

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2218**

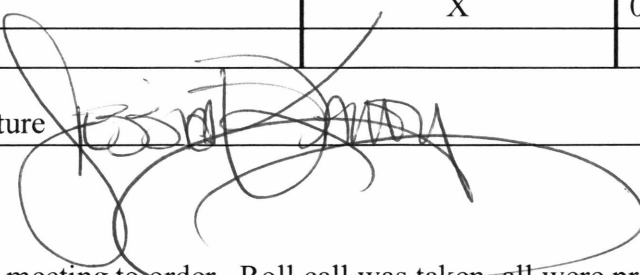
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2218

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/19/99

Tape Number	Side A	Side B	Meter #
1	X		3675-END
		X	0-1100
Committee Clerk Signature 			

Minutes:

Senator Mutch called the meeting to order. Roll call was taken, all were present.

Senator Mutch opened the hearing on SB 2218.

Senator Holmberg introduced the bill. He gave some background history and handed out a packet of information (enclosed).

Senator Heitkamp: Does he derive 50% or more income from the land?

Senator Holmberg: He is an older gentleman who is retired, this is his work.

Senator Heitkamp: The reason I bring it up is because on Senate Finance and Tax that was the big deal, there was always a problem with that.

Senator Krebsbach: Are you aware of any other situation similar to this or is there a possibility that in this particular case we could grandfather this gentleman in, in the category he wants?

Senator Holmberg: Throughout the drafting of this bill, the intent was always to try to do that.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb 2218

Hearing Date 1/19/99

Senator Mutch: Do you have any idea what his payroll was?

Senator Holmberg: No I don't know for sure.

Senator Tallackson also spoke in favor of SB 2218. He mentioned that he has known this individual for many years. He is just trying to be an honest person. He would like to remain a farmer.

Ray Gudajtes from Job Service North Dakota spoke neutrally. His testimony is enclosed.

Senator Sand: The forgiveness by ND to someone makes the person eligible to send much more money to Washington, DC, is that so?

Ray Gudajtes: That's correct.

Senator Mutch: What's the threshold for farmers?

Ray Gudajtes: The agricultural workers are covered if the employer has 10 or more employees in any 20 calendar weeks, or a quarterly payroll of \$20,000.

Senator Mutch: The same situation if they don't have to pay unemployment tax then how does this federal affect those farmers then?

Ray Gudajtes: Until the employer meets the criteria I just mentioned they are not liable for FUTA tax.

Senator Mutch: Then how would this individual that has this grievance here, how would he place that, if he was classified as a farmer, how would he be a liability then?

Ray Gudajtes: Federal law would not recognize that exclusion they still define this entity as an agricultural entity.

Senator Mutch: So if you had a chicken farm or something then you would be okay?

Ray Gudajtes: Yes.

Senator Klein: If we declare this person a farmer how will the federal law apply, but you saying even though the state may declare them a farmer the federal government would not declare them a farmer and they would still fall into the FUTA guidelines.

Ray Gudajtes: Yes

Senator Krebsbach: How many employees does this man have? He has operated from 1972-1998 as a farm what brought about the reclassification?

Ray Gudajtes: I would like to refer that question.

Mike Wilma from Job Service took the question asked by Senator Krebsbach.

Mike Wilma: He was considered non-agriculture because of an audit. The operation consists of a hunting club, dog kennel, and clay shooting. The breakdown of his income is about 50% from dogs, 10% from clay, and 40% from hunting.

Senator Mutch: So it was a state determination not a federal that made this change?

Mike Wilma: Right.

Senator Thompson: Whether it's game bird or other type of livestock there should be intent the same. If you think it's a farmer for one it should be a farmer for the other.

Mike Wilma: I would have to consider that, it's not something I really thought about.

Senator Sand: As I understand it this audit did not come about because he got income from the birds, it was because he got income from the hunting club, this part of this was not farm and put the whole thing in a commercial aspect. Is that so?

Mike Wilma: That is basically my understanding.

Senator Sand: If we classify it now as a farm you might say the tail isn't going to wag the dog.

Mike Wilma: It's your purgative to classify them.

Senator Holmberg: When he started this farm it all started with a game farm and eventually led into everything there is now. Each enterprise goes with the other.

Senator Klein: I think we want to help this gentleman out but the testimony needs to be in front of the FUTA people because that is where the real issue is coming from.

