

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator Nelson

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; to provide an appropriation;
3 and to provide an effective 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 a person, other than a dependent, as defined under
9 sections 151 and 152 of the Internal Revenue Code disregarding section
10 152(b)(3) of the Internal Revenue Code, who filed a claim authorized by this
11 chapter and who was a resident of this state during the calendar year for
12 which the claim for relief was filed.
- 13 b. The claimant must have resided in a rented or leased unit on which ad
14 valorem taxes or payments made in lieu of ad valorem taxes are payable at
15 some time during the calendar year covered by the claim.
- 16 c. "Claimant" does not include a resident of a nursing home, intermediate care
17 facility, long-term residential facility, or a facility that accepts group residential
18 housing payments whose rent constituting property taxes is paid pursuant to
19 the supplemental security income program under title XVI of the Social
20 Security Act, the medical assistance program pursuant to title XIX of the
21 Social Security Act, or any other state or federal assistance program. If only a
22 portion of the rent constituting property taxes is paid by these programs, the
23 resident is a claimant for purposes of this chapter, but the refund calculated
24 pursuant to section 57-65-02 must be multiplied by a fraction, the numerator

1 of which is income, reduced by the total amount of income from the above
2 sources other than vendor payments under the medical assistance program
3 or the general assistance medical care program, and the denominator of
4 which is income plus vendor payments under the medical assistance program
5 or the general assistance medical care program, to determine the allowable
6 refund pursuant to this chapter.

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

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

25 f. If a homestead is occupied by two or more renters, who are not husband and
26 wife, the rent must be deemed to be paid equally by each, and separate
27 claims must be filed by each. The income of each must be considered to be
28 that renter's household income for purposes of computing the amount of
29 credit to be allowed.

30 2. "Commissioner" means the tax commissioner.

- 1 3. "Dependent" means any person who is considered a dependent under sections
2 151 and 152 of the Internal Revenue Code.
- 3 4. "Disabled claimant" means any claimant who has a disability.
- 4 5. "Disability means:
- 5 a. Inability to engage in any substantial gainful activity by reason of any
6 medically determinable physical or mental impairment that can be expected to
7 result in death or has lasted or can be expected to last for a continuous period
8 of not less than twelve months, or
- 9 b. Blindness, which means central acuity of 20/200 or less in the better eye with
10 the use of a correcting lens. An eye which is accompanied by a limitation in
11 the fields of vision such that the widest diameter of the visual field subtends
12 and angle no greater than 20 degrees shall be considered as having a central
13 visual acuity of 20/200 or less.
- 14 c. An individual shall be determined to be under a disability only if the physical or
15 mental impairment or impairments are of such severity that the individual is
16 not only unable to do previous work but cannot, considering age, education,
17 and work experience, engage in any other kind of substantial gainful work that
18 which exists in the state economy, regardless of whether the work exists in
19 the immediate area of residence, or whether a specific job vacancy exists for
20 the individual, or whether the individual would be hired on applying for work.
21 For purposes of the preceeding sentence, "work that exists in the state
22 economy" means work that exists in significant numbers either in the area
23 where the individual lives or in several areas of the state.
- 24 d. A "physical or mental impairment" is an impairment that results from
25 anatomical, physiological, or psychological abnormalities which are
26 demonstrable by medically accepted clinical and laboratory diagnostic
27 techniques.
- 28 6. a. "Gross rent" means rental paid for the right of occupancy, at arm's length, of a
29 homestead, exclusive of charges for any medical services furnished by the
30 landlord as a part of the rental agreement, whether or not expressly set out in
31 the rental agreement.

- 1 b. The gross rent of a resident of a nursing home or intermediate care facility is
2 three hundred fifty dollars per month. The gross rent of a resident of an adult
3 foster care home is five hundred fifty dollars per month. The commissioner
4 shall annually adjust for inflation the gross rent amounts stated in this
5 paragraph. The adjustment must be made in accordance with section 1(f) of
6 the Internal Revenue Code, except that for purposes of this subdivision the
7 percentage increase must be determined from the year ending June 30, 2009,
8 to the year ending on June thirtieth of the year in which the rent is paid. The
9 commissioner shall round the gross rents to the nearest ten dollar amount. If
10 the amount ends in five dollars, the commissioner shall round it up to the next
11 ten dollar amount.
- 12 c. If the landlord and tenant have not dealt with each other at arm's length and
13 the commissioner determines that the gross rent charged was excessive, the
14 commissioner may adjust the gross rent to a reasonable amount for purposes
15 of this chapter.
- 16 7. "Household" means a claimant and an individual related to the claimant as
17 husband or wife who are domiciled in the same homestead.
- 18 8. "Household income" means all income received by all persons of a household in a
19 calendar year while members of the household, other than income of a dependent.
- 20 9. "Homestead" means the dwelling occupied as claimants principal residence.
- 21 10. "Income" means the sum of the following:
- 22 a. Federal adjusted gross income as defined in the Internal Revenue Code; and
23 b. The sum of the following amounts to the extent not included in subdivision a:
24 (1) All nontaxable income;
25 (2) The amount of a passive activity loss that is not disallowed as a result
26 of section 469, paragraph (i) and (m) of the Internal Revenue Code and
27 the amount of passive activity loss carryover allowed under section
28 469(b) of the Internal Revenue Code;
29 (3) An amount equal to the total of any discharge of qualified farm
30 indebtedness of a solvent individual excluded from gross income under
31 section 108(g) of the Internal Revenue Code;

- 1 (4) Cash public assistance and relief;
- 2 (5) Any pension or annuity including railroad retirement benefits, all
- 3 payment received under the federal Social Security Act, supplemental
- 4 security income, and veterans benefits, which was not exclusively
- 5 funded by the claimant or spouse, or which was funded exclusively by
- 6 the claimant or spouse and which funding payments were excluded
- 7 from federal adjusted gross income in the years when the payments
- 8 were made;
- 9 (6) Interest received from the federal or a state government or any
- 10 instrumentality or political subdivision thereof;
- 11 (7) Workforce safety and insurance compensation;
- 12 (8) Nontaxable strike benefits;
- 13 (9) The gross amounts of payments received in the nature of disability
- 14 income or sick pay as a result of accident, sickness, or other disability,
- 15 whether funded through insurance or otherwise;
- 16 (10) A lump-sum distribution under section 402-(e)(3) of the Internal
- 17 Revenue Code of 1986, as amended through December 31, 1995;
- 18 (11) Contributions made by the claimant to an individual retirement account,
- 19 including a qualified voluntary employee contribution; simplified
- 20 employee pension plan; self-employed retirement plan; cash or
- 21 deferred arrangement plan under section 401(k) of the Internal
- 22 Revenue Code; or deferred compensation plan under section 457 of the
- 23 Internal Revenue Code;
- 24 (12) Nontaxable scholarship or fellowship grant;
- 25 (13) The amount of deduction allowed under section 199 of the Internal
- 26 Revenue Code; and
- 27 (14) The amount of deduction allowed under section 220 or 223 of the
- 28 Internal Revenue Code.
- 29 11. "Income" does not include:
- 30 a. Amounts excluded pursuant to the Internal Revenue Code, sections 101(a)
- 31 and 102;

- b. Amounts of any pension or annuity which was exclusively funded by the claimant or spouse and which funding payments were not excluded from federal adjusted gross income in the years when the payments were made;
- c. Surplus food or other relief in kind supplied by a governmental agency;
- d. Relief granted under this chapter;
- e. Child support payments received under a temporary or final decree of dissolution or legal separation; or
- f. Restitution payments received by eligible individuals and excludable interest as defined in section 803 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16.

12. "Property taxes payable" means the property tax exclusive of special assessments, penalties, and interest payable on the a claimant's homestead

13. "Rent constituting property taxes" means fifteen percent of the gross rent actually paid in cash, or its equivalent, or the portion of rent paid in lieu of property taxes, in any calendar year by a claimant for the right of occupancy of the claimant's 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 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 household income of the claimant specified in subsection 2 in the year for which the rent was paid, the claimant is not eligible for a refund under this section.

