

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2240

Introduced by

Senators Cook, O'Connell, Urlacher

Representatives Drovdal, R. Kelsch, Williams

1 A BILL for an Act to amend and reenact subsection 15 of section 57-02-08 of the North Dakota  
2 Century Code, relating to verification of claims for farm residence property tax exemptions; and  
3 to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the North Dakota  
6 Century Code is amended and reenacted as follows:

- 7 15. a. All farm structures and improvements located on agricultural lands.
- 8 (1) This subsection must be construed to exempt farm buildings and  
9 improvements only, and may not be construed to exempt from taxation  
10 industrial plants, or structures of any kind not used or intended for use  
11 as a part of a farm plant, or as a farm residence.
- 12 (2) Any structure or improvement used primarily in connection with a retail  
13 or wholesale business other than farming, any structure or  
14 improvement located on platted land within the corporate limits of a city,  
15 or any structure or improvement located on railroad operating property  
16 subject to assessment under chapter 57-05 is not exempt under this  
17 subsection. For purposes of this paragraph, "business other than  
18 farming" includes processing to produce a value-added physical or  
19 chemical change in an agricultural commodity beyond the ordinary  
20 handling of that commodity by a farmer prior to sale.
- 21 (3) The following factors may not be considered in application of the  
22 exemption under this subsection:
- 23 (a) Whether the farmer grows or purchases feed for animals raised  
24 on the farm.

- 1 (b) Whether animals being raised on the farm are owned by the  
2 farmer.
- 3 (c) Whether the farm's replacement animals are produced on the  
4 farm.
- 5 (d) Whether the farmer is engaged in contract feeding of animals on  
6 the farm.
- 7 b. It is the intent of the legislative assembly that this exemption as applied to a  
8 residence must be strictly construed and interpreted to exempt only a  
9 residence that is situated on a farm and which is occupied or used by a  
10 person who is a farmer and that the exemption may not be applied to property  
11 which is occupied or used by a person who is not a farmer.
- 12 (1) For purposes of this subdivision:
- 13 ~~(1)~~ (a) "Farm" means a single tract or contiguous tracts of agricultural  
14 land containing a minimum of ten acres [4.05 hectares] and for  
15 which the farmer, actually farming the land or engaged in the  
16 raising of livestock or other similar operations normally  
17 associated with farming and ranching, has received annual net  
18 income from farming activities which is fifty percent or more of  
19 annual net income, including net income of a spouse if married,  
20 during any of the three preceding calendar years.
- 21 ~~(2)~~ (b) "Farmer" means an individual who normally devotes the major  
22 portion of time to the activities of producing products of the soil,  
23 poultry, livestock, or dairy farming in such products'  
24 unmanufactured state and has received annual net income from  
25 farming activities which is fifty percent or more of annual net  
26 income, including net income of a spouse if married, during any  
27 of the three preceding calendar years. "Farmer" includes a  
28 "retired farmer" who is retired because of illness or age and who  
29 at the time of retirement owned and occupied as a farmer the  
30 residence in which the person lives and for which the exemption  
31 is claimed. "Farmer" includes a "beginning farmer" who has

- 1 begun occupancy and operation of a farm within the three  
2 preceding calendar years; who normally devotes the major  
3 portion of time to the activities of producing products of the soil,  
4 poultry, livestock, or dairy farming in such products'  
5 unmanufactured state; and who does not have a history of farm  
6 income from farm operation for each of the three preceding  
7 calendar years.
- 8 (c) "Livestock" includes nontraditional livestock as defined in section  
9 36-01-00.1.
- 10 (3) (d) "Net income from farming activities" means taxable income from  
11 those activities as computed for income tax purposes pursuant to  
12 chapter 57-38 adjusted to include the following:
- 13 (a) [1] The difference between gross sales price less expenses of  
14 sale and the amount reported for sales of agricultural  
15 products for which the farmer reported a capital gain.
- 16 (b) [2] Interest expenses from farming activities which have been  
17 deducted in computing taxable income.
- 18 (c) [3] Depreciation expenses from farming activities which have  
19 been deducted in computing taxable income.
- 20 (4) (2) (a) ~~When exemption is claimed under this subdivision for a~~  
21 ~~residence, the assessor may require that the occupant of the~~  
22 ~~residence who it is claimed is a farmer~~ The claimant of the  
23 exemption under this subdivision shall file a claim for the  
24 exemption before February first and provide to the assessor for  
25 ~~the year or years specified by the assessor a written statement~~  
26 an affidavit in a form provided by the tax commissioner in which it  
27 is stated that fifty percent or more of the net income of that  
28 ~~occupant, and spouse if married and both spouses occupy the~~  
29 ~~residence, was, or was not, net income from farming activities~~  
30 the claimant is entitled to the exemption under this subdivision.  
31 The affidavit must include an authorization, signed by each

1 individual whose income is considered in determining eligibility  
2 for the exemption under this subdivision, for the tax  
3 commissioner to examine the income tax returns of those  
4 individuals for only those taxable years for which income is a  
5 qualifying factor under this subsection. The authorization must  
6 also include permission for the tax commissioner to disclose to  
7 the assessor whether the claimant does or does not qualify for  
8 the exemption under this subsection. Every claim of exemption  
9 under this subsection must be forwarded to the tax commissioner  
10 for examination of relevant income tax return information.

11 (b) The assessor shall forward to the tax commissioner a copy of  
12 every claim of exemption and supporting affidavits filed under  
13 this subdivision. The tax commissioner shall provide for random  
14 review of at least fifty percent of claims of exemption to verify  
15 income eligibility. The tax commissioner shall notify the assessor  
16 of any claim of exemption for which the tax commissioner finds  
17 the claimant is ineligible. If the tax commissioner has not notified  
18 the assessor that a claimant is ineligible within thirty days after  
19 the tax commissioner has received a copy of the claim of  
20 exemption, the claimant is deemed eligible for the exemption.

21 (c) A claimant who received an exemption under this subdivision to  
22 which the claimant was not entitled is subject to payment of taxes  
23 and penalties and interest on delinquent property taxes as  
24 provided by law from the time the taxes should have been paid  
25 until they are paid.

26 ~~(5)~~ (3) In addition to any of the provisions of this subsection or any other  
27 provision of law, a residence situated on agricultural land is not exempt  
28 for the year if it is occupied by an individual engaged in farming who  
29 had nonfarm income, including that of a spouse if married, of more than  
30 forty thousand dollars during each of the three preceding calendar

1 years. This paragraph does not apply to a retired farmer or a beginning  
2 farmer as defined in paragraph 2.

3 ~~(6)~~ For purposes of this section, "livestock" includes "nontraditional  
4 livestock" as defined in section 36-01-00.1.

5 ~~(7)~~ (4) A farmer operating a bed and breakfast facility in the farm residence  
6 occupied by that farmer is entitled to the exemption under this section  
7 for that residence if the farmer and the residence would qualify for  
8 exemption under this section except for the use of the residence as a  
9 bed and breakfast facility.

10 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
11 December 31, 2004.