Senator Mutch: I think we need to hear a little bit more. I had agreed with the sponsor that we wouldn't act on this bill until further testimony could come down here. Maybe this won't be the only fellow who will be grieved by this hearing.

Senator Thompson: What other areas are we going to get into and do audits on and get other people.

Senator Mutch asked that the committee delay action until next week.

Senator Mutch closed the hearing.

Committee discussion took place on January 28, 1999

Senator Klein moved for a do pass on SB 2218. Senator Thompson seconded his motion. The motion carried with a 6-0-1 vote.

Senator Thompson will carry the bill.

**FISCAL NOTE**

Return original and 10 copies)

Bill/Resolution No.: SB 2218 Amendment to: \_\_\_\_\_

Requested by Legislative Council \_\_\_\_\_ Date of Request: 1-13-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

Currently no business registered with the unemployment insurance program is classified with the Standard Industrial Code (SIC) 0971, Hunting and Trapping, and Game Propagation. Consequently, there would be no impact on Special Funds (Unemployment Insurance Trust Fund).

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:		0		0		0
Expenditures:		0		0		0

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: None
- b. For the 1999-2001 biennium: None
- c. For the 2001-03 biennium: None

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
No Impact			No Impact			No Impact		

If additional space is needed, attach a supplemental sheet.

Signed Wayne E. Kindem

Typed Name WAYNE E. KINDEM

Date Prepared: 1-15-99

Department JOB SERVICE NORTH DAKOTA

Phone Number 328-3033

SU 81354

Date: 1/27/99

Roll Call Vote #: 2218

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By KLEIN Seconded By THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment THOMPSON

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 28, 1999 10:00 a.m.

**Module No: SR-18-1354**  
**Carrier: Thompson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2218: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2218 was placed on the Eleventh order on the calendar.



**1999 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2218**

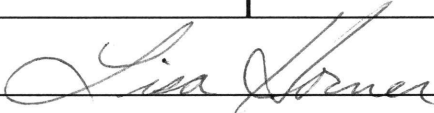
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2218

House Industry, Business and Labor

Conference Committee

Hearing Date 2-15-99

Tape Number	Side A	Side B	Meter #
1	x		3.2-28.5
Committee Clerk Signature 			

Minutes: BILL SUMMARY: Relating to the exception of agricultural labor from employment subject to unemployment compensation insurance coverage. Chairman Berg opened the hearing.

Ray Gudajtes, Job Service : I am here as a neutral party to present informational testimony. (See attached testimony)

Sen. Holmberg, Dist. 17, Grand Forks : Testified in support of the bill. This bill was put in because of a disagreement between a farmer and job service. We are not here to say who is or isn't to blame. That is not the intent. This gentlemen had been a farmer since 1972, and he was classified at that time, by the Unemployment Compensation Bureau as exempt. He did not ask for that, but that's what they told him he was. Two years ago, Job Service did an audit. Under their definition, they said he was not a farmer. This caused anger on his part, because he was a farmer. He wants to die a farmer. He is not trying to avoid paying benefits. He has worked with Job Service. Job Service said if we pass this bill, the farmer is going to have to pay more in taxes to federal government, then he would if we did not pass the bill. The farmer said, fine. I'll pay.

(Sen. Holmberg gave committee a handout.)

Vice Chair Kempenich: Who did the farmer rent his cultivated land to?

Sen. Holmberg : I don't know.

Rep. Ekstrom : 11.3 How many employees does this person have?

Sen. Holmberg : It varies, seasonally, I can't tell you that. In the law suit, the court decided on the side of Job Service. The only remedy the farmer has is legislation.

Chairman Berg : The farmer can't exclude himself from federal liability.

Ray G. : 13.5 No, he may not, as long as he has employees, he must be a part of that.

Rep. N. Johnson : If this bill passes, how many other people will this impact?

Ray G. : 17.2 At this point, we do not have another entity in the unemployment insurance, covered under this definition.

Rep. Klein : 17.7 It seems to me he is presently paying .8% and if he goes into the federal system, he'd have to pay 6.2%.

Ray G. : That's correct. He's paying .8% for federal portion and 2.2% or less for the state.

Rep. Stefonowicz : 18.3 Are there ever cases in law or differences in our definitions and the federal definitions of a group?

