

**OPINION**  
**66-385**

February 2, 1966 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Municipal Industrial Development - Assessment  
and Exemption

This is in reply to your letter of January 26, 1966, relative to the tax exemption provisions of section 40-57-17 of the North Dakota Century Code, a section of the Municipal Industrial Development Act. You refer to our opinion of November 29, 1965, and note that since that opinion further questions have arisen. You ask the following questions:

1. Under present law (section 57-02-11, N.D.C.C.) for the assessment and taxation of locally assessed property, April first of each year is the assessment date for all property (except in an instance or two not pertinent here) that is, property brought into the state after that date or coming into existence in this state after that date or transferred from an exempt governmental owner to a non-exempt owner after that date is not subject to assessment and taxation for any remaining part of that calendar year.

Section 40-57-17, N.D.C.C., provides in part that:

The leasehold granted by a municipality under this chapter is hereby classified as personal property and such leasehold and all other personal property used by the lessee in connection with the project and located on the premises of the leasehold shall be exempt from personal property taxation for a period of five years from the granting of such leasehold and execution of any instrument evidencing said grant.'

If, for example, the leasehold is granted on May 1, 1966, (which is after the 1966 April first assessment date), will the leasehold and the personal property specified in the section be exempt from taxation for the next five years of 1967, 1968, 1969, 1970 and 1971?"

2. The exemption provided by section 40-57-17, N.D.C.C., after providing for exemption of the leasehold and personal property, then provides:

Further, that any corporate lessee under such a leasehold referred to shall be exempt from the payment of corporate income taxes on any corporate income attributable to the business carried on by the lessee on such leasehold premises for a period of five years from the year in which the

corporation lessee commenced business operation on the leasehold premises. \* \* \*.'

The following related questions arise under this exemption provision:

- A. Do the words 'years' and 'year' as used in this provision mean calendar year or do they mean either calendar year or fiscal year, depending upon the basis of which net income is computed for state income tax purposes? See section 1-01-33, N.D.C.C., of the general provisions of the Code, defining 'year' and see subsections 7 and 8 of the section 57-38-01, N.D.C.C. defining 'income year', 'taxable year' and 'fiscal year' for income tax purposes and section 57-38-20, N.D.C.C., prescribing calendar year or fiscal year as the basis for computing and reporting income for income tax purposes.
  - B. Does the word 'from' in the phrase 'for a period of five years from the year in which the corporation lessee commenced business operations on the leasehold premises' mean 'after', so that if business operations were commenced, for example, on May 1, 1966, and the corporation reported its income on a calendar year basis, any income it realized from operation of the project for the period of May first through December 31, 1966, and for the calendar years of 1967, 1968, 1969, 1970 and 1971 would be exempt from state income tax?"
3. f the revenue bonds issued under the Municipal Industrial Development Act, or any series of them if issued in series, mature in a maximum time, for example, of twenty years, must the lease negotiated under the Act for operation of the project be for a similar term of twenty years or may it be for any lesser period of time.?"

Our replies to the questions are presented in the order in which they were listed.

1. Section 40-57-17 classifies the leasehold granted by a municipality under chapter 40-57 as personal property. It does not merely provide the leasehold should be assessed or taxed as personal property is assessed or taxed. We would also note, however, that section 40-57-17 of the North Dakota Century Code provides the exemption from taxation is for a period of five years "from the granting of such leasehold and execution of any instrument evidencing said grant." This provision must necessarily be construed with the provisions together, it is our opinion that the period of exemption begins on the date the leasehold is granted and continues for five years. Thus in the example cited in your letter, the period of exemption would begin on May 1, 1966, and continue until May 1, 1971. However, since the assessment date for 1971 taxes is April first and since this property would not be assessed as personal property on

that date, it is our further opinion the property would not be subject to assessment in 1971 (and no taxes would be collected in 1972) since the statutes make no provision for the assessment of property acquired after the April first assessment date. The provisions of section 57-02-17 would not appear applicable in this instance since that section purports to govern the assessment of personal property moved between April first and June first of any year. If, of course, the five year exemption period expires between January first and April First, the property would be subject to assessment and taxation.

2. A. As you have noted in your letter, section 1-01-33 of the North Dakota Century Code defines "year" to mean "a calendar year." Section 57-38-01 (7 & 8) of the North Dakota Century Code, as amended, define the terms "income year", "taxable year", and "fiscal year" but only for the purposes of chapter 57-38. Therefore we believe the words "years" and "year" as used in section 40-57-17 of the North Dakota Century Code mean calendar year.
2. B. We note that the provision for exemption from personal property taxes contained in section 40-57-17 refers to a period of five years "from the granting of such leasehold." The provision for exemption from income tax is "for a period of five years from the year in which the corporation lessee commenced business operation on the leasehold premises." The distinction between the two provisions for tax exemption would appear to indicate a difference in meaning.

The definition of the word "from" as used in this context is "A particle used to indicate a point of departure for motion, duration, distance, action, etc." See Webster's New Twentieth Century Dictionary (2nd ed.). Applying this definition to the word "from" as used in section 40-57-17 it appears the year in which the corporation lessee commenced business operation on the leasehold premises would be used as the point of departure.

It is our opinion that the word "from" as used in the phrase "for a period of five years from the year in which the corporation lessee commenced business operations on the leasehold premises" mean "after" so that if business operations were commenced, for example, on May 1, 1966, and the corporation reported its income on a calendar year basis, any income it realized from operation of the project for the period of May first through December 31, 1966, and for the calendar years 1967, 1968, 1970 and 1971 would be exempt from state income tax.

3. With respect to the third question, there is no express provision in chapter 40-57 which would prohibit the term of the lease covering a shorter period of time than that covered by bonds or any series of the bonds. Section 40-57-03(3) of the North Dakota Century Code does provide:

Any municipality, in addition to the powers prescribed

elsewhere by the laws of this state, shall have the power to:

\* \* \*

3. Lease projects to any industrial or commercial enterprise in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon;

\* \* \*. "

In construing this provision the Supreme Court of North Dakota in *Gripentrog v. City of Wahpeton*, 126 N.W.2d. 230 (1964) state, page 234 of the Reporter:

It is also open to the construction that the power to lease is subject only to the condition that the rents be sufficient to pay the bonds and the interest thereon, and that the balance of the section is an additional grant of power to a municipality.\* \* \* We therefore adopt this construction."

The syllabus by the Court, page 231 reads, number 3:

Subsection 3 of section 40-57-03, as amended, is construed and it is held that the only conditions imposed on the power of a municipality to lease are that rents realized from the project be sufficient to pay the interest and to create a sinking fund sufficient to pay the principal on revenue bonds when such payments become due."

In view of the terms of the Act, as cited above, and construction placed upon same by the North Dakota Supreme Court, it is our opinion that the lease negotiated under the Act for operation of the project need not be for the similar term during which the bonds mature and may be for any lesser period of time provided the rent collected during the period of the lease is at least sufficient to pay the principal and interest on the bonds as they become due.

HELGI JOHANNESON

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