

N.D.A.G. Letter to Mehrer (June 5, 1990)

June 5, 1990

Mr. Owen K. Mehrer
Stark County State's Attorney
P.O. Box 130
Dickinson, ND 58601

Dear Mr. Mehrer:

Thank you for your letter of May 24, 1990, wherein you inquire whether buildings or improvements used in a beekeeping enterprise are exempt from ad valorem taxation under N.D.C.C. § 57-02-08(15). For the following reasons, it is my opinion that buildings and improvements used in a beekeeping enterprise, excluding the processing of honey, are exempt under N.D.C.C. § 57-02-08(15).

N.D.C.C. § 57-02-08(15)(a) exempts from ad valorem taxation all farm structures and improvements which are located on agricultural lands. This subsection specifically excludes from the exemption industrial plants, structures not used or intended for use as a farm plant and structures used for a retail or wholesale business.

On January 30, 1975, the North Dakota supreme court issued a decision wherein it held that the operation of a commercial honey producer was commercial rather than agricultural and was subject to workmen's compensation statutes. Morel v. Thompson, 225 N.W.2d 584 (N.D. 1975).

At that time Senate Bill 2434 relating to the beekeeping industry was pending before the Legislative Assembly. In response to the Morel decision, supra, Mr. Mel Fischer, State Bee Inspector for the North Dakota Commissioner of Agriculture, testified in support of an amendment to Senate Bill 2434 which would provide that "[b]eekeeping is an agricultural enterprise for all purposes under the laws of this state." Hearing on S. 2434 Before the House Agriculture Comm. 44th N.D. Leg. (February 28, 1975) (Statement of Mel Fischer) This language is now codified as N.D.C.C. § 4-12.2-25.

"Although plain terms of a statute may not be contradicted by an administrative interpretation thereof, the practical construction by the Tax Commissioner of an ambiguous statute is entitled to some weight in construing the statute." Ladish Malting Co. v. Stutsman County, etc., 351 N.W.2d 712, 720 (N.D. 1984). The Office of the State Tax Commissioner issued property tax guidelines dated December 1989, wherein the Tax Commissioner suggests the following:

6. Buildings and improvements used in connection with the operation of keeping bees are exempt because beekeeping is considered to be an agricultural pursuit. (N.D.C.C. Section 4-12.2-25).

Processing honey is considered to be a commercial operation rather than an agricultural pursuit. Morel v. Thompson, 225 NW2d 584 (N.D. 1975). Buildings and improvements used in connection with the operation of commercial honey production are commercial and are taxable. North Dakota Property Tax Guideline, p. G-9 (Dec. 1989). I agree with the Tax Commissioner's property tax guidelines relating to buildings and improvements used in a beekeeping enterprise.

Sincerely,

Nicholas J. Spaeth

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