

Office of the Attorney General
State of North Dakota

Opinion No. 82-24

Date Issued: April 8, 1982

Requested by: Tax Commissioner Kent Conrad

--QUESTIONS PRESENTED--

I.

Whether the 1981 assessment by the State Board of Equalization of the operating personal property of Amtrak (the National Railroad Passenger Corporation) is invalid and the property is exempt from taxation.

II.

Whether the treasurers of the counties to which the 1981 assessment of Amtrak property was certified as provided in Section 57-05-04 of the North Dakota Century Code should be advised that the 1981 property taxes levied on Amtrak are uncollectible if the assessment is invalid.

III.

Whether the board of county commissioners of each county to which the 1981 Amtrak property assessment was certified should cancel the 1981 property taxes levied on Amtrak.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that the 1981 assessment by the State Board of Equalization of the operating personal property of Amtrak is invalid and that the property is exempt from taxation.

II.

It is my further opinion that the treasurers of the counties to which the 1981 assessment of Amtrak property was certified as provided in Section 57-05-04, N.D.C.C., should be advised that the 1981 property taxes levied on Amtrak are uncollectible.

III.

It is my further opinion that the board of county commissioners of each county to which the 1981 Amtrak property assessment was certified should cancel the 1981 taxes levied on Amtrak as provided in Section 57-22-11, N.D.C.C.

--ANALYSIS--

I.

The State Board of Equalization assessed the operating property of Amtrak (the National Railroad Passenger Corporation) in the fall of 1981 and the assessment was apportioned and certified as provided in Section 57-05-04, N.D.C.C., to the eleven counties in which Amtrak's trains and other personal property was operated. All of the property assessed was personal property.

In *Ogilvie v. State Board of Equalization*, 657 F.2d 204 (C.A. 8 1981) the Court of Appeals for the 8th Circuit affirmed the decision of the federal district court in *Ogilvie v. State Board of Equalization*, 492 F.Supp. 446 (D.N.D. 1980), that operating personal property of railroads in North Dakota is exempt from taxation because personal property of businesses whose real estate is locally assessed is exempted from taxation by North Dakota law. Those decisions held that the operating personal property of railroads is exempt in North Dakota under the anti-tax discrimination provision of 49 U.S.C.A. § 11503, a section of the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) enacted by the United States Congress.

The State Board of Equalization filed a petition for a writ of certiorari with the United States Supreme Court asking for a review of the decision in the above cited *Ogilvie* case. The petition was denied on November 30, 1981. (See *State Board of Equalization of the State of North Dakota v. Ogilvie*, ---- U.S. ----, 102 S.Ct. 644, (1981).

In addition to the decision of the federal courts in the *Ogilvie* case holding that operating personal property of railroads in North Dakota is exempt from taxation, the United States Congress enacted two laws in 1981 relating to taxation of Amtrak. The first was Public Law 97-35 (95 Stat. 357), the Omnibus Budget Reconciliation Act that was approved on August 13, 1981. Section 1178 (95 Stat. 692) of that law, provides an exemption for Amtrak from taxation of its operating property. The second law was P.L. 97-102 (95 Stat. 1442), the Department of Transportation and Related Agencies Appropriation Act, 1982, which was approved on December 23, 1981. It provides appropriations to the Department of Transportation for the fiscal year ending September 30, 1982, and includes (95 Stat. 1451) for Amtrak a provision, 'Grants To The National Railroad Passenger Corporation', the second paragraph of which prohibits Amtrak from using any of its appropriation or other assets to pay any tax to a state or its political subdivision.

It is therefore clear that the 1981 assessment of Amtrak's property, which consisted entirely of personal property, is invalid and that the property is exempt under federal law from taxation in North Dakota.

II.

The State Board of Equalization's 1981 assessment of Amtrak property was certified to the counties as provided in Section 57-05-04, N.D.C.C., and that section also provides that railroad property assessed by the State Board of Equalization 'shall be taxed as personal property is taxed in each county.' Section 57-20-07, N.D.C.C., provides that the county treasurer is the collector of property taxes. Chapter 57-22, N.D.C.C., provides that the county treasurer, as assisted by the sheriff, shall enforce the collection of delinquent personal property taxes. But, as explained above, Amtrak's operating personal property is exempt from taxation and the 1981 property taxes levied on it are invalid and uncollectible.

The treasurers of the counties to which the 1981 assessment of Amtrak's property was certified as provided in Section 57-05-04, N.D.C.C., should therefore be advised that they and the sheriffs do not have the authority to enforce collection of the 1981 taxes levied on Amtrak's property because under federal law that property is exempt from taxation.

III.

Railroad operating property is taxed as personal property, as provided in Section 57-05-04, N.D.C.C., but because Amtrak's property is exempt from taxation as explained above, the 1981 taxes levied on the operating personal property are invalid and uncollectible.

Section 57-22-11, N.D.C.C., provides that at its regular meeting in January of each year the board of county commissioners shall examine the sheriff's report on personal property taxes and may cancel any of the taxes on the report that it is satisfied cannot be collected. The sheriff's report referred to is the annual report required by Section 57-22-09, N.D.C.C.

The 1981 uncollectible personal property taxes levied on Amtrak's property as will be shown in the sheriff's annual report made pursuant to Section 57-22-09, N.D.C.C., should therefore be cancelled by the boards of county commissioners at their January, 1983, meeting as provided in Section 57-22-11, N.D.C.C.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, ND.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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