North Dakota Office of State Tax Commissioner

Property Tax Newsletter

News and developments

A publication of the Property Tax Division

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2013 Legislation

The 2013 Legislature will adjourn in a couple of weeks. The few remaining property tax bills are amended almost daily and would be outdated by distribution time. Therefore, the Property Tax Division will wait until the Legislature adjourns to provide a synopsis of the property tax legislation implemented by the 2013 Legislature.

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Affidavits of Affixation

Background

Mobile homes are considered personal property. North Dakota Century Code (N.D.C.C.) ch. 57-55 provides for assessment of mobile homes and payments in lieu of property taxes. Excluded from the provisions of ch. 57-55 are mobile homes that are permanently attached to a foundation on land owned by or subject to a long-term lease by the mobile home owner. Those mobile homes are assessed and taxed as real property. Some states consider mobile homes that are set up on piers to be permanently attached; some do not. North Dakota property tax law refers only to mobile homes being permanently attached to a foundation. The Tax Department has not taken an official position on whether piers should be considered a foundation.

Financing terms for mobile homes have historically been less favorable than mortgage terms available to owners of real property. Mobile home owners have tried, mostly unsuccessfully, to have lenders treat their mobile homes as real property. Proponents of mobile homes being treated as real property drafted legislation for consideration by every state. North Dakota adopted that legislation in 2009.

2009 Legislation

House Bill 1301 was enacted relating to conversion of manufactured homes to real property, the affixation of manufactured homes to real property, and the conveyance and encumbrance of manufactured homes as real property. The term "manufactured" homes is interpreted to include mobile homes and modular homes.

Section 47-10-27 creates an affidavit of affixation to be executed and recorded. A manufactured home is deemed to be real property when:

(1) The home is permanently affixed to land owned or leased by the person who owns the manufactured home for a period of at least 20 years after the date of execution and the consent of the lessor of the real property;
(2) "Permanently affixed" is defined as anchored to real property by attachment to a permanent foundation;
(3) An affidavit of affixation conforming to the requirements has been recorded in the conveyance records in the office of the recorder in the county where the manufactured home is permanently affixed;

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(4) A copy of the recorded affidavit of affixation has been delivered for filing to the department of transportation; and
(5) The requirements of subsection 1 through 3 of section 39-05-35 (re title registration), as applicable, have been satisfied.

Much of § 47-10-27 addresses financing and security interests. When all requirements have been met and an affidavit of affixation has been recorded, the manufactured home is deemed to be real property. Any mortgage, deed of trust, lien, or security interest which can attach to land, buildings erected thereon, or fixtures affixed thereto attaches as of the date of recording of the affidavit in the same manner as if the manufactured home were built from ordinary building materials onsite.

An affidavit of affixation is not necessary for a manufactured home to be subject to assessment as real property. However, every manufactured home for which an affidavit of affixation has been recorded must be assessed as real property. If a manufactured home is owned by the same person who owns the land or who has possession of the land under terms of a lease of at least 20 years, ch. 57-55 requires the manufactured (mobile) home to be assessed as real property, regardless of whether an affidavit of affixation has been recorded. Manufactured homes assessed as real property prior to enactment of the affidavit of affixation statute continue to be assessed as real property. Their owners are not required to record an affidavit of affixation but may do so. An owner of a new manufactured home that meets the requirements of ch. 57-55 for assessment as real property is not required to record an affidavit of affixation but may do so.

An affidavit of affixation is not necessary for a maunufactured home to be subject to assessment as real property.

Section 47-10-27 does not establish a template for the affidavit of affixation or a source for the affidavit. If the home is financed the affidavit should be available from the creditor or one can be prepared by an attorney. The North Dakota Banker's Association has prepared a form which is available to their banks. A sample of the form has been provided to the State Bar Association Real Estate Attorneys. The Property Tax Division has a copy that we can e-mail to anyone who asks for it. It is not on our web site because it is not a Tax Department document. An excellent set of questions and answers on manufactured homes and affidavits of affixation is found on the Department of Transportation (DOT) website at www.dot.nd.gov/divisions/mv/docs/faqhomes.pdf .

Statement of Manufactured Home Full Consideration

The Statement of Manufactured Home Full Consideration is found on the Property Tax web site www.nd.gov/tax/property/forms/ under Other Forms. This document is to be filed with the County Recorder by the grantee (purchaser) of the manufactured home and is subject to the same confidentiality provisions as the Statement of Real Estate Full Consideration (N.D.C.C. § 11-18-02.2) through July 31, 2013. On August 1, 2013, ALL Statements of Full Consideration become public records. The consideration to be reported on the Statement is the amount paid for the manufactured home only, excluding land.

The full consideration paid for a manufactured home may be shown on the affidavit of affixation. In that case, a statement of manufactured home full consideration is not required.

Other manufactured-home-related forms found on the website under Monthly Reports for County Recorders are:

- The Monthly Report of the County Recorder – Manufactured Homes
- Report of the County Recorder – Schedule Amh
- Report of the County Recorder – Schedule Bmh

County Recorders submit reports for affixed manufactured homes to the Property Tax Division at the same time as the reports relating to real property transactions.

