

LETTER OPINION
95-L-222

September 21, 1995

Mr. Ronald W. McBeth
Assistant Richland County
State's Attorney
Law Enforcement Center
413 3rd Avenue North
Wahpeton, ND 58075-4427

Dear Mr. McBeth:

Thank you for your letter asking for clarification of the term "retired" for the purpose of the ad valorem exemption for a farm residence. Specifically, you set forth the following questions in your letter:

If a non-farmer retires from a job in town and then purchases a quarter section of land in the country with a house on the property and resides in the dwelling, can this person claim he is farming, by hiring all the labor work to be done by others, paying all farm bills himself, collecting all receipts in his name, and subsequently, then claim the dwelling to be "Farm Exempt" under Section 57-02-08(15), NDCC?

Is it also acceptable for this person to retire a second time, this time as a farmer, and claim "Farm Exempt" for the structures for the duration of his retirement, under the same section?

N.D.C.C. § 57-02-08(15)(a) exempts all farm structures and improvements, including a farm residence, from ad valorem taxation. N.D.C.C. § 57-02-08(15)(b) provides the following statement of legislative intent:

It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be

Mr. Ronald W. McBeth
September 21, 1995
Page 2

applied to property which is occupied or used by a person who is not a farmer.¹

The 1973 Legislative Assembly defined the terms "farm" and "farmer" for the purpose of the farm residence exemption. 1973 N.D. Sess. Laws ch. 447. These definitions are now codified as N.D.C.C. § 57-02-08(15)(b)(1)(2) and provide as follows:

"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.

"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.

"Net income from farming activities" is defined in N.D.C.C. § 57-02-08(15)(b)(3).

Assuming the statutorily required income test is met, whether an individual under the circumstances you described in your letter after retirement from a "job in town" became a "farmer" for the purpose of the farm residence exemption is a question of fact that must be decided by the local assessing officials.

It may be of some assistance to the local assessing officials when making this finding of fact to know that the North Dakota Supreme Court observed that the term "farm" as defined in N.D.C.C.

¹ The North Dakota Supreme Court in Mills v. Board of County Comm'rs, 305 N.W.2d 832, 836 (N.D. 1981), recognized the rule that it is the burden of the claimant of a farm residence tax exemption to establish the exempt status of the property.

Mr. Ronald W. McBeth
September 21, 1995
Page 3

§ 57-02-08(15)(b)(1) . . . "is largely intended to exclude hobby farms and rural residences from the exemption." Butts Feed Lots v. Board of County Comm'rs, 261 N.W.2d 667, 671 (N.D. 1977). With respect to the term "farmer" the North Dakota Supreme Court observed the following in Mills v. Board of County Comm'rs, 305 N.W.2d 832, 836 (N.D. 1981):

It is apparent that one who lives and resides on the land and spends the major portion of his or her time on the agricultural land is not automatically a "farmer" by operation of law under the definition in Section 57-02-08(15). That definition requires that in order to be considered a farmer the individual must devote the major portion of his or her time to the activities of "producing products of the soil, poultry, livestock, or dairy farming . . ."

Finding that the major portion of an individual's time is devoted to farming activities is crucial to meeting the qualifications for the farm residence exemption. Farm management and employee supervision constitute farming activities. See Fredrickson v. Burleigh County, 139 N.W.2d 250 (N.D. 1965).

If the local assessing officials determine that under the circumstances described in your letter a person is a "farmer" for the purpose of the farm residence exemption, then your second question is raised: whether that person may qualify as a "retired" farmer and continue to enjoy the benefits of the farm residence exemption.

Under the above-quoted definition of "farmer" an individual continues to meet the qualifications for the farm residence exemption if that individual . . . "is retired because of illness or age and who at the time of retirement owned and occupied as a farmer . . . the residence in which he lives and for which the exemption is claimed." N.D.C.C. § 57-02-08(15)(b)(2).

Unless a contrary intention appears, and none appears in either the statute or the legislative history, words used in a statute are to be understood in their ordinary sense. N.D.C.C. § 1-02-02. The American Heritage Dictionary 1055 (2d coll. ed. 1991) defines "retired" as "1. Withdrawn; secluded. 2. Withdrawn from business or public life." (Emphasis supplied).

Once an individual has met the definition of "farmer" under the statute, that individual may continue to enjoy the farm residence tax

Mr. Ronald W. McBeth
September 21, 1995
Page 4

exemption as a "retired" farmer if that individual meets the definition in the ordinary sense.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rww/pg