Ray G. : 18.7 There is one that deals with corporate officers.

Rep. Severson : 19.0 Are there farm management places, who might be excluded. If we do, won't they have to pay 6.2%.

Ray G. : 19.6 We understand there are other entities out there. It's just they are not liable for unemployment taxation, now. For a variety of reasons.

Rep. Keiser : 20.9 I'm totally confused. He wants to be considered a farmer again and pay more.

Ray G. : He wants to be known as an agricultural entity, not a commercial entity. He has changed his focus and expanded into other areas; hunting, crop sharing, kennel, etc. We did an audit, we figured 50% of his business earnings were from kennel operations. 40% was from hunting preserve and 10% crop sharing. That is how we made our determination.

Rep. Severson : 27.5 How many employees did he have?

Ray G. : At the time of audit, he said three, but I don't know how many were full-time. One for sure was full-time.

Rep. Keiser : 28.0 If we strike the language on lines 10 and 11, what effect will this have on other people who want to use that section as an exemption?

Ray G. : 28.4 It will not effect them, it just cleans up the language.

Hearing no other testimony for or against this bill, the hearing was closed. Held over.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 2218 3-2-99

House Human Services Committee

Conference Committee

Hearing Date 3-2-99

Tape Number	Side A	Side B	Meter #
3	x		1.2 - 33.6
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **HB 2218**

Chairman Berg opened the discussion of HB 2218.

George Newton explained to the committee the reasons he submitted this bill to the legislature.

He wanted Job Service to reclassify his farm from a commercial operation back to a farming operation.

The committee had a lengthy discussion with George about why Job Service changed his reclassification. The committee's concern was what the results would be to other farmers if this bill passed.

Chairman Berg closed the hearing.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2218

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-3-99

Tape Number	Side A	Side B	Meter #
2	x		789 - 1339
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **SB 2218**

Chairman Berg opened the discussion on SB 2218.

Rep. Lemieux: I have information for the committee. What we are asked to do is reclassify game farms as Agricultural farms. The lie is that in order for him to have to pay as a farmer into unemployment, either state or federal, is if he would have over \$20 thousand in salaries per quarter or if he has ten or more workers in one year. If he is a corporation he must include the officer's salaries in the total calculation of benefits. The next issue is by being reclassified by Job Service as a commercial entity. His major concern is that he would lead to the potential for the county tax accessor to come in and reclassify his whole farming operation.

Chairman Berg: I have a problem with doing something for someone so they can get around another level of government. What I want to know is he really going to end up paying more or less to Job Service?

Rep. Lemieux: Before he was reclassified he was paying nothing. If we classify, as a legislative assemble, then it could go back.

Rep. Klein: If we do pass this bill, will this have any impact on others out there that don't even know that this is happening?

Rep. Froseth: I think if he incorporated his game farming activities as a separate corporation and that he has hay on his 160 acres, then that could qualify him as a farm and exempt his buildings as farm buildings.

Rep. Thorpe: Unless we vote for this bill I think that with the can of worms that was opened up with Job Service in regards to this bill, we are going to be back here every two years with a new farm issue that should be Agricultural.

Chairman Berg: One of my frustrations in the legislative process is if someone has a problem with one of our agencies so they come in with a bill and poke them in the eye. If we are doing our job as legislators we should correct the problem within the agency rather than try and make exceptions for every person that's out there. If there is any side line to what the issue here is, we should learn what was the problem with Job Service. Was Job Service out of line? How do we as legislators be sure that other individuals don't put out their hats and go through the same hoops?

Chairman Berg closed the hearing.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2218.1

House Human Services Committee

Conference Committee

Hearing Date 3-8-99

Tape Number	Side A	Side B	Meter #
1	x		8.2
		x	0-25.1
Committee Clerk Signature <i>Lisa Loner</i>			

Minutes:

SB 2218.1

Chairman Berg opened the meeting on the bill.

The committee discussed the features of the bill as it pertains to a game farm. Various questions pertaining to the state and federal rates of taxes for unemployment insurance were raised.

Rep. Stefonowicz stated that this puzzled him as to the language of the bill.

Rep. Severson asked if Job Service had done anything with the other classifications.

Berg said they did not.

Berg went on to say that if Job Services was wrong that they should change the language.



Berg said someone can come from Job Service and explain the particulars to committee members.

