

N.D.A.G. Letter to Johnson (April 29, 1987)

April 29, 1987

Mr. Dennis Edward Johnson
McKenzie County State's Attorney
P.O. Box 1288
Watford City, ND 58854

Dear Mr. Johnson:

Thank you for your letter of February 12, 1987, wherein you inquired about the taxable status of a certain land description located within McKenzie County. I apologize for the delay in responding to you.

As I understand the facts in this case, the land in question was allotted by the federal government and is presently owned in fee patent by a Native American Indian who is an enrolled member of the Three Affiliated Tribes. Furthermore, the land is located within the original boundaries of the Fort Berthold Indian Reservation. The landowner has "petitioned" McKenzie County for a refund of taxes.

Your question is whether this land is exempt from county real property taxation because of the nature of its ownership.

In N.D. Op. Att'y Gen. 85-12, I concluded "that real property owned in fee patent by an Indian tribe and located within the boundaries of the tribe's reservation is not subject to county real property taxation." Here, however, the question involves land owned by an individual, not by the tribe.

There is no United States Supreme Court decision which has directly answered this question. However, 25 U.S.C. § 349 provides that land allotted to an Indian by the Secretary of Interior becomes subject to taxation upon issuance, acceptance, and recording of the fee patent. With this understanding, it must be remembered that the United States Supreme Court has cautioned that 25 U.S.C. § 349 must not be used by the states to establish a pattern of "checkerboard jurisdiction" over Indian reservation. Moe v. Confederated Salish and Kootenai Tribes, etc., 425 U.S. 463, 478 (1976).

It is my opinion that the land in question is subject to county real property taxation under the provisions of 25 U.S.C. § 349.

The petition has asked for a refund for each year back to 1978. I believe that this petition should be treated as an application for abatement and refund under N.D.C.C. § 57-23-04. Applications made under this section must be "filed in the office of the county auditor on or before November first of the year following the year in which the tax becomes delinquent. . ."

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The petition is dated February 4, 1987. If it is treated as an application filed under N.D.C.C. § 57-23-04, only the 1985 and 1986 tax years could be affected. For the reasons stated in this letter, I believe that the application for abatement and refund should be denied.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

cv