Affixed manufactured homes and other manufactured or mobile homes that are permanently attached to a foundation are assessed with the land as real property by township or city assessors. Once a manufactured home has been permanently attached to a foundation and assessed as real property, a subsequent purchaser of the property must place the amount of full consideration on the face of the deed or record a Statement of Real Estate Full Consideration.

Mobile (or manufactured) homes that are not permanently attached to a foundation on land owned or leased by the mobile home owner are assessed separately from the land by the county director of tax equalization, following provisions of N.D.C.C. ch. 57-55. The Statement of Mobile Home Full Consideration (different from the Statement of Manufactured Home Full Consideration) is required to be filed with the Department of Transportation (DOT) for mobile homes that are titled by DOT. Those mobile homes may or may not qualify for assessment as real property. The Statement of Mobile Home Full Consideration is found on the DOT web site at www.dot.nd.gov/forms/sfn03004.pdf .

Spousal Interest Considered Ownership

Applicants for the homeowners' property tax credit and disabled veterans' credit according to North Dakota Century Code (N.D.C.C.) §§ 57-02-08.1 and 57-02-08.8 must be owners of the property claimed. Assessment officials rely on the evidence of ownership of record – that being the names of individuals listed on deeds of ownership transfer.

Legal counsel of the North Dakota Office of State Tax Commissioner reviewed the law, legislative history, and advisory opinions issued by the Office. The Office of State Tax Commissioner takes the position that, for purposes of applications for homestead credit and disabled veterans' credit according to N.D.C.C. §§ 57-02-08.1 and 57-02-08.8, spousal or marital interest gives a person an interest in property in the spouse's name that may be considered ownership.

Applicants need to provide assessment officials with the necessary evidence to establish spousal interest.

". . . spousal or marital interest gives a person an interest in property in the spouse's name that may be considered ownership."

Change in a Property's Active Use Affects Taxable or Exempt Status

For taxation purposes, the assessment date is February 1. On this date assessors determine the taxable or exempt status of property and the valuation of taxable property.

When the active use changed from the last assessment date, assessors need to determine whether the change in use means the property is subject to taxation or whether the property is eligible for an exemption. Some examples follow.

A project operator qualified for the new business exemption according to N.D.C.C. ch. 40-57.1. During the last year, the operator discontinued the operation for which he had been granted the exemption. The use of the property changed since the last assessment date. N.D.C.C. § 40-57.1-06 requires the property operator to file a new application for an exemption or the assessor will assess the property for the current assessment period.

An elderly couple lived in a residence on a "farm" and used various out buildings as part of their farm operation. Since last February, the couple retired from farming, sold their farm equipment, and moved out of state. The son moved into the residence but works in town. The family rents the barn and grain storage bins to the neighboring farmer for that farmer's farm operation. The son uses the metal storage building for storage of his car collection and other family items. In this case, the residence is now occupied by someone who is not a farmer; therefore, the residence becomes taxable. Even

though the family receives rent for use of the barn and grain storage bins, the barn and bins are located on agricultural land and used as part of a farm operation so they are eligible for exemption as farm buildings. The metal storage building used by the son and family is not being used as part of a farm operation so would be taxable.

A farmhouse was last used as a farm residence but has been vacant for many years. It has qualified for exemption as a vacant farm residence. The family members who do not meet the requirements of being a "farmer" or a "farm laborer" use the residence as a storage facility and claim the exemption as a farm residence. In this case, the last or current use of that building is not use as a farm residence by one who is a farmer. Therefore, that building is subject to taxation.

If there is any concern about fraudulent activity regarding statements of full consideration, please contact your jurisdiction's legal counsel.

For the last assessment year, the unremarried surviving spouse of a disabled veteran occupied the residence that the veteran owned and resided in prior to his death. The surviving spouse remarried during the assessment year and remains in the residence. Because the surviving spouse remarried, the exemption no longer applies to the structure value.

Note, there is no statutory exemption for the surviving spouse of a blind person.

Assessors need to examine the facts of each situation on the assessment date to determine whether the property or the individual qualifies for the exemption claimed. If the property or person does not qualify for exempt status, the assessor must assess the property. The valuation of a property that changed to or from taxable or exempt status must be listed on the form titled "Changes in True & Full Value."

Fraudulent Activity Regarding Statements of Full Consideration

County directors of tax equalization and class I city assessors receive copies of statements of full consideration. Individuals or the representative of the grantee sign the statement knowing that there is a penalty for providing false information in a governmental matter. When assessment officials question the statement claimed or the price listed, they should contact the attorney for their jurisdiction. State's attorneys and city attorneys are charged with upholding the law and providing legal advice and action on behalf of the jurisdiction that they are charged to represent and protect. If there is any concern about fraudulent activity regarding statements of full consideration, please contact your jurisdiction's legal counsel.

Effective Date of Annexations

With all the development going on around the state, particularly in the western part of the state, developers want to annex property into cities for potential development and obtaining city services.

