

N.D.A.G. Letter to Enget (Aug. 21, 1989)

August 21, 1989

Mr. Wade G. Enget
Mountrail County State's Attorney
Box 369
Stanley, ND 58784

Dear Mr. Enget:

Thank you for your April 6, 1989, letter regarding an application for abatement and settlement of taxes that is pending before the Mountrail Board of County Commissioners. I apologize for the delay in answering your letter.

From reading your letter and from discussing this matter with a staff member who has contacted you by telephone, it is my understanding that the relevant facts in this matter can be described as follows:

The abatement applicant, Melda Berget (Berget), is an enrolled member of the Three Affiliated Tribes. Berget owns a lot in the city of New Town which is within the boundaries of the Fort Berthold Indian Reservation. Berget leased this lot to the Fort Berthold Housing Authority, a tribal agency (Housing Authority). The Housing Authority built a home on the lot and rents the home to Berget. Berget's abatement application claims that the building (home) is exempt from assessment and that any taxes levied against it should be abated. The abatement application does not seek relief for taxes levied against the lot.

You wish to know whether this abatement application is properly before the board of county commissioners and, if so, whether the home owned by the Housing authority and rented to Berget is exempt from county real property taxation.

Berget is authorized to make this application for abatement because N.D.C.C. § 57-23-05 provides, in part, that "[a]ny person having any estate, right, title, or interest in or lien upon any real property who claims that the assessment made or the tax levied against the same is excessive or illegal, in whole or in part, shall be entitled to make an Application for abatement, refund, or compromise, as the case may be, and have such application granted if the facts upon which the application is based bring it within the provisions of this chapter for abatement, refund or compromise."

Upon the filing of a proper abatement application, the board of county commissioners may abate or refund any assessment or tax if "the complainant, or the property, is exempt from the tax." N.D.C.C. § 57-23-04(1)(c).

N.D.C.C. § 57-02-04(2) includes within the definition of real property subject to taxation "structures and buildings."

A previous opinion of this office concluded that real property owned in fee patent by an Indian tribe and located within the boundaries of the tribe's reservation is not subject to county real property taxation." 1985 N.D. Op. Att'y Gen. 37. A copy of this opinion is enclosed.

Based upon this opinion and the specific facts of this case, it is my conclusion that the structure owned by the Housing Authority is exempt from tax because the structure, in effect, is owned by the Three Affiliated Tribes.

I hope this discussion is helpful to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure