestead credit does not apply to the rural homestead of a farmer, does it apply to the assessed value

on the land part of a nonfarm homestead in a city? For example, if the assessment on a city homestead is \$800.00 on the lot and \$1,500.00 on the home for a total assessment of \$2,300.00, is the homestead credit the maximum of \$1,000.00 or is it limited to \$750.00, which is one-half of the assessed value on the home?

"6. If the homestead credit does not apply to the assessed value of the land, would it apply to the assessed value on not only the home but on other improvements such as curb, gutter, sewer, sidewalk, unattached garage, etc.?"

Section 57-02-08.1, as amended, of the North Dakota Century Code relates to homestead tax credit for persons who are sixty-five years of age or older having limited income. As reference is made throughout this opinion to this section, it is quoted for your convenience as follows:

"57-02-08.1. HOMESTEAD CREDIT FOR PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER WITH LIMITED INCOME - PENALTY FOR FALSE STATEMENT. - Any person sixty-five years of age or older with an income of three thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a fifty percent reduction in the assessment up to a maximum reduction of one thousand dollars of assessed valuation on his homestead as defined in Section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this chapter regardless of whether or not such person is the head of a family. In no case shall a husband and wife who are living together both be entitled to the credit as provided in this chapter upon their homestead. The provisions of this chapter shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that he is sixty-five years of age or older and that such income, including that of any dependent as determined in this chapter does not exceed three thousand dollars per annum. The term 'dependent' shall include the spouse, if any, of the person claiming the exemption. Any person knowingly signing a false statement shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet."

The above section was enacted by the 1969 Legislative Assembly and became effective on July 1, 1969. The apparent legislative purpose of the section was to grant tax relief to certain individuals who are sixty-five years of age or older and who, because of insufficient income, would find it burdensome to pay the real estate tax in question. Subsection 1 of Section 57-02 11 provides that real property subject to taxation shall be assessed every odd-numbered year and property assessed in odd-numbered years shall be taxed in

the following year upon the assessed valuation as equalized in the year of assessment, "except as otherwise provided in this chapter." Section 57-02-08.1 does not specifically provide that the homestead credit is to be applied only in odd-numbered years but rather provides that any person sixty-five years of age or older in a certain income category shall receive the designated credit.

Thus, it appears that Section 57-02-08.1 does create an exception to the odd-numbered year provision as set out in Subsection 1 of Section 57-02-11 and, therefore, if a person meets the requirements of Section 57-02-08.1 on April 1, 1970, and complies with its provisions, the person would be entitled to the tax credit in either an odd or even-numbered year.

To construe the credit as only applying in every odd-numbered year would preclude a person from receiving the tax credit who became sixty-five years of age and otherwise meets all of the requirements for the tax credit in an even-numbered year, as well as a person who meets the age qualification in an odd-numbered year but not the income test but who in the following even-numbered year also meets the income requirement. These results would appear to be contrary to the apparent purpose of the legislation and if the legislature had intended same it would have expressly limited the application of the credit to persons who became sixty-five years of age in an odd-numbered year.

As to your second question, the North Dakota Supreme Court in *Garr, Scott & Co. v. Sorum*, 11 N.D. 164, 90 N.W.2d 799, concluded that pursuant to Section 57-02-11, April first is the appointed date which is used to determine the taxability, ownership and value of property for real property taxation purposes. Thus, it is our opinion that if a person reaches his sixty-fifth birthday on or before April first he would be eligible for the homestead credit if he otherwise meets the requirements set out in Section 57-02-08.1 of the North Dakota Century Code.

In regard to your third question, it is noted that Section 57-02-08.1 in prescribing the income qualification refers to the person's "per annum" income, Section 1-02-02 of the North Dakota Century Code provides that words used in a statute are to be understood in their ordinary sense unless a contrary intention clearly appears. The common understanding of the term "per annum" means "by the year - or in any one year." In this connection, see *32 Words & Phrases*, Page 5-7, and *Black's Law Dictionary*, Fourth Edition. In addition, Section 1-01-33 of the North Dakota Century Code provides that the word "year" shall mean a calendar year. Thus, it appears that the term "per annum" as used in Section 57-02-08.1 refers to the income received by the person in the previous calendar year rather than in any fiscal twelve-month period ending March 31st.

Your fourth and fifth questions relate to whether the tax credit provided for in Section 57-02-08.1 applies to assessments on the land as well as improvements situated thereon. In your fourth question you refer to rural land and in the fifth question you refer to land located within a city. You asked that if the credit applies to land, is a constitutional question presented under Section 176 of the North Dakota Constitution.

Section 57-02-08.1 specifies that a qualified person "shall receive a fifty percent reduction in the assessment up to a maximum reduction of one thousand dollars of assessed valuation on his homestead as defined in Section 47-18-01 * * *." Section 47-18-01 defines a "homestead" as follows:

"47-18-01. 'HOMESTEAD' DEFINED - EXEMPTION. - The homestead of every head of the family residing in this state shall consist:

1. If within a town plat, of not to exceed two acres of land upon which the claimant resides, and the improvements thereon, and not exceeding in value forty thousand dollars over and above liens or encumbrances or both.
2. If not within a town plat, of not to exceed in the aggregate more than one hundred sixty acres, and the dwelling house situated thereon in which the homestead claimant resides, with all its appurtenances, and all other improvements on said land regardless of the value of the same.

Such homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. In no case shall the homestead embrace different lots or tracts of land unless they are contiguous."

It is noted that the legislature in Section 57-02-08.1 chose the definition of a "homestead" for purposes of the tax credit as that term is defined in Section 47-18-01, and this section clearly provides that for both rural and urban property a homestead constitutes the land and improvements located thereon. Thus, it clearly appears the legislature intended the credit to apply to both land and buildings or other improvements. Had the legislature intended to limit the exemption only to improvements situated on property, it would have been a simple matter for it to limit the exemption to improvements only, rather than make it applicable to the entire property encompassed within the definition of a homestead. With respect to the constitutionality of this statute, we are mindful of the Supreme Court decision in *Westland v. Stalnecker*, 76 N.D. 294, 35 N.W.2d 567, in which the Court referred to constitutional limitations in exempting real property. However, in this instance we are dealing with a "credit" rather than an "exemption." A legislative enactment is presumed to be constitutional and this presumption is regarded as conclusive by the Courts, unless it is clearly shown that the statute violates a constitutional provision. In this connection, see *O'Laughlin v. Carlson*, 30 N.D. 213, 152 N.W. 675; *State Ex Rel. Linde v. Taylor*, 33 N.D. 76, 156 N.W. 561; and *Souris River Telephone Mutual Aid Corporation v. State of North Dakota* (1968), 162 N.W.2d 685. In addition to the above, it is a function of this office to support the constitutionality of legislative enactments.

As we have concluded that the credit does apply to the assessed valuation of land as well as to the improvements on it and, as your question number six is predicated upon a possible holding that the credit may not apply, it appears that no answer to question number

six need be given.

HELGI JOHANNESON

Attorney General