

**OPINION
79-238**

September 5, 1979 (OPINION)

Mr. Byron L. Dorgan
Tax Commissioner
State of North Dakota
State Capitol
Bismarck North Dakota 58505

Re: House Bill 1507, chapter 615, S.L. 1979

Dear Commissioner Dorgan:

You have asked for a formal opinion from this office in response to the following question:

Is the manager of the North Dakota State Fair Association responsible for the collection of the North Dakota sales tax imposed upon all taxable gross receipts from all activities and concessions at the North Dakota State Fair as a result of the amendments to subsection 5 of section 57-39.2-01 and subsection 4 of section 57-39.2-04 N.D.C.C. as enacted by the 1979 Legislature in House Bill 1507?

The basis for this question is set forth in your letter as follows:

The 1979 Legislature enacted House Bill 1507, Chapter 615, S.L. 1979, which amended subsection 5 of section 57-39.2-01 and subsection 4 of section 57-39.2-04 N.D.C.C..

Section 57-39.2-04 N.D.C.C. provides for certain exemptions from the imposition of the retail sales tax. Specifically, subsection 4 thereof, as amended, now provides the following exemption from the sales tax:

4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, unless the activities are held in a publicly owned facility, where the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15-29-13.

The underlined language was added by the 1979 Legislature.

The 1979 amendment to subsection 5 of section 57-39.2-01 N.D.C.C. included within the definition of "retailer" - " . . . any person engaged in operating or managing a publicly owned facility."

A review of the 1979 Legislature's House and Senate Committee Reports for the Committees on Finance and Taxation reveal that no discussion

was held as to the potential responsibility the manager of the State Fair Association would have for the collection of the retail sales tax from the gross receipts of taxable activities and concessions at State Fair Association facilities. The only testimony in reference to state and district fairs was assurance from your office that House Bill 1507 would not affect the current exemption from the sales tax of the gross receipts from sales of admissions to state, county, district and local fairs.

The effect of House Bill 1507's amendment to subsection 4 of section 57-39.2-04 of the North Dakota Century Code is to remove the exempt status of the gross receipts from educational, religious, or charitable activities when those activities are held in a publicly owned facility. The facilities owned by the State Fair Association are public facilities and the State Fair Association is a state agency. See chapter 4-02.1 of the North Dakota Century Code.

As you stated in your letter, House Bill 1507 also amended subsection 5 of section 57-39.2-01 of the North Dakota Century Code to include within the definition of "retailer" any person who operates or manages a publicly owned facility. Clearly, this would include the manager of the State Fair Association.

Thus, the effect of House Bill 1507 is to impose the primary responsibility for the collection of the retail sales tax upon the manager of the State Fair Association for all taxable gross receipts collected as a result of activities or concessions held in the Association's facilities, including the gross receipts from educational, religious, or charitable activities which are held in those facilities and which would otherwise be exempt. In fact, this conclusion goes beyond the scope of your question as this responsibility extends to all activities and events held in Fair Association facilities and is not limited to only those times that the State Fair itself is being held.

This legislation is consistent with the following provision from the North Dakota Century Code, section 4-02.1-23:

4-02.1-23. REGULATION AND LICENSING. - The state fair association . . . shall be charged with the responsibility of seeing that all state and local laws and all rules and regulations of the fair association are complied with by such shows, exhibitions, performances, establishments, or those granted fair privileges.

I trust that this answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General