Whether or not land is annexed to cities based on petition by the owners or by an administrative law judge, annexations become effective for general taxation purposes on or after the next February 1. For example, the resolution to annex a tract of land is signed by the city governing board at its meeting on the third Tuesday in February 2013. The tract of land, even though it may be platted, will be assessed in the township for the 2013 assessment cycle.

The tract cannot be assessed by the city until the 2014 assessment cycle.

Assessor Responsibilities at Meetings of Governing Boards

Assessors are considered officers of townships and cities. Assessors submit their assessments for review and approval at the equalization meetings and make recommendations regarding requests for exemption, property tax credits, and applications for abatement. The assessor may be the most knowledgeable officer regarding assessment laws, property status, market values, exemptions, and credits and can provide valuable insight and advice to the governing board members.

Parliamentary procedure should be followed during meetings, and the chairperson running the meeting should be familiar with those procedures. Some governing boards consist of three members, and only two members must be present to constitute a quorum. When the board is small and the assessor is familiar with the members and the process, the assessor might be tempted to make a motion to approve an application or procedure.

Although the assessor is an officer of a city or township, the assessor is not a member of the governing board. Therefore, the assessor has no legal right to make any motions to the governing board or to vote on issues considered by the board.

Individuals claiming homestead credit must file an annual application with the assessor to receive the credit.

Applicants for Credits and Exemptions Must Provide Evidence to Support Claims

Individuals who claim property tax credits and exemptions are required to provide evidence to assessment officials to support their claims. In most cases applicants must complete and sign an application. The application requires information pertinent to the claim including ownership, age or disability, income, occupancy status (e.g., farm residence exemption), the statutory authorization, and any additional information requested to support the applicant's claim. The applications contain a statement indicating that the information provided is accurate to the best of the applicant's knowledge and that the applicant is aware that providing false information in a governmental matter is punishable as a Class A misdemeanor. Applicants need to sign and date the application.

In order to qualify for exemption of property located within cities, individuals and representatives of organizations must file an annual application for exemption with the assessor. Individuals claiming homestead credit must file an annual application with the assessor to receive the credit. Applicants for the disabled veterans' credit must file an application with the county auditor by February 1 of the first year for which the credit is claimed. For any subsequent year, an individual claiming the disabled veterans' credit must provide to the assessor or tax director, when requested, any information needed to support the claim for the exemption.

Assessors approve or deny credits and exemptions based on the facts on February 1, the assessment date. When the facts change during the year, individuals may request applications for abatement to change the original amount of credit or exemption. Following are two examples.

An individual qualified for the disabled veterans' credit as of February 1. The veteran disagreed with the rating awarded by the Veterans Administration and filed an appeal for a review of his disability. The disabled veteran's credit was allowed based on the facts as of February 1. The Veterans Administration reviewed the veteran's situation and changed his certification of disability. The veteran filed an application for abatement requesting a further reduction of his assessment based on the new certification of disability. As long as assessment officials have evidence that the revised certification of disability was effective as of the assessment date, the property owner would be entitled to the additional disabled veterans' credit for the year.

A homeowner was denied the homestead credit for the current year based on the fact that the applicant's income exceeded the allowable amount. The homeowner contacts the assessor and indicates some medical expenses were not included in the calculation. The assessor may allow the homeowner to submit an amended application and the homeowner may file an application for abatement; however, the assessor will want the applicant to provide evidence of the medical expenses claimed.

Individuals or organizations claiming exemption from property tax need to provide evidence to assessment officials to support their claim for a property tax credit or exemption.

Confidential Information in Assessment Offices

North Dakota Century Code § 44-04-18 provides, in pertinent part, that "[e]xcept as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. . ." Certain information listed on documents located in the offices of assessors and county directors of tax equalization is considered confidential and excluded from open record laws.

North Dakota Century Code § 44-04-17.1(16) defines 'record' as "recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. 'Record' . . . does include preliminary drafts and working papers. . . ."

Certain information listed on documents located in the offices of assessors and county directors of tax equalization is considered confidential and excluded from open record laws.

The following items are considered, by statute, as confidential and exempt from the open records laws.

- Statements of full consideration filed with the State Board of Equalization – N.D.C.C § 11-18-02.2 - until August 1, 2013. On August 1, 2013, they become open records.
- Income and expense information regarding commercial property – N.D.C.C § 57-02-11.2

A portion of the homestead credit application (lines 4-10) is confidential. See ND Attorney General's Opinion beginning on page O-417 of Section O of the Property Taxation Manual. North Dakota Attorney General's Opinions have the same effect as law until overturned by statute, a North Dakota Supreme Court decision, or another Attorney General's Opinion.

Disabled veterans' letters of eligibility (certification of disability), form DD214, and any portion of a document showing the veteran's file number and social security number are exempt from open records laws. This is the official position of the North Dakota Department of Veterans Affairs.

The penalty for disclosing confidential information is a class C felony. North Dakota Century Code § 12.1-13-01. Assessment officials need to ensure protection of the confidential information.

Electronic Newsletter

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