

N.D.A.G. Letter to Gibbens (June 10, 1987)

June 10, 1987

Ms. Lisa Beckstrom Gibbens
Towner County State's Attorney
P.O. Box 601
Cando, ND 58324

Dear Ms. Gibbens:

Thank you for your letter of May 20, 1987, wherein you inquire whether there is a remedy available if ad valorem taxes on a leasehold interest in a railroad right of way become delinquent.

N. D. Const. art. X, § 4, provides, in part, as follows:

The property, including franchises of all railroads operated in this state. . . . shall be assessed by the state board of equalization in a manner prescribed by such state board or commission as may be provided by law. But should any railroad allow any portion of its railway to be used for any purpose other than the operation of a railroad thereon, such portion of its railway, while so used shall be assessed in a manner provided for the assessment of other real property.

(Emphasis supplied.)

In paragraph 4 of the Syllabus in Northern Pac. Ry. Co. v. Morton County, 156 N.W. 226, 227 (N.D. 1915), the court state the following:

[N.D. Const. art. X, § 4] for taxation purposes recognizes a dual taxable right of user of right of way, viz: (1) A right to tax the [right of way] upon the assessment of the state board of equalization as for railroad use; and (2) the right to locally tax by general taxation any portion of the site appropriated temporarily to private use.

Therefore, a railroad right of way used for railroad purposes is centrally assessed by the State Board of Equalization and the same railroad right of way leased for private use is also locally assessed. N.D.C.C. chs. 57-05 and 57-02.

N.D.C.C. § 57-02-26 provides, in part, as follows:

57-02-26. CERTAIN PROPERTY TAXABLE TO LESSEE OR
EQUITABLE OWNER.

1. Property held under a lease for a term of years, ... belonging...to any railroad corporation whose property is not taxed in the same manner as other property, shall be considered, for all purposes of taxation, as the property of the person so holding the same.

N.D.C.C. § 57-02-04 provides, in part as follows:

57-02-04. REAL PROPERTY DEFINED. Real property, for the purpose of taxation, includes:

1. The land itself, . . . and all rights and privileges thereto belonging or in anywise appertaining, and shall expressly include . . . all such improvements to land the title to which still is vested in any railroad company and which is not used exclusively for railroad purposes,
2. All structures and buildings, including systems for the heating, air conditioning, ventilating, sanitation, lighting, and plumbing of such structures and buildings, and all rights and privileges thereto belonging or in anywise appertaining

Since both the central assessment and the local assessment are valid tax assessments, a delinquent tax on the leasehold interest also constitutes a lien on the lease site. Northern Pac. Ry. 156 N.W. at 233.

In Northern Pac. Ry., the court said that a lien on a leasehold interest in a railroad right of way may be satisfied as follows:

The tax is a local one upon a local business, in no wise connected with interstate business. The taxing power at the utmost cannot in the least, in the enforcement of collection of these taxes, hinder the operation of the road or prevent it from the exercise to the full of all its franchise rights and privileges. Should the [site] in question be sold, [it] would be taken subject to a right to retake [it] again for railroad use, upon payment of [its] value, by the railroad under its right of eminent domain, granting that the lien from the taxes levied might divest the property of its railroad use, should it go to tax deed.

Id.

I hope that this has answered your inquiry. If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth