

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2369

Introduced by

Senators Nelson, Horne, Potter

Representatives Dahl, Mock, Schneider

1 A BILL for an Act to create and enact chapter 57-65 of the North Dakota Century Code, relating
2 to refund of rent constituting property taxes for eligible individuals; and to provide an effective
3 date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 57-65 of the North Dakota Century Code is created and enacted
6 as follows:

7 **57-65-01. Definitions.** As used in this chapter:

- 8 1. a. "Claimant" means an individual, other than a dependent, as defined under
9 sections 151 and 152 of the Internal Revenue Code, who filed a claim
10 authorized by this chapter and who was a resident of this state during the
11 calendar year for which the claim was filed.
- 12 b. The claimant must have resided in a rented or leased unit on which ad
13 valorem taxes or payments made in lieu of ad valorem taxes are payable at
14 some time during the calendar year covered by the claim.
- 15 c. "Claimant" does not include a resident of a nursing home, intermediate care
16 facility, long-term residential facility, or a facility that accepts group residential
17 housing payments whose rent constituting property taxes is paid pursuant to
18 the supplemental security income program under title XVI of the Social
19 Security Act, the medical assistance program pursuant to title XIX of the
20 Social Security Act, or any other state or federal assistance program. If only a
21 portion of the rent constituting property taxes is paid by these programs, the
22 resident is a claimant for purposes of this chapter, but the refund calculated
23 pursuant to section 57-65-02 must be multiplied by a fraction, the numerator
24 of which is income, reduced by the total amount of income from the above

sources other than vendor payments under the medical assistance program or the general assistance medical care program, and the denominator of which is income plus vendor payments under the medical assistance program or the general assistance medical care program, to determine the allowable refund pursuant to this chapter.

d. Notwithstanding subdivision c, if the claimant was a resident of the nursing home, intermediate care facility, long-term residential facility, or facility for which the rent was paid for the claimant by the group residential housing program for only a portion of the calendar year covered by the claim, the claimant may compute rent constituting property taxes by disregarding the rent constituting property taxes from the nursing home or facility and use only that amount of rent constituting property taxes or property taxes payable relating to that portion of the year when the claimant was not in the facility. The claimant's household income is the income for the entire calendar year covered by the claim.

e. In the case of a claim for rent constituting property taxes of a part-year resident, the income and rental reflected in this computation must be only for the period of residency. Any rental expenses paid which may be reflected in arriving at federal adjusted gross income cannot be utilized for this computation. When two individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who shall be the claimant. If they are unable to agree, the matter must be referred to the commissioner whose decision is final.

2. "Commissioner" means the tax commissioner.

3. "Dependent" means any person who is considered a dependent under sections 151 and 152 of the Internal Revenue Code.

4. a. "Gross rent" means rental paid for the right of occupancy, at arm's length, of a homestead, exclusive of charges for any medical services furnished by the landlord as a part of the rental agreement, whether or not expressly set out in the rental agreement.

- 1 b. For an individual not receiving the benefit of any payments described in
2 subdivision c of subsection 1, the gross rent of a resident of a nursing home
3 or intermediate care facility is deemed to be three hundred fifty dollars per
4 month and the gross rent of a resident of an adult foster care home is deemed
5 to be five hundred fifty dollars per month. The commissioner shall adjust
6 annually for inflation the gross rent amounts stated in this subdivision. The
7 adjustment must be made in accordance with section 1(f) of the Internal
8 Revenue Code, except that for purposes of this subdivision the percentage
9 increase must be determined from the year ending June 30, 2009, to the year
10 ending on June thirtieth of the year in which the rent is paid. The
11 commissioner shall round the gross rents to the nearest ten dollar amount. If
12 the amount ends in five dollars, the commissioner shall round it up to the next
13 ten dollar amount.
- 14 c. If the landlord and tenant have not dealt with each other at arm's length and
15 the commissioner determines that the gross rent charged was excessive, the
16 commissioner may adjust the gross rent to a reasonable amount for purposes
17 of this chapter.
- 18 5. "Homestead" means the dwelling occupied as the claimant's principal residence.
19 6. "Household" means a claimant and an individual related to the claimant as
20 husband or wife who are domiciled in the same homestead.
21 7. "Household income" means all income received by all persons of a household in a
22 calendar year while members of the household, other than income of a dependent
23 or roomer or boarder on contract.
24 8. "Income" means federal taxable income for the taxable year for which the refund
25 claim is filed.
26 9. "Property taxes payable" means the property tax exclusive of special assessments,
27 penalties, and interest payable on the claimant's homestead.
28 10. "Rent constituting property taxes" means fifteen percent of the gross rent actually
29 paid in cash, or its equivalent, or the portion of rent paid in lieu of property taxes, in
30 any calendar year by a claimant for the right of occupancy of the claimant's
31 homestead in this state in the calendar year, and which rent constitutes the basis in

the succeeding calendar year of a claim for relief under this chapter by the claimant.

