

**OPINION**  
**54-120**

June 3, 1954 (OPINION)

**TAXES**

RE: Five Percent Discount

We have your letter of May 22, 1954, in which you ask us to confirm an opinion of this office dated March 14, 1949.

In that opinion it was stated that a taxpayer who desired to pay his real estate taxes without paying the special assessments on the real estate was entitled to the five percent discount if the taxes were paid within the statutory time entitling him to such discount.

The principle that general taxes may be paid without at the same time paying special assessments since declared in the cases of *State ex rel Moore v. Furstenau* 20 N.D. 540, 129 N.W. 81 and *Hackney v. Elliott* 23 N.D. 373, 137 N.W. 433 has not been overruled by our courts since that time and similar reasoning has since been adopted in regard to other taxes such as the hail indemnity tax. (See *State v. Johnson* 54 N.D. 184, 208 N.W. 966).

As the provision for discount for early payment of taxes provided by Section 57-2009 of the 1953 Supplement to the North Dakota Revised Code of 1943 is relatively new legislation, at least in this state, the principles to be applied thereto are not so clearly established. It has been held under a statute remarkably similar to Chapter 245, Session Laws of 1937, the original provision for such discounts in this state, that a taxpayer who tendered the full amount of its taxes less a road tax which it contested, which contested tax was later found to be valid, was entitled to the discount on the taxes paid, by the court of another state, (*N.P. Ry. Co. v. Franklin County et al* 203 P. 27, 118 Wash. 117) although such a question has not, up to the present time, been before our supreme court.

As indicated by the previous opinion to which you refer, technically special assessments are not in the strictest sense of the term taxes, although in popular parlance, and even in legislative enactments, they are frequently called taxes. This distinction is fully discussed in *State ex rel Viking Township v. Mikkelson*, 24 N.D. 175, 139 N.W. 525 and *State ex rel Moore v. Furstenau* 20 ND 540, 129 N.W. 81. (See also Section 2165, *McQuillin Municipal Corporations*, Revised Edition). Legislative recognition of this distinction is at least indicated by the subsequent part of this statute providing that the discount shall apply to "general real estate taxes" and not to "special assessment installments." In view of the fact that in this statute the legislature provided that the discount shall be allowed to all taxpayers who shall pay all of the "real estate taxes" and has shown its recognition of the distinction between "general real estate taxes" and "special assessment installments," it is our opinion that the discount should be allowed upon the payment of all real estate taxes even though special assessment installments are not paid.

PAUL BENSON

Attorney General