

**LETTER OPINION
2001-L-41**

October 9, 2001

Honorable Rick Clayburgh
State Tax Commissioner
600 East Boulevard Avenue
Bismarck, ND 58505-0599

Dear Mr. Clayburgh:

Thank you for your letter written on behalf of the State Board of Equalization relating to the exemption provisions of N.D.C.C. § 57-02-10. The question presented in your letter relates to lands subject to permanent easements under the United States Department of Agriculture Natural Resources Conservation Service's Emergency Watershed Protection (EWP) Program. You indicate there are three categories of easements in the EWP Program. The categories differ in the extent to which the land is authorized to be productive. You ask whether land in the second category qualifies for exemption from taxation under N.D.C.C. § 57-02-10.

It is my understanding, from the documents you provided, the EWP Program authorizes flood plain easements to be purchased on lands that have serious recurring flooding problems. The purpose of the EWP Program is to: (1) protect lives and property from floods, drought, and the products of erosion; (2) retard soil erosion through the restoration, protection, or enhancement of the flood plain; (3) allow the unimpeded reach and flow of any waters in, over, upon, or through the easement area including the restoration, reconnection, and enhancement of water conditions on the easement area; (4) eliminate future disaster payments that would otherwise be applicable to the area; and (5) conserve natural values including fish and wildlife habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetics and environmental education. USDA flyer entitled "Emergency Watershed Protection Program - Flood Plain Easement," July 1998.

Section 57-02-10, N.D.C.C., provides in pertinent part:

The board of county commissioners is authorized and directed to remove from the tax rolls and to declare as exempt from taxation all inundated

lands upon which the owner thereof has granted or hereafter shall grant a permanent easement to the United States of America, its instrumentalities, or agencies, for the purpose of constructing, maintaining, and operating water or wildlife conservation projects . . . and such lands so removed from the tax rolls shall remain exempt until such time as such water or wildlife conservation projects . . . shall have been abandoned. Such lands shall not be removed from the tax rolls and declared exempt from taxation until such time as the construction of such water or wildlife conservation projects . . . thereon shall have been completed.

(Emphasis supplied.)

Words in a statute are to be understood in their ordinary sense, and given the meaning an ordinary person would get from reading the section. N.D.C.C. § 1-02-02; State v. Velasquez, 602 N.W.2d 693, 695 (N.D. 1999). The word “inundated” in an ordinary sense as used in this statute means “1. To cover with water, esp. flood water; overflow. 2. To overwhelm as if with a flood; swamp.” The American Heritage Dictionary 674 (2d coll. ed. 1991).

“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). Thus, whether land qualifies for the exemption under N.D.C.C. § 57-02-10 depends on the facts, as they exist on February 1st of the assessment year:

Section 57-02-11(1), N.D.C.C., provides for the listing and assessment of real property annually “with reference to its value” on February first of the assessment year. This requirement that it be assessed with reference to its value on February first of the assessment year means that its taxable or exempt status and its value are determined with respect to the facts existing on the February first assessment date. See United Telephone Mutual Aid Corporation v. State, 87 N.W.2d 54 (N.D. 1957).

1981 N.D. Op. Att’y Gen. 114.

In order for land in the EWP Program to qualify for this exemption under N.D.C.C. § 57-02-10, assessing officials must make the factual determination that on February 1st of the assessment year: (1) the subject land is inundated; (2) a permanent easement has been granted under the EWP Program; (3) the easement is for a water or wildlife conservation project; and (4) the construction of the water or wildlife conservation is completed.

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Thus, in response to your question, it is my opinion that the EWP Program category in which the land is located is not determinative of whether the land qualifies for the exemption from taxation under N.D.C.C. § 57-02-10. Whether land qualifies for the exemption will depend on the factual determination stated in the preceding paragraph.

Sincerely,

Wayne Stenehjem
Attorney General

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