57-65-02. Refund allowable.

1. A refund is allowed each claimant in the amount that rent constituting property taxes exceeds the percentage of household income of the claimant specified in subsection 2 in the taxable year for which the rent was paid. If the amount of rent constituting property taxes is equal to or less than the percentage of the gross household income of the claimant specified in subsection 2 in the taxable year for which the rent was paid or if the gross household income of the claimant exceeds the maximum amount determined under subsection 2, the claimant is not eligible for a refund under this section.
2. Percentage of gross household income is as follows:
 - a. One and one-half percent for gross household income less than twenty thousand dollars.
 - b. Two percent for gross household income of twenty thousand dollars or more but less than thirty thousand dollars.
 - c. Two and one-half percent for gross household income of thirty thousand dollars or more but less than forty thousand dollars.
 - d. Three percent for gross household income of forty thousand dollars or more but not exceeding fifty thousand dollars.
3. If the rent constituting property taxes for a claimant exceeds the percentage determined for the claimant under subsection 1 times the gross household income of the claimant, the claimant is entitled to a refund equal to the difference but not in an amount exceeding one thousand dollars.
4. The commissioner shall construct and make available to taxpayers a comprehensive table showing the refund allowed at various levels of income and rent.

57-65-03. Gross household income. If an individual occupies a homestead with another individual or individuals not related to the individual as husband or wife, excluding dependents and roomers or boarders on contract, the gross household income of the claimant or claimants for the purpose of computing the refund allowed by section 57-65-02 must include

1 the total income received by the other individuals residing in the homestead. For purposes of
2 this section, "dependent" includes a parent of the claimant or spouse who lives in the claimant's
3 homestead.

4 **57-65-04. One claimant per household.** Only one claimant per household per year is
5 entitled to relief under this chapter. Payment of the claim for relief may be made payable to the
6 husband and wife as one claimant. The commissioner, upon written request, may issue
7 separate checks to the husband or wife for one-half of the relief provided the original check has
8 not been issued or has been returned. Individuals related as husband and wife who were
9 married during the year may elect to file a joint claim which shall include each spouse's income,
10 rent constituting property taxes, and property tax payable. Husbands and wives who were
11 married for the entire year and were domiciled in the same household for the entire year must
12 file a joint claim. The maximum dollar amount allowable for a joint claim may not exceed the
13 amount that one person could receive.

14 **57-65-05. Proof of claim.** A claim for refund under this chapter must be filed by June
15 thirtieth of the year following the taxable year to which the claim applies and must be made on a
16 for prescribed by the commissioner. Every claimant shall supply to the commissioner, in
17 support of the claim, proof of eligibility under this chapter, including a certificate of rent paid
18 from the owner or manager of the property rented or an affidavit of rent paid verified by the
19 claimant, name and address of the owner or managing agent of the property rented, and any
20 changes in homestead, household membership, household income, and size and nature of
21 property claimed as a homestead and any other information the commissioner requires.

22 **57-65-06. Claim applied against outstanding liability.** The amount of any claim
23 otherwise payable under this chapter may be applied by the commissioner against any
24 delinquent tax liability of any member of the household. If there are two or more members of
25 the household, the commissioner may apply only the delinquent taxpayer's share of a refund to
26 the delinquent tax liability of that taxpayer.

27 **57-65-07. Rights to file claim - Right to receive credit.**

- 28 1. If an individual entitled to relief under this chapter dies before receiving relief, the
29 surviving spouse or dependent of the individual is entitled to file the claim and
30 receive relief. If there is no surviving spouse or dependent, the right to the credit
31 lapses.

1 2. If the commissioner cannot locate the claimant within two years from the date the
2 original warrant was issued, or if a claimant to whom a warrant has been issued
3 does not cash that warrant within two years from the date the warrant was issued,
4 the right to the credit lapses and the warrant must be deposited in the general fund.

5 **57-65-08. Owner or managing agent to furnish rent certificate.** The owner or
6 managing agent of any property for which rent is paid for occupancy as a homestead must
7 furnish a certificate of rent paid to an individual who is a renter on December thirty-first, in the
8 form prescribed by the commissioner. If the renter moves on or before December thirty-first,
9 the owner or managing agent may give the certificate to the renter at the time of moving or mail
10 the certificate to the forwarding address if an address has been provided by the renter. The
11 certificate must be made available to the renter before February first of the year following the
12 year in which the rent was paid. The owner or managing agent must retain a duplicate of each
13 certificate or an equivalent record showing the same information for a period of three years.
14 The duplicate or other record must be made available to the commissioner upon request.

15 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
16 December 31, 2008.