

August 2004

Introduced by

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 qualifications for the farm residence property tax exemption; and to  
3 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 improvement  
14 located on platted land within the corporate limits of a city, or any  
15 structure or improvement located on railroad operating property subject  
16 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~~ The exemption under this  
8 subsection as applied to a residence must be strictly construed and  
9 interpreted to exempt only a residence that is situated on a farm and which is  
10 occupied or used by a person who is a farmer ~~and that the exemption may not~~  
11 ~~be applied to property which is occupied or used by a person who is not a~~  
12 ~~farmer~~ whose household income for the most recently ended taxable year  
13 does not exceed forty thousand dollars. For purposes of this subdivision,  
14 "household income" includes total income as shown on the federal income tax  
15 return, before any adjustments, of residents of the farm residence, including  
16 only the farmer, the farmer's spouse, and any individual over age seventeen  
17 who is not a full-time student enrolled in secondary or higher education. For  
18 purposes of this subdivision:

- 19 (1) "Farm" means a single tract or contiguous tracts of agricultural land  
20 containing a minimum of ten acres [4.05 hectares] and ~~for~~ on which the  
21 farmer; is actually farming the land or engaged in the raising of  
22 livestock or other similar operations normally associated with farming  
23 and ranching, ~~has received annual net income from farming activities~~  
24 ~~which is fifty percent or more of annual net income, including net~~  
25 ~~income of a spouse if married, during any of the three preceding~~  
26 ~~calendar years. For purposes of this subdivision, "livestock" includes~~  
27 nontraditional livestock as defined in section 36-01-00.1.  
28 (2) "Farmer" means an individual who ~~normally devotes the major portion~~  
29 ~~of time to the activities of producing~~ produces for sale products of the  
30 soil, poultry, livestock, or products of dairy farming in such products'  
31 unmanufactured state ~~and has received annual net income from~~

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

- 1                   (5) ~~In addition to any of the provisions of this subsection or any other~~  
2                   ~~provision of law, a residence situated on agricultural land is not exempt~~  
3                   ~~for the year if it is occupied by an individual engaged in farming who~~  
4                   ~~had nonfarm income, including that of a spouse if married, of more than~~  
5                   ~~forty thousand dollars during each of the three preceding calendar~~  
6                   ~~years. This paragraph does not apply to a retired farmer or a beginning~~  
7                   ~~farmer as defined in paragraph 2.~~
- 8                   (6) ~~For purposes of this section, "livestock" includes "nontraditional~~  
9                   ~~livestock" as defined in section 36-01-00.1.~~
- 10                  (7) ~~A farmer operating a bed and breakfast facility in the farm residence~~  
11                  ~~occupied by that farmer is entitled to the exemption under this section~~  
12                  ~~for that residence if the farmer and the residence would qualify for~~  
13                  ~~exemption under this section except for the use of the residence as a~~  
14                  ~~bed and breakfast facility.~~

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