

**OPINION**  
**74-544**

September 25, 1974           (OPINION)

Mr. Linn Sherman  
State's Attorney  
Kidder County  
Steele, ND 58482

Dear Mr. Sherman:

This is in response to your letter of August 29, 1974, wherein you request an opinion of this office relative to Sections 57-22-26 and 57-22-27 of the North Dakota Century Code and the applicability of said statutes to the provisions of Chapter 57-55 involving the mobile home tax. You submit the following in your letter:

"Under the provisions of Chapter 57-55 of the North Dakota Century Code, a Mobile Home Tax is provided for certain mobile homes.

Sections 57-22-26 and 57-22-27 of the Century Code provide for deductions from salaries and wages and other compensation of officers and employees of the state, county and other political subdivisions for payment of delinquent personal property taxes of the recipient of such salaries, wages and other compensation.

In your opinion, is the mobile home tax provided for in Chapter 57-55 to be classified as a personal property tax under the provisions of Sections 57-22-26 and 57-22-27, to require deductions from compensation to the extent therein provided for payment of delinquent mobile home taxes?"

Sections 57-22-26 and 57-22-27 of the North Dakota Century Code provide that deductions shall be made from salaries and wages of other compensation due officers and employees of the state, county and other political subdivisions any delinquent personal property taxes owed by such employee or officers. It is upon this that the question arises whether the mobile home tax is a personal property tax within the meaning of these two provisions.

It is our opinion that the mobile home tax is a personal property tax rather than a real estate tax and that, if it is owed by an employee of the state or political subdivision, it can be deducted from that employee's salary as provided in Section 57-22-26.

"While the present mobile home tax law does not expressly describe the tax as either a personal property tax or a real estate tax, there are several statutory provisions which indicate a legislative understanding that it is a personal property tax. For example, Section 57-55-10(1)(a) of the mobile homes tax law exempts from the tax a mobile home that is owned and used as living quarters by a military person on active duty in this state who is a resident of another state. This exemption is provided because under the Soldiers' and

Sailors' Civil Relief Act of 1940 enacted by the United States Congress such a mobile home is personal property and is exempt from personal property taxation by every state except the state in which the serviceman maintains his residence - see Snapp v. Neal 382 U.S. 397, 86, S.Ct. 485.

Similarly, Section 57-55-10(1)(b) exempts a mobile home "if it is owned and occupied by a welfare recipient who meets the requirements of Section 57-02-21, provided such mobile home is not permanently attached to the land and classified as real property." Section 57-02-21 provides a tax exemption of personal property of certain persons with minimum income.

Also, Section 57-55-10(2)(b) provides that the mobile home tax law shall not apply to a mobile home which "qualifies as a farm residence, provided such mobile home is permanently attached to the ground and the owner of such mobile home owns the land on which such mobile home is located." This provision parallels the real estate tax exemption for farm residences that is provided in Section 57-02-08(15).

Further, Section 57-55-10(2)(c) provides that the mobile home tax law shall not apply to a mobile home which "is permanently attached to a foundation and is assessed as real property, provided the owner of such mobile home also owns land on which such mobile home is located." This certainly indicates that the tax on a mobile home that is subject to the mobile homes tax is not a real estate tax.

We would also note that Section 57-02-11(1) provides for the biennial assessment of real estate (except as provides for cities in subsection 6), whereas mobile homes are assessed and taxed on an annual basis.

Accordingly, it appears that the provisions of the mobile homes tax law just cited as well as other provisions of that law indicate that the purpose of Chapter 57-55 of the North Dakota Century Code (mobile homes tax law) is to tax such homes that are in fact essentially mobile and to exempt from the tax mobile homes that are attached to real property that is owned by the mobile home owner. Also, the 1969 personal property tax repeal provision that appears in the Code as Section 57-02-08(25) indicates a legislative understanding that the mobile homes tax is a tax on personal property because the personal property tax exemption provision in Section 57-02-08(25) provides that it does not exempt mobile homes. Accordingly, we are of the opinion that the mobile homes tax is a personal property tax rather than a real estate tax.

Although Section 57-55-11 of the mobile homes tax law provides a method for the director of tax equalization to enforce collection of the mobile home tax in certain instances, it does not expressly exclude any other method for collection of delinquent personal property taxes. For this reason we are of the opinion that Sections 57-22-26 and 57-22-27 apply so as to require deductions from salaries and wages and other compensation of officers and employees of the state, county and other political subdivisions, the amount of delinquent mobile homes tax due on a mobile home assessed to that

employee as long as that employee or individual owns the home or a taxable interest therein under Chapter 57-55 of the North Dakota Century Code.

We trust that the foregoing will adequately set forth our opinion upon the matters submitted.

Sincerely,

ALLEN I. OLSON

Attorney General

State of North Dakota