

2011 SENATE FINANCE AND TAXATION

SB 2126

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2126
1/11/2011
Job Number 12748

Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the definition of nonfarm income for purposes of the farm residence property tax exemption

Minutes:

Written Testimony Attached

Chairman Cook opened SB 2126 relating to the definition of nonfarm income for purposes of the farm residence property tax exemption.

Chairman Cook announced that Senator Hogue was introducing a bill in the house so he will be late.

Senator Bowman – I represent district 39 and on behalf of a constituent that has had quite a lot of experience dealing with this issue I told him I would introduce this bill for him so that he can explain what he has found with his experiences on what is considered nonfarm income. The bill is pretty well self explanatory, but to get in to the details of why the bill is here I'll turn it over to Cameron Arnegard.

Cameron Arnegard, Wheat Farmer from Arnegard ND – (See attached testimony A, A1, and A2 in favor of SB2126)

Chairman Cook asked for further testimony in favor of SB 2126. No one came forward.
Chairman Cook asked for testimony opposed to SB 2126.

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – (See attached testimony B in opposition of SB 2126)

Woody Barth, North Dakota Farmers Union – We favor the present exemption for farm residence exemptions that is currently in law and we seek no changes in the code as written.

Julie Ellingson, North Dakota Stockman Association – We too would respectfully oppose this bill. While we have supported the farm residence property tax exemption in other instances we think that this bill may broaden the exemption beyond what was originally intended. Plus our law already has some provisions addressing retired farmers and the surviving spouses of farmers, so several of the revenue sources indicated in this bill may already be addressed. Therefore we support maintaining the definition and the qualification matrix we currently have in statute.

Sandy Clark, North Dakota Farm Bureau – We too stand in opposition to SB 2126.

Larry Syverson, North Dakota Township Office Association – While the particulars of Mr. Arnegard's case may be interpreted in a heavy handed manner, this does broaden the scope too much. It includes too many things. Perhaps if they came with a more narrow definition it could be possible, but as it is, we can't support it.

Chairman Cook closed SB 2126.

Chairman Cook opened discussion on SB 2126.

Vice Chairman Miller motioned to Do Not Pass

Seconded by **Senator Burckhard**

Roll call vote 7-0-0. Motion passed.

FISCAL NOTE
 Requested by Legislative Council
 01/06/2011

Bill/Resolution No.: SB 2126

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2126 defines nonfarm income for purposes of the farm residence property tax exemption.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2126 limits the definition of nonfarm income to income derived from active employment and excludes passive income from specified sources. Information is not available to estimate the fiscal effect of the broadening of the farm residence exemption that will occur if SB 2126 is enacted. The burden of property taxes that will no longer be paid by persons newly eligible for the farm residence exemption will be shifted to other property owners/taxpayers.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/10/2011

Date: 1-11-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2126

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen Miller Seconded By Sen Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No _____

Absent _____

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

SB 2126: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2126 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2126

Senate Bill 2126

Jan 11, 2011

Our story begins with the tax assessment that was levied on us increasing the 2007 tax on the parcel of land where our farm residence is located and was increased because we were finishing construction on our farm residence. The county denied the application for tax exemption that had been made and adjudicated the year before.

We asked for clarification on the counties' action and provided documentation showing that our active non-farm income was less than \$40,000.

We researched Century Code 57-03-08 (15) but could not come up with a definition of the words "nonfarm income" as it applies to farm residence exemption.

We believe that the law as written is meant to help the farmer who has had to actively be employed and work off the farm and generate “active income” to make ends meet. It was written to help that same farmer work and still keep his farm home exemption.

We do not believe the county should include passive income derived from retirement accounts; social security payments; pensions or annuities; veteran’s disability; interest earnings on inheritance, savings and investment accounts.

The county argues that all income that they interpret as not being farm income should automatically be counted as non-farm income for the purpose of determining farm home exemption.

We believe that while it is understandable that they want to collect more taxes, it is wrong when you consider they are doing this by collecting excess taxes from farmers who receive “passive” income from sources other than outside employment.

We believe the law has migrated from the original intent of the authors to what the county has spun the statute dealing with farm residence exclusion and have re-interpreted Century Code 57-02-08(15) law must evolve to. That is to include passive income.

As written the statute is open to interpretation. Just look at the different interpretations of the statute: Cory Fong has said the income test must be for any one of the three preceding years

● nevertheless the County stick with “all the three preceding years.

I submit to you that “income” as used in this statute must be defined to mean non-farm income resulting from active labor; from wages, a salary derived from working for an employer and not from passive and not from passive sources: what about the farmer who has a Roth IRA? What about the farmer who has social security or other entitlements? Is the farmer to be penalized for his frugality? Is he going to lose his farm home exemption because he has an inheritance? Or because he signed an oil lease? Or because he was injured and receives disability income? I submit to you, no it does not.

