

July 2001

## **PROPERTY TAX ASSESSMENTS AND ABATEMENTS - BACKGROUND MEMORANDUM**

House Bill No. 1206 (attached as an appendix) directs the Legislative Council to study several issues, one of which is "property tax assessment and abatements," and the study is to include a determination of the true and full value of subsidized housing for property tax assessments and the homestead tax valuation for senior citizens. Separate memorandums have been prepared regarding property tax assessments and the homestead property tax credit.

### **PROPERTY TAX LIABILITY DETERMINATION AND PAYMENT**

The property tax liability of a property owner is determined by multiplying taxing districts' combined mill rates times the taxable value of the property. Although this formula is relatively simple, complexities are involved in determining the mill rate, taxable value, and tax status for the property.

All locally assessed property taxes are collected by the county and distributed among taxing districts according to their interests in the revenues. Property taxes are due January 1 following the year of assessment and are payable without penalty until March 1 of the year they are due. If property taxes are paid in full by February 15, the taxpayer is entitled to a 5 percent discount. Penalties begin to accrue if property taxes are not paid by March 1. Taxpayers have the option of paying property taxes in installments.

### **DETERMINATION OF MILL RATE**

The mill rate for a taxing district is established through the budget process. Each taxing district prepares a proposed budget based on anticipated expenditures for the upcoming fiscal year. Hearings are held on the proposed budget and adjustments are made as needed. The deadline for amendments to budgets and for sending copies of the levy and budget to the county auditor is October 10. From October 10 to December 10, the county auditor prepares tax lists, which must be delivered to the county treasurer by December 10 and mailed to property owners by December 26.

The amount budgeted by a taxing district may not result in a tax levy exceeding levy limitations established by statute. Levy limitations for political subdivisions are summarized in the schedule of levy limitations prepared biennially by the Tax Commissioner's office. Since 1981 the Legislative Assembly has provided optional authority to levy taxes with a

maximum amount determined by comparison with a base year levy amount in dollars. This method is an alternative to the use of statutorily established mill levy limitations. Most taxing districts in the state use this optional method of determining the maximum levy to which they are entitled. From 1981 through 1996, percentage increases were allowed by law over the base year levy in dollars. The compounding of these increases allowed taxing districts to increase levies well beyond the amount they would be able to levy under mill levy limitations. For taxable years after 1996, taxing districts may use the optional method to levy up to the amount levied in dollars in the base year without a percentage increase.

To determine the mill rate for a taxing district, the county auditor determines whether the amount levied is within statutory levy limitations and, if it is, the county auditor divides the total property taxes to be collected for the taxing district by the taxing district's total taxable valuation. This generates a percentage that is the mill rate for the district.

### **ASSESSMENT OF LOCALLY ASSESSED PROPERTY**

All property in this state is subject to taxation unless expressly exempted by law (North Dakota Century Code (NDCC) Section 57-02-03). Real property must be assessed with reference to its value on February 1 of each year (Section 57-02-11). All property must be valued at the "true and full value" of the property (Section 57-02-27.1). True and full value is defined as the value determined by considering the earning or productive capacity, if any, the market value, if any, and all other matters that affect the actual value of the property to be assessed. For purposes of agricultural property, this includes farm rentals, soil capability, soil productivity, and soils analysis (Section 57-02-01). The assessed value of property is equal to 50 percent of the true and full value of the property (Section 57-02-01). Taxable valuation of property is determined as a percentage of assessed valuation, which is 9 percent for residential and 10 percent for agricultural, commercial, and centrally assessed property. The taxable valuation is the amount against which the mill rate for the taxing district is applied to determine the tax liability for individual parcels of property.

Residential and commercial property true and full value is established by local assessors. True and full value of railroad, public utility, and airline property is

centrally determined by the State Board of Equalization.

True and full value of agricultural property is based on productivity as established through computations made by the North Dakota State University Department of Agricultural Economics based on the capitalized average annual gross return of the land. Annual gross return must be determined from crop share rent, cash rent, annual gross income, or annual gross income potential. Average annual gross return for each county is determined by taking annual gross returns for the county for the most recent 10 years, discarding the highest and lowest annual gross return years, and averaging the remaining eight years. Annual gross return is then capitalized using a 10-year average of the most recent 12-year period for the gross federal land bank mortgage rate of interest. Personnel from North Dakota State University determine an average agricultural value per acre for cropland and noncropland on a statewide and countywide basis. This information is provided to the Tax Commissioner by December 1 of each year and then provided by the Tax Commissioner to each county director of tax equalization. The county director of tax equalization provides each assessor within the county an estimate of the average agricultural value of agricultural lands within the assessor's assessment district. The local assessor must determine the relative value of each assessment parcel within that assessor's jurisdiction. In determining relative values, local assessment officials are to use soil type and soil classification data whenever possible.

