

**LETTER OPINION
2009-L-14**

October 9, 2009

Mr. A. W. Stokes
Richland County State's Attorney
413 3rd Avenue North
Wahpeton, ND 58075-4427

Dear Mr. Stokes:

Thank you for your letter asking whether an income deferral or offset for tax purposes can be excluded from nonfarm income when considering the limitation on the tax exemption for a farm residence found in N.D.C.C. § 57-02-08(15)(b)(5). Specifically, you asked:

1. If a person defers W-2 income (for tax purposes) in an amount which lessens the off-farm income to less than the \$40,000 nonfarm income cap, is such an individual then qualified to receive the farm exemption if he or she meets all other qualifications?
2. Can a farmer offset W-2 nonfarm income with Schedule C or D nonfarm losses to reduce the net nonfarm income?
3. Can a farmer offset Schedule C Business income (income from two or more other nonfarm businesses) so that the resulting total net of nonfarm income is less than the \$40,000.00 threshold?

For the reasons indicated below, it is my opinion the answer to each question is yes.

ANALYSIS

Generally, a farm residence occupied by a farmer is exempt from taxation, with certain limitations.¹ Your questions relate to a statutory limitation in place since 1983, regarding the amount of "nonfarm income" a farmer and farmer's spouse may receive and still qualify for the exemption. That statute, N.D.C.C. § 57-02-08(15)(b)(5), provides:

¹ N.D.C.C. § 57-02-08.

In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. This paragraph does not apply to a retired farmer or a beginning farmer as defined in paragraph 2.²

Thus, the answers to your questions depend upon the meaning of the phrase “nonfarm income.”

Unlike N.D.C.C. § 57-02-08(15)(b)(3) which defines the phrase “net income from farming activities,” there is no definition of the phrase “nonfarm income” provided in the Century Code. Because the phrase “nonfarm income” does not indicate whether it is net income, gross income, or some other formula, it is susceptible to different interpretations. “When the plain language of a statute is not ‘transparent,’ . . . codified rules of statutory interpretation direct [review of] the Code itself in determining the meaning of statutory terms.”³ “Words used in any statute are to be understood in their ordinary sense.”⁴ And if a statute is ambiguous, a court, in determining the intention of the legislation, may consider among other matters the legislative history, laws upon the same or similar subjects, the consequences of a particular construction, and the administrative construction of the statute.

Within subsection (b) of N.D.C.C. § 57-02-08(15), the Legislature has defined net farm income by a formula that begins with taxable income as computed for income tax purposes, or net income, and adds certain additional amounts that had been deducted when computing taxable income.⁵ It could be inferred that the phrase “nonfarm income” means net income, or the amount of income less deductions and deferrals, since the farm residence tax exemption statute is based on a comparison of net farm income⁶ and nonfarm income; these provisions may best be harmonized if net farm income were

² Emphasis supplied.

³ Northern X-Ray Co. v. State ex rel. Hanson, 542 N.W.2d 733, 735 (N.D. 1996); see also Hamich, Inc. v. State ex rel. Clayburgh, 564 N.W.2d 640, 644 (N.D. 1997).

⁴ N.D.C.C. § 1-02-02.

⁵ N.D.C.C. § 54-02-08(15)(b)(3).

⁶ Lucier v. N.D. Workers Compensation Bureau, 556 N.W.2d 56, 60 (N.D. 1996) (statutes are construed so that an ordinary person reading them would get the usual accepted meaning and statutes on the same topic are harmonized to give full force and effect to legislative intent).

compared with net nonfarm income.⁷ It could also be inferred that the phrase “nonfarm income” means gross income, or all income without deductions for tax purposes, because of the absence of any directive to consider deductions from nonfarm income while there are express directives to include deductions in the definition of the phrase “net farm income.”⁸

Because the phrase “nonfarm income” does not indicate whether it is net income, gross income, or some other formula, it is susceptible to different interpretations. “[W]hen a statute is susceptible to differing but rational meanings, we may look to extrinsic aids to determine the legislature’s intent.”⁹ These extrinsic aids include the legislative history.¹⁰

A review of the legislative history of N.D.C.C. § 57-02-08(15)(b)(5) reveals that the original bill draft proposed amending the definition of the phrase “net income from farming activities” by changing the word “net” to “gross” so that section 57-02-08(15)(b)(5) defined gross income from farming activities rather than net income, and the bill did not address the concept of nonfarm income.¹¹ The Senate Finance and Taxation Committee examined the difference between gross and net income as part of its deliberations.¹² Amendments ultimately adopted by the Senate Finance and Taxation Committee abandoned the original proposal in favor of creating the “nonfarm income” limitation now found in N.D.C.C. § 57-02-08(15)(b)(5).¹³ An explanation of the amendment was provided by the state supervisor of assessments, and it was discussed and adopted by the committee. Immediately after recording the vote to adopt the amendment, the minutes

⁷ Frey v. City of Jamestown, 548 N.W.2d 784, 788 (N.D. 1996) (statutory provisions must be considered as a whole, with each provision harmonized if possible). See also Stutsman County v. State Historical Soc’y of N.D., 371 N.W.2d 321, 325 (N.D. 1985).

