

**OPINION
57-205**

May 31, 1957 (OPINION)

TAXATION

RE: Personal Property - Where Assessed

This is in reply to your letter of 17 May 1957 requesting an opinion of this office in regard to the assessment of personal property taxes by city assessors.

The facts you give are substantially as follows: Personal property of a professional man who had kept and maintained same in the city of Rugby for many years was assessed in Rugby on 26 March 1957. The professional man removed his offices to the city of Minot; the personal property concerned was located in Minot as of 1 April 1957 and was assessed again in and for the city of Minot. You ask our opinion in regard to the validity of such assessments. You call to our attention section 40-1902 of the North Dakota Revised Code of 1943.

We find the source of said section 40-1902 to be section 3642 of the Compiled Laws of North Dakota for 1913 which provides:

ASSESSOR'S APPOINTMENT. ASSESSMENT ROLL. The assessor shall be appointed at the first meeting of the city council in September in each odd numbered year, and shall be governed by the same laws and regulations as county and township assessors, except that he may list any real estate or personal property for assessment on or after the first day of January in the year in which the same is subject to assessment, and for that purpose the county auditor shall furnish him with assessment books prior to said first day of January; and he shall on the first day of April in each year commence the assessment of property assessable for such year, and shall return his assessment roll to the city auditor on or before the first day of June in each year. Such assessment roll shall be open to the inspection of all persons interested until the meeting of the city board of equalization."

We find the explanation for the deletion of the language of this section in regard to commencement of assessment on the first day of April in the Revisor's Note to section 40-1902 of the North Dakota Revised Code of 1943 as follows:

This section is a part only of C.L. 1913 s. 3642, revised for clarity and brevity without change in meaning. This section applies to assessors in all cities, and is placed in a separate section because the general provisions in this chapter apply to city and village assessors. The phrase 'and he shall on the first day in April in each year commence the assessment of property assessable for such year' is omitted as surplusage. The title Taxation sets forth when personal property shall be assessed, when real property shall be assessed, and when

assessments shall be commenced." (underlining ours)

Looking thus to the title Taxation to determine when personal property shall be assessed, we find the following portions of sections 57-0211, 57-0215, and 57-0222 of the North Dakota Revised Code of 1943 pertinent to this question:

57-0211. LISTING OF PROPERTY; ASSESSMENT THEREOF. Property shall be listed and assessed as follows:

* * * *

2. All personal property, except stocks of merchandise, shall be listed and assessed annually with reference to its value on April first of each year.* * *

* * * *."

57-0215. PLACE OF LISTING PERSONAL PROPERTY. Except as otherwise provided by statute, or by the constitution, all taxable tangible personal property shall be assessed in the county, city, township, village, or district in which it is situated.* * *"

57-0222. PLACE OF LISTING IN CASE OF DOUBT. All taxable personal property wherever and whenever found between the first day of April and the first day of June shall be listed by the assessor.* * * *'" (underlining ours)

While the case is not directly in point insofar as it deals with taxability of property brought into the state after April first, we believe the following statement, from Gaar, Scott and Co. v. Sorum, 11 N.D., 164, of great assistance in properly construing the above-quoted statutory provisions and section 40-1902 of the North Dakota Revised Code of 1943:

For the reasons stated we have reached the conclusion, without hesitation, that under the general revenue laws of this state the taxability of personal property depends upon its existence and presence in the state on the first day of April of each year. This we believe has been the construction placed upon our revenue laws both by the public and by the officers charged with their execution. Were the question a doubtful one, - and we do not think it is, - this fact alone would probably control our decision, under the wholesome rule that 'the practical construction given to a doubtful statute by the public officers of the state and acted on by the people thereof, is to be considered. It is perhaps decisive in case of doubt.' Suth. St. Const. s. 309, and cases cited at note 4. We may also add that, if the language employed by the legislature made the question fairly debatable, it would, we think, be our duty to hesitate long before holding that it was the purpose of the legislature to establish a two-months' period for determining the taxability of personal property, and thus introduce into this state a system involving great injustice to taxpayers and confusion in tax proceedings, - a system which is not possible of being made effective, and which has been universally

condemned by the courts. As already stated, however, we find no warrant in the statutes for holding that the legislature had in view any such intention."

Thus the purpose of section 40-1902 would appear to be to authorize the assessor to commence his making of the assessment as of January first, but not to have any effect on the date of the determination of the taxable situs of the personal property concerned. In other words, he is permitted to make his assessment prior to April first or "tax day" but the assessment either before or after "tax day" must be as of the location of the property on "tax day."

If, under the above, there remains any question or dispute, as to the propriety of the assessment involved, we would suggest that the procedure specified in section 57-0222 of the North Dakota Revised Code of 1943 be followed, i.e. "* * *In all questions that may arise as to the proper place to list personal property, or where the same cannot be listed as herein provided, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the board of county commissioners, and when between different counties, or places in different counties, by the state tax commissioner. Such determination shall have the same effect and shall be as binding as if fixed hereby."

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