

OFFICIAL OPINION NO. 92-01, Taxes and Annexation.

April 29, 1992

Wilson Kleibacker
Lake County State's Attorney
P.O. Box 45
Madison, South Dakota 57042

OFFICIAL OPINION NO. 92-01

Taxes and Annexation

Dear Mr. Kleibacker:

You have requested an Official Opinion of the Office of the Attorney General regarding the following facts:

FACTS:

The Lake County Commissioners have been approached by some citizens whose property was previously outside of the city limits of the City of Madison, but was annexed into Madison on August 20, 1990. The property is located in Herman Township on the west side of Madison.

The property owners are objecting to being taxed for the full year as if the property had for the full year been within the municipal boundaries of the City of Madison. The property owners point out that the property was only within the city limits for four months and eleven days in 1990.

Their position is that the property is assessed annually by the Director of Equalization on the first day of the year, at which time they were still within Herman Township. Herman Township is also concerned because it has lost any revenue it would otherwise receive from that property being within the township for 1990.

The argument further is that the 1990 assessments now due in 1991 are actually for 1990, and that city services were not provided to these property owners within the annexed territory for the full year, so they are paying for services they have not yet received.

The Department of Revenue has indicated that it is their policy to advise counties to tax the property based upon the taxing district the property is in at the time the Auditor calculates and spreads the tax levy. SDCL 10-17-1 and 10-17-2 charge the Auditor to calculate and spread the tax levies on all property within the taxing districts. I can find no state law that specifically addresses this question.

In regard to the above factual situation, you have asked the following questions:

QUESTIONS:

1. What is the proper way to tax property when it has changed taxing districts through annexation during a tax year, and what is the authority for that position?
2. Is there any mechanism available to allow proration of taxes amongst taxing districts based on the date the property changed districts?

GENERAL DISCUSSION

To properly answer the questions you have presented, the interaction of the assessment process and the budgeting process must be reviewed. These processes combine to provide the taxes necessary to finance local governments.

The analysis begins with a review of the assessment law setting the time the assessments take place:

SDCL 10-6-2. All real and personal property subject to taxation shall be listed and assessed annually during the first six months of each year, but the value of such property is to be determined according to its value on the first day of January preceding the assessment.

SDCL 10-6-2 gives us the time certain when the assessment of all property is to take place January 1 and also calls for the listing of all property subject to taxation.

The county director of equalization assesses all property within the county and the property owners have the opportunity to pursue appeals. SDCL 10-3-16, SDCL 10-11. Once the property has been assessed and all appeals exhausted, the value of each parcel of property within the county is certified as the true and full value. It is important to recognize that the value of each parcel of property is fixed as of January 1 of the year, regardless of any

annexation that may or may not take place during the calendar year or when such annexation took place.

It is the interaction between the assessed value of the property and the budgets for each individual taxing entity that yields the amount of taxes payable for each parcel of property. Therefore, it is also necessary to review the budgeting process.

At the local level, there are different taxing entities that have different budgeting periods. Townships, cities and counties are on a calendar year budget, from January 1 through December 31. Schools, however, are on a fiscal year budget from July 1st through June 30th of the following year. SDCL 13-26-1. Even though schools are on a fiscal year budget beginning on July 1, their budgets are meshed with the January 1 assessments calendar year one, which will yield taxes due and payable in calendar year two.

There is also a different time frame for the adoption of budgets for each taxing entity. For instance, the county budget is finalized in September. SDCL 7-21-12, 10-12-8. The township budget, on the other hand, must be finalized in March. SDCL 8-3-1, 8-3-2(8), 10-12-26. It is interesting to note that the budgets for the counties and the townships are adopted at different times, even though both are under the calendar year budgeting system. One can compare this with a school district's budget which is adopted in August. SDCL 13-11-2. A city's budget must be adopted in September of each year. SDCL 9-21-2.

Each of the different taxing entities certify to the county auditor the specific amount of money to be collected in real property taxes. SDCL 10-12-7. This takes place on or before the first day of October. SDCL 10-12-7. The county auditor then proceeds to make out the tax list and extend the tax to each parcel of property within the particular taxing district. SDCL 10-17-1, 2 and 3. After extending the taxes and making out the tax list, the county auditor delivers the certified tax list to the county treasurer for collection. SDCL 10-17-7. This certified tax list is turned over to the county treasurer on or before the 1st day of January, following the assessment, budgeting, and levy extension processes. SDCL 10-17-7. It is the solemn obligation of the county treasurer to collect the monies as certified by the tax list. SDCL 10-17-9.

The collection of tax revenues for the operation of taxing entities within the county is part of an integrated system that is time-dependent. In other words, there is a certain time line in which things must take place regarding the assessment process and the budgeting process before the county auditor ultimately spreads the taxes and delivers the tax list to the county

treasurer. Any attack or modification of any of the steps in this entire process necessarily affects the rest of the process and can lead to uncertainty and havoc within the taxing system. Therefore, one must review the annexation statutes and procedures to determine their place in this complex process, and whether they mesh with the system.

Annexation has no bearing on taxes collected by a county because the property will be within the same county regardless of whether it is within or without a municipality or a township.

