



Property Tax Newsletter

July 1998

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State Board of Equalization Meetings Scheduled

The North Dakota State Board of Equalization will meet Tuesday, August 4, 1998, at 9:00 a.m. CDT in the 8th floor Conference Room of the Office of State Tax Commissioner to review and take testimony on 1998 railroad and utility assessments.

On Tuesday, August 11, 1998, at 8:30 a.m. CDT the State Board of Equalization (the Board) will meet in the Pioneer Room of the State Capitol to consider applications for income tax exemption of new or expanding businesses. At 9:30 a.m. CDT the Board will review assessments of locally assessed property beginning with Eddy County. At 1:30 p.m. CDT the Board will review telecommunications gross receipts taxes.

The Board has not indicated any change in its policy of allowing a five percent tolerance for residential, commercial and agricultural property. That means that the Board will not order a change in residential and commercial property assessments for any county in which the median sales ratio for each of those two classes of property represents between 95 percent and 105 percent of market value. The Board will not order a change in agricultural land assessments of any county for which the average agricultural value approved by the County Board of Equalization represents between 95 percent and 105 percent of the county average value certified by the Tax Commissioner to that county.

It would be helpful to the Board if assessment officials would recommend to individuals who intend to appeal their assessments to the Board that they notify the Tax Commissioner (Secretary of the Board), in writing, of their intent to appear before the Board. It would also be helpful if assessment officials would notify the State Tax Commissioner's Office of individuals who will appeal their assessments to the Board of Equalization.

Proper Notification of Local Abatement Hearing Required

Whenever an application for abatement is filed with the county auditor, the county auditor sends a copy of the application to the city auditor or township clerk of the assessment district in which the property is located.

North Dakota Century Code (N.D.C.C.) § 57-23-06 specifies the requirements for notifying the applicant of the abatement hearings. Within ten days of receiving the application from the county auditor, the city auditor or township clerk *must* notify the applicant of the date, time, and location of the hearing before the governing body. The hearing before the city or township governing board must be held within 60 days of the date the notice was mailed and before the city or township governing board makes a recommendation regarding the application.

It is very important that the applicant is notified of the hearing before the local governing board meets to consider the

abatement application. Not only is it required by law but, it allows the applicant the opportunity to answer questions and present information to support the applicant's claim for a reduction in valuation. The courts have not ruled favorably on governing boards' actions when property owners were not given proper notification as required by law.

Whenever county auditors receive an application for abatement for which the local governing board did not notify the applicant prior to the hearing, the county auditor should return the application to the city auditor or township clerk with instructions that the applicant must be notified of the hearing before the local governing board. The board needs to make a recommendation based upon all facts presented at the hearing.

When determining whether or not to grant an abatement or refund of tax according to N.D.C.C. § 57-23-04, boards of county commissioners generally give considerable weight to the recommendation of the local governing board. Therefore, it is very important that the local governing boards allow applicants an opportunity to present information to support their claim and the assessor an opportunity to support his/her estimate of value. It would also be helpful to boards of county commissioners if local governing boards would provide a written explanation of the basis for their recommendation.

When county auditors forward abatement applications to a city auditor or township clerk, the State Supervisor of Assessments suggests they remind the city auditor or township clerk of the notification requirement.

State Supervisor Requests Update for Sales Ratio Study

Now that county directors of tax equalization and class I city assessors have a breathing spell between the meetings of the county and state boards of equalization, the Office of State Tax Commissioner has a project for them.

The State Supervisor of Assessments asks assessment officials to update their listing of county codes for the sales ratio study. Without a current listing of additions within assessment jurisdictions, it is difficult to verify and code information from the Bx schedules. Assessors and directors should verify whether the current sales ratio listing of county codes contains the names of all additions/subdivisions in the assessment jurisdiction. Assessment officials may submit the updated list to Judy Brosz in the Office of State Tax Commissioner.

Interim Taxation Committee Meets in July

The interim Taxation Committee of the Legislature will meet in the Roughrider Room of the State Capitol in Bismarck July 7, 1998, beginning at 9:00 a.m. CDT.