The committee agreed that if the game birds are raised they are exempt from Job Service insurance payments because it was considered a farm. If the game farm raises dogs, that would not be exempt from Job Service insurance payments.

The committee agreed to have a job service representative explain the rules of classifications.

Chairman Berg closed the meeting on the bill. The committee went on to discuss SB 2273.

Chairman Berg opened the meeting on SB 2218 again.

The committee discussed what exemptions should be made on such businesses as game farms and so forth.

Ray, Job Service was there to explain requirements and exemptions for certain businesses such as game farms.

Stefonowicz asked why a game farm is not a game preserve.

Ray, Job Service said that a hunting preserve is not raising the wildlife, but are feeding them and releasing them later on.

Kempenich said if the bill is passed then we would be inconsistent with federal law.

Ekstrom said if an elk rancher raised an elk for someone to harvest then would that be considered agriculture labor.

Ray, Job Service said that it depends. If the earnings come in from livestock labor then you could define it as agriculture labor. The business must be looked as a whole and what the majority is. Over 50 % of an activity dictates that the activity would determine the classification.

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House Human Services Committee

Bill/Resolution Number SB 2218.1

Hearing Date 3-8-99

The training of dogs is not considered an agriculture labor. The district courts have upheld this ruling.

Glassheim asked Job Service to explain how dog training, raising, and selling could become agriculture.

Keiser asked about a dispute on classification regarding the activity such as for job service or workers compensation.

Ray said that decisions can be appealed.

Motion by Rep. Severson for do not pass, second by Rep. Kline

Discussion continued on classification of agriculture versus other business. It seems other businesses want to be classified as farms also instead of a commercial business.

By roll vote, 15 yes, 0 no, 0 absent, motion carried.

Rep. Lemieux will carry the bill.

Chairman Berg closed the hearing on the bill.

Date: 3-8-99  
Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2218**

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do not pass

Motion Made By Severson Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe	/	
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 15 No 0

Absent \_\_\_\_\_

Floor Assignment Lemieux

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 8, 1999 1:09 p.m.

Module No: HR-41-4215  
Carrier: Lemieux  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2218: Industry, Business and Labor Committee (Rep. Berg, Chairman)** recommends **DO NOT PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2218 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**SB 2218**

## SENATE BILL 2218

### Testimony Before the Senate Committee On Industry, Business and Labor Senator Duane Mutch, Chairperson January 19, 1999

Mr. Chairman and members of the committee, I am Ray Gudajtes of Job Service North Dakota. I am not speaking in favor nor against the proposed legislation. I would like to provide information on how this bill may impact the employer group and their employees.

The State can exclude employer groups from liability to the State Unemployment Insurance Program. However, exclusion from the state's program does not exclude the employer group from liability to the Federal Unemployment Tax Act (FUTA). Employers can be excluded from the federal unemployment tax only if the federal law specifically identifies such an exclusion.

Employer groups included in the state's unemployment insurance program receive a credit for 5.4% of the 6.2% federal unemployment tax. Consequently, they pay a 0.8% federal unemployment tax. Employer groups excluded from the state's unemployment insurance program will be liable for payment of the full 6.2% federal unemployment tax. Federal unemployment taxes are paid on the first \$7,000 in wages paid to each employee.

All federal unemployment tax dollars collected by the federal government are used to finance the program's administrative costs, the federal share of extended benefits, and to maintain a loan fund for states that exhaust their own trust funds monies. None of these dollars will be applied to our Trust Fund nor available for benefit payments.

Excluding an employer group from liability to the State Unemployment Insurance Program will:

- 1) Make all the employers in this group liable for payment of the full 6.2% federal unemployment tax, unless the employer group is also excluded from the federal unemployment tax.
- 2) Exclude workers of these employers from eligibility for state unemployment insurance benefits.

Following is an unemployment insurance payment scenario using the 1999 state tax base (\$15,600) and a state unemployment tax rate of 0.2%:

Employer's Payroll in a calendar year -

Employee 1	\$17,600
Employee 2	15,250
Employee 3	4,900
Employee 4	1,900
Employee 5	<u>650</u>
Gross Wages	\$40,300
Taxable to State	\$38,300
Taxable to Federal	\$21,450

Tax Payments -

\* If the employer is not excluded from the state program

State (0.2%)	Federal (0.8%)	Total
\$76.60	\$171.60	\$248.20

\* If the employer is excluded from the state program, but not excluded from the federal tax

Federal  
(6.2%)  
  
\$1,329.90

The attachment presents tax payment data for this employer scenario for each unemployment insurance positive account tax rate within North Dakota's 1999 tax rate schedule.