### **ASSESSMENT OF CENTRALLY ASSESSED PROPERTY**

Property of railroads, public utilities, and airlines is assessed by the State Board of Equalization as required by Article X, Section 4, of the Constitution of North Dakota. Under NDCC Section 57-13-01, the State Board of Equalization consists of the Governor, the State Treasurer, the State Auditor, the Agriculture Commissioner, and the Tax Commissioner. The assessment process for centrally assessed property differs from the procedure for locally assessed property. The owner of centrally assessed property must file an annual report with the Tax Commissioner by May 1. The Tax Commissioner prepares a tentative assessment for the property by July 15. Notice of the tentative assessment is sent to the property owner at least 10 days before the State Board of Equalization meeting. On the first Tuesday in August, the State Board of Equalization meets to receive testimony on the value of centrally assessed property and to finalize assessments. The Tax Commissioner certifies the finalized assessments to the counties, to reflect the portion of centrally assessed property for each property owner which is taxable in that county.

Airlines serving North Dakota cities pay a property tax computed by averaging mill levies in all the cities served by an airline and applying the average levy against the taxable valuation of property of the airline in North Dakota. Taxes imposed on an airline are collected by the State Treasurer and distributed to the cities in which the airline operates, to be used exclusively for airport purposes.

### **PAYMENTS IN LIEU OF TAXES**

State law provides that some enterprises make payments in lieu of taxes rather than paying property taxes. Mutual or cooperative telephone companies and investor-owned telephone companies pay a tax of 2.5 percent of adjusted gross receipts. This tax is paid to the Tax Commissioner and allocated among counties.

Rural electric cooperatives pay a gross receipts tax in lieu of property taxes for all property except land. The tax is 1 percent in the first five years of operation and 2 percent thereafter. Rural electric cooperatives with generating facilities are subject to a transmission line tax of \$225 per mile in lieu of property taxes on transmission lines of 230 kilovolts or more.

Coal conversion facility taxes are paid in lieu of property taxes. These taxes are allocated by state law and provide revenues to affected taxing districts.

Property owned by certain state agencies and certain agencies and instrumentalities of the federal government is subject to payments in lieu of property taxes.

### **EQUALIZATION**

Equalization is the process provided by law to adjust property assessments to be consistent with market value or agricultural value. Property owners who are dissatisfied with assessment levels may initially present their concerns for review by the township board of equalization or the city board of equalization in April. The board of county commissioners meets as the county board of equalization in June to equalize among assessment districts within the county. The State Board of Equalization meets in August to equalize among counties and districts within a county.

### **ABATEMENT**

As an alternative to the more informal equalization process, a taxpayer also has a more formal appeal mechanism regarding a property tax assessment. This optional method is called the abatement process and may be initiated by the taxpayer filing an application for abatement and refund of taxes. Several layers of review are involved in the abatement process, which may culminate in appeal of the decision of the board of county commissioners to the district court and then to the North Dakota Supreme Court. Several statutory

grounds exist for granting an abatement, including that the assessment is invalid, inequitable, or unjust. Other grounds for abatement are erroneous computation of the tax, the improvements to the property did not exist on the assessment date, the property is exempt, the property was assessed taxes more than once, and the improvement was destroyed or damaged.

### **ENACTED 2001 PROPERTY TAX ASSESSMENT AND ABATEMENT LEGISLATION**

House Bill No. 1206 requires the board of county commissioners, upon rejection in whole or in part of an application for abatement, to provide a written explanation of the rationale for the decision and to mail a copy to the applicant. This bill was amended in the Senate to incorporate the study addressed by this memorandum.

House Bill No. 1222 provides that a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of 100 kilowatts or more, on which construction is completed before January 1, 2011, must be valued at 3 percent of assessed value to determine the taxable valuation of the property.

Senate Bill No. 2033 allows a city to grant a partial or complete property tax exemption for single-family residential property rehabilitated by an individual as a primary place of residence in a renaissance zone project. The bill also allows a municipality to grant a partial or complete exemption on any structure rehabilitated as a zone project for any business for investment purposes. The bill also created a new section providing that a taxpayer may not be delinquent in payment of any state or local tax liability to be eligible for a tax benefit under the renaissance zone law.