As of the date of this printing, an agenda was not available.

Telecommunications Gross Receipts Tax Affects Budgets And Maximum Levy Worksheets

The 1997 Legislature enacted a gross receipts tax on two-way telecommunications carriers, effective for 1998. This tax is in lieu of property tax on telecommunications property that the State Board of Equalization used to assess. The Tax Commissioner used to certify the valuations of telecommunications companies and mobile radio companies and the gross receipts taxes on rural telephone companies to the county auditors each fall.

A standing appropriation of \$8.4 million will be distributed to all political subdivisions in 1999 in the same ratio that the 1996 (payable in 1997) telecommunications company taxes, mobile radio company taxes, and rural telephone company gross receipts taxes were distributed. Under the statutory formula, all political subdivisions other than school districts will receive annually 4.9 percent more from the new gross receipts tax than they did in 1997 from property taxes on telecommunications companies and mobile radio companies; school districts will receive 4.9 percent more than they did in 1997 from the sum of property taxes on telecommunications companies and mobile radio companies plus gross receipts taxes on rural telephone companies. When preparing budgets, political subdivisions should account for the revenue they will receive in 1999 from the Telecommunications Gross Receipts Tax.

When preparing maximum levy worksheets for the 1998 levies, county auditors should adjust the base year taxes by including telecommunications company and mobile radio company values in "taxable value of property assessed in the base year but not assessed in the current year." The amount of property tax needed to meet budgetary requirements is reduced because of the expected revenue from the Telecommunications Gross Receipts Tax.

Tax Commissioner's Office Clarifies Property Tax Exemption

The Office of State Tax Commissioner was requested to clarify whether the resolution to allow exemption of a new single family residential property must be passed prior to commencement of construction or prior to assessment of the improvements.

North Dakota Century Code § 57-02-08(35) specifically provides for exemption of *new* single family residences. The North Dakota Attorney General stated in Opinion 86-10 that the legislative intent in enacting this exemption was to stimulate the construction industry.

We took the position that, because the statute specifically provides for exemption of *new residences* and the legislative intent of the exemption was to stimulate new construction, the governing board must pass the resolution prior to construction.

The resolution may be amended to limit the exemption, not expand it. Therefore, the resolution cannot be amended to allow exemption of residences built prior to the date that the original resolution was passed.

Assessment Problem

A parsonage was offered for sale by bids as of the assessment date (February 1) but was not sold until a later date. An officer of the church filed an application for exemption for the year. Is the property eligible for exemption according to N.D.C.C. § 57-02-08(7) or (9) for any part of the year?

Assessors must list and value all taxable property according to its value on February 1 each year. N.D.C.C. § 57-02-11. The assessor must first determine whether the property qualifies for an exemption. Both N.D.C.C. §§ 57-02-08(7) and (9) require that, to qualify for property tax exemption, the property must be *owned* by a religious organization and *used or intended and ordinarily used* as a parsonage or residence of the minister in charge of church services. The Office of State Tax Commissioner takes the position that, if the owner is actively trying to sell the property as of the assessment date, e.g., lists the property with a realtor or advertises the property in the newspaper, the owner demonstrates that owner does not *intend* to use the residence as a parsonage. The assessor should assess the property.

County Auditor Required to Notify Public of County Board of Equalization Meeting

North Dakota Century Code § 57-23-02 requires county auditors to publish a notice of the meetings of the township and city boards of equalization. This statute, however, is silent regarding the county auditor's responsibility to publish the meeting date of the county board of equalization. North Dakota Century Code ch. 57-12, pertaining to the county board of equalization, is also silent regarding public notification of the meeting date.

North Dakota Century Code 11-11-05 provides that the chairman of the board of county commissioners, or a majority of the members of the board, may call a special meeting of the board by publishing a notice in the official newspaper of the county or by giving notice, in writing, to all members of the board. Because the county board of equalization meeting is required by law (N.D.C.C. ch. 57-12), it does not qualify as a special meeting according to N.D.C.C. § 11-11-05.

