

N.D.A.G. Letter to Vogel (Dec. 23, 1992)

December 23, 1992

Sarah Vogel, Commissioner of Agriculture
Chair, North Dakota Potato Council
State Capitol
600 E. Boulevard, 6th Floor
Bismarck, ND 58505-0020

Dear Commissioner Vogel:

Thank you for your December 2, 1992, letter in which you request an opinion concerning whether seed potatoes grown by a North Dakota partnership owned by three individuals are subject to the assessment imposed by N.D.C.C. § 4-10.1-09 under the following circumstances:

1. The potatoes are shipped by the partnership to a different farm in North Dakota where they are raised in a 50/50 partnership with another farmer;
2. The potatoes are shipped to a different state where the three partners have formed a separate corporation to raise the potatoes from the North Dakota seed.

Your question focuses on whether seed potatoes retained by a grower for a separate partnership (in which the grower owns an interest) or a separate corporation (in which the grower owns an interest) constitute "potatoes retained by growers to be used for seed purposes" under N.D.C.C. § 4-10.1-09. This question has not been addressed in any previous opinion or in the case law.

N.D.C.C. § 4-10.1-03(4) defines a "grower" as any "person who plants, raises, and harvests Irish potatoes from more than ten acres". N.D.C.C. § 4-10.1-03(7) defines "person" as "an individual, partnership, corporation, association, grower, cooperative, or any other business unit." Words or phrases that are defined by statute must be construed according to such definitions. N.D.C.C. §§ 1-02-02 and 1-02-03. Under the above definitions, a partnership, corporation, or other business unit is a "person." The two separate partnerships and the separate corporation you describe are, therefore, separate persons, and, as such, for the purposes of N.D.C.C. § 4-10.1-09, they are separate growers.

N.D.C.C. § 4-10.1-09 imposes an assessment "upon all potatoes grown in the state or sold to a designated handler" except "potatoes retained by growers to be used for seed purposes or for consumption by the grower." Since the potatoes you describe are not retained by the "grower" who raised them for seed purposes, but rather are planted, raised,

and harvested by a separate partnership or corporation, they do not qualify for the exemption to the assessment imposed under N.D.C.C. § 4-10.1-09.

Sincerely,

Nicholas J. Spaeth
Attorney General

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