

Overruled in part by N.D.A.G. 84-8

Office of the Attorney General
State of North Dakota

Opinion No. 83-47

Date Issued: December 21, 1983

Requested: Kent Conrad
North Dakota Tax Commissioner

--QUESTIONS PRESENTED--

I.

Whether the effective date and the expiration date of Senate Bill 2295, as amended by Senate Bill 2502, both enacted by the 1983 Legislative Assembly, must be considered when deciding which property qualifies for family residential property tax exemption.

II.

Whether a building must be completed by the Federal first assessment date before it can qualify for the family residential tax exemption.

III.

Whether a residence would receive a family residential tax exemption for only one year where construction on the residence began in 1983 but the residence did not qualify for the exemption until the February 1, 1985, assessment date.

IV.

Whether the term 'builder' within the context of this legislation can include a homeowner who builds his own residence.

V.

Whether a residence which continues to be owned by its builder can qualify for the family residential tax exemption if it is incidentally rented.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that the effective date and the expiration date of Senate Bill 2295, as amended by Senate Bill 2502, both enacted by the 1983 Legislative Assembly, must be considered when deciding which property qualifies for the family residential property tax exemption.

II.

It is my further opinion that a building must be completed by the February first assessment date before it can qualify for the family residential tax exemption.

III.

It is my further opinion that a residence would receive a family residential tax exemption for only one year where construction on the residence began in 1983 but the residence did not qualify for the exemption until the February 1, 1985, assessment date.

IV.

It is my further opinion that the term 'builder' within the context of this legislation cannot include a homeowner who builds his own residence.

V.

It is my further opinion that a residence which continues to be owned by its builder can qualify for the family residential tax exemption if it is incidentally rented.

--ANALYSIS--

I.

Senate Bill 2295 is published as 1983 N.D. Sess. Laws 601. Senate Bill 2502 is published as 1983 N.D. Sess. Laws 597. Senate Bill 2502 amended and reenacted Senate Bill 2295. Although this legislation created and enacted two new subsections to Section 57-02-08 of the North Dakota Century Code, the Legislative Council did not assign permanent subsections because each bill becomes ineffective after December 31, 1987. Therefore the contents of the legislation appear as a note that is annotated to Section 57-02-08 of the North Dakota Century Code.

Section 3 of each bill contains the following language:

SECTION 3. EFFECTIVE DATE AND EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 1982, for

property upon which construction is begun after March 31, 1983, and completed before January 1, 1985, and is ineffective after December 31, 1987.

Unless otherwise provided by the Legislative Assembly, the effective date of enacted legislation is July first after the close of the session. Article IV, § 41 North Dakota Constitution. The Legislative Council's Bill Drafting Manual for the Forty-eighth Legislative Assembly states the following about effective date and expiration date clauses:

EFFECTIVE DATE CLAUSE

An effective date must be noted in the title of the bill. An effective date clause is used to provide an effective date for the bill, or specified sections in the bill, other than the first day of July following the legislative session. Examples of two types of effective date clauses are:

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1982.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on January 1, 1984.

EXPIRATION DATE CLAUSE

An expiration date clause must be noted in the title of the bill. An expiration date clause is used to provide a time at which the bill, or a specified provision of the bill, expires. Thus the affected provisions are temporary and will not be codified. An example of an expiration date clause is:

SECTION 5. EXPIRATION DATE. This Act is effective through June 30, 1982, and after that date is ineffective.

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Therefore, compliance with the language of Section 3 of these bills must be met before a residence can be eligible for the family residential property tax exemption provided for in Section 1 of the legislation.

II.

1983 N.D. Sess. Laws 597, § 1 provides the following family residential property tax exemption:

All new single family residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the two taxable years subsequent to the taxable year in which construction is begun if all of the following conditions are met:

a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution.

b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.

c. The first owner after the builder resides on the property, or the builder still owns the property.

For purposes of this subsection 'single family residential property' does not include condominium or townhouse property.

All property is taxable unless it is expressly exempted. Section 57-02-03, N.D.C.C. Freedom from taxation is the exception. *Tyler v. Cass County*, 48 N.W. 232 (N.D. 1890).

Unless the builder still owns the property, the first owner of a single family residential property must reside in the residence in order for the property to qualify for the exemption. 1983 N.D. Sess. Laws 597, § 1(c).

Words are to be understood in their ordinary sense unless otherwise defined in the Code. Section 1-02-02, N.D.C.C. A mere prospective use as a residence would not serve to qualify a single family dwelling for the exemption. The property must be fit for its intended use by the February first assessment date before it can qualify for the family residential tax exemption.

III.

1983 N.D. Sess. Laws 597, § 1 provides the following exemption from property taxation:

All new single family residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the two taxable years subsequent to the taxable year in which construction is begun. . . .
[Emphasis supplied]

Section 1-02-05, N.D.C.C., provides:

When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

An examination of the above quoted exemption language makes it eminently clear that the maximum exemption allowed is for two years subsequent to the year in which construction began. Therefore, if construction on a residence began in 1983 and if the residence did not qualify for the exemption until the February 1, 1985, assessment date, the residence could only receive an exemption for one year.

IV.

As stated in response to Question II, words are to be understood in their ordinary sense unless otherwise defined in the Code. Section 1-02-02, N.D.C.C.

The relevant definition of 'builder' as found in Webster's Third New International Dictionary, unabridged, 1971, is as follows:

Builder: One that builds: as a: a worker (as a carpenter, shipwright, or mason) whose occupation is to build b: a person who supervises and usu. has a financial interest in building operations and the arts and trades involved in their progress--compare contractor.

Furthermore, the whole tenor of the committee testimony pertaining to this legislation is that a 'builder' is meant to be a building contractor and someone other than a homeowner who builds his own residence. For example see Representative Timm's testimony before the House Finance and Taxation Committee April 12, 1983, relating to Senate Bill 2502. Section 1-02-39(3), N.D.C.C., specifically authorizes the consideration of legislative history when a statute appears to be ambiguous. *North American Coal Corporation v. Huber*, 268 N.W.2d 593, 597 (N.D. 1978).

V.

The language of 1983 N.D. Sess. Laws 597, § 1 does not prohibit a residence which continues to be owned by its builder from qualifying for the exemption if it is incidentally rented.

The committee notes are silent on this subject with respect to single family residences. However, Senator Kilander, a co-sponsor of both Senate Bills, testified before the Senate Finance and Taxation Committee on April 11, 1983, regarding Senate Bill 2502, that a builder of condominiums should not be able to qualify for the exemption if the builder rented the property.

Thus, the expressed concern was with the possibility that multiple dwelling units would be built for rental purposes as an investment and qualify for the exemption. There was no apparent concern about single family residences being built for the intention of sale being qualified for the exemption if they were incidentally rented pending sale.

--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 questions presented are decided by the courts.

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