

PROPERTY TAX EXEMPTION FOR PRIVATE USE OF BUILDINGS ON STATE LAND

It has been established by court decisions and opinions of the North Dakota Attorney General that a possessory interest in government-owned real property held by a nonexempt person is subject to taxation based on the value of the possessory interest, because no exemption is provided by law. North Dakota Attorney General's opinions 88-7, 89-6, 2005-L-12, 2005-L-05; *Otter Tail Power Co. v. Degnan*, 252 N.W. 619 (N.D. 1934); *Lower Yellowstone Irrigation District No. 2 v. Nelson*, 2 N.W. 2nd 180 (N.D. 1942); *United States v. Fresno County*, 429 U.S. 452 (1977). The policy on exemptions is summarized in the statutory provision that all property in this state is subject to taxation unless expressly exempted by law (North Dakota Century Code Section 57-02-03).

Under Section 57-02-26, leased property belonging to the United States or to the state or a political subdivision is taxable to the lessee. The tax imposed on a leasehold interest is collectable as a personal charge against the nonexempt lessee of the possessory interest under Section 57-24-31.

The Legislative Assembly has created two exemptions from property tax of a lessee's or owner's otherwise taxable interest in building space at a state institution of higher education. The two exemptions are provided in subsections 16 and 34 of Section 57-02-08, which provide:

57-02-08. Property exempt from taxation.

All property described in this section to the extent herein limited shall be exempt from taxation:

16. Property now owned, or hereafter acquired, by a corporation organized, or hereafter created, under the laws of this state for the purpose of promoting athletic and educational needs and uses at any state educational institution in this state, and not organized for profit.
34. Any building located on land owned by the state if the building is used at least in part for academic or research purposes by students and faculty of a state institution of higher education.

It is apparent from the language of subsections 16 and 34 that neither exemption is subject to approval or discretion of the local governing body and neither exemption has a limit on the duration of time for which the exemption applies. The lack of local control and the duration of these exemptions was raised as a concern by a member of the Grand Forks City Council at the November 2013 Taxation Committee meeting. Attached as an [appendix](#) to this memorandum is a copy of a memorandum from the Grand Forks City Assessor to the Grand Forks City Council providing information on taxable and nontaxable leaseholders and owners of buildings on University of North Dakota property.

ATTACH:1