A claimant whose rent constituting property taxes exceeds the percentage of the household income in this section must pay an amount equal to the percent of income shown for the appropriate household income level along with the percent to be paid by the claimant of the remaining amount of rent constituting property taxes. The refund equals the amount of rent constituting property taxes that remains, up to the maximum state refund amounts shown below.

3. The commissioner shall construct and make available to taxpayers a comprehensive table showing the property taxes to be paid and refund allowed at various levels of income and assessment. The table must follow the schedule of income percentages.

???

1. Percentages of gross household income are as follows:
 - a. One and one-half percent for income less than twenty thousand dollars.
 - b. Two percent for income twenty thousand dollars or more but less than thirty thousand dollars.
 - c. Two and one-half percent for income of thirty thousand dollars or more but less than forty thousand dollars.
 - d. Three percent for income of forty thousand dollars or more but not exceeding fifty thousand dollars.
2. 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.

???

57-65-03. Combined Household income.

If a person occupies an homestead with another person or persons not related to the person as husband and wife, excluding dependents, roomers or boarders on contract, and has property tax payable with respect to the homestead, the household income of the claimant or claimants for the purpose of computing the refund allowed by section 290A.04 shall include the total income received by the other persons residing in the homestead. For purposes of this section, "dependent" includes a parent of the claimant or spouse who lives in the claimant's homestead and does not have an ownership interest in the homestead. If a person occupies a homestead with another person or persons not related as husband and wife or as dependents, the property tax payable or rent constituting property tax shall be reduced as follows:

1 If the other person or persons are residing at the homestead under rental or lease
2 agreement, the amount of property tax payable or rent constituting property tax shall be that
3 portion not covered by the rental agreement.

4 **57-65-05. One claimant per household.**

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

13 The maximum dollar amount allowable for a joint claim shall not exceed the amount that
14 one person could receive.

15 **57-65-06. Proof of claim.**

16 Every claimant shall supply to the commissioner, in support of the claim, proof of
17 eligibility under this chapter, including amount of rent paid accrued, name and address or owner
18 or managing agent of property rented, changes in homestead, household membership,
19 household income, size and nature of property claimed as a homestead.

20 Disabled person filing claims shall submit proof of disability in the form and manner as
21 the department may prescribe. The department may require examination and certification by
22 the claimant's physician or by a physician designated by the department. The cost of any
23 examination shall be borne by the claimant, unless the examination proves the disability, in
24 which case the cost of the examination shall be borne by the department.

25 A determination of disability of a claimant by the Social Security Administration under
26 Title II or Title XVI of the Social Security Act shall constitute presumptive proof of disability.

27 **57-65-06. Claims of tenants in leasehold cooperatives.**

28 The cooperative manager of a leasehold cooperative shall furnish a statement of each
29 tenant by March 31 of the year in which the property tax is payable showing each unit's share of
30 the gross property tax and each unit's share of any property tax credits. Each tenant may apply
31 for a property tax refund under this chapter as a homeowner based on each tenant's share of

1 property taxes. The tenant may not include any rent constituting property taxes paid on that
2 unit. For the purpose of this section, a leasehold cooperative is formed on the day that
3 leasehold cooperative status is granted by the appropriate county official.

4 **57-65-08. Claim applied against outstanding liability.**

5 The amount of any claim otherwise payable under this chapter may be applied by the
6 commissioner against any delinquent tax liability of any member of the household. If there are
7 two members of the household, the commissioner may apply only one-half of a refund to the
8 separate liability of either member of the household.

9 **57-65-09. Rights to file claim - Right to receive credit.**

- 10 1. If a person entitled to relief under this chapter dies prior to receiving relief, the
11 surviving spouse or dependent of the person shall be entitled to file the claim and
12 receive relief. If there is no surviving spouse or dependent, the right to the credit
13 shall lapse.
- 14 2. If the commissioner cannot locate the claimant within two years from the date that
15 the original warrant was issued, or if a claimant to whom a warrant has been
16 issued does not cash that warrant within two years from the date the warrant was
17 issued, the right to the credit shall lapse, and the warrant shall be deposited in the
18 general fund.