However, N.D.C.C. § 44-04-20, known as the open records law, provides that public notice must be given of all meetings of a public entity. Subsection 1 of N.D.C.C. § 44-04-20 provides that, unless otherwise specified by law, resolution, or ordinance, the notices do not need to be published. Subsection 4 of N.D.C.C. § 44-04-20 provides that the notice must be posted at the principal office of the governing body holding the meeting and at the location of the meeting on the day of the meeting. The notice regarding a meeting of the board of county commissioners must also be filed in the office of the county auditor.

As a matter of public service, county auditors could include the meeting date and location of the county board of equalization in the notice required by N.D.C.C. § 57-23-02.

Mobile Home Moving Permit

Before a mobile home owner may move a mobile home from its existing location, the owner must obtain a moving permit from the county director of tax equalization. Before the tax director may issue a moving permit, the owner must pay the *full* amount of taxes, penalties and interest levied against the mobile home for the year.

For example, a mobile home owner paid the first half of the mobile home tax for the current year and in June requests a moving permit from the tax director. There is no statutory provision that allows the owner to obtain a moving permit by paying only part of the mobile home tax for the year. To receive a mobile home moving permit, the owner must pay the *entire* amount of tax levied against the mobile home for the current year as well as any taxes levied for prior years plus penalties and interest due. The mobile home tax is levied and payable on January 10th of each year. Therefore, the full year's mobile home tax must be paid in order to obtain a moving permit.

1998 NCRAAO Conference A Success

Congratulations to all the assessment officials who worked so hard to make the NCRAAO Conference such a success. The educational sessions consisted of good topics and the Conference was well attended by North Dakota assessment personnel. The Conference provides a good opportunity to attend quality education and network with other assessment officials and personnel.

The State Supervisor of Assessments will allow continuing education credit to participants who attended the educational sessions. Assessment personnel should send copies of certificates for the sessions they attended to the Property Tax Division. Individuals who are not yet certified as County Director of Tax Equalization may submit their certificates for recognition of attendance.

E-Mail Addresses Wanted

E-mail is a fast and cost-effective means of communicating between offices. The Office of State Tax Commissioner would like to compile a list of e-mail addresses for the following offices:

City Assessors
County Directors of Tax Equalization
County Auditors
County Treasurers
County Registers of Deeds

If your office has an E-mail address, please send it to LuElla Wedge on the internet at mmail.lw143@ranch.state.nd.us. Addresses received by August 15 will be compiled into a list and made available upon request.

County Treasurers Must Distribute Taxes Monthly

The ND Attorney General recently responded to a question whether county treasurers may hold property taxes collected in December but not due until January and then distribute those taxes to the political subdivisions in February.

North Dakota Century Code §§ 11-14-10 and 11-14-16 require the county treasurer to distribute by the tenth working day of each calendar month to the political subdivisions all taxes and money received and required to be distributed.

The Attorney General stated that the statutes are based on actual receipt of taxes levied and collected. Therefore, county treasurers cannot wait for prepaid property taxes to become due. They must distribute to the appropriate political subdivisions on or before the tenth working day of each calendar month taxes levied and collected according to N.D.C.C. §§ 11-14-10 and 11-14-16.

Abstract of Exempt Property Not Required for 1998

A few county directors of tax equalization have contacted the Property Tax Division to inquire whether they need to submit an abstract of exempt property this year.

Relax. The first abstract of exempt property is not due until 1999. The only property required to be listed on that abstract is property exempt by discretion of the local governing body or owned by a charitable organization and used for the charitable purpose for which it was organized.

Need Assistance?

Please direct property tax questions or concerns to:

Office of State Tax Commissioner
Property Tax Division
600 E. Boulevard Ave.
Bismarck, ND 58505-0599
Phone: (701)328-3127
Toll free within state: 1-800-638-2901, option 5
Fax: (701)328-3700
E-mail: mmail.bh758@ranch.state.nd.us
Website: <http://www.state.nd.us/taxdpt>

