

**OPINION
72-566**

August 7, 1972 (OPINION)

Mr. Glenn Dill
Assistant State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Dill:

This is in response to your letter in which you state that a question has been posed to you regarding the provisions of Section 57-02-41 as same may relate to transfer of property from the Bank of North Dakota to a private purchaser on April 28, 1972.

You specifically ask whether the property should be assessed as of April 28, 1972, for the balance of the year and taxes levied on that basis.

You also call our attention to subsection 6 of Section 57-28-15 and Section 57-28-18. You further advise that it has been the practice of Ward County to place property sold either at or after annual tax sales on the assessment rolls only on the following April 1.

You specifically ask: "Does Section 57-02-41 N.D.C.C. relate to all tax exempt real estate enumerated in Section 57-02-08 N.D.C.C. including United States of America, the State of North Dakota and political subdivisions thereof; or does it relate only to those tax exempt corporations or organizations whose property may be exempt depending upon the use to which it is put?"

You also ask whether unredeemed tax property sold by the county should have the same tax proration treatment either as a result of Section 57-02-41 or as a result of some other statute.

Section 57-02-41 provides as follows:

"ATTACHMENT OF TAX LIEN AND PRORATING TAXES AS BETWEEN VENDOR AND PURCHASER. All taxes, as between vendor and purchaser, shall become a lien on real estate on and after the first day of January following the year for which such taxes were levied. In any case where real property is sold or otherwise disposed of or purchased or otherwise acquired by a tax exempt corporation or organization after the assessment date and used for the purposes provided in section 57-02-08, the property shall be liable for taxes during the portion of the year for which it has been assessed computed to the nearest month such property was not used as provided in section 57-02-08. The taxes so computed shall attach as a lien on such property and the purchaser shall take the property subject to such lien. When such property has not been assessed, it shall be assessed as omitted real property and taxes computed as herein provided."

The first sentence relates to sales and transfers between parties

where the tax status of the property is not changed. The first sentence applies to instances where the property was subject to taxation before the sale and will continue to be subject to taxation after the sale. The remaining portion of Section 57-02-41 pertains to instances where the tax status of the property is changed either because of change in ownership resulting from the sale or the use made of the property.

It should be noted that the conditions which will make the remaining portion of Section 57-02-41 applicable are: (1) that the sale or transfer of property involves a tax exempt corporation or organization, and (2) that the use of the land will change the tax status of the property.

Reference is made to Section 57-02-08 in the above section. Some of the subsections provide for an exemption based on ownership, whereas some provide for an exemption based on the use made of the property. It also appears that Section 57-02-08 is based upon Section 176 of the North Dakota Constitution. Said constitutional provision authorizes and provides for exemptions based on either ownership or use or both.

In examining the provisions of Section 57-02-41 and 57-02-08, together with Section 176 of the North Dakota Constitution, it becomes apparent that the Legislature intended to put tax exempt property on the tax rolls as soon as possible where the change and status resulted either from change in ownership or change in use. It also is apparent that the Legislature intended to keep property on the tax rolls to the maximum period of time where its tax status was changed from exempt to nonexempt as a result of ownership or use.

This conclusion is fortified by the provision that the tax status shall be computed to the nearest month.

Earlier opinion which touched slightly on the subject matter were issued to Raymond Rund on October 20, 1969, and to Shiro Kashiwa, an assistant attorney general with the Department of Justice on May 12, 1970. In the latter opinion we recognized that an inchoate lien attaches when same is assessed even though the amount of taxes are not determined until a later date. The assessment of property normally is on April 1, but pursuant to the provisions of Section 57-02-41, if the property was not assessed as a result of its tax status, but the tax status was changed to a nonexempt status after April 1, such property shall be assessed in the same manner as omitted real property. The tax is to be computed in the same manner as the tax is computed on omitted property.

In answering your questions, it is our opinion that Section 57-02-41 relates to real property which is exempt by reason of ownership as enumerated under Section 57-02-08, or, for that matter, is exempt because of any provision of law. This would include property owned by the United States of America and the State of North Dakota or any of its political subdivisions. It is our further opinion that this section is also applicable where the tax status is either changed to an exempt or nonexempt status because of the use of the property.

As to the final question, Section 57-28-15 and Section 57-28-18 and

transfers resulting or arising out of tax sales at the regular time specified, we do not believe that Section 57-02-41 is applicable on the basis that the sales are made in November and the property becomes subject to taxes the following January even though the assessment is not made until the following April 1.

As to the sale of the property by the Bank of North Dakota to a private purchaser on April 28, the property would be subject to taxes as of May 1, 1972.

It is our further opinion that any transfers or sales made under the provisions of Section 57-28-18 after April 1 would not be subject to the provisions of Section 57-02-41.

Sincerely yours,

HELGI JOHANNESON

Attorney General