

**OPINION
71-381**

June 10, 1971 (OPINION)

Mr. Gerald Rustad

Assistant State's Attorney

Williams County

RE: Taxation - Assessment - Definition of Real Property

This is in reply to your letter of June 3, 1971, relative to a matter of assessment for tax purposes. You state the following facts and questions:

The Williams County Director of Tax Equalization has requested an interpretation of the North Dakota Century Code section 57-02-04 'Real Property' defined, subsection 3(a) which states:

3. 'Machinery and equipment, but not including small tools and office equipment, used or intended for use in any process of refining products from
 - a. Oil or gas extracted from the earth. . .'

The question has arisen concerning a local oil refinery wherein it is alleged by the company that facilities in question, being storage tanks at the refinery used for storage of the finished product, loading facilities which are utilized to load the finished product, and sulfur extraction units used to make byproducts from refining crude oil, are not real property within the statutory definition because it is not used 'in the process of refining products.'

Therefore, the questions directed to your office are as follows:

1. Does the definition of real property as above-quoted include equipment and facilities at the refinery which are utilized either before or after the actual separation process?
2. Would the definition of Real Property as above-quoted include sulfur extraction units used to make byproducts from refining crude oil?"

Your reference to section 57-02-04 is to that section as amended and reenacted by Senate Bill 2045 of the 1971 Legislative Assembly. That bill contained an emergency clause and became effective March 29, 1971, the date it was signed by the Governor. Subsection 3(a) of that section, as amended, provides:

"'Real Property' defined. Real property, for the purpose of taxation, includes:

* * *

3. Machinery and equipment, but not including small tools and office equipment, used or intended for use in any process of refining products from
 - a. Oil or gas extracted from the earth, but not including such equipment or appurtenances located on lease oil and gas production sites,

* * *. "

In the first instance we must note there are some questions of fact involved in the questions presented of which we have not knowledge. Our comments may, as a result, be general in nature with respect to some of the questions presented.

The statute above-quoted obviously does not apply only to the actual equipment used in the refining process, for if it did, it would not have been necessary for the Legislature to exclude "small tools and office equipment" from the definition. While small tools might actually be used in the refining process, office equipment would not be so used. We must therefore conclude that the Legislature did not intend the above definition to be so narrow as to apply only to the equipment and machinery actually used in the refinery process. Furthermore we believe it is obvious that when a product is refined there must be equipment at the refinery in which to immediately place the refined product and such equipment must necessarily be considered part of the immediate refining process.

Therefore, in direct reply to your first question, it is our opinion the definition of real property quoted above does include equipment and facilities at the refinery which are utilized either before or after the actual separation process.

With respect to your second question, there are some factual elements of which we have no direct knowledge which may prove to be a factor in formulating a reply to this question. However we understand that one of the purposes of refining is the removal of impurities from petroleum. Thus the Manual of Oil and Gas Terms written by Williams and Meyers (1957 Banks and Company) defines a refinery, at page 207 of the book, as follows:

A person who has any part in the control or management of any operation by which the physical or chemical characteristics of petroleum or petroleum products are changed, exclusive of the operations of passing petroleum through separators to remove gas, placing petroleum in settling tanks to remove basic sediment and water, dehydrating petroleum and generally cleaning and purifying petroleum. Within the term is included every person who blends petroleum with any product of petroleum. Code of Federal Regulations, Title 30, Mineral Resources, Chapter III, Oil Regulations, Title 30, Mineral Resources, Chapter III, Oil and Gas Division Department of Interior, section 302.2."

It would appear the removal of sulfur would be part of the refining

process, i.e., the removal of impurities from the crude oil. Furthermore we note the statute defines as real property "machinery and equipment* * * used or intended for use in any process of refining products from oil or gas* * *." The sulfur in this instance is a product refined from oil or gas extracted from the earth and therefore it would appear the machinery used in the operation would properly be classified as real property under the statute. It is our opinion that the definition of real property as above-quoted would include sulfur extraction units used to make byproducts from refining crude oil.

I trust this will adequately set forth our position on the matters presented.

HELGI JOHANNESON

Attorney General