

N.D.A.G. Letter to Jones (Aug. 17, 1987)

August 17, 1987

Honorable Kent Jones
Commissioner
Department of Agriculture
State Capitol
Bismarck, ND 58505

Dear Commissioner Jones:

Thank you for your letter of July 17, 1987, concerning provisions of House Bill No. 1584 as codified in N.D.C.C. ch. 6-09.11.

Financial assistance in the form of loans can be made by financial institutions to a farmer pursuant to the provisions of N.D.C.C. ch. 6-09.11. A farmer is defined by N.D.C.C. § 6-09.11-01(3) as follows:

6-09.11-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

3. "Farmer" means a resident of North Dakota involved in the production of an agricultural commodity on a family farm or who will be involved in the production of an agricultural commodity on a family farm if granted a loan, and who meets the definition of "farmer" as provided in paragraph 2 of subdivision b of subsection 15 of section 57-02-08.

N.D.C.C. § 57-02-08(15)(b)(2) defines "farmer" as follows:

57-02-08. PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation:

- (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.

(Emphasis supplied.)

Consequently, in order to be eligible for the loans available for farmers under N.D.C.C. ch. 6-09.11, an individual must normally devote the major portion of his time to certain production activities and normally receive not less than fifty percent of his annual net income from one or more of those production activities. N.D.C.C. § 1-02-02 requires that words used in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears. The word "normal" or "normally" means "conforming, adhering to, or constituting a usual or typical pattern, level, or type; usual; typical." The American Heritage Dictionary of the English Language, 894 (New Col. ed. 1981).

Certainly, one can envision a person who is farming and who has a part-time job spending, for reasonably short periods of time, the major portion of his time working on that part-time job, but still earning more than fifty percent of his net income from production farming activities, or spending the majority of his time working on production farming activities but occasionally earning less than fifty percent of his net income from those activities. Such a person could qualify to receive a loan under N.D.C.C. ch. 6-09.11. However, if that person over a longer period of time spends the major portion of his time on the part-time job or other activities not related to production agriculture, even though he still receives fifty percent or more of his net income from the production of agricultural activities, or he continues for a longer period of time to receive more net income from his other job, he may not qualify for a loan under N.D.C.C. ch. 6-09.11.

As you can see, any decision will depend upon the facts and circumstances of each case, and upon such factual situations I cannot issue an opinion. Of course, the real problem for a farmer meeting the requirements of N.D.C.C. § 57-02-08(15)(b)(2) may have more to do with the use of the term "net income" rather than "gross income."

Suffice it to say, that for meeting the eligibility criteria of N.D.C.C. ch. 6-09.11, "normally" means that usually or as a typical pattern an individual must devote the major portion of his time to production agricultural activities and meet the fifty percent annual net income test in order to qualify. Additionally, N.D.C.C. § 609.11-01(2), (3) require that these production activities occur on the family farm operated by the farmer and his family. See Mills v. Board of County Com'rs, 305 N.W.2d 832 (N.D. 1981).

I must point out that for purposes of the fifty percent annual net income test, if a husband and wife reside together in a residence claimed as exempt because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities. See N.D.C.C. § 57-02-08(15)(b)(4), (5).

Your observation that the provisions of N.D.C.C. ch. 6-09.11 which incorporate the definition of "farmer" found in N.D.C.C. § 57-02-08 could be very restrictive to farmers and their wives who hold part-time jobs may be very accurate and is unfortunate. However, there seems to be no alternative other than a case-by-case analysis of the facts and circumstances of each farmer.

Finally, in regard to your last question concerning machinery, N.D.C.C. 6-09.11-04 states, in part, as follows:

6-09.11-04. LOANS TO FARMERS -- PURPOSES.

- I. The following purposes are eligible to be funded by bond proceeds or loan participations under this chapter:
 - d. Purchasing farm equipment.

There is no limitation as to whether or not the funding must be made for new or used equipment; therefore, it can only be assumed that it will cover any purchase of farm equipment, new or used.

Further, in the "Declaration of findings and purpose" the intent of the Legislative Assembly in regard to N.D.C.C. ch. 6-09.11, is stated, in part, as follows:

3. In order to survive, many of these family farms will need to restructure their operations, restructure their debt, undertake new, more profitable enterprises, and make other necessary changes. Some of these family farm operations will need the opportunity to begin again.

The Bank of North Dakota is a vital resource for all North Dakota citizens, and the Bank of North Dakota must develop innovative ways to help North Dakota family farms restructure, recapitalize, and adapt to the current economic situation. To do so will strengthen not only the agricultural sector of our economy, but also the state's economy as a whole.

1987 N.D. Sess. Laws ch. 133, § 1 (emphasis supplied).

Therefore, I believe it appropriate that the restructuring, recapitalization, or refinancing of debt on machinery currently owned by qualifying North Dakota farmers can be funded by bond proceeds or loan participations under N.D.C.C. ch. 6-09.11-04 or rules adopted pursuant to it.

Sincerely,

Nicholas J. Spaeth

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