

N.D.A.G. Letter to Wold (May 31, 1990)

May 31, 1990

Mr. James W. Wold
Griggs County State's Attorney
P.O. Box 628
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your letter of April 20, 1990, wherein you request my opinion as to the meaning of the word "retired" as used for the purpose of the farm residence property tax exemption under N.D.C.C. § 57-02-08(15).

N.D.C.C. § 57-02-08(15) exempts from ad valorem taxation all farm structures and improvements, including farm residences, which 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. Board of County Comm'rs, 305 N.W.2d 832 (N.D. 1981). For the purpose of the farm residence exemption "farm" and "farmer" are defined as follows under N.D.C.C. § 57-02-08(15)(b)(1)(2):

- (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.

(Emphasis supplied).

These definitions were enacted by the 1973 Legislative Assembly, 1973 Sess. L. ch. 447. A review of the legislative history reveals no discussion of the meaning of the word "retired."

The North Dakota Supreme Court applied the statutory rule of construction under N.D.C.C. § 1-02-02 in Coldwell Banker - First Realty, Inc. v. Meide & Son, Inc., 422 N.W.2d 375, 379 (N.D. 1988) stating:

In interpreting a statute, words must be given their plain, ordinary and commonly understood meaning, and consideration should be given to the ordinary sense of statutory words, the context in which they are used, and the purpose which prompted their enactment.

Id.

The following relevant definitions for the words "retire" and "retired" are found in Webster's New International Dictionary, 3d ed. (1971), (39):

retire (vb) "4: to withdraw from office, public station, business, occupation, or active duty"

retired (adj.) "4: to withdraw from active duty or business.

A similar definition of the verb "retire" as found in Webster's 2d ed. was followed in International Ass'n of Mach. v. Electric Vacuum Cleaner Div., General Electric Co., 136 N.E.2d 167, 168 (Oh. 1949) and State v. Meakim, 208 P.2d 628 (Wa. 1949).

"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, 351 N.W.2d 712, 720 (N.D. 1984). The office of the State Tax Commissioner issued property tax guidelines dated December 1989, where the Tax Commissioner suggests that "[a] retired farmer is an individual who quit farming because of illness or age and has not merely changed occupations." North Dakota Property Tax Guidelines, p.p. G-9 (1989).

It is the duty of the local taxing authorities to make the findings of fact that are necessary to determine whether a particular residence qualifies as an exempt farm residence under N.D.C.C. § 57-02-08(15). Because there are so many unique circumstances, this must be done on a case-by-case basis. While I cannot perform this function, I trust the above discussion will provide guidance to local officials so they can make the necessary determinations.

I hope that my suggestions will be of assistance to those taxing authorities.

Sincerely,

Nicholas J. Spaeth

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