

## **N.D.A.G. Letter to McIntee (March 23, 1998)**

March 23, 1998

Mr. Michael S. McIntee  
McHenry County State's Attorney  
PO Box 90  
Towner, ND 58788-0090

Dear Mr. McIntee:

Thank you for your letter asking several questions concerning unredeemed tax sale certificates and purchasing or leasing property from a county holding a tax deed.

A county holding a tax deed to certain property need not necessarily place that property in the annual sale of such property provided for by N.D.C.C. ch. 57-28, but may keep the property acquired by tax deed to use for purposes authorized by law if that action is approved by the board of county commissioners. 1996 N.D. Op. Att'y Gen. L-5. One of those authorized purposes is leasing the property pursuant to N.D.C.C. § 57-28-23, et seq.

If a county commission resolves to lease property acquired by tax deed, then the lease arrangement is made pursuant to N.D.C.C. §§ 57-28-23, 57-28-24, and 57-28-25. The rental income obtained from such a lease is received and deposited pursuant to N.D.C.C. § 57-28-26. On or before January 10 of each year, the county treasurer must apportion the amount of the lease revenue between all of the taxing districts in which the property in question is located in the proportions required by that section.

If at some time the prior owner agrees to a repurchase of the property, either outright or by contract for deed, the process is undertaken pursuant to N.D.C.C. § 57-28-19. If the former owner is also the person to whom the county has been leasing the property before that person decides to actually repurchase the property, the lease payments made pursuant to N.D.C.C. §§ 57-28-23, et seq., are not deducted from amounts required to be paid pursuant to N.D.C.C. § 57-28-19. The proceedings for leasing the property and for contracting to repurchase the property are separate, and payments made under a lease are not offset against amounts required to be paid for a repurchase.

N.D.C.C. § 57-02-26(l) provides, in part:

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the . . . state or a political subdivision thereof . . . must be considered, for all purposes of taxation, as the property of the person so holding the same.

N.D.C.C. § 57-28-09 requires the county auditor to issue a tax deed to the county after the period of redemption expires and no assignment or redemption has occurred. That section states that the tax deed passes the property in fee to the county free from all encumbrances, with certain exceptions. Because N.D.C.C. § 57-02-26(l) requires property leased from a political subdivision to be taxed to the person holding the lease, without exception for the method of acquisition of the interest in the property by the political subdivision, it is my opinion that property leased for a term of years from a county holding a tax deed issued under N.D.C.C. ch. 57-28 is taxable to the holder of the lease. The language of N.D.C.C. § 57-28-19 contemplates a repurchase of the property at a certain time during the year as opposed to a lease under N.D.C.C. § 57-28-23.

Your last question deals with the meaning of N.D.C.C. § 57-28-19 relating to an actual repurchase of the property either for cash or on a contract for deed, as distinguished from a lease. It is stated in N.D.C.C. § 57-28-19 that the consideration for the repurchase of the property must include "1. The total amount required to be paid to effect a redemption" and "2. The total amount of all subsequent taxes with interest, penalties, and costs." If the fair market value of the property at the time of the repurchase is less than the amount calculated under the above formula, then the board of county commissioners is to fix a "fair sale price" for the property.

Redemption is a redemption of tax sale certificates issued under N.D.C.C. ch. 57-24 when annual real property taxes are not paid. Redemption of tax sale certificates is conducted pursuant to N.D.C.C. ch. 57-26 wherein N.D.C.C. § 57-26-03 indicates redemption from a tax sale must be made from an original tax certificate by paying the amount paid by the purchaser of the tax sale certificate plus interest on the amount at the rate bid by the purchaser from the date of the certificate. Redemption of other types of tax sale certificates is conducted under subsections 2 and 3 of N.D.C.C. § 57-26-03. Where the county has bid in the property at the tax sale, actual tax sale certificates, original or subsequent, need not be issued. N.D.C.C. §§ 57-24-23 and 57-24-25.

In the circumstances of unredeemed tax sale certificates where the county has bid in the property, N.D.C.C. § 57-28-01 provides that notice of expiration of the period of redemption for all property for which three or more years have passed since the issuance of a tax sale certificate is to be made on or before June 1 of each year. Where the county has bid in the property at the tax sale, it is not again offered for sale unless the county assigns its interest. However, the property continues to be assessed and taxed until the redemption period expires.

N.D.C.C. § 57-24-15. If the repurchase or contract for repurchase under N.D.C.C. § 57-28-19 is made in January of any year, the property is assessed and taxed for that year. However, if the repurchase or contract for repurchase of the tax deed is made after January in any year, the property is not taxed for that current year and the county is entitled to rental and the landlord's share of crops for the current year. Therefore, the consideration for the repurchase or contract for repurchase from the county must

include the amount required to redeem from the tax sale, the amount of any taxes assessed since that time, plus interest, penalties, and costs. If the repurchase is made in January of any year, the taxes for that year are included.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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