

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 verification of claims for the farm residence property tax exemption;
3 and 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 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 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. For purposes of
12 this subdivision:
- 13 (1) "Farm" means a single tract or contiguous tracts of agricultural land
14 containing a minimum of ten acres [4.05 hectares] and for which the
15 farmer, actually farming the land or engaged in the raising of livestock
16 or other similar operations normally associated with farming and
17 ranching, has received annual net income from farming activities which
18 is fifty percent or more of annual net income, including net income of a
19 spouse if married, during any of the three preceding calendar years.
- 20 (2) "Farmer" means an individual who normally devotes the major portion
21 of time to the activities of producing products of the soil, poultry,
22 livestock, or dairy farming in such products' unmanufactured state and
23 has received annual net income from farming activities which is fifty
24 percent or more of annual net income, including net income of a spouse
25 if married, during any of the three preceding calendar years. "Farmer"
26 includes a "retired farmer" who is retired because of illness or age and
27 who at the time of retirement owned and occupied as a farmer the
28 residence in which the person lives and for which the exemption is
29 claimed. "Farmer" includes a "beginning farmer" who has begun
30 occupancy and operation of a farm within the three preceding calendar
31 years; who normally devotes the major portion of time to the activities of

1 producing products of the soil, poultry, livestock, or dairy farming in
2 such products' unmanufactured state; and who does not have a history
3 of farm income from farm operation for each of the three preceding
4 calendar years.

5 (3) "Net income from farming activities" means taxable income from those
6 activities as computed for income tax purposes pursuant to chapter
7 57-38 adjusted to include the following:

8 (a) The difference between gross sales price less expenses of sale
9 and the amount reported for sales of agricultural products for
10 which the farmer reported a capital gain.

11 (b) Interest expenses from farming activities which have been
12 deducted in computing taxable income.

13 (c) Depreciation expenses from farming activities which have been
14 deducted in computing taxable income.

15 (4) When exemption is claimed under this subdivision for a residence, the
16 assessor ~~may~~ shall require that the ~~occupant of the residence who it is~~
17 ~~claimed is a farmer~~ claimant of the exemption provide to the assessor
18 ~~for the year or years specified by the assessor a written statement an~~
19 affidavit in a form provided by the tax commissioner in which it is stated
20 that ~~fifty percent or more of the net income of that occupant, and~~
21 ~~spouse if married and both spouses occupy the residence, was, or was~~
22 ~~not, net income from farming activities~~ the claimant is entitled to the
23 exemption under the terms of this subdivision. The affidavit must be
24 accompanied by an authorization, in a form provided by the tax
25 commissioner and signed by each individual whose income is
26 considered in determining eligibility for the exemption under this
27 subdivision, for the tax commissioner to examine the returns of those
28 individuals and disclose to the assessor whether the claimant does or
29 does not qualify for the exemption under this subsection.

30 (5) ~~In addition to any of the provisions of this subsection or any other~~
31 ~~provision of law, a residence situated on agricultural land is not exempt~~

1 for the year if it is occupied by an individual engaged in farming who
2 had nonfarm income, including that of a spouse if married, of more than
3 forty thousand dollars during each of the three preceding calendar
4 years. This paragraph does not apply to a retired farmer or a beginning
5 farmer as defined in paragraph 2.

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

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

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