Senate Bill No. 2068 amends the definition of inundated agricultural land to require a minimum of 10 contiguous acres and that the value of the inundated land exceed 10 percent of the average agricultural value of noncropland for the county. The bill provides that the land must have been unsuitable for growing crops or grazing animals for two consecutive growing seasons or more and must have produced revenue from any source in the most recent prior year which is less than the average county revenue per acre for noncropland. The bill requires applications for inundated agricultural land treatment to be made in writing.

Senate Bill No. 2185 requires a nonprofit organization to make payments in lieu of property taxes on property it acquires for conserving natural areas and habitats. The payments must be calculated in the same manner as if the property were subject to full assessment and levy of property taxes.

### **FAILED 2001 PROPERTY TAX ASSESSMENT AND ABATEMENT LEGISLATION**

House Bill No. 1362 would have frozen the valuation of a parcel of agricultural property for taxable years 2001 and 2002 at not more than the value of that parcel for taxable year 1999. The bill would also have called for a Legislative Council study of agricultural property assessment. The bill failed in the House by a vote of 46 to 52.

Senate Bill No. 2425 would have provided a property tax exemption for an assisted-living facility operated on a nonprofit basis but owned by a for-profit entity. The bill failed in the Senate by a vote of 13 to 34.

House Bill No. 1246 would have locked the capitalization rate for agricultural property valuation within a range of 9.25 to 10.5 percent. The bill failed in the House by a vote of 45 to 52.

House Bill No. 1121 would have repealed a provision requiring state payments to political subdivisions in lieu of taxes for tax-exempt carbon dioxide pipeline property. The bill failed in the House by a vote of 0 to 95.

House Bill No. 1204 would have established a method of valuation for commercial rental property based on capitalization of the income from the property unless this method results in an unreasonable determination. This bill failed in the House by a vote of 4 to 92.

House Bill No. 1464 would have removed the income limitations that restrict eligibility for the farm building property tax exemption. The bill failed in the House by a vote of 11 to 85.

House Bill No. 1334 would have changed the measurement for required income from farming activities from net income to gross income and would have provided for inflation indexing and an increase from \$40,000 to \$50,000 in the annual nonfarm income limit for exclusion from the farm buildings property tax exemption. The bill failed in the House by a vote of 5 to 90.

Senate Bill No. 2453 would have changed the assessment and taxation of mobile homes to mirror assessment and taxation of other property. The bill failed in the Senate by a vote of 16 to 31.

Senate Bill No. 2348 would have provided for valuation of subsidized housing under the income approach and would have required the assessor to consider restrictions imposed on property rentals under the subsidy program. The bill failed in the Senate by a vote of 18 to 30.

House Bill No. 1340 would have allowed a property tax exemption for up to \$150,000 of the true and full value of property owned and occupied by a full-time teacher in a teacher-shortage school district. The bill failed in the House by a vote of 7 to 89.

House Bill No. 1265 would have increased the transmission line mile tax from \$225 to \$325 per mile for

transmission lines with a capacity of more than 230 kilovolts. The bill failed in the House by a vote of 11 to 85.

### **SUGGESTED STUDY APPROACH**

The study required under House Bill No. 1206 is stated in broad terms but requires special attention to two specified topics, relating to valuation of subsidized housing for property tax assessments and the homestead tax valuation for senior citizens. Separate memorandums have been prepared with regard to special assessment improvements and the homestead tax credit for senior citizens. During committee discussion on House Bill No. 1206, an additional issue was raised with regard to the effect of improvements by special assessment on property tax valuation of property. The question raised was if a parcel of property has a certain value and a road is constructed with a special assessment against the property, whether the

property tax assessed valuation of the property would increase accordingly. Assessment officials will be asked to address this issue.

With regard to the issues on valuation of subsidized housing, it appears the participants in the debate during the 2001 Legislative Assembly can be invited to address the committee with regard to these issues.

With regard to the homestead tax credit for senior citizens, addressed in a separate memorandum, committee members should identify any further information required as background for making a recommendation on this topic.

Because the study directive is phrased broadly, any other topics with regard to special assessments and property tax assessment and abatements may be addressed by the committee. However, it will be necessary for interested parties or committee members to identify issues for which information is necessary.

ATTACH:1