

Date Issued: January 27, 1984 (AGO 84-8)

Requested by: Senator Donald J. Kilander

- QUESTION PRESENTED -

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

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a building does not have to be completed by the February first assessment date before it can qualify for the family residential tax exemption.

- ANALYSIS -

Senate Bill 2502 (1983 N.D. S.L. 597) amended and reenacted Senate Bill 2295 (1983 N.D. S.L. 601). 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, N.D.C.C.

1983 N.D. Session Laws 597, Section 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). Taxable property shall be listed and assessed with respect to its value annually on February first. Section 57-02-11(1), N.D.C.C.

The North Dakota Supreme Court in YMCA of North Dakota State University v. Board of County Commissioners, 198 N.W.2d. 241 (N.D. 1972), stated the following:

The burden is upon the plaintiff to establish that certain of its property comes within the tax-exemption statutes of the State. If there is any doubt as to whether the Legislature intended facilities such as those in question to be exempted from taxation, there is a presumption in favor of the taxing power. 198 N.W.2d. 241, 244.

A pertinent general rule of law has been stated as follows:

A statute exempting new buildings for a stated period of years, where the new construction results in a public benefit, has been held constitutional, and new buildings within the terms of the statute are exempt for the statutory period, but buildings not conforming to statutory requirements are not exempt. 84 C.J.S. 466, Section 249.

The question then is whether a partially constructed building can qualify as a residence for the purpose of this exemption. Some states specifically exempt buildings under construction. 84 C.J.S. 466-467, Section 249. North Dakota has no equivalent exemption. Property tax exemptions in North Dakota generally require that the exempt real property be identifiable as qualified exempt property or actually used for exempt purposes before that property receives an exemption. Section 57-02-08, N.D.C.C.

However, after further review of the legislative history of the family residential tax exemption legislation, it is apparent that the Legislative Assembly understood that this exemption is to apply to qualifying residential property while under construction as well as after construction has been completed. Legislative history may be used to interpret ambiguous statutes. Section 1-02-39(3), N.D.C.C.

In addition, in enacting a statute a result feasible of execution is intended. Section 1-02-38(4), N.D.C.C. This apparent deviation from the general rule is further supported by the fact that this legislation is only temporary, inasmuch as it becomes ineffective after December 31, 1987. 1983 N.D. S.L. 597, section 3.

Finally, in the event that upon completion of the construction of a building it did not become residential property that qualified for the family residential tax exemption, the building could be assessed by the county auditor as omitted property. Section 57-14-01, N.D.C.C.

Therefore, it is my opinion that a building does not have to be completed by the February first assessment date before it can qualify for the family residential tax exemption.

- 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. To the extent that this opinion disagrees with my opinion in response to question II of Opinion 83-47, the previous opinion is overruled. Such being the case, my response to question III of Opinion 83-47 has been rendered moot and is no longer to be given effect.

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