

OPINION
63-258

July 22, 1963 (OPINION)

TAXATION

RE: Equalization - Proration

Your letter request of July 11, 1963, for an opinion concerning section 57-02-18.2 of the North Dakota Century Code, is acknowledged.

You relate certain facts as follows:

A large number of livestock was purchased in another State by a resident o Foster County and which purchase and delivery of the livestock was completed April 5, 1963. The Township Assessor valued the livestock at a reduced amount based upon the above title provision. Thereafter, the Township Equalization Board approved the said assessment and then the County Commissioners questioned this particular matter."

You continue by stating:

It would seem that the above code provision would apply in cases of this nature but it seems to be questioned by the County Auditor as to the proper procedures to be followed in this matter. The County Auditor contends that the County Equalization Board must raise the value of the livestock to the County average and, further, if the County did not act, the State Equalization Board would raise the assessed valuation of all livestock in Foster County to meet the North Dakota County average. The amount of livestock purchased in this particular case amounts to over 50 percent of the entire livestock population of the County. * * * *

Please advise this office as to whether the above code Provision would apply to the facts as stated and, further, the proper administrative procedures to take by the Township Assessor, County Commissioners, Township Equalization Board and County Equalization Board."

Section 57-02-18.2 of the North Dakota Century Code provides as follows:

57-02-18.2. LIVESTOCK TAX PRORATION AFTER APRIL FIRST. If such livestock is brought or driven or comes into any county before April first the tax levied or to be levied thereon shall be the full amount of the tax computed as provided by law, but if brought, driven or coming into the county after April first the tax levied or to be levied against such property shall be prorated according to the ratio which the number of months remaining in said calendar year bears to the total number of months in said year. For the purpose of determining such taxes, the levy made during the previous year

shall be used if the levy for the current year has not been made." (Emphasis supplied).

Section 57-02-11 at subsection 2 provides in part that:

All personal property * * * shall be listed and assessed annually with reference to its value on April first of each year * * *."

We also note the holding in the North Dakota case of Gaar, Scott and Co. v. Sorum, 11 N.D. 164, 90 N.W. 799, cited in the footnotes to section 57-02-11, and which held that personal property is not taxable if it was not in existence on April first or if it was brought into the state after that date.

This office has not ruled on the particular point raised in your request, and neither has the State Tax Department counsel.

It is our opinion that section 57-02-18.2 of the North Dakota Century Code clearly provides that a property owner is entitled to proration, if in fact, the property involved was brought in after April first. In the facts you gave us, you indicated that the livestock was brought in on April 5, thus it would appear that the proration referred to would be applicable in this case.

Since it is our view that under the facts supplied, the owner is entitled to proration, it follows that the subsequent related sections of the law, namely, sections 57-02-18.3 through 57-02-18.7 are applicable. These sections provide in essence that all owners must file a list with the auditor, who shall then proceed to assess as is provided in chapter 57-14 of the North Dakota Century Code, which deals with assessment of omitted property. However, the property owner is still entitled to proration as provided in section 57-02-18.2 notwithstanding the provisions of section 57-14-01 which use the terms "* * * true and full value * * *." Thus, the auditor acts as assessor in this situation as provided in sections 57-14-02 and 57-14-03, and section 57-14-04 then places a duty on the county commissioners to hear complaints and equalize such assessments, but they must take into consideration the fact that the property owner is entitled to proration if the livestock were brought in after April first of the particular year.

We are enclosing a copy of a letter sent to Mr. Anton Burckhard, McHenry County Auditor, Towner, North Dakota, dated February 20, 1961, which though not directly in point, does discuss the background and intent of sections 57-02-18.1 through 57-02-18.7.

HELGI JOHANNESON

Attorney General