19 **57-65-10. Owner or managing agent to furnish rent certificate.**

20 The owner or managing agent of any property for which rent is paid for occupancy as a
21 homestead must furnish a certificate of rent paid to a person who is a renter on December
22 thirty-first, in the form prescribed by the commissioner. If the renter moves before December
23 thirty-first, the owner or managing agent may give the certificate to the renter at the time of
24 moving, or mail the certificate to the forwarding address if an address has been provided by the
25 renter. The certificate must be made available to the renter before February first of the year
26 following the year in which the rent was paid. The owner or managing agent must retain a
27 duplicate of each certificate or an equivalent record showing the same information for a period
28 of three years. The duplicate or other record must be made available to the commissioner upon
29 request.

30 **57-65-11. Verification of Social Security numbers.**

1 Annually, the commissioner shall furnish a list to the county assessor containing the
2 names and Social Security numbers of persons who have applied for both homestead
3 classification under section 273-13 and a property tax refund as renter under this chapter.

4 Within ninety days of the notification, the county assessor shall investigate to determine
5 if the homestead classification was improperly claimed. If the property owner does not qualify,
6 the county assessor shall notify the county auditor who will determine the amount of homestead
7 benefits that has been improperly allowed. For the purpose of this section, "homestead
8 benefits" has the meaning given in section 273.124, subdivision 13, paragraph (h). The county
9 auditor shall send a notice to persons who owned the affected property at the time the
10 homestead application related to the improper homestead was filed, demanding reimbursement
11 of the homestead benefits plus a penalty equal to one hundred percent of the homestead
12 benefits. The person notified may appeal the county's determination with the Minnesota Tax
13 Court within sixty days of the date of the notice from the county as provided in section 273.124,
14 subdivision 13, paragraph (h).

15 If the amount of homestead benefits and penalty is not paid within sixty days, and if no
16 appeal has been filed, the county auditor shall certify the amount of taxes and penalty to the
17 county treasurer. The county treasurer will add interest to the unpaid homestead benefits and
18 penalty amounts at the rate provided for delinquent personal property taxes for the period
19 beginning sixty days after demand for payment was made until payment. If the person notified
20 is the current owner of the property, the treasurer may add the total amount of benefits, penalty,
21 interest, and costs to the real estate taxes otherwise payable on the property in the following
22 year. If the person notified is not the current owner of the property, the treasurer may collect
23 the amounts due under the Revenue Recapture Act in charter 270A, or use any of the powers
24 granted in sections 277.20 and 277.21 without exclusion, to enforce payment of the benefits,
25 penalty, interest, and costs, as if those amounts were delinquent tax obligations of the person
26 who owned the property at the time the application related to the improperly allowed homestead
27 was filed. The treasurer may relieve a prior owner of personal liability for the benefits, penalty,
28 interest, and costs, and instead extend those amounts on the tax lists against the property for
29 taxes payable in the following year to the extent that the current owner agrees in writing.

30 Any amount of homestead benefits recovered by the county from the property owner
31 shall be distributed to the county, city or town, and school district where the property is located

1 in the same proportion that each taxing district's levy was to the total of the three taxing district's
2 levy for the current year. Any amount recovered attributable to taconite homestead credit shall
3 be transmitted to the _____ auditor to be deposited in the taconite property tax relief
4 account. Any amount recovered that is attributable to supplemental homestead credit is to be
5 transmitted to the commissioner of revenue for deposit in the general fund of the state treasury.
6 The total amount of penalty collected must be deposited in the county general fund.

7 **SECTION 10. APPROPRIATION.** There is appropriated out of any moneys in the
8 general fund in the state treasury, not otherwise appropriated, the sum of \$_____, or so
9 much of the sum as may be necessary, to _____ for the purpose of _____ for
10 the biennium beginning July 1, 2009, and ending June 30, 2011.

11 **SECTION 11. EFFECTIVE DATE.** Section 1 of this Act becomes effective for taxable
12 years beginning after December 31, 2008.