LAW PROVIDING FARM
RESIDENCE EXEMPTION

NORTH DAKOTA CENTURY CODE 57-02-08 (15)

A1

57-02-08

GENERAL PROPERTY ASSESSMENT

exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.

(2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.

(3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-36 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

(4) The following factors may not be considered in application of the exemption under this subsection:

- (a) Whether the farmer grows or purchases feed for animals raised on the farm.
- (b) Whether animals being raised on the farm are owned by the farmer.
- (c) Whether the farm's replacement animals are produced on the farm.
- (d) Whether the farmer is engaged in contract feeding of animals on the farm.

It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:

(1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres (4.05 hectares) and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years.

(2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products manufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar

TAXATION

57-02-08

there is a building used for the religious services of the organization or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, pastor, or other minister in charge of services, must be deemed to be property used exclusively for religious services, and exempt from taxation, whether the real property consists of one tract or more. This exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.

10. Property of an agricultural fair association duly incorporated for the purpose of holding agricultural fairs, and not conducted for the profit of any of its members or stockholders; provided, that all property described in this subsection shall be subject to taxation for the cost of fire protection services furnished by any municipal corporation in which said property is located.

11. Property owned by lodges, chapters, commanderies, consistories, farmers clubs, commercial clubs, and like organizations, and associations, grand or subordinate, not organized for profit, and used by them for places of meeting and for conducting their business and ceremonies, and all property owned by any fraternal, sorority, or organization of college students if such property is used exclusively for such purposes; provided, further, that any portion of such premises not exclusively used for places of meeting and conducting the business and ceremonies of such organization shall be subject to taxation.

Provided, further, that if any such organization as contemplated by this subsection is licensed for the sale of alcoholic beverages as defined by the statutes of the state of North Dakota, such portion of such premises where such alcoholic beverages are consumed or sold shall be deemed not to be so used exclusively for conduct of its business and meeting if such beverages are sold at a profit.

Provided further, that if food other than that served at lodges or sorority house, is sold at a profit on the premises; that portion of the premises where such food is sold at a profit shall be deemed not to be used exclusively for places of meeting or conducting the business and ceremonies of such organizations; provided, that all property described in this subsection shall be subject to taxation for the cost of fire protection services furnished by any municipal corporation in which said property is located.

12. Repealed by S.L. 1989, ch. 555, § 2.

13. All land used as a public park or monument ground belonging to any military organization, and not used for gain.

14. The arroyo, and land or lots upon which situated, owned by a regiment, battalion, or company of the North Dakota national guard, and used for military purposes by such organization.

15. a. All farm structures and improvements located on agricultural lands.

(1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to

years. "Farmer" includes a "retired farmer" who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed. "Farmer" includes a "beginning farmer" who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.

- (3) "Net income from farming activities" means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
 - (c) Depreciation expenses from farming activities which have been deducted in computing taxable income.
- (4) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, net income from farming activities.
- X (5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. This paragraph does not apply to a retired farmer or a beginning farmer as defined in paragraph 2.
- (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.
16. Property now owned, or hereafter acquired, by a corporation organized, or hereafter created, under the laws of this state for the purpose of promoting athletic and educational needs and uses at any state educational institution in this state, and not organized for profit.
17. Moneys and credits, including shares of corporate stock and membership interests in limited liability companies, except moneyed capital which is so invested or used as to come into direct competition with money invested in bank stock.

H2

Cameron Arnegard
13341 Ball Diamond Road
Arnegard, North Dakota 58854

March 19, 2007

Debra L. Wisness
McKenzie County Tax Director
P.O Box 543
Watford City, North Dakota 58854

Re: Arnegard Application for Farm Residence Tax Exemption

Dear Ms. Wisness:

I acknowledge receipt of your March 7, 2007 letter denying our application for tax exemption on our farm residence, filed on February 21, 2006. Both I and my wife look forward to working with you to resolve all issues and questions so as to benefit from our full time involvement in the farming industry.

We want to assure you that we are law abiding citizens who are eager to pay our fair share of taxes rightfully due to the county, state and federal governments, but at the same time believe our tax laws are established for each respective industry in a fair and equitable manner. It is not our intention to receive a benefit not justly deserved, or to be burdensome upon you and your staff, but I must confess I have a few questions as to how entitlement to the tax relief sought is evaluated.

For example, (i) what is the definition of the word "income" as used in the code, (ii) what documentation is required to accompany our application at the time of submittal to afford timely adjudication, and (iii) will we be required to file an application each successive year we request tax exemption?

In an effort to become versed in the area of taxation we have reviewed various section of title 57 and would appreciate it if you could direct us to the sections of the code that address these issues as well as others you may feel are relevant for us to know.

Very truly yours,

Cameron Arnegard

Cameron Arnegard
13341 Ball Diamond Road
Arnegard, North Dakota 58854

April 16, 2007

SENT REGISTERED RECEIPT REQUESTED VIA USPS

Debra L. Wisness
McKenzie County Tax Director
P.O Box 543
Watford City, North Dakota 58854

Re: Notice of Increase in Real Estate Assessment (Your Letter Dated March 30, 2007 – unsigned) and your Letter of Explanation dated April 9, 2007

Dear Ms. Wisness:

I acknowledge receipt of your March 30, 2007 letter increasing the real estate assessment on the NE ¼ of Section 14 Twp 150, Range 100. I have also received and appreciate your letter of April 9, 2007 where you try answering our questions.

Please find enclosed our Application for Property Tax Exemption of a Farm Residence for 2007. I am bringing substantiating documents to your office this week in order to obtain timely adjudication in this matter. I look forward to meeting you in person.

Be advised that we do not agree with the denial of our application for Property Tax Exemption of a Farm Residence for 2006 (your letter dated March 7, 2007). In that regard, we are seeking further clarification from the State regarding Title 57 of the North Dakota Century Code (Our letter dated March 19, 2007).

We look forward to working with you to resolve all issues and questions in this matter.

Very truly yours,

Cameron Arnegard

1 Atch
Application for Property Tax Exemption of a Farm Residence for 2007

Application for Property Tax Exemption of a Farm Residence

1. Application must be filed every year on or before February 1 of the year for which the exemption is being requested. Return the completed application to: McKenzie County Tax Director, PO Box 543, Watford City ND 58854

Property Number: 30005500
 Property Owner: CAMERON ARNEGARD
 Property Address: 13341 BALL DIAMOND ROAD 58835
 Legal Description: 14 150 100
 NE1/4

The property owner(s) apply for real property tax exemption for the year 2007 on the property described above and, certify the following:

SELECT ONLY ONE CATEGORY THAT APPLIES

Active Farmer Category

- | | Yes | No |
|---|-------------------------------------|-------------------------------------|
| 1. Is the residence located on a tract or contiguous tracts of agricultural land containing 10 or more acres farmed by the occupant?..... | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the major portion of the occupant's time devoted to farming activities?..... | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Does the annual net income from farming constitute 50% or more of the total income, including the income of a spouse if married, during any one of the three preceding calendar years?.....
<small>"Net income from farming" means taxable income from farming as computed for state income tax purposes adjusted as follows:</small> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <small>a. Add back the difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.</small> | | |
| <small>b. Add back interest expenses from farming which has been deducted in computing taxable income.</small> | | |
| <small>c. Add back depreciated expense from farming activities which has been deducted in computing taxable income.</small> | | |
| 4. Did the occupant engaged in farming have nonfarm income, including that of a spouse, if married, of more than \$40,000 during each of the 3 preceding calendar years?..... | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Vacant Residence Category

- | | | |
|--|--------------------------|--------------------------|
| 1. Is the residence intended for use as a farm residence?..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Was the residence last used as a farm residence or a part of a farm plant?..... | <input type="checkbox"/> | <input type="checkbox"/> |

Farm Laborer Residence Category

- | | | |
|--|--------------------------|--------------------------|
| 1. Is the residence being used as part of a farm plant to provide housing for the farmer's workers?..... | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|

Retired Farmer Category

- | | | |
|---|--------------------------|--------------------------|
| 1. Is the residence occupied by an individual who retired from farming because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the applicant lives and for which the exemption is claimed?..... | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

Beginning Farmer Category

- | | | |
|---|--------------------------|--------------------------|
| 1. Is the residence occupied by an individual who began occupancy and operation of a farm within the 3 preceding calendar years?..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the major portion of the individual's time normally devoted to farming activities?..... | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Was there at least one of the prior 3 years in which the farmer had no farm income or loss?..... | <input type="checkbox"/> | <input type="checkbox"/> |

I am willing to furnish proof of income if requested to do so by someone authorized to administer this exemption and I understand that making false statement in a governmental matter is punishable as a Class A misdemeanor provided in N.D.C.C. 12.1-11-02.

Cameron Arnegard
 Signature of applicant _____ Date _____

Assessor or Director of Tax Equalization _____ Date _____
 Application is: Approved Disapproved

Cameron Arnegard
13341 Ball Diamond Road
Arnegard, North Dakota 58854

April 17, 2007

Hand Delivered

Debra L. Wisness
McKenzie County Tax Director
P.O Box 543
Watford City, North Dakota 58854

Dear Debra

Enclosed find a copy of my letter to you that was mailed registered receipt requested yesterday. This is an application for Property Tax Exemption of a Farm Residence for 2007 for property number: 30005500.