Mr. Chairman, this concludes my testimony. I would try to answer any question from the committee. Thank you.





THE REASON FOR THIS BILL  
S 2218

1. In 1998 Job Service North Dakota (JSND) reclassified my farm labor from agricultural to commercial.

The reason given by JSND: "I did not hatch raise for eventual sale or slaughter of the birds themself."

Also, JSND made the assumption that I rented out my cultivated acres and therefore, did not engage in farming itself. I do not rent out my land.

2. I appealed the Determination with a three page letter (3-24-97) to correct the erroneous facts and assumptions that did not fairly portray my farm labor activities and duties. (I also volunteered to go to Bismarck to discuss the issue. I did not receive a response to this request from JSND).

Job Service of North Dakota (JSND) rejected my letter of appeal with the following statements: "reliance of facts asserted in the March letter is misplaced. The letter is not substantial evidence. The letter was not offered under oath or subjective to cross-examination."

Further, JSND stated, "I am not a farm because I never said I was a farm."

3. My attorney petitioned the local District Court for a motion for consideration of Additional or Excluded Evidence and Oral Arguments to correct the record.

States Attorney, Douglas Bahr, convinced the Judge that it was ~~to~~ <sup>47E</sup> to correct the evidence and consider the testimony of my witness and that I should have hired a lawyer earlier.

In 1998 Job Service North Dakota reclassified my farm labor from agricultural to commercial. The determination was based on the following ND Agricultural Law:

For the purposes of this case, the term "agricultural labor as defined in 26USC§3121(g) which includes all services performed on a farm, in the employ of a person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, training, management of and caring for livestock, bees, poultry, and fur-bearing animals and wild-life.

My farm labor qualifies under nine of the twelve headings listed in the law.

The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for raising of agricultural or horticultural commodities, and orchards."

My farm qualifies under four of the ten definitions of a farm.

The purpose of this <sup>BILL</sup> ~~Law~~ 2218, is to establish that I have a farm. My farm is acknowledged by Farm Services Administration (FAS) and Natural Resources and Conservation Service (NRCS). My labor cares for 4000 game birds and other animals each year. My labor uses farm tractors, disks, cultivators, plows, mowers, water tanks, hay wagons, blades, planters, and spraying equipment. We have holding pens and enclosures, feeders, feed bunks, grain bins and grain augers. etc.

We are a farm. #5457

I own 627 acres. 36 ac. CRP on north farm, 30 ac. farm  
I lease 80 " total of 63 acres CRP

I sell gamebirds. not hunting  
over 50% of farm income bird sales.



Grand Forks County

**NDSU EXTENSION SERVICE**

201 South 4th St., Grand Forks, ND 58201-4788  
(701) 780-8229 Fax (701) 780-8309  
grandfor@ndsuent.nodak.edu

August 12, 1997

To Whom It May Concern:

I am an Extension Agent with the NDSU Extension Service in Grand Forks County, North Dakota. I have been an Agricultural Extension Agent for twenty-eight years, twenty-one years in my current position, working with educational programming for farmers.

During the entire time I have been in Grand Forks County, I have been familiar with George Newton, and his operation. I consider George's operation as part of our farming community, and what he does nicely compliments the practices of other farmers in the area.

The acreage that George operates is right in the middle of a very rural area of Grand Forks County. His use of the land is consistent with what it is adaptable for, agriculturally. The enterprises George has activated are the very same as the ones we recommend to farmers who wish to diversify, usually to enhance their income, and to make better use of land that has special needs.

George maintains CRP land, including the control of noxious weeds, which is part of the Federal Farm Program in this country. George also farms in cooperation with other farmers in the area.

With my farm background, and with my experience working with farmers during my Extension career, I firmly believe that George Newton's operation should be considered agricultural. If I can help by answering any questions you may have, please get in touch with me.

