

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-7

Date issued: February 24, 1988

Requested by: Lisa Beckstrom Gibbens
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- QUESTION PRESENTED -

Whether the provisions of N. D. C. C. ' 57-02-26(1) preclude the assessment of a leasehold interest in real property owned by a governmental entity if the term of the lease is for one year or less.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the provisions of N. D. C. C. ' 57-02-26(1) do not preclude the assessment of a leasehold interest in real property owned by a governmental entity if the term of the lease is for one year or less.

- ANALYSIS -

Real property located in North Dakota and owned by the United States, the state of North Dakota, or its political subdivisions is exempt from ad valorem taxation. N. D. Const. art. X, ' 5; N. D. C. C. ' 57-02-08(1)(2)(3). However, this does not mean that a leasehold interest of a nonexempt person in real property owned by a governmental entity is exempt from ad valorem taxation.

Possessory interests are defined as real property for purposes of ad valorem taxation as follows:

57-02-04. "Real property" defined. Real property for the purpose of taxation, includes:

1. The land itself . . . and all rights and privileges thereto belonging to or in anywise appertaining . . .
2. All structures and buildings . . . and all rights and privileges thereto belonging or in anywise appertaining

"All property in this state is subject to taxation unless expressly exempted by law." N. D. C. C. ' 57-02-03.

A possessory interest in government owned real property held by a nonexempt person is therefor subject to taxation on the value of the possessory interest, regardless of the characterization of the lease under which it is held because no exemption is provided by law. See, Otter Tail Power Co. v. Degnan, 252 N.W. 619 (N.D. 1934); Lower Yellowstone Irrigation District No. 2 v. Nelson, 2 N.W.2d 180 (N.D. 1941); and United States v. Fresno County, 429 U.S. 452 (1977).

Having determined that a leasehold interest of this kind is subject to ad valorem taxation, the next question is how the possessory interest should be valued for the purpose of assessment.

If the "[p]roperty [is] held under a lease for a term of years, [it] shall be considered, for all purposes of taxation, as the property of the person so holding the same." N. D. C. C. ' 57-02-26(1).

If the lease is held for less than a term of years, e.g., month-to-month, it is not valued pursuant to N. D. C. C. ' 57-02-26(1). The value of a possessory interest under a lease held for less than a term of years is less than the value of the physical property to which the possessory interest applies and the possessory interest must be valued accordingly for the purpose of ad valorem assessment. If a month-to-month lease continues for only part of the year, the assessment and taxes would be reduced proportionately as follows:

57-02-41. 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. If taxable real property is acquired in any year after the assessment date by an owner in whose hands it will be exempt from taxation, the taxes on it for the portion of the year that it was not exempt, computed to the nearest month, shall constitute a personal charge against the person from whom it was acquired and all of the provisions of law for payment and collection of personal property taxes shall be applicable to such prorated taxes.

If exempt real property is acquired in any year after the assessment date by an owner in whose hands it is taxable, it shall be assessed as omitted property and the taxes on it for that portion of the year that it is not exempt, computed to the nearest month, shall be subject to all of the provisions for payment and collection that are applicable to taxes for the same year on other real property.

When the leasehold commences, it is a transfer of real property from an exempt entity to a nonexempt entity. Similarly, when the leasehold terminates, it is a transfer from a nonexempt entity to an exempt entity. The assessment on a possessory interest in a leasehold is prorated pursuant to N. D. C. C. ' 57-02-

41, and assessed only for the period it was held by a nonexempt person.

Therefore, it is my opinion that the provisions of N. D. C. C. ' 57-02-26(1) do not preclude the assessment of a leasehold interest in real property owned by a governmental entity if the term of the lease is for one year or less.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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