

OPINION
53-110

February 3, 1953 (OPINION)

TAXATION

RE: Exemption of Certain Structures

You have asked our opinion upon an interpretation of section 57-0208(15) of the North Dakota Revised Code of 1943, which section exempts from taxation buildings located on agricultural lands and comprising part of the farm plant.

In the case in question, the taxpayer has located a chicken hatchery on an eight-acre tract of land outside the city limits of Bismarck. The land is used exclusively for the hatching and marketing of chickens and no crops whatsoever are grown on the land. The taxpayer lives on this tract of land.

You point out that the North Dakota supreme court had occasion to construe this particular subsection in the case of Eisenzimmer v. Bell 32 N.W. 2d, 891. In that case, facts materially different from that of this case were before the court.

However, the court stated at page 893 that the test to be used in such cases was twofold. First, the character of the lands must be agricultural as distinguished from urban or other properties; and second, the buildings must be used or have been intended to be used as a "part of the farm plant."

As to the first question - the character of the lands - there can be no question that the lands are agricultural as distinguished from urban.

If then, the buildings are part of the "farm plant", the taxpayer would come within the exemption as provided in section 57-0208(15).

We think that the Massachusetts case of Winship v. Inspector of Buildings of Town of Wakefield 174 N.E. 476, Mass. 380, is particularly in point. It is stated in that case at page 477 that:

"The word farm has well-defined meaning, and is a tract of land devoted to agriculture, stock raising, or some allied industry, and may consist of land devoted to agriculture, and may lie in one, or in more than one, township premises used for raising and sale of chickens and production and sale of eggs being commonly designated as 'chicken farm.'"

It is our opinion that this is the correct view of the nature of this occupation and that this conforms to the view of "farming" adopted in the case of Lowe v. North Dakota Workmen's Compensation Bureau 66 N.D. 246, in which the Webster dictionary definition is quoted with apparent approval. Included in that definition is the excerpt that agriculture is "the science and art of the production of plants and animals useful to man."

Clearly, then, the raising of chickens is a form of agriculture and all buildings that comprise a part of this occupation are part of a farm plant.

For this reason, we are of the opinion that these buildings come within the meaning of section 57-0208(15) and that they are therefore exempt from taxation.

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