

N.D.A.G. Letter to Heitkamp (June 8, 1987)

Overrules by implication N.D.A.G. Ltr to Burleigh County State's Attorney (May 26, 1982)

June 8, 1987

Ms. M. K. Heidi Heitkamp
Tax Commissioner and Secretary of
the State Board of Equalization
State Capitol
Bismarck, North Dakota 58505

Dear Commissioner Heitkamp:

Thank you for your letter of May 20, 1987, regarding the annual ad valorem assessment by the State Board of Equalization of the operative property of pipeline companies.

Specifically, the members of the State Board are concerned about the taxable status of a pipeline owned by Amoco Oil Company which begins at its Mandan refinery and crosses the state to the Minnesota border in Cass County. The pipeline does not constitute common carrier property and it is used by Amoco solely for transporting its refined products from its refinery to various marketing areas.

In a letter to the Burleigh County State's Attorney dated May 26, 1982, my predecessor, Attorney General Wefald, concluded that this pipeline was not subject to central assessment by the State Board. It was Mr. Wefald's impression that the language of N.D. Const. Art. X, § 4 and N.D.C.C. Ch. 57-06 did not authorize the State Board to assess pipeline property of an owner who used it only to transport the owner's products and did not make the pipeline available for public use. Since the date of Mr. Wefald's letter, the State Board has not assessed Amoco's product pipeline.

The North Dakota Supreme Court recently held that several pipelines which are used for transporting crude oil or natural gas belonging to the respective owners of the pipelines are subject to central assessment by the State Board even though these pipelines are not for public use. Phillips Nat. Gas Co. v. State Bd. of Equal., 402 N.W.2d 906 (N.D. 1987). The members of the State Board would like to know whether the decision in Phillips has impliedly overruled the May 26, 1982, letter opinion of the Attorney General that Amoco's product pipeline is exempt from central assessment.

When the supreme court found the pipelines in the Phillips case to be subject to central assessment, the court "concluded that [N.D. Const. Art. X, § 4] authorizes a central assessment of linear transportation systems ordinarily extending through multiple geographic districts." Id. at 909. The supreme court concluded further that the statutory language of N.D.C.C. Ch. 57-06 did not limit the constitutional language "so as to exclude central assessment of pipelines transporting products not for public use." Id. at 911.

Based upon the holding in the decision, it is my opinion that the supreme court has impliedly overruled the May 26, 1982, letter opinion of the Attorney General and it is my further opinion that Amoco's product pipeline is subject to central assessment by the State Board.

Sincerely,

Nicholas J. Spaeth

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