

N.D.A.G. Letter to Ficek (Aug. 11, 1987)

August 11, 1987

Mr. Vince H. Ficek
Dickinson City Attorney
P.O. Box 866
Dickinson, ND 58601-0866

Dear Mr. Ficek:

Thank you for your letter of June 26, 1987, wherein you ask whether a lessee of real property has sufficient interest in that property to file an application for abatement or refund under the provisions of N.D.C.C. ch. 57-23.

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, .

The North Dakota Supreme Court has held that "[w]hen the landlord leases land to a tenant for one or more years, the tenant has an estate in such land for such time, and can hold possession thereof for the whole time." Minneapolis Iron Store Co. v. Branum, 162 N.W. 543, 547 (N.D. 1917). This language follows the general rule that a lease of real estate creates in the lessee an interest in the real estate. Read v. Estate of Mincks, 176 N.W.2d 192, 193 (Iowa 1970); 49 Am. Jur.2d Landlord and Tenant § 1 (1970).

Therefore, it is my opinion that a lessee of real property has sufficient interest in that property to file an application for abatement or refund under the provisions of N.D.C.C. ch. 57-23.

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

Sincerely,

Nicholas J. Spaeth

cv