

N.D.A.G. Letter to Slorby (Aug. 10, 1989)

August 10, 1989

Mr. Tom P. Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Slorby:

Thank you for your June 6, 1989, letter concerning discounts for real estate tax payments. In your letter you ask whether a person must pay all real estate taxes, including special assessments, prior to February 15 to be entitled to the discount N.D.C.C. § 57-20-09 provides, or whether, in the alternative, the taxpayer would be entitled to that discount if he or she paid the general consolidated real estate taxes before that date, but did not pay special assessments until after February 15.

It is my opinion that a taxpayer must pay all real estate taxes due and all special assessments due on or before February 15 prior to the date of delinquency before the county treasurer may give the taxpayer the five percent discount N.D.C.C. § 57-20-09 allows.

N.D.C.C. § 40-24-16 provides, in relevant part, that

[i]n the event that the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, he shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. When prorating any tax payment received prior to October fifteenth, the term "due", as it pertains to real estate taxes, shall include only the first installment of real estate taxes.

Because of this proration provision, the real estate taxes that are due cannot be paid in full unless the special assessments that are due are also paid in full by the deadline for the allowable discount.

In addition to the proration provision of N.D.C.C. § 40-24-16, N.D.C.C. § 57-20-21.1, as enacted by the 1989 Legislative Assembly, provides as follows:

57-20-21.1. Priority for delinquent taxes. When payment is made for any real or personal property taxes or special assessments, payments must be applied first to the oldest unpaid delinquent taxes or special assessments due, if any, shown to exist upon the property for which the tax payments are made, including any penalty and interest. The discounts applicable to payment of taxes set out in

section 57-20-09 do not apply to payment of taxes made on property upon which tax payments are delinquent.

These two provisions indicate that the five percent discount is authorized only when all real estate taxes and special assessments are paid by February 15.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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