Also enclosed are documents showing my wife's salary for 2007 is approximately \$14,000. Her annual salary is \$33,600 and she is working for the first 5 months of 2007. She has resigned her position as of the end of May, 2007.

I have no salary or wages.

Our intent is to live peacefully as your neighbors and to pay our fair share of taxes due to the County, State and Federal Governments. We are not asking for special treatment but at the same time we believe our tax laws are established in a fair and equitable manner for all citizens. We ask that you seriously consider our request for property tax exemption on our home on the farm. Our total non-farm income for 2007 is approximately \$14,000.

Very truly yours,

Cameron Arnegard

Encl:
Documents substantiating Application for Property Tax Exemption

Office of Tax Equalization

P O Box 543

Watford City ND 58854

701-444-6852 Ext 4 - email dwisness@co.mckenzie.nd.us - fax 701-444-4113

January 7, 2008

Arnegard Township
Lynn Hovde, Chairman
13651 30th St NW
Alexander ND 58831

Mr. Chairman and fellow Board members:

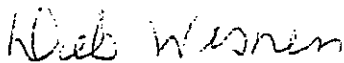
I am following up our phone conversation from January 4, 2008 with this letter. I just want to refresh your memory in respect to the subject of Cameron Arnegard. About a year ago, the McKenzie County Tax Director's office sent your Township Board a notice that Cameron Arnegard's home had been placed on the tax rolls for the 2007 tax year. The reason the home was placed on the rolls was because he was denied Farm Residence Exemption status. I have included a blank form as a reference.

My reason for denial was first of all, the exemption pertains to actual residence to the home. The individuals living in his home were not farmers, only caretakers. The second reason for denial was based on number 4 of the Active Farmer Category. With retirement from a job as a consultant with the Pentagon, one would think that you would make over \$40,000 annually. I denied him exemption status and asked to see his tax statements. It went no where. He sent me some information but none of it ever pertained to him. We have been going around and around with him for over a year. Hopefully we can get it all taken care of this year.

Cameron Arnegard has paid his taxes for 2007 **under protest**. That means that he will file an application of abatement within the next 60 days. Once that has been completed, the County Auditor will be notifying you as to the next step. Cameron forgets that there is a chain of command that must be followed. Talking to me directly doesn't help as long as he lives in an organized township.

Any more questions, just give me a call.

Sincerely,



Deb Wisness
McKenzie County Tax Director

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE

SENATE BILL 2126

JANUARY 11, 2011

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner. I am here today to testify on Senate Bill 2126.

BACKGROUND

N.D.C.C. § 57-02-08 (15)(b) provides a farm residence exemption for applicants who meet certain criteria. The main criteria are:

1. The individual normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state;
2. The applicant has received net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years;
3. A residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years.

"Net income from farming activities" is defined as taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:

- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
- (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (c) Depreciation expenses from farming activities which have been deducted in computing taxable income.

There is no definition of nonfarm income in the statute. On legal counsel's advice, the

Property Tax Division has taken the position that all taxable income that is not farm income is nonfarm income; tax-exempt income is not counted as either farm income or nonfarm income.

In a recent case, the North Dakota Supreme Court denied an individual's claim of eligibility for the farm residence exemption. That individual had argued that passive income should not be counted as nonfarm income. Section 57-02-08(15) makes no mention of active v. passive income.

PROPOSED CHANGE

Senate Bill 2126 defines "nonfarm income" as income derived from active employment. It excludes "passive income derived from retirement accounts, social security payments, pensions or annuities, veterans' disability, military retirement payments, interest earnings on inheritances, and savings and investment accounts" from nonfarm income. Some other types of passive income are not listed, either purposely or accidentally, e.g., mineral royalties or rental of property.

EFFECT OF PROPOSED CHANGE

Senate Bill 2126 will make more people with substantial amounts of nonfarm income eligible for the farm residence exemption. Income information for potential applicants is not available to estimate the fiscal effect of SB 2126. And because exempt farm residences are not required to be valued, it is unknown how much residential valuation may be exempted.

EFFECTIVE DATE

The provisions of Senate Bill 2126 are effective for taxable years beginning after December 31, 2010.

CONCLUSION

Political subdivisions will not lose revenue due to Senate Bill 2126, because they are allowed to levy the same number of dollars as in the highest of the most recent three years, regardless of changes in valuation.

This concludes my prepared testimony. I will be glad to try to answer any questions.