

**OPINION
68-404**

July 11, 1968 (OPINION)

Honorable Edwin Sjaastad

Tax Commissioner

RE: Taxation - Exemption of Farm Machinery - Proof of Payment of Sales Tax

This is in response to your letter in which you ask for an opinion on the provisions of Section 57-02-20, as amended, of the North Dakota Century Code, which provides as follows:

* * * No exemption shall be allowed, however, unless the buyer exhibits to the assessor satisfactory written proof on a form furnished by the state tax commissioner to retail sales or use tax permit holders only, that the North Dakota sales or use tax has been paid on such farm machinery. A duplicate copy of such form shall be attached to the assessment sheet which is filed with the county auditor. * * *."

You state that a situation has arisen where the dealer, who should have furnished the completed form mentioned in said section, did not do so and it is now impossible for the farmer to obtain the form because the business has been discontinued, either because of the dealer's death or for some other reason. You then ask, what are the requirements which must be met, if any, before the assessor or the Equalization Board can legally grant an exemption from assessment for personal property taxes on that part of the value of the farm machinery on which North Dakota sales or use tax was paid.

You also ask, if the exemption can be granted in the foregoing situation, then in cases where the farmer did not receive the form at the time of the purchase but the dealer is still in business, can the exemption be granted without the form first being furnished to the Tax Commissioner by the farmer.

As you pointed out in your letter, the Legislature provided for the exemption of farm machinery from personal property taxes for the first year if the sales or use tax was paid at the time of the purchase. This was accomplished in the first sentence of Section 57-02-20. In the second sentence the Legislature, in effect, set out the proof that is required. The parenthetical phrase in said section, "on a form furnished by the state tax commissioner to retail sales or use tax permit holders only", was a method employed by the Legislature to direct the Tax Commissioner to provide the forms. We also believe that the Legislature referred to such form so as to establish a uniform method of providing the necessary information. We believe that the parenthetical phrase is directory and not mandatory.

In this respect, it is observed that the latter portion of Section 57-02-20 provides that, in the absence of proof that the sales and use tax was paid, steps shall be taken to assess and collect the tax. It then provides further that, upon proof that the tax was paid, the

assessment may be abated and the personal property tax may be refunded if paid. The latter provision pertaining to assessment and collection of taxes is conditioned on the taxpayer failing or refusing to exhibit proof of the payment of such sales or use tax. This condition does not include a provision that the proof must consist of either the original or duplicate copy of the form furnished by the Tax Commissioner. This provision would permit any reliable method to establish or prove that the sales or use tax was paid. The term "such proof" quite obviously refers back to the term "satisfactory written proof" which appears immediately preceding the parenthetical qualifying phrase, "on a form furnished by the Tax Commissioner."

We do not believe that the Legislature was primarily concerned with form, but rather with substantiative proof, and the reference to form was to establish a uniform system of establishing proof and to direct the Tax Commissioner to furnish the forms to tax permit holders.

We are also aware that the assessments are to be made on or about April first, but we know as a matter of fact that not all of the assessments are made on April first, but are made as of that date. Consequently, having in possession the completed form on April first is not an absolute requirement to qualify for the exemption. We also believe that if a form was actually furnished but lost, the property owner would be entitled to obtain a duplicate or some other proof that the form had been completed on or about the time the sales or use tax was paid or that, in fact, it was paid.

Thus in response to your first question, it is our opinion that the property owner may use any legal method to establish that he paid the sales or use tax on a specific piece of property and, upon establishing such fact, the property would be exempt from taxation. This necessarily entails the consideration of time in which to accomplish this, if the form was not furnished at the time of the sale. We believe that the assessor may allow the taxpayer a reasonable time in which to provide this information, otherwise the property will be assessed. In this respect, we do not believe that the Legislature intended that the property should be assessed automatically and the taxpayer be required to proceed by the abatement process, which can be cumbersome and time consuming both for the taxpayer, the county commissioners and other persons involved.

In response to your second question, it is our opinion that where the seller or dealer is still in business, the form as prescribed by the Tax Commissioner should be employed wherever possible. However, if the time factor were to become material, the taxpayer could submit proof by some other method in exceptional instances, but where the form would be available, the assessor would have the right to insist that the form as prescribed by the Tax Commissioner be employed and be furnished to him before granting the exemption.

As we analyze the statutory provisions, the Legislature was primarily concerned with what should constitute adequate proof that the sales and use tax was paid, and in this respect authorized and directed the Tax Commissioner to provide a form which would contain all the information necessary, but, at the same time, we do not believe that

the form in itself is the critical factor upon which the determination is made. By way of example, the form prescribed by the Tax Commissioner could be pink in color and someone else might submit the same information on a white form. It is the information which is controlling.

We have also taken into account that no provision of law exists which requires, under penalty of law, to furnish the information to the taxpayer.

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Attorney General