

OFFICIAL OPINION NO. 96-02, Owner-occupied Classification.

May 30, 1996

Mr. Ronald D. Buskerud
Pennington County Deputy States Attorney
300 Kansas City Street
Rapid City, South Dakota 57701

OFFICIAL OPINION NO. 96-02

Owner-occupied classification.

Dear Mr. Buskerud:

You have requested an official opinion from this Office based upon the following facts:

FACTS:

Pennington County does not classify duplexes and triplexes as "owner-occupied single-family dwellings" under SDCL 10-13-39 for purposes of the twenty percent tax credit, even if the owner resides in one unit. It has been brought to our attention that other counties classify duplexes and triplexes as "owner-occupied single-family dwellings," and that the Department of Revenue may share in that interpretation of the law. The Pennington County Director of Equalization does not have records which indicate that the owned or occupied unit of a duplex or triplex is assessed or taxed as a separate unit which is a requirement under the statute.

Based upon the foregoing facts, you have asked the following questions:

QUESTIONS:

1. Do duplexes and triplexes qualify for the twenty percent tax credit under SDCL 10-13-39 when the owner resides in one of the units and rents the other unit(s)?
2. If the answer to no. 1 is no, would the answer be different if the duplex is a home with an apartment in the basement?

3. If the answer to no. 1 is yes, how does the Director of Equalization assess the property for tax credit purposes, that is, give the entire unit a twenty percent reduction, give the unit a one-half or one-third credit, or give the unit credit by a square foot basis?

IN RE QUESTION NO. 1:

All of the questions you have asked focus on the twenty percent owner-occupied property tax credit. Therefore, it is necessary to review the appropriate statute, SDCL 10-13-39:

Each owner-occupied single-family dwelling in this state is specifically classified for the purpose of taxation. For the purposes of this section, an owner-occupied single-family dwelling is a house, condominium apartment, town house, town home, and manufactured or mobile home as defined in § 32-3-1, which is assessed and taxed as a separate unit, including an attached or unattached garage and the parcel of land upon which the structure is situated as recorded in the records of the director of equalization. The owner of each owner-occupied single-family dwelling shall receive a twenty percent credit toward the property taxes, except special assessments, payable in 1996. A person may receive a credit on only one owner-occupied single-family dwelling per year.

In interpreting a statute, the words of the statute are to be given "their plain meaning and effect." In re Petition of Famous Brands, Inc., 347 N.W.2d 882, 885 (S.D. 1984). SDCL 10-13-39 grants a tax credit of twenty percent to an "owner-occupied single-family dwelling." SDCL 10-13-39 effectively operates to "exempt" the "owner-occupied single-family dwelling" owner from twenty percent of their tax bill. SDCL 10-13-39 is really an exemption statute:

[S]tatutes imposing a tax are to be construed liberally in favor of the taxpayer. . . .

[S]tatutes allowing a tax exemption are strictly and narrowly construed in favor of the taxing power and are given a reasonable, natural and practical meaning to effectuate the purpose for which the exemption was granted. . . .

In re Quality Service Railcar Repair Corp., 437 N.W.2d 209, 211 (S.D. 1989). With these rudimentary rules of statutory construction in mind, we turn to the statute in question.

SDCL 10-13-39 defines an "owner-occupied single-family dwelling" as a "house, condominium apartment, town house, town home, and manufactured or mobile home as defined in § 32-3-1." The plain meaning of the phrase "single-family dwelling" is a structure

designed and built for occupancy by one family, and encompassed by one legal description. Duplexes, by definition, are designed and built for occupancy by two families. Duplexes, unlike town houses and condominiums are not taxed as "separate units." Finally, nowhere in SDCL 10-13-39, or the list of the types of properties that are included in the classification of "owner-occupied single-family dwelling," is a duplex or triplex found. Since we must give the words of SDCL 10-13-39 their plain meaning and effect, and construe the tax exemption strictly in favor of the taxing body, I am of the opinion that duplexes and triplexes do not qualify for the twenty percent property tax credit of SDCL 10-13-39.

IN RE QUESTION NO. 2:

Your second question asks whether there is a difference between a duplex or triplex, and "a home with an apartment in the basement." Again, I return to the plain and ordinary meaning of the phrase "single-family dwelling," which I have defined as a structure designed and built for occupancy by one family. I define the term "apartment" as a separate, self-contained unit also designed to be occupied by a family. See Webster's New Collegiate Dictionary, 51 (1981), defining apartment as "a room or set of rooms fitted especially with housekeeping facilities and used as a dwelling." If a "single-family dwelling" is converted to a home with a separate apartment, I am of the opinion that the dwelling is no longer a "single-family dwelling" because the structure is now converted for two family occupancy. A home with an apartment is no different than a duplex because both are to be occupied by two families.

A dwelling loses its classification as a "single-family dwelling" when part of the dwelling is converted to include an apartment. If a person rents out a room to a border, but has not converted any part of the home to an apartment, the home is still a "single-family dwelling" because it is still designed and built for occupancy by one family. There are perhaps other scenarios which will question whether the home is still a "single-family dwelling." Each must be reviewed based upon the specific facts of each case, and the rule that statutes granting an exemption must be strictly construed in favor of the taxing body.

To summarize, I am of the opinion that the apartment disqualifies the home as an "owner-occupied single-family dwelling" for the purpose of the twenty percent property tax credit of SDCL 10-13-39.

IN RE QUESTION NO. 3:

Since the answer to question no. 1 is in the negative, there is no need to address question no. 3.

In conclusion, I cannot construe "single family" to include double family (duplex) or triple family (triplex), any more than I can construe it to include apartment buildings. It is within the exclusive power of the Legislature to determine whether a tax credit should be provided to owners of duplexes, triplexes, or comparable owner-occupied structures. No matter how desirable, as Attorney General I do not have the power through the opinion process to amend statutes to achieve these ends.

Respectfully submitted,

MARK BARNETT
ATTORNEY GENERAL

MB/DDW/clr