Sincerely,

Morris A. Davidson  
Extension Agent/Grand Forks County

**Helping You Put Knowledge To Work**

County Commissions, North Dakota State University and U.S. Department of Agriculture Cooperating  
*NDSU is an equal opportunity institution*



August 14, 1997

To whom it may concern:

RE: George Newton Farm Status

Over the past fourteen years I have worked with George Newton on installing a variety of soil-conservation practices on his farm in Brenna Township, Grand Forks County.

A majority of these practices were installed with USDA cost-share assistance and in order to be eligible for these funds the producer must be recognized as a farm in the USDA system.

George Newton is recognized as a farm and has a farm number which is 5457. He is enrolled in the Conservation Reserve Program and the Water Bank Program and we plant trees on his farm almost every year.

George is very active in the farming community and attends most of our farm meetings and farm workshops that provide information on USDA programs.

If I can be of further assistance please contact me at 772-2321.

Sincerely,

Richard Axvig  
District Conservation

June 23, 1998

TO: Jennifer Gladden  
Executive Director

FROM: Mike Wilma  
Assistant Attorney General

(701) 328-3043

REF: Proposed Legislative Change - Shooting Preserves, George Newton

Jennifer, I have reviewed the proposed legislation which incorporates shooting preserve labor into the definition "agricultural labor". Here are my comments.

- (1) The proposed legislation deals with shooting preserve labor for a shooting preserve as defined under section 20.1-01-02. That definition of "shooting preserve" is "... any privately owned or leased acreage [hectarage] on which hatchery raised game birds are released to be hunted for a fee over an extended season."

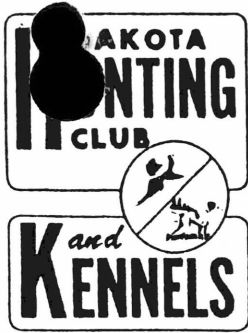
The record before Job Service indicates that in terms of sales value or receipts received, hunting constitutes 40% of the business, dog boarding 50%, and sporting clays 10%. Labor involving the hunting portion of the business would be service that falls within the definition of "shooting preserve". It does not appear that labor performed in the dog boarding or sporting clays portion of the business would fall within the definition of "shooting preserve".

There is a provision in the North Dakota Unemployment Compensation Law that deals with "included and excluded service". N.D.C.C. § 52-01-01(26) provides that if the service performed during one-half or more of any pay period by an individual for the person employing him constitutes employment, all of the services performed must be deemed to be employment. Does the percentage of labor performed by the workers employed by Mr. Newton in each of the three areas of the operation equal or approximate the percentages of income from those areas, dog boarding 50%, sporting clays 10%, hunting 40%? If one assumes that this is the case for discussion purposes, an issue is presented because only 40% of the labor would be in the shooting preserve area and under the "included and excluded service" provision cited above all of the services would be in covered employment because more than one-half, dog boarding, 50% and sporting clays, 10%, would be included service.

- (2) The proposed legislation does not appear to present a conformity issue under the Federal Unemployment Tax Act (FUTA) because states have considerable latitude regarding exclusions from coverage, with some exceptions. However, there is no comparable exclusion from coverage under the Federal Unemployment Tax Act. Employers receive a

90% credit (5.4% of 6.2%) against their FUTA liability if they pay state unemployment compensation taxes. Consequently, if Newton's operation would be exempted from state unemployment compensation coverage, that exemption would not eliminate the federal liability which would then not include the 90% credit. Therefore, a liability would still exist from the FUTA standpoint which would be in the amount of 6.2% on a taxable wage base of \$7,000 for each employee.

- (3) The state liability in this case is effective January 1, 1994. N.D.C.C. § 1-02-10 provides that no statutory enactment is retroactive unless it is expressly declared to be so. The proposed legislation would have an effective date of August 1, 1999, in the absence of an emergency clause and retroactive effective date. Consequently, it would not impact a period of 5 years and 7 months.



October 29, 1998

Senator Ray Holmberg  
District 17  
621 High Plains Ct.  
Grand Forks, ND 58201-7717

Dear Ray,

I have reviewed the letter from Mike Wilma, Assistant Attorney General to Jennifer Gladden dated June 23, 1998.

The continuing problem with this issue is the misinformation given to Mr. Wilma from Job Service North Dakota. (JSND).

JSND provided Mr. Wilma accounting ledger titles I use in my farm accounting system such as Hunting 40% of business, Dog-boarding 50% and Sporting Clays 10%.

