

**OPINION
75-196**

August 5, 1975 (OPINION)

Mr. Robert P. Bennett
Assistant State's Attorney
P.O. Box 1901
Bismarck, ND 58501

Dear Mr. Bennett:

This is in response to your letter of June 30, 1975, in which you requested an opinion clarifying the scope of the December 13, 1971, opinion from this office regarding liability for payment of mobile home taxes as it relates to the factual situation stated in your letter.

The following is quoted from your letter:

"The facts as they relate to this inquiry are as follows: An individual purchased a mobile home in August of 1974 from a party who had failed to pay the mobile home tax on January 10, 1974, and, as a result, did not receive a tax decal for that home. As of this date, no tax has been paid for the period of January, 1974, to August of 1974.

* * *

Based upon the applicable statutes and the December 13, 1971, opinion, our question is this: Although it is clear that the owner of the mobile home on January tenth is obligated to pay the entire calendar year on that home, is a purchaser of that home after January tenth also liable for the taxes on that home currently unpaid?"

Our understanding from additional information furnished is that the individual who owned the mobile home in January 1974 did file an application for a mobile home tax decal with the county director of tax equalization as required by Section 57-55-01.1, N.D.C.C., and that the county director of tax equalization did determine the amount of the 1974 mobile home tax due as provided in Section 57-55-04, N.D.C.C., and that that owner has never paid any part of that tax and therefore was never issued a 1974 mobile home tax decal.

In the December 13, 1971, opinion from this office to the Burke County State's Attorney to which you referred, we said that the mobile home tax is imposed "on the mobile home itself even though the owner is required to pay it."

In other words, while it is the mobile home that is taxed, it is the owner in whose name it was assessed and taxed who is required to pay it. That owner is personally liable for payment of the tax. This is clearly indicated by the following provisions of the mobile home tax law:

1. Section 57-55-01.1 which requires the owner to file an

application for a mobile home tax decal.

2. Section 57-55-02 which provides, in part, that a tax decal shall not be issued until the owner files an application for a tax decal and pays the tax.
3. Section 57-55-07 which provides, in part, that "Any person who fails to make application pursuant to provisions of this chapter. . .or who fails to attach such decal pursuant to the provisions of this chapter, shall be guilty of a misdemeanor." (A class B misdemeanor after June 30, 1975.)
4. Section 57-55-11 which provides, in part, that if the county director of tax equalization determines that "any person is not complying with the provisions of this chapter, he shall give such person a warning that if such person fails to comply within ten days after the issuance of such warning, the director of tax equalization will begin civil action against such person."

There would seem to be no doubt under the above statutory provisions that a mobile home owner who made application for a mobile home tax decal but failed to pay the tax when due is not complying with the provisions of the mobile homes tax chapter and that the county director of tax equalization is authorized by Section 57-55-11 to begin a civil action against him to collect the tax if it is not paid within ten days of the issuance of the warning to him as provided in that section. In our opinion that authority for bringing the civil action to collect the tax continues whether or not the individual who owes it owns the mobile home at the time the warning is issued and the action is begun.

In the situation you present, it appears that the necessary steps for assessing the 1974 tax on the mobile home were completed by the proper official and that there is therefore a valid, enforceable tax. See *Farrington v. The New England Investment Company* 1 N.D. 102 at 113, 45 N.W. 191 at 194; *Powers v. Larabee* 2 N.D. 141 at 149, 49 N.W. 724 at 726; *O'Neil v. Tyler* 3 N.D. 47 at 55-56, 53 N.W. 434 at 435, 436; *Swenson v. Greenland* 4 N.D. 532 at 535, 62 N.W. 603 at 605; and *Shuttuck v. Smith* 6 N.D. 56 at 61, 69 N.W. 5 at 7.

Section 57-55-11 also provides, in part, as follows:

"57-55-11. COLLECTION - ENFORCEMENT. . . .In the event the director of tax equalization shall determine that there are mobile homes in his county belonging to transients or nonresidents who have failed to comply with the provisions of this chapter, and in his opinion the taxes will be uncollectible if immediate action is not taken, he shall notify the county sheriff. The county sheriff shall immediately, and in no event later than five days after receiving such notification, commence proceedings as provided by law to collect the taxes and penalties, if any, which are due."

Where it appears that collection of the tax owed by a transient or nonresident may be difficult, it is our opinion that the above provisions quoted from Section 57-55-11 were intended to incorporate

those provisions of Sections 57-22-21.1 and 57-22-21.2, N.D.C.C., which are not in conflict with Section 57-55-11 and which relate to the collection of taxes on personal property belonging to transients or nonresidents.

In order, however, for the sheriff to levy on the mobile home under those sections for the unpaid taxes on it, the mobile home would have to belong to the transient or nonresident against whom the tax was assessed.

Since the mobile home to which your letter relates no longer belongs to the individual who owned it in January 1974 when it was assessed and taxed, it would not now be personal property "belonging to" that individual within the meaning of Section 57-22-21.1. Therefore neither that section nor Section 57-22-21.2 could now be relied on for enforcing collection of the tax under Section 57-22-21.2 by sheriff's levy on that mobile home which is now owned by a different individual than the one to whom it belonged when it was assessed and taxed.

The foregoing deals with the collectibility of the tax on this mobile home from the individual who owned it at the time the 1974 tax on it was assessed in January 1974. It is necessary now to consider whether the individual who purchased this mobile home in August 1974 from the individual to whom it belonged in January 1974 is liable for all or any part of the 1974 tax on it. In regard to this we note that Section 57-55-04 provides in part:

"If a mobile home is acquired or moved into this state during the calendar year, and a tax decal has not been previously issued on such mobile home in this state for such year, the tax shall be determined by computing the remainder number of months of the current year to the nearest full month and multiplying such number by one-twelfth of the amount which would be due for the full year."

The mobile home to which you refer in your letter did not have a 1974 tax decal displayed on it pursuant to Section 57-55-06 at the time it was acquired in August 1974 by the individual who purchased it then. This was because the 1974 taxes that had been assessed on it had not been paid, and Section 57-55-02 prohibited issuance of the tax decal until the tax was paid. These circumstances bring the matter directly within the provisions quoted above from Section 57-55-04, with the result that the individual who acquired the mobile home in August 1974 became personally liable for payment of that part of the 1974 tax prorated to the balance of the calendar year remaining after he acquired it as computed in accordance with those provisions of Section 57-55-04.

In summary, the individual who owned the mobile home in January 1974 when the tax on it was assessed continues to be liable for payment of all or any part of the 1974 tax on it that is unpaid, even though he sold the mobile home in August 1974; the individual who acquired it in August 1974 without a 1974 tax decal on it is also liable for payment of any unpaid portion of the 1974 tax that is prorated as provided in Section 57-55-04 to the part of the year that remained after he acquired it.

As stated in the December 13, 1971, opinion from this office to the Burke County State's Attorney:

"Where a mobile home. . .is transferred where a tax has been paid or remains due is a matter to be taken into consideration between the purchaser and seller. This becomes part of the negotiated purchase price."

In other words, the seller and buyer may decide between themselves how much of the tax should be borne by each; but if the tax or some part of it is not paid, any agreement they make will not prevent the collection of the unpaid tax from being enforced as set out above.

Sincerely,

ALLEN I. OLSON

Attorney General