

Date Issued: July 9, 1984 (AGO 84-29)

Requested by: Kent Conrad
Tax Commissioner

- QUESTIONS PRESENTED -

I.

Whether the exemption provided for new single family residential property pursuant to 1983 N.D. Session Laws 597, Section 1 must be prorated if the first owner, after the builder, sells the property before the exemption period has expired.

II.

Whether the exemption provided for new condominium and townhouse residential property pursuant to 1983 N.D. Session Laws 597, Section 2 is available, on a prorated basis, to the first owner after the builder who resides on the property, if the first owner does not purchase the property from the builder until after the February 1 assessment date.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the exemption provided for new single family residential property pursuant to 1983 N.D. Session Laws 597, Section 1 must be prorated if the first owner, after the builder, sells the property before the exemption period has expired.

II.

It is my further opinion that the exemption provided for new condominium and townhouse residential property pursuant to 1983 N.D. Session Laws 597, Section 2 is available on a prorated basis, to the first owner after the builder who resides on the property, if the first owner does not purchase the property from the builder until after the February 1 assessment date.

- ANALYSES -

I.

1983 N.D. Session Laws 597, Section 1 provides, in pertinent part:

All 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.

It is clear from the wording of the statute that, in order to qualify for the exemption, the conditions must be met on a continuous basis. That is, the exemption is for two taxable years if all of the conditions are satisfied. One of those conditions is that the first owner after the builder must reside on the property. If the first owner after the builder sells the property, one of the conditions is no longer satisfied, and the exemption ends.

That interpretation is also consistent with section 57-02-41 of the North Dakota Century Code, which provides, in pertinent part:

If exempt real property is acquired in any year after the assessment date by an owner in whose hands it is taxable, it shall be assessed as omitted property and the taxes on it for that portion of the year that it is not exempt, computed to the nearest month, shall be subject to all of the provisions for payment and collection that are applicable to taxes for the same year on other real property.

This section provides that the owner who does not qualify for the exemption is responsible for the taxes for that portion of the year the exemption no longer applies. Therefore, the exemption must be prorated if the first owner after the builder sells the property before the exemption period has expired.

II.

1983 N.D. Session Laws 597, Section 2 provides, in pertinent part:

All new condominium and townhouse 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 condominium or townhouse is situated are not delinquent.
- c. The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.

Pursuant to this section, a builder of condominium, townhouse, or residential property does not qualify for an exemption. However, the first owner after the builder does qualify for the exemption. Again, a portion of section 57-02-41, N.D.C.C., applies:

If taxable real property is acquired in any year after the assessment date by an owner in whose hands it will be exempt from taxation, the taxes on it for the portion of the year that it was not exempt, computed to the nearest month, shall constitute a personal charge against the person from whom it was acquired and all of the provisions of law for payment and collection of personal property taxes shall be applicable to such prorated taxes.

This section provides that the taxes must be paid by the person from whom the property was acquired for the portion of the year that the property was not exempt. Therefore, the exemption is available, on a prorated basis, to the first owner after the builder who resides on the property.

- 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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