

**LETTER OPINION
2000-L-104**

June 28, 2000

Mr. Terry W. Elhard
McIntosh County State's Attorney
PO Box 248
Ashley, ND 58413-0248

Dear Mr. Elhard:

Thank you for your letter inquiring how property taxes are to be pro rated under N.D.C.C. § 40-01-08 when a building is removed from the land.

N.D.C.C. § 40-01-08, as amended by the 1987 Legislative Assembly, provides as follows:

No person may remove a building from any lot or tract of land in any municipality, unless it is assessed as personalty or exempt from taxation, until after the taxes and special assessments then due have been paid, nor until the owner shall have paid into the sinking fund for the retirement of any bonded indebtedness of the municipality an amount equal to the just share of the tax which would then be required against the property in ~~said~~ the municipality to pay the principal outstanding, less amount in sinking funds, of the bonded indebtedness of ~~such~~ the municipality. The phrase "taxes and special assessments then due" means all taxes and special assessments that have been levied plus a pro rata estimated tax for the current assessment year. For property classified as residential, "special assessments then due" means the sum of the installments of special assessments certified to the county auditor for extension on the tax list plus the pro rata installment of the special assessment to be certified in the current assessment year. If the building is removed without the payment of the taxes and special assessments and pro rata share of bonded indebtedness, ~~such~~ the taxes, special assessments, and pro rata share of bonded indebtedness shall be a lien on the building notwithstanding its removal as well as upon the lot, lots, tract, or tracts of land from which the ~~same~~ building was

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removed. This section does not apply where a building is removed to permit the erection or installation of improvements equal or greater in value than the building removed. Any person violating the provisions of this section is guilty of a class A misdemeanor.

S.L. 1987, ch. 487, § 1. (Overstriking and underlining represent the amendment).

Specifically, your inquiry is what constitutes the . . . "pro rata estimated tax for the current assessment year." For the following reasons, it is my opinion that the proration that must be paid before the building is removed is that portion of the estimated tax attributable to the building.

If a statute is ambiguous, its legislative history may be considered. N.D.C.C. § 1-02-39(3). While it is not entirely clear from the record, a reading of the March 9, 1987, Bill Summary prepared by the Legislative Council staff and a review of the January 29, 1987, testimony before the Senate Committee on Political Subdivisions and the March 6, 1987, testimony before the House Committee on Political Subdivisions creates the inference that there was concern that legislation was needed to ensure that tax revenue was not lost because of the removal of a building.

This inference is greatly strengthened when N.D.C.C. § 40-01-08 is read with the statutes that primarily provide the procedure for the ad valorem assessment process.

"All real property subject to taxation must be listed and assessed every year with reference to its value, on February first of that year." N.D.C.C. § 57-02-11(1). Changes made in the ownership, use, or other status of taxable property after the February first assessment date do not provide a basis for changing the assessment that was made that year in reference to the value and taxable status of the property on February first unless there is a statute that expressly provides for changing that assessment. 1981 N.D. Op. Att'y Gen. 345, 347 (Oct. 21 to Alvin Hausauer).

The assessor . . . "shall determine both the true and full value as defined by law and the assessed value of each tract or lot of real property listed for taxation, and shall enter those values in separate columns, and the true and full value and assessed value of all improvements and structures taxable thereon in separate columns, opposite such description of property, and in another column shall

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show the total assessed value of the property by adding the totals of the two previous assessed value columns." N.D.C.C. § 57-02-34. Thus, an assessment of land and an assessment of an improvement on the land are done separately.

<PAGE NAME="p.L-106">"All real . . . property taxes . . . become due on the first day of January following the year for which the taxes were levied." N.D.C.C. § 57-20-01.

Reference to the . . . "pro rata estimated tax for the current assessment year" as found in N.D.C.C. § 40-01-08 would be an estimated tax based upon the separate February first value that the assessor placed upon the building that is about to be removed.

Finally, "when the [Tax] Commissioner interprets a statute on a complex and technical subject, the [Tax] Commissioner's interpretation is entitled to appreciable deference if it does not contradict the language of the statute, or if it is not arbitrary and unjust." Kinney Shoe Corp., 552 N.W.2d 788, 790. 1999 N.D. Op. Att'y Gen. 36, 38 (June 7 to Stephen Rice).

An inquiry made of the Tax Commissioner's Property Tax Division reveals that the Tax Commissioner interpreted the 1987 amendment to N.D.C.C. § 40-01-08 to require that the proration that must be paid before a building is removed is that portion of the estimated tax attributable to the building. This interpretation must be given deference because it does not contradict the language of the statute.

Sincerely,

Heidi Heitkamp
Attorney General

rww/vkk