

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-15

Date issued: June 5, 1990
Requested by: Lyle G. Witham
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- QUESTION PRESENTED -

Whether, for the purpose of the ad valorem tax exemption for a farm residence, net income from farming activities always includes payments received by a farmer under the Conservation Reserve Program (CRP).

- ATTORNEY GENERAL'S OPINION -

It is my opinion that for the purposes of the ad valorem tax exemption for a farm residence, net income from farming activities always includes payments received by a farmer under the Conservation Reserve Program (CRP).

- ANALYSIS -

N. D. C. C. ' 57-02-08(15) exempts from ad valorem taxation all farm structures and improvements, including farm residences, that are located on agricultural lands. The exemption for a farm residence must be strictly construed and only exempts ". . . a residence which is situated on a farm and which is occupied or used by a person who is a farmer." N. D. C. C. ' 57-02-08(15) (b); Mills v. Bd. of County Comm'rs, 305 N. W. 2d 832, 836 (N. D. 1981).

For the purpose of the farm residence exemption "farm," "farmer" and "net income from farming activities" are defined as follows:

- (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than fifty percent of his annual net income.
- (2) "Farmer" means an individual who normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty percent of his annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer

as defined above the residence in which he lives and for which the exemption is claimed.

- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.

N. D. C. C. ' 57-02-08(15)(b)(1), (2), (3).

N. D. C. C. ch. 57-38 provides that federal taxable income is the starting point for the calculation of an individual's North Dakota income tax liability and only those adjustments expressly provided by statute may be made to increase or decrease federal taxable income. N. D. C. C. " 57-38-01(8), -01.1, -01.2; Erdle v. Dorgan, 300 N. W. 2d 834, 837 (N. D. 1980).

Under the Internal Revenue Code and the Federal Treasury Regulations, agricultural program payments, with certain specific exceptions, are deemed to be farm income for income tax purposes and are reportable in Schedule F of the individual income tax return Form 1040. IRC " 61, 126 (1990); Treas. Reg. ' 1.61-4 (1990); 1 Fed. Taxes 2d (P-H) && 612.04, 614.051, 614.052, 614.062 (1990); 2 Fed. Taxes 2d (P-H) & 1260 (1990). CRP was enacted as a part of the Erodible Land and Wetland Conservation and Reserve Program, 16 U.S.C. " 3831-3836 (1988). CRP is not an exception to the requirement that agricultural program payments must be reported as farm income for federal income tax purposes. IRC ' 126 (1990).

Therefore, although CRP payments are deemed under 16 U.S.C. ' 3834 to be "rental" payments, and fixed rent for farmland generally is not reported as farm income for federal income tax purposes, Treas. Reg. ' 1.175-3 (1990); 3 Fed. Taxes 2d (P-H), & 1752.02 (1990); 1984 N.D. Op. Att'y Gen. 105, "[n]et income from farming activities" under N. D. C. C. ' 57-02-08(15)(b)(3) always includes payments received by a farmer under CRP.

- EFFECT -

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.

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