

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-11

Date issued: August 5, 1999

Requested by: Earle R. Myers, Jr., Richland County State's Attorney

- QUESTION PRESENTED -

Whether an earthen pond created for the treatment of wastewater generated by an agricultural or industrial facility is property which may be exempt from ad valorem taxation under N.D.C.C. § 57-02-08(38).

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an earthen pond created for the treatment of wastewater generated by an agricultural or industrial facility does not qualify for the exemption from ad valorem taxation in N.D.C.C. § 57-02-08(38). It is my further opinion that any piping, wiring, or other materials (exclusive of land) which are used in conjunction with an earthen pond and which are not the product or result of physical manipulation of the land on which the pond is located may be exempt under N.D.C.C. § 57-02-08(38).

- ANALYSIS -

N.D.C.C. § 57-02-08(38) provides the following exemption from ad valorem taxation:

All property described in this section to the extent herein limited shall be exempt from taxation:

38. a. A pollution abatement improvement. As used in this subsection, "pollution abatement improvement" means property, exclusive of land and improvements to the land such as ditching, surfacing, and leveling, that is:
- (1) Part of an agricultural or industrial facility which is used for or has for its ultimate purpose, the prevention, control, monitoring, reducing, or eliminating of

pollution by treating, pretreating, stabilizing, isolating, collecting, holding, controlling, measuring, or disposing of waste contaminants; or

- (2) Part of an agricultural or industrial facility and required to comply with local, state, or federal environmental quality laws, rules, regulations, or standards.

- b. The exemption under this subsection applies only to that portion of the valuation of property attributable to the pollution abatement improvement on which construction or installation was commenced after December 31, 1992, and does not apply to the valuation of any property that is not a necessary component of the pollution abatement improvement. The governing body of the city, for property within city limits, or the governing board of the county, for property outside city limits, shall determine whether the property proposed for exemption is a pollution abatement improvement and may grant an exemption for the pollution abatement improvement based upon the requirements of this subsection.

(Emphasis added).

N.D.C.C. § 1-02-02 provides: "Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained." The North Dakota Supreme Court has further articulated the rules of statutory interpretation:

The interpretation of a statute is a question of law and is fully reviewable by this court. Our primary goal in construing a statute is to discover the intent of the legislature. We look first to the language of the statute in seeking to find legislative intent. If a statute's language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute. If a statute's language is ambiguous, however, we may look to "extrinsic aids" in interpreting the statute.

Northern X-Ray Co. v. State, 542 N.W.2d 733, 735 (N.D. 1996); Kinney Shoe Corp. v. State, 552 N.W.2d 788, 790 (N.D. 1996).

It is clear and unambiguous that a pond formed exclusively by the manipulation of land is not a "pollution abatement improvement" which would qualify for the exemption under the statute because the definition excludes "land and improvements to the land such as ditching, surfacing, and leveling." N.D.C.C. § 57-02-08(38). The fact that a pond could be created out of concrete or steel and qualify for an exemption as a "pollution abatement improvement" does not mean that an earthen pond also may qualify for the exemption. The plain meaning of the exemption requires an inquiry into the materials from which the improvement is constructed or formed.

To the extent that the exemption in N.D.C.C. § 57-02-08(38) is ambiguous, one of the "extrinsic aids" that may be considered is the legislative history of the statute. N.D.C.C. § 1-02-39(3); Northern X-Ray Co., 552 N.W.2d at 736.

The genesis for the pollution abatement improvement exemption was 1993 Senate Bill 2288. See 1993 N.D. Sess. Laws ch. 542. A review of the legislative history reveals that the phrase "exclusive of land and improvements to the land such as ditching, surfacing, and leveling" did not appear in the original bill. At a hearing on the bill, Representative Berg asked the following question of Barry Hasti, State Supervisor of Assessments: "What about improvement, barriers in land fills for our protection?" Hearing on S. 2288 Before the House Comm. on Finance and Taxation 53rd N.D. Leg. (February 16, 1993) (committee minutes). Mr. Hasti replied: "I think you raised a good point, improvements to the land would qualify." At a subsequent hearing on the bill, the House committee adopted an amendment which included the exception to the exemption for "land and improvements to the land such as ditching, surfacing, and leveling." Hearing on S. 2288 Before the House Comm. on Finance and Taxation 53rd N.D. Leg. (February 24, 1993) (committee minutes). The wording of this amendment is identical to language found in the definition of real property in N.D.C.C. § 57-02-04(1).

The amendment process described in the previous paragraph clearly indicates that the Legislative Assembly did not want the exemption to apply to land and to earthen improvements to the land. However, the answer to the question presented is not so straightforward. N.D.C.C. § 57-02-08(38) begins by authorizing an exemption for all property described in that subsection, and then continues by excluding from the tax exemption all "land and improvements to the land" on which the improvement is located. Thus, all property

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described in N.D.C.C. § 57-02-08(38) may be exempt except for the land on which an improvement is located or the portion of the improvement which is the product or result of physical manipulation of the land.

Worded another way, it is my opinion that an earthen pond created for the treatment of wastewater generated by an agricultural or industrial facility does not qualify for the exemption from ad valorem taxation in N.D.C.C. § 57-02-08(38). However, it is my further opinion that any piping, wiring, or other materials (exclusive of land) which are used in conjunction with an earthen pond and which are not the product or result of physical manipulation of the land on which the pond is located may be exempt under N.D.C.C. § 57-02-08(38).

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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