

LETTER OPINION
96-L-79

April 25, 1996

Mr. Fabian E. Noack
Foster County State's Attorney
PO Box 15
Carrington, ND 58421-0015

Dear Mr. Noack:

Thank you for your letter inquiring whether modifiers may be used for the ad valorem assessment of agricultural lands to account for conditions that are not documented in a soil survey.

N.D.C.C. § 57-02-27.2 provides the methodology for the valuation and assessment of agricultural lands. This section provides, in pertinent part, that "[i]n determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall, wherever possible, use soil type and soil classification data from detailed and general soil surveys." (Emphasis supplied.)

I have been advised by the Office of the Tax Commissioner that when the Property Tax Division of that office conducts training sessions for assessment officials, those assessment officials are encouraged to use modifiers to account for conditions that are not documented in a soil survey. These undocumented conditions include such things as unmapped wet areas, saline seeps, and rocky fields. Modification is also recommended to account for inaccessibility (e.g., tillable land along a creek bed at the bottom of a deep ravine), non-conformance (e.g., small area of tillable land in the middle of a quarter section of pasture land), and unusable shapes of tracts (e.g., generally caused by a highway or railroad right of way bisecting a tract leaving a long narrow triangular tract).

The Office of the Tax Commissioner has interpreted the above-quoted language from N.D.C.C. § 57-02-27.2 as providing the authority for the use of these modifiers. The North Dakota Supreme Court gives weight to the Office of the Tax Commissioner's practical interpretation of an ambiguous property tax statute. Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712, 720 (N.D. 1984). Based on the interpretation the Office of the Tax Commissioner has given this statute, it is my opinion that assessment officials may use modifiers to account for conditions that are not documented in a soil survey.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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