

Fifty-ninth  
Legislative Assembly  
of North Dakota

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

1 begun occupancy and operation of a farm within the three  
2 preceding calendar years; who normally devotes the major  
3 portion of time to the activities of producing products of the soil,  
4 poultry, livestock, or dairy farming in such products'  
5 unmanufactured state; and who does not have a history of farm  
6 income from farm operation for each of the three preceding  
7 calendar years.

8 (c) "Livestock" includes nontraditional livestock as defined in section  
9 36-01-00.1.

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

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

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

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

20 (4) (2) ~~When exemption is claimed under this subdivision for a residence, the~~  
21 ~~assessor may require that the occupant of the residence who it is~~  
22 ~~claimed is a farmer. The claimant of the exemption under this~~  
23 ~~subdivision shall provide to the assessor for the year or years specified~~  
24 ~~by the assessor a written statement an affidavit in a form provided by~~  
25 ~~the tax commissioner in which it is stated that fifty percent or more of~~  
26 ~~the net income of that occupant, and spouse if married and both~~  
27 ~~spouses occupy the residence, was, or was not, net income from~~  
28 ~~farming activities the claimant is entitled to the exemption under the~~  
29 ~~terms of this subdivision. The affidavit must be accompanied by an~~  
30 ~~authorization, in a form provided by the tax commissioner and signed~~  
31 ~~by each individual whose income is considered in determining eligibility~~

1 for the exemption under this subdivision, for the tax commissioner to  
2 examine the returns of those individuals and disclose to the assessor  
3 whether the claimant does or does not qualify for the exemption under  
4 this subsection. The tax commissioner shall conduct an annual random  
5 audit of claims of exemption under this subdivision. A claimant who  
6 received an exemption under this subdivision to which the claimant was  
7 not entitled is subject to payment of taxes and penalties and interest on  
8 delinquent property taxes from the time the taxes should have been  
9 paid until they are actually paid. In addition, any claimant of an  
10 exemption under this subdivision to which the claimant was not entitled,  
11 in circumstances showing an intentional misstatement of eligibility, is  
12 ineligible for the exemption under this subdivision for the two  
13 subsequent taxable years.

14 ~~(5) In addition to any of the provisions of this subsection or any other~~  
15 ~~provision of law, a residence situated on agricultural land is not exempt~~  
16 ~~for the year if it is occupied by an individual engaged in farming who~~  
17 ~~had nonfarm income, including that of a spouse if married, of more than~~  
18 ~~forty thousand dollars during each of the three preceding calendar~~  
19 ~~years. This paragraph does not apply to a retired farmer or a beginning~~  
20 ~~farmer as defined in paragraph 2.~~

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

23 ~~(7)~~ (3) A farmer operating a bed and breakfast facility in the farm residence  
24 occupied by that farmer is entitled to the exemption under this section  
25 for that residence if the farmer and the residence would qualify for  
26 exemption under this section except for the use of the residence as a  
27 bed and breakfast facility.

28 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after

29 December 31, 2004.