

Office of the Attorney General
State of North Dakota

Opinion No. 81-118

Date Issued: October 30, 1981

Requested by: Kent Conrad, State Tax Commissioner

--QUESTION PRESENTED--

Whether cash rents can be used for purposes of valuing agricultural lands as provided in Section 57-02-27.2 of the North Dakota Century Code.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that cash rents cannot be used for purposes of valuing agricultural lands as provided in Section 57-02-27.2, N.D.C.C.

--ANALYSIS--

Section 57-02-27.1, N.D.C.C., provides that the valuation of agricultural lands shall be as determined pursuant to Section 57-02-27.2, N.D.C.C. Section 57-02-27.2, N.D.C.C., provides, in part:

57-02-27.2. VALUATION AND ASSESSMENT OF AGRICULTURAL LANDS. True and full value' of agricultural lands shall be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value shall be defined as the 'capitalized average annual gross return'. The 'annual gross return' shall be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, 'annual gross return' for cropland means thirty percent of annual gross income produced, and 'annual gross return' for land used for grazing farm animals means fifty percent of an amount determined to represent the annual gross income potential of the land which would be produced if the land were used for the growing of hay. The 'average annual gross return' for each county shall be determined as follows: (Emphasis supplied. The underlined language was not in the original legislation when the bill was introduced.)

In addition, Section 57-02-27.2, N.D.C.C., provides that the agricultural economics department of North Dakota State University shall make the computations that are required by this section for arriving at agricultural values for the purpose of assessment.

The legislative history of Section 57-02-27.2, N.D.C.C., reveals that it was codified from Senate Bill 2323 which was enacted by the 1981 Legislative Assembly (1981 N.D. Sess. Laws, Ch. 564, § 2).

When Senate Bill 2323 was first introduced, Section 2 provided, in part, the following:

'True and full value' of agricultural lands shall be their agricultural value for the purposes of this Act. Agricultural value shall be defined as the 'capitalized average annual gross return'. The 'annual gross return' shall be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.

A search of the records in the library of the Legislative Council reveals that the principal sponsor of Senate Bill 2323, Senator Donald Moore, filed a memorandum dated March 2, 1981, which sets forth his explanation of the productivity concept contained in this legislation. At pages 2 and 3, Senator Moore stated:

The productivity approach for farmland is a method of determining the amount of income attributable to land (this is not the same as set farm income which represents return to the labor management and equity capital of the farm operator) and capitalizing that return by an appropriate interest rate. Income attributable to land could be determined effectively by cash rent which of course is the amount the rentee thinks the use of the land is worth. Unfortunately, cash rent information is not and probably cannot be made available in enough quantity to be used. There is fortunately a second approach. The Crop Livestock Reporting Service, a joint federal-state program, provides for each county, a list of acreage yield, and price for every crop of economic importance in North Dakota. This provides a determination of total gross receipts from crop production in each county. There is available survey data which demonstrates that the overwhelming share received by crop-share landlords who furnish nothing but the land is one-third of the crop. Since the landlord has taxes and marketing expenses, the landlord's net share of gross receipts is 30%. This 30% of gross receipts is then the income attributable to land. (Emphasis supplied.)

Subsequently, and to be consistent with this statement of the sponsor, Senate Bill 2323 was amended by including the following language:

On page 2 of the reengrossed bill, line 21, after the period insert the following new sentence:

'For purposes of this section, 'annual gross return' for cropland means thirty percent of annual gross income produced, and 'annual gross return' for land used for grazing farm animals means fifty percent of an amount

determined to represent the annual gross income potential of the land which would be produced if the land were used for the growing of hay.'

1981 House Journal, page 1862.

Section 1-02-39(3), N.D.C.C., provides that in the event of ambiguity a court may consider legislative history in determining the intention of legislation. *North American Coal Corporation v. Huber*, 268 N.W.2d 593 (N.D. 1978). Section 1-02-07, N.D.C.C., provides that in the event a general provision and a special provision in a statute are irreconcilable, the special provision shall prevail. Section 1-02-08, N.D.C.C., provides that in the event a statute contains several irreconcilable clauses '. . . the clause last in order of date or position shall prevail.'

Finally, when words and phrases are defined by a statute, they shall be construed according to that definition. Sections 1-02-02 and 1-02-03, N.D.C.C. *Morton County v. Henke*, 308 N.W.2d 372 (N.D. 1981).

Applying these rules of statutory interpretation to the provisions of Section 57-02-27.2, N.D.C.C., it is clear that cash rents cannot be used as a substitute for the '. . . thirty percent of annual gross income produced . . .' factor in establishing the 'annual gross return' for cropland.

If Section 57-02-27.2, N.D.C.C., was interpreted to contain language that was permissive enough to allow the true and full value of agricultural lands to be established by criteria adopted by the agricultural economics department of North Dakota State University rather than the Legislative Assembly, the statute would be void as an unconstitutional delegation of legislative authority. 1 Cooley, *The Law of Taxation* (1924) § 78, at page 194 states '. . . that the nondelegable power to tax, as meaning the inability of the legislature to delegate the power to tax to the executive or judicial department of government, includes the method to be employed in arriving at the fair taxable value of the property.' See *Montana-Dakota Utilities Co. v. Johanneson*, 153 N.W.2d 414 (N.D. 1967).

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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