⁸ Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993) (the law is what the Legislature says, not what is unsaid).

⁹ Burlington Northern R.R. v. State ex rel. Hanson, 500 N.W.2d 615, 617 (N.D. 1993), citing Republican Com. v. Democrat Com., 466 N.W.2d 820, 825 (N.D. 1991).

¹⁰ N.D.C.C. § 1-02-39(3).

¹¹ See North Dakota Legislative Council, Bills as Submitted 1983-1985, CD-ROM (maintained at the North Dakota Legislative Council Library).

¹² Hearing on S.B. 2313 Before the Senate Comm. on Finance and Taxation, 1983 N.D. Leg. (Jan. 24) (Statement of Charles S. Krueger, Burleigh County Tax Assessor) (see also Statement of Senators Dotzenrod and Lee).

¹³ Hearing on S.B. 2313 Before the Senate Comm. on Finance and Taxation, 1983 N.D. Leg. (Feb. 15).

state: “\$10,000 is ‘net.’”¹⁴ After additional discussion, the committee later voted “in favor,” although the exact motion was not recorded.¹⁵

It is reasonable to conclude the Legislature’s intent was that the phrase “nonfarm income” in N.D.C.C. § 57-02-08(15)(b)(5) was meant to only include “net” nonfarm income. Further, as noted previously, this interpretation would best harmonize the statute’s requirement to compare net farm income with nonfarm income because the comparison would be between similar measures of income. This conclusion also follows the long-standing interpretation and application of N.D.C.C. § 57-02-08(15)(b)(5) by the North Dakota Office of State Tax Commissioner.¹⁶

Deference to the administrative interpretation and application is appropriate, particularly when the agency interprets and implements tax laws that are complex and technical in nature.¹⁷ However, an administrative agency’s construction of a statute is accorded much less weight when the only issue to be resolved by a court is a nontechnical question of law, or matter of pure statutory interpretation.¹⁸ Regardless, since the Legislature is presumed to know the construction of a statute by executive departments of the state, failure to amend or change the phrase “nonfarm income” in N.D.C.C. § 57-02-08(15)(b)(5) since 1983 indicates legislative acquiescence, and weight should be given to the agency’s interpretation of the law,¹⁹ especially since the Legislature has amended section 57-02-08(15)(b)(5) twice since 1983.²⁰

¹⁴ Id. Before the bill was passed, the \$10,000 limitation was raised to \$20,000. That limitation was raised to \$30,000 in 1985 (see 1985 N.D. Sess. Laws ch. 600), and to \$40,000 in 1997 (see 1997 N.D. Sess. Laws ch. 477).

¹⁵ Id.

¹⁶ See E-mail from Marcy D. Dickerson, State Supervisor of Assessors, Office of the State Tax Commissioner, to Matthew A. Sagsveen, Assistant Attorney General (June 19, 2009). See also N.D.C.C. § 57-01-02(2) (the Tax Commissioner has general supervision over property assessors). Cf. Am. Crystal Sugar Co. v. Traill County Bd. of Comm’rs, 714 N.W.2d 851, 859 (N.D. 2006) (Tax Commissioner issued guidelines for property tax valuation for commercial and residential property). An additional argument could be made that because the Legislature is presumed to know the construction of a statute by executive departments of the state, failure to amend the statute indicates legislative acquiescence. Effertz v. N.D. Workers Compensation Bureau, 525 N.W.2d 691 (N.D. 1994).

¹⁷ Hamich, 564 N.W.2d 640, 644-45 (N.D. 1997).

¹⁸ State ex rel. Clayburgh v. Am. West Comty. Promotion, Inc., 645 N.W.2d 196, 200 (N.D. 2002).

¹⁹ Effertz v. N.D. Workers Compensation Bureau, 525 N.W.2d 691 (N.D. 1994); State ex rel. Clayburgh v. Am. West Comty. Promotion, Inc., 645 N.W.2d at 203-04.

²⁰ See note 14.

Based on the foregoing, it is my opinion that if a person defers W-2 income in an amount which lessens the off-farm income to less than the \$40,000 nonfarm income limitation under N.D.C.C. § 57-02-08(15)(b)(5), that individual is then qualified to receive the farm exemption if he or she meets all other qualifications. It is my further opinion that a farmer may offset W-2 nonfarm income with Schedule C or D nonfarm losses to reduce the net nonfarm income to be factored in under N.D.C.C. § 57-02-08(15)(b)(5). Finally, it is my opinion that a farmer may offset Schedule C business income (income from two or more other nonfarm businesses) so that the resulting total of nonfarm income is less than the \$40,000 threshold to be factored in under N.D.C.C. § 57-02-08(15)(b)(5).

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.²¹

²¹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).