

OPINION
57-204

February 25, 1957 (OPINION)

TAXATION

RE: Personal Property - Foreign Contractor's Equipment

This is in reply to your letter of January 25, 1957, asking for an opinion from this office on the question of whether privately owned property, including equipment of resident and nonresident contractors, can be assessed and subjected to property taxes if located on and used on the air base land west of Grand Forks city, which land is owned by the federal governmental.

Unless otherwise expressly provided by law, all personal property in this state is subject to taxation (section 57-0203, N.D.R.C. 1943) according to its value on April first (section 57-02111(2), N.D.R.C. 1943) if it is in this state on April first (Gaar, Scott and Co. v. Sorum, 11 N.D. 164, 90 N.W. 99).

51 Am. Jur. 294, section 238, states in general that privately owned property on federally owned land is subject to taxation by a state if "not held or used as an incident of military service, within a military reservation which has neither been excepted from the jurisdiction of the state in which it lies at the time of her admission, nor established on lands purchased therefor with the consent of her legislature." See Surplus Trading Co. v. Cook, 281 U.S. 647, 651, 74 L. Ed. 1091, 50 S.C. 455, 456. See also Nikis v. Commonwealth of Virginia, 131 S.E. 236, 46 A.L.R. 219, and 84 C.J.S. pages 62-64.

Nothing has been found in our legislative acts to show that the land on which this personal property is located was purchased by the federal government with the consent of our state legislature (article 1, section 8, clause 17 of the United States Constitution) nor that consent of the legislature was thereafter obtained by the President as authorized by 4 U.S.C.A. Section 103.

Nor can we find anything to indicate that ownership or use of this personal property by the construction contractors is such that it can be regarded as held or used as an incident to military service within the meaning of the United States Supreme Court's statement in Surplus Trading Co. v. Cook, already cited.

It is therefore my opinion that, considering the North Dakota statutes cited and the apparent lack of exclusive jurisdiction by Congress over the land on which this personal property is located, the township assessors can and should assess this personal property owned by the contractors if it is in the state on April first.

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