

**OPINION
59-169**

June 18, 1959 (OPINION)

MOTOR VEHICLES

RE: Additional Fee - Exceptions - Farmers

This is in reply to your request for a clarification as to whether a party having bees and engaging in the honey business only is considered a farmer under chapter 39-04A of the 1957 Supplement to the North Dakota Revised Code of 1943 so that he would not be subject to the ton fee tax for the truck used to transport the bees from one location to another in this state where the truck has a gross weight of more than twelve thousand pounds.

You also state that it is your understanding these beekeepers have the bees in this state only in the summer months. These bees are brought to this state in May or early June by truck and as soon as weather gets cold they are loaded and hauled to a warmer climate. The statute in question is 39-04A06 of the 1957 Supplement to the North Dakota Revised Code of 1943 and is as follows:

EXCEPTIONS. This Act (chapter) shall not apply:

1. To the transportation of property between farms and the usual local trading places, between farms locally, or to the transportation of farm equipment owned by a bona fide resident farmer of this state when such farm equipment is transported in vehicles owned by such resident farmer;
2. To a farmer transporting his own livestock or commodities from his farm with his own truck to any village, market, or place where such livestock and commodities are to be sold, stored, or otherwise disposed of, as well as the transporting of livestock or commodities from any village, city or place where same is purchased or acquired to his farm where such supplies are to be used, consumed, or processed;
3. To a farmer in the normal exchange of work with his neighbors; or
4. To the transportation of property within the city or village limits or not to exceed two miles from the corporate or recognized limit of such city or village."

It is noted that the exception applies to farmers transporting livestock and commodities from their farms with their own trucks and etc. and transportation of property between farms and local trading places and between farms locally and the transportation of farm equipment owned by a bona fide resident farmer of this state when transported in vehicles owned by such resident farmer.

The term "farmer" is defined in Webster's dictionary as one who

farms; as one who conducts or manages a farm. A "farm" is defined as any tract devoted to agricultural pursuits; a plot or tract of land devoted to raising domestic or other animals. The term "farm" has many and various meanings depending upon the circumstances and relation to the subject matter in which it was used. For instance a farm can also have reference to a club or minor league's association with a major league.

25 CJ 671 amongst other things defined a farm in its legal meaning in the following statement:

. . . . In more modern time the word has received a more extended signification, and now denotes, in this country, both in a popular and legal sense, a considerable tract of land, devoted, in part at least, to cultivation, with suitable buildings, and under the supervision of a single occupant, regardless of the nature or extent of his tenure; a considerable tract of land, cultivated or used in some one of the usually recognized ways of farming; a tract of land under one control or forming a single property devoted to agriculture, stock raising, dairy produce, or some allied industry; a tract of ground cultivated or designed for cultivation by a farmer; a parcel of or tract of land consisting usually of grassland, meadow, pasture, tillage, and woodland, cultivated by one man and usually owned by him in fee; a plot or tract of land devoted to the raising of domestic or other animals, as, a chicken farm or a fox farm; a piece of ground devoted by its owner to agriculture; all the land of a person engaged in agricultural pursuits, and used for that purpose; a body of land, usually under one ownership, devoted to agriculture, either to the raising of crops, or pasture or both; an indefinite quantity of land, some of which is cultivated, whether it is large or small, isolated, or made up of many parcels, for a farm may be of any size, of any shape, of any boundaries, and may include less than one lot, or comprise several lots or parts of lots. The term is and has been a collective one, comprehending diverse things collected together, whereof one is a message, and the others are the lands, meadows, pastures, woods, commons, and other things lying on or appertaining thereto. Generally the word 'farm' includes all the land which forms part of the tract."

On page 673 of the same volume it defines the word "farmer."

The word has a well recognized meaning, and has been defined as a person engaged in the business of cultivating land or employing it for the purpose of husbandry; a man who cultivates a considerable tract of land in some one of the usual recognized ways of farming; one who is devoted to the tillage of the soil; a person engaged in the tillage of the soil; a tiller of the soil; one who tills the soil; one who resides on a farm with his family, cultivating such farm, and mainly deriving his support from it, one who owns and resides on a farm; one who directs the business of a farm and works at farm labor; one who cultivates a farm either as owner or lessee; an agriculturist; a cultivator; a husbandman."

On page 674 it defines "farming."

The business of cultivating land, or employing it for the purposes of husbandry; the cultivation and fertilization of the soil, as well as caring for and harvesting the crops. In its purely agricultural sense, its use is comparatively modern."

The keeping of bees or the keeping of an apiary as such comes within the broad term of "engaged in agricultural pursuit" but does not come within the generally accepted term of "farm" or "farming." The keeping of bees for honey purposes can be considered part of a farm but in itself does not establish that such a person is engaged in farming or that he is a farmer. The term "farmer" or "farm" is not synonymous with agriculture. The North Dakota Supreme Court in 66 N.D. 246 said that:

One may be employed in agriculture and yet not be a 'farmer' in the ordinary sense of the term, They are not synonymous terms. The term 'agriculture' is broader than either of the others."

This statement is applicable to our question. As noted from the definition set out above farming can include many separate and distinct items and enterprises if they are in conjunction with what is basically known as farming of operating a farm. It is to be observed that basically farming is the cultivating the land, or employing it for the purposes of husbandry; the cultivation and fertilization of the soil, as well as caring for and harvesting the crops. Throughout the definition it is noted that it has to do with the tilling and cultivating of the soil in connection with other products which are incidental to tilling and cultivating the soil.

In referring to the statute it is noted that the transportation of property between farms is one of the exceptions. It cannot be said that the sites or locations where the bees are temporarily placed in the summertime within the State of North Dakota are considered a farm or more particularly a farm with relation to the owner or keep of bees. It might be farmland, depending on the nature on which it is used but that in itself does not make the keeper of bees a farmer. In other words the location or site is not his (keep of the bees) farm. We have now concluded that the keeper of the bees by the mere fact that he keeps these bees as outlined above is by virtue of such not a farmer. If such person claims an exception by virtue of being a farmer, he would have to establish independently from the bee business that he is a farmer. Even though he might be in a position to establish that he is a farmer it is doubtful that the statute applies unless he is a North Dakota farmer.

Subsection 2 allows the farmer to transport his livestock from his farm to any village, market or place where such livestock or commodities are sold, stored or otherwise disposed of or to transport such items from the city or village where it is purchased or acquired to his farm where such supplies are to be used, consumed or processed.

For the reasons stated above it is our opinion that the party having bees and engaging in the honey business only as set out above does

not fall within the exception of section 39-04A06 and is required to pay the ton fee tax provided for in chapter 39-04A.

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