

LETTER OPINION
94-L-120

April 15, 1994

Honorable Sarah Vogel
Commissioner of Agriculture
600 East Boulevard Avenue
Bismarck, ND 58505

Honorable Bob Hanson
State Tax Commissioner
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Commissioners Vogel and Hanson:

Thank you for your April 4, 1994, letter asking about the application of a May 16, 1980, Attorney General's opinion on the property tax exemption for farm structures to bed and breakfast retail businesses conducted in farm residences.

The May 16, 1980, opinion interpreted language which read:

15. All farm structures, and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or structures used in connection with a retail or wholesale business other than farming, even though situated on agricultural land, shall not be exempt under this subsection. . . .

(Emphasis added.)

N.D.C.C. ? 57-02-08(15). 1980 N.D. Op. Att'y Gen. 136.

Currently, including amendments through the 1991 special legislative session, the relevant provision reads:

All farm structures and improvements located on

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agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or improvement used in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection.

(Emphasis added.) N.D.C.C. ? 57-02-08(15)(a).

In 1981, N.D.C.C. ? 57-02-08(15) underwent substantial amendment concerning qualifying for the tax exemption with respect to farm residences. Those amendments dealt with the meaning of farm, farmer, and income from farming and other sources. They did not relate to the use of farm structures (including residences) that was considered and interpreted by the above-noted May 16, 1980 Attorney General's opinion.

The 1980 Attorney General's opinion, after describing 1971 legislative changes to the relevant section, opined:

It therefore follows that a building or structure that is "used in connection with a retail or wholesale business other than farming" but is also used in connection with farming is not exempt even though it is used mainly, or primarily or predominantly, in connection with farming.

A structure is defined as:

[A]n edifice or building of any kind.

A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

Black's Law Dictionary, 1424 (6th ed. 1990). See

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Ladish Malting Co. v. Stutsman Co., 351 N.W.2d 712 at 720 n.7 (N.D. 1984).

A bed and breakfast facility is defined by N.D.C.C. ? 23-09.1-01 as "a private home that is used to provide accommodations for a charge to the public, with not more than four lodging units, in which no more than two family style meals per day are served."

All such bed and breakfast facilities are required by law to be licensed by the North Dakota Department of Health and Consolidated Laboratories. N.D.C.C. ? 23-09.1-02.2. The Legislature, by so defining such use of homes as bed and breakfast facilities, has made a determination that such use constitutes a business.

Further, N.D.C.C. ? 57-39.2-01 defines "retailer" to include "[e]very person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations"

Therefore, it is my opinion that a farm residence is a structure, and that operating a bed and breakfast business is a retail business.

After the 1981 amendments to N.D.C.C. ? 57-02-08(15), the Attorney General twice confirmed the May 16, 1980, opinion as controlling on the subject of the use of farm structures and qualification for the property tax exemption. Letter opinion from Attorney General Nicholas J. Spaeth to State's Attorney Lyle R. Bopp (August 1, 1985) and Letter from Attorney General Nicholas J. Spaeth to Charles Anderson (March 18, 1986). Copies of those letters are enclosed for your information.

The emphasized portions of N.D.C.C. ? 57-02-08(15)(a) quoted above show that the operative language of the statute has not changed significantly since the 1980 Attorney General opinion with respect to the use of farm structures. I believe the 1980 Attorney General's opinion (1980 N.D. Op. Att'y Gen. 136) correctly interprets the law and is controlling in the circumstances you describe. It is, therefore, my opinion that a farm residence used in connection with a bed and breakfast business is not exempt from property taxation under N.D.C.C. ? 57-02-08(15).

Sincerely,

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Heidi Heitkamp
ATTORNEY GENERAL

rel/pg
Enclosures