

Office of the Attorney General
State of North Dakota

Opinion No. 83-37

Date Issued: September 27, 1983

Requested by: Kent Conrad
State Tax Commissioner

--QUESTION PRESENTED--

Whether in the valuation and assessment of agricultural lands pursuant to Section 57-02-27.2 of the North Dakota Century Code, for the calendar year 1983, the average annual gross return shall be capitalized at seven and one-half percent.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that pursuant to Section 57-02-27.2, N.D.C.C., in the valuation and assessment of agricultural lands for the calendar year 1983, the average annual gross return shall be capitalized at seven and one-half percent.

--ANALYSIS--

Section 57-02-27.2, N.D.C.C. was rather extensively amended by Section 1 of House Bill No. 1052 enacted by the 1983 Legislative Assembly. House Bill 1052 includes two other sections, namely, the effective date provision in Section 2 and the emergency measure provision in Section 3. Section 2 provides as follows:

EFFECTIVE DATE. The provisions of this Act shall be effective for assessments of property made, and taxable years beginning, on or after January 1, 1983.

Section 3 of House Bill 1052 declares the bill to be an emergency measure; its provisions therefore became effective on April 28, 1983, the date the Governor approved the bill.

House Bill 1052 is published as 1983 N.D.Sess.Laws Ch. 604. Section 1 of that chapter amending Section 57-02-27.2, N.D.C.C., shows overstrikes of language deleted from Section 57-02-27.2, N.D.C.C., and underlining of language added to that section by House Bill 1052. The portion of Section 57-02-27.2, N.D.C.C., with overstrikes and underlining as published in Chapter 604, that must be considered here is as follows:

To find the 'capitalized average gross return' for years after 1983, the average annual gross return shall be capitalized by a rate which is one-half of one percentage point below a ten-year average of the gross federal land bank mortgage rate of interest for North

Dakota. The ten-year average shall be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year shall be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate shall not be adjusted as provided in paragraph (3)(2) of section 20.2032A-4. To find the 'capitalized average annual gross return' for 1983, the average annual gross return shall be capitalized at seven and one-half percent. Notwithstanding the other provisions of this section, the maximum increase or decrease in the capitalization rate in any two-year period is three-tenths of one percentage point above or below the capitalization rate for the year preceding the two-year period.

The first and second sentences of the above-quoted language from Section 57-02-27.2, N.D.C.C., purport to provide a formula for determining the capitalization rate for years after 1983, and the last sentence, which begins with the word 'Notwithstanding', provides for a maximum increase or decrease in the capitalization rate in any two-year period. The third sentence expressly provides that 'for 1983 the average annual gross return shall be capitalized at seven and one-half percent.' This seven and one-half percent capitalization rate clearly would have applied for 1983 if Section 57-02-27.2, N.D.C.C., had not been amended by the 1983 Legislative Assembly.

House Bill 1052 was introduced by the Interim Finance and Taxation Committee of the Legislative council, and as introduced, it would not have changed the seven and one-half percent capitalization rate for 1983. No indication has been found in the legislative history of House Bill 1052 that the 1983 capitalization rate was intended to be anything other than seven and one-half percent. On the contrary, the testimony, notes of committee clerks, and tape recordings of committee hearings relating to House Bill 1052 that are on file in the Legislative Council all clearly show that the capitalization rate for 1983 was intended to be seven and one-half percent.

The question then is: Did the legislature intend by the enactment of the effective date provision in Section 2 of House Bill 1052 that some other capitalization rate than seven and one-half percent should apply for 1983?

As already noted, Section 2 of House Bill 1052 provides that the provisions of House Bill 1052 'shall be effective for assessments of property made, and taxable years beginning on or after January 1, 1983.' If this provision is construed as requiring that a new capitalization rate, rather than the seven and one-half percent rate, be computed for 1983, the effect would be to repeal by implication the provisions of the third sentence in the quote above from Section 57-02-17.2, N.D.C.C., that is, it would repeal the provision that: 'To find the 'capitalized average annual gross return' for 1983, the average annual gross return shall be capitalized at seven and one-half percent.'

Repeals of statutes by implication are of course not favored, and to overcome the presumption against an implied repeal, it must be shown that the conflict between the two

provisions is irreconcilable. *City of Grand Forks v. Board of County Commissioners of Grand Forks*, 284 N.W.2d 420, 422 (N.D. 1979). A general rule of statutory construction is 'that when two statutes relating to the same subject matter appear to be in conflict, they should whenever possible be construed to give effect to both statutes if this can be done without doing violence to either.' *In re Weisser Finance Company*, 169 N.W.2d 420, 427 (N.D. 1969). Consistent with these rules of construction by the courts is the provision in Section 1-02-38, N.D.C.C., that in enacting a statute it is presumed that: '2. The entire statute is intended to be effective.'

It is therefore presumed, as provided in Subsection 2 of Section 1-02-38, N.D.C.C., that all of the provisions of Section 57-02-27.2, N.D.C.C., as amended by House Bill 1052 are intended to be effective, including the provision that 'to find the 'capitalized average annual gross return' for 1983, the average annual gross return shall be capitalized at seven and one-half percent.' The presumption that this provision is effective can be overcome only by showing that it is in irreconcilable conflict with the effective date provisions of Section 2 of House Bill 1052.

The effective date provision can be harmonized and reconciled with the provision in Section 57-02-17.2, N.D.C.C., for a 1983 capitalization rate of seven and one-half percent by construing the effective date provision to mean the provision for a seven and one-half percent capitalization rate for 1983 applies to the 1983 assessments and the provisions for the formula for computing a new capitalization rate for each year apply only to assessments for years after 1983. This gives effect to all parts of House Bill 1052 and to what quite clearly appears to have been the manifest intention of the legislature in enacting the bill.

--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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