

LETTER OPINION
2005-L-12

March 17, 2005

Mr. Jeffrey K. Leadbetter
Ransom County State's Attorney
PO Box 511
Lisbon, ND 58054-0511

Dear Mr. Leadbetter:

Thank you for your letter regarding the ad valorem assessment of a leasehold interest of a nonexempt person in real property owned by a governmental entity. Your letter and follow-up correspondence present four questions concerning this subject:

1. In North Dakota Century Code [57-02-26(1)], the statute provides that [a] lease for a term of years is subject to property tax taxation. Does a term of years mean that the term of the lease must be one year or greater, or does a term of years as used in that section mean for any period of time whether one hour, one day, one month, or one year.
2. If a term of years is for any period of time, then who has the reporting responsibility to provide the names and address of the lessees to the County Assessor?
3. When leasehold interests are taxed and in the case of farm land being taxed to a tenant farmer who produces a crop from the premises and said tenant farmer does not make payment of the tax, how does the county enforce the collection of the tax against the tenant where the agricultural land is owned by a municipality and the tenant has no improvement to the land which may be [seized]?
4. Does the County Assessor have the authority to require township and city assessors to include leasehold property in their assessment lists?

In response to your questions, it is my opinion that (1) the definition of a lease for a term of years is immaterial to the issue of whether a possessory interest in land is taxable; (2) the local assessor has the responsibility to determine the lessee of real property owned by a governmental entity; (3) the holder of a leasehold or other possessory interest in exempt real property is personally liable for the payment of real property taxes and is subject to the provisions of N.D.C.C. ch. 57-22 concerning collection of delinquent personal property taxes; and (4) the county director of tax equalization has the general authority to require local assessors to include leasehold property interests in their assessment lists.

ANALYSIS

"[A]ll property in this state is subject to taxation unless expressly excepted by law." N.D.C.C. § 57-02-03. A leasehold interest in exempt real property is a property interest subject to taxation. N.D.A.G. 2005-L-05 ("A possessory interest in government owned real property held by a nonexempt person is therefore 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," quoting N.D.A.G. 89-6).

As stated in the above quote from N.D.A.G. 2005-L-05, the characterization of the lease under which a taxable possessory interest is held has no bearing upon the taxability of the interest. Thus, the term of the lease is immaterial. Any interest, whether it be for a day, a month, or a year or more is subject to taxation. If the lease is for less than a year, the assessment and taxes would be reduced proportionately under N.D.C.C. § 57-02-41. N.D.A.G. 88-7.

In response to your second question, there is no specific statute regarding reporting duties. Section 40-19-01, N.D.C.C., requires, however, the city assessor to "perform all the duties necessary in assessing the property within the city for the purpose of levying the . . . taxes." Similar duties exist for the township assessor and the county director of tax equalization. See N.D.C.C. §§ 58-09-03 and 11-10.1-05. It is therefore my opinion that inherent within the duties of a local assessor is the requirement that the local assessor determine the lessee of real property owned by a governmental entity.

In response to your third question, N.D.C.C. § 57-20-28(1) provides:

If any holder of a leasehold or other possessory interest in exempt real property neglects or refuses to pay any real estate taxes legally assessed and levied on that property at the time required by law for the payment of real property taxes, the taxes shall constitute a personal charge against the holder of the lease or other possessory interest from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes are applicable.

See also N.D.A.G. 89-6. Thus, it is my opinion that the holder of a leasehold or other possessory interest in exempt real property is personally liable for the payment of real property taxes and is subject to the provisions of N.D.C.C. ch. 57-22 concerning collection of delinquent personal property taxes.

In response to your last question, N.D.C.C. § 11-10.1-05(1) provides:

LETTER OPINION 2005-L-12

March 17, 2005

Page 3

The county director of tax equalization shall have the power, duty, and responsibility to call upon and confer with township and city assessors in the county and to instruct them in the preparation and proper use of land maps and property record cards, the preparation of assessment books, the changes in assessment laws and regulations, the determination of proper standards of value, the use of proper classifications of property, and the authority to require attendance at meetings, to the end that a uniform assessment of all real property in the county will prevail.

Consequently, based on this broad statutory oversight responsibility, it is my opinion that the county director of tax equalization has the general authority to require local assessors to include leasehold property interests in their assessment lists.

Sincerely,

Wayne Stenehjem
Attorney General

pg

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. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).