

Office of the Attorney General
State of North Dakota

Opinion No. 82-19

Date Issued: March 23, 1982
Requested by: Kent Conrad
State Tax Commissioner

--QUESTION PRESENTED--

Whether the changes made in the federal estate tax law after December 31, 1980, may be implemented for North Dakota estate tax purposes by administrative action.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the changes made in the federal estate tax law after December 31, 1980, may not be implemented for North Dakota estate tax purposes by administrative action.

--ANALYSIS--

North Dakota estate tax law is 'federalized'. That is, Section 57-37.1-04 of the North Dakota Century Code provides that the North Dakota estate tax shall be equal to the maximum credit allowable for state death taxes against the federal estate tax pursuant to the United States Internal Revenue Code of 1954, as amended.

Section 57-37.1-01(8), N.D.C.C., defines 'United States Internal Revenue Code of 1954, as amended' to mean the 'United States Internal Revenue Code of 1954 as amended to and including December 31, 1980.' Based on this definition, our estate tax law has only been federalized through December 31, 1980. Any federal law change subsequent to that date is not included in Section 57-37.1-04, N.D.C.C.

Article X, Section 3 of the North Dakota Constitution provides, in part, that only income taxes may be defined ' . . . by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time,' Estate taxes do not enjoy this same broad constitutional umbrella. To administratively incorporate by reference federal estate tax laws which were enacted after December 31, 1980, would violate Article X, Section 3 of the North Dakota Constitution.

Since the law is clear, this question only arises as a result of the expression of legislative intent in this regard. The 1979 Legislative Assembly enacted Chapter 600, S.L. 1979, relating to estate tax computation. Section 1 of that Chapter is printed as a Note following Section 57-37.1-02 of the North Dakota Century Code and provides as follows:

The legislative intent is to not tax property transferred upon death. It is the intent of the legislative assembly to repeal the state estate tax to the extent possible without jeopardizing that portion of federal estate taxes which is allowed as a credit for state estate taxes. It is recognized that, if the state estate tax were totally repealed, the amount of federal estate taxes due would be increased by the amount of credit at no savings to the people of North Dakota.

Unfortunately, the specific language of the statute prevails over a general statement of legislative intent. Therefore, the changes made in the federal estate tax law by the Economic Recovery Tax Act of 1981 may not be implemented for North Dakota estate tax purposes by administrative action. Formal action by the Legislature adopting those provisions of the federal law is needed.

--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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