Annexation, however, is very important when considering townships, cities, and schools. The situation most often present is that of a city annexing property that is within the bounds of an organized civil township. The civil township, typically, is assessing taxes for the maintenance of roads and bridges, snow removal, and fire protection within the township. When the city annexes a portion of the township, those services are no longer necessary to that portion of the township. At the time the annexation becomes effective, the city then has the obligation to take care of the annexed property, while that obligation is no longer present for the township.

Also important in the annexation discussion is the whole question of schools. SDCL 13-6-7 tells us that all territory within a municipality shall be part of the same school district. If a municipality annexes property that belongs to another school district, SDCL 13-6-7 essentially requires a realignment of the boundaries of each particular school district. Along with the boundary realignment, you have children now attending the "municipal" school system that previously attended another school system. This corresponds with the increased cost to the school system within the municipality and the decreased cost to the school system outside of the municipality.

Each of the local entities must plan for the future when they complete their budgeting cycle. The school must try to plan on how many students it has to educate during the upcoming school year. The city must plan on the amount of services it must extend to all individuals and properties within the municipality. The township must plan on the amount of monies needed to maintain township roads and bridges and to provide snow removal and fire protection. A major part of the planning process is to determine the extent of the services required. This determination necessitates knowledge of the boundaries of each entity during the budgeting process. If property has been annexed into a municipality, for instance, the

municipality must plan ahead and increase its budget to extend services to the new territory within the municipality.

Municipalities annex property pursuant to SDCL Chapters 9-4 and 9-5. Annexation by both of those chapters may take place at any time during the calendar year. I have reviewed both of those chapters; neither provides any guidance regarding the treatment of the annexed property for taxation purposes.

There are several schools of thought regarding the time period when an annexation becomes effective for tax purposes. One is that the January 1 listing and assessment date controls throughout the year, regardless of when the property is annexed. Another school of thought suggests that the October 1st deadline for submission of the budgets to the county auditor is the key time period. A third is that if an annexation takes place at any time during the calendar year, changes need be made in the budgets and extensions of levy for the taxes payable the very next year.

I believe the answer to the annexation issue can be found in SDCL 10-12-7:

All county, township, city, town, and school taxes, except special assessments in cities and towns, shall be levied or voted in specific amounts of money required and within the limitations fixed by law. The amount of such levies made by any of such taxing districts except counties shall be certified to the county auditor of the county by the clerk or corresponding officer of the taxing district on or before the first day of October of each year and such certificates shall be filed by such auditor as permanent records of his office and be open to public inspection at all times.

Any levy so filed may be altered in any respect permitted by law, by proper action of the governing body of the taxing district involved, at any time before extension of the tax for said district has been commenced by the county auditor, upon filing a properly amended certificate showing the alteration required.

SDCL 10-12-7 establishes the October 1st date that each taxing entity must certify to the county auditor the amount of taxes to be collected for a taxing district. This October date comes after the final budgets must be adopted for entities such as townships (SDCL 8-3-1, 8-3-2(8), 10-12-26), schools (SDCL 13-11-2), and cities (SDCL 9-21-2). SDCL 10-12-7 authorizes these entities to alter their tax request at any time before extension of the tax by the county auditor. I believe that language, found in the last paragraph of 10-12-7, is

dispositive as it recognizes that each of the entities within the county can change their tax levy requests. This is especially crucial for townships, which must budget in March of the year. If an annexation occurs after March, and SDCL 10-12-7 were not present, the township would be locked in to the amount of money requested even though it is no longer needed.

If an annexation takes place during the year, it would follow that each of the different taxing entities could calculate the effect of the annexation and adjust its budget accordingly. The township could adjust its budget down since they would, theoretically, have fewer obligations to fulfill. The city could adjust its budget upward to recognize that it will be supplying more services in the upcoming year. The schools could also look at the annexation to determine if their budgets need adjustment for the increased territory. Each of these separate entities will review an annexation to determine its effect, and have the opportunity under SDCL 10-12-7 to adjust its tax levy request.

Therefore, I am of the opinion that the January 1 listing and assessment date does not control which entity is able to levy taxes against what property for the taxing year. I am of the opinion that the determinative date is October 1 of each year, pursuant to SDCL 10-12-7.

IN RE QUESTION NO. 1:

Your first question asks the proper way to tax property when it has changed taxing districts throughout the year. It is my opinion that the location of the property within the various taxing districts is set as of October 1 of each and every year pursuant to SDCL 10-12-7. If the annexation is fully completed by October 1, the taxing entity's boundary on that date controls.

IN RE QUESTION NO. 2:

Your second question asks whether there are any mechanisms available to prorate the taxes amongst the various taxing districts. I have reviewed all of the pertinent statutes and I can find no authority for proration of taxes among the various taxing entities based upon the annexation of property. Since there is no authority for proration, that option is not available. See *Sioux Falls Municipal Employees Ass'n. v. Sioux Falls*, 233 N.W.2d 306, 309 (S.D. 1975).

Respectfully submitted,

MARK BARNETT
ATTORNEY GENERAL

MB/DDW/bec