

**OPINION
79-252**

March 15, 1979 (OPINION)

Mr. Joseph A. Vogel, Jr.
State's Attorney
Morton County
Box 190
Mandan, North Dakota 58554

Dear Mr. Vogel:

This is in response to your letter of February 27, 1979, wherein you request an opinion of this office relative to Section 57-02-08(15) of the North Dakota Century Code, as amended, as affecting certain practices of your county in determining eligibility for exemption from taxation. You submit the following facts and inquiry in your letter:

The Morton County Tax Director has located a number of residences in the county that may not qualify as farm residences, and therefore, are not subject to the farm exemption for property tax purposes.

The problem to date has been that when the owners of such rural residences are contacted by the Tax Director's Office, they claim the exemption, but refuse to provide documentation or copies of income tax returns which would support their statement of exemption.

To acknowledge such exemptions upon information voluntarily provided by the owners, the Tax Director has inquired whether he can, pursuant to Section 57-02-08(15) N.D.C.C., request owners of such rural residences to sign an affidavit that they normally devote the major portion of their time to the activities of producing products of the soil, poultry, livestock, or dairy farming, in such product's unmanufactured state, and that they normally receive not less than 50% of their annual net income from any one or more of the foregoing activities.

If the owners refuse to sign such an affidavit, then, of course, the rural residences would be taxed as any other dwelling in the county that does not qualify for the farm exemption.

Initially we must note that Section 57-02-08 of the North Dakota Century Code, as amended, providing for the exemption which is the subject of your inquiry, specifically sets forth the limitations, specifications and legislative intent as to its application. The same provides as follows, in part:

57-02-08. PROPERTY EXEMPT FROM TAXATION. - All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

* * *

5. 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 from this subsection. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer; for this purpose the term "farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than fifty percent of his annual net income; and the term "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; (Emphasis Supplied)

* * *

This statute, by its own terms provides that the exemption, as applied to farm residences shall be strictly construed. This is in accord with judicial precedent affording interpretation of exemption statutes generally, establishing that it is well settled that provisions exempting property from taxation are to be strictly construed; that their operation should not be extended by construction; and that the power and right of the state to tax are presumed and that the exemption must be clearly granted. (Lutheran Campus Council v. Board of County Commissioners, Ward County, 174 N.W.2d. 362 (N.D. 1970)).

Such being the case, it is apparent that the assessor must make a firm determination relative to whether a particular owner is entitled to the exemption as provided by subsection 15 of Section 57-02-08, pertaining to farm residences. The statute does not spell out the mechanics by which the assessor shall make such determination or ascertain such facts. For this reason it would appear that any reasonable inquiry or requirement from which such determination could

be reasonably made or inferred would be proper. Certainly an affidavit attesting to the existence of facts specified by the statute would appear proper, particularly if the owner claiming the exemption refuses examination of or documentation of income tax returns in support of their statement and claim for exemption.

It is also well settled that the burden of establishing that property comes within the tax exemption statutes of the state is upon the one who claims the exemption. See *North Dakota Society for Crippled Children and Adults v. Murphy*, 94 N.W.2d. 343, (N.D. 1959), and *Evangelical Lutheran Good Samaritan Society v. Board of County Commissioners, Ramsey County*, 219 N.W.2d. 900, (N.D. 1974). Accordingly, it would appear that if an owner fails to accept such burden of establishing that his property comes within the tax exemption specified, the property should be assessed and placed on the tax roll as if the same does not qualify for the exemption. We do not specifically limit this concept to the furnishing of an affidavit establishing such facts, but rather to any reasonable inquiry or documentation upon which the assessor may make his determination that the subject property falls within that category contemplated by the statute providing for the specific exemption.

In direct response to your inquiry, we believe that the Tax Director can request owners of rural residences claiming the exemption provided for by Section 57-02-08(15) of the North Dakota Century Code, as amended, to sign an affidavit establishing that the facts exist which would qualify such claimant for the exemption which he seeks.

We trust that the foregoing general observations, comments and expressions will adequately set forth the opinion of this office upon the matters submitted and that the same will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General