This information was wrong. It represented only a short term estimate of revenue percentages at the time JSND requested this information and therefore was not a true evaluation of my calendar year farm operation.

North Dakota law stipulates that I can sell game birds to customers seven months each year, Sept. through March. During spring and summer months dog training and boarding revenue is a greater percentage than during the fall and winter months when the sale of game birds is greater. During a twelve month period game bird sales represents over fifty percent of my farm revenue.

Also, by North Dakota law, twenty percent of all game birds I sell to customers for release in the field must remain unharvested. This means that every one hundred game birds I sell to a customer for cash to release into the field for hunting I must also release 20 extra birds for the state that I do not get paid for.

If the percentage of farm revenue has suddenly become the only criteria to evaluate my farm labor for agricultural designation then the twenty percent of revenue that I give to the state should be credited as revenue.



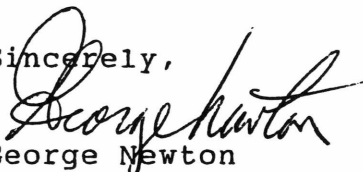
My farm labor spends as much time and effort caring for the twenty birds I give to the state as they do for the first one hundred birds that I was paid for.

Ledger accounting titles in my farm accounting system such as Hunting, Dogboarding, Sporting Clays are a loose practice of organizing income and cost. It is not a precise record of income revenue.

Job Service North Dakota, however, chooses to ignore my explanation of titles and all other farm titles in my ledger that account for income and cost affecting my farm operation.

Mr. Wilma did point out in his letter to Jennifer Gladden, third paragraph: "included and excluded service NDCC 52-01-01 (26) provides that if the service performed during one-half or more of any pay period by an individual for the person employing him constitutes employment, all of the services performed must be deemed employment."

As I have pointed out, my farm labor qualifies for the agricultural exemption.

Sincerely,  
  
George Newton

P.S. Ray, somehow I need to get the correct information to the people evaluating this issue.



## SENATE BILL 2218

### Testimony Before the House Committee On Industry, Business and Labor Representative Rick Berg, Chairperson February 15, 1999

Mr. Chairman and members of the committee, I am Ray Gudajtes of Job Service North Dakota. I am not speaking in favor nor against the proposed legislation. I would like to provide information on how this bill may impact the employer group and their employees.

The State can exclude employer groups from liability to the State Unemployment Insurance Program. However, exclusion from the state's program does not exclude the employer group from liability to the Federal Unemployment Tax Act (FUTA). Employers can be excluded from the federal unemployment tax only if the federal law specifically identifies such an exclusion.

Employer groups included in the state's unemployment insurance program receive a credit for 5.4% of the 6.2% federal unemployment tax. Consequently, they pay a 0.8% federal unemployment tax. Employer groups excluded from the state's unemployment insurance program will be liable for payment of the full 6.2% federal unemployment tax. Federal unemployment taxes are paid on the first \$7,000 in wages paid to each employee.

All federal unemployment tax dollars collected by the federal government are used to finance the program's administrative costs, the federal share of extended benefits, and to maintain a loan fund for states that exhaust their own trust funds monies. None of these dollars will be applied to our Trust Fund nor available for benefit payments.

Excluding an employer group from liability to the State Unemployment Insurance Program will:

- 1) Make all the employers in this group liable for payment of the full 6.2% federal unemployment tax, unless the employer group is also excluded from the federal unemployment tax.
- 2) Exclude workers of these employers from eligibility for state unemployment insurance benefits.

Following is an unemployment insurance payment scenario using the 1999 state tax base (\$15,600) and a state unemployment tax rate of 0.2%:

Employer's Payroll in a calendar year -

Employee 1	\$17,600
Employee 2	15,250
Employee 3	4,900
Employee 4	1,900
Employee 5	<u>650</u>
Gross Wages	\$40,300

Taxable to State	\$38,300
Taxable to Federal	\$21,450

Tax Payments -

\* If the employer is not excluded from the state program

State (0.2%)	Federal (0.8%)	Total
\$76.60	\$171.60	\$248.20

\* If the employer is excluded from the state program, but not excluded from the federal tax

Federal (6.2%)
\$1,329.90

The attachment presents tax payment data for this employer scenario for each unemployment insurance positive account tax rate within North Dakota's 1999 tax rate schedule.

Mr. Chairman, this concludes my testimony. I would try to answer any question from the committee. Thank you.