

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; 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

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

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

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

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

29 2. "Commissioner" means the tax commissioner.

30 3. "Dependent" means any person who is considered a dependent under sections
31 151 and 152 of the Internal Revenue Code.

1 4. "Disability" means:

- 2 a. Inability to engage in any substantial gainful activity by reason of any
3 medically determinable physical or mental impairment that can be expected to
4 result in death or has lasted or can be expected to last for a continuous period
5 of not less than twelve months; or blindness, which means central acuity of
6 20/200 or less in the better eye with the use of a correcting lens. An eye
7 which is accompanied by a limitation in the fields of vision such that the widest
8 diameter of the visual field subtends an angle no greater than twenty degrees
9 shall be considered as having a central visual acuity of 20/200 or less.
10 b. An individual must be determined to be under a disability only if the physical
11 or mental impairment or impairments are of such severity that the individual is
12 not only unable to do previous work but cannot, considering age, education,
13 and work experience, engage in any other kind of substantial gainful work that
14 exists in the state economy, regardless of whether the work exists in the
15 immediate area of residence, or whether a specific job vacancy exists for the
16 individual, or whether the individual would be hired on applying for work.
17 "Work that exists in the state economy" means work that exists in significant
18 numbers either in the area where the individual lives or in several areas of the
19 state.
20 c. A "physical or mental impairment" is an impairment that results from
21 anatomical, physiological, or psychological abnormalities which are
22 demonstrable by medically accepted clinical and laboratory diagnostic
23 techniques.

24 5. "Disabled claimant" means any claimant who has a disability.

- 25 6. a. "Gross rent" means rental paid for the right of occupancy, at arm's length, of a
26 homestead, exclusive of charges for any medical services furnished by the
27 landlord as a part of the rental agreement, whether or not expressly set out in
28 the rental agreement.
29 b. The gross rent of a resident of a nursing home or intermediate care facility is
30 deemed to be three hundred fifty dollars per month. The gross rent of a
31 resident of an adult foster care home is deemed to be five hundred fifty dollars

per month. The commissioner shall adjust annually for inflation the gross rent amounts stated in this subdivision. The adjustment must be made in accordance with section 1(f) of the Internal Revenue Code, except that for purposes of this subdivision the percentage increase must be determined from the year ending June 30, 2009, to the year ending on June thirtieth of the year in which the rent is paid. The commissioner shall round the gross rents to the nearest ten dollar amount. If the amount ends in five dollars, the commissioner shall round it up to the next ten dollar amount.

c. If the landlord and tenant have not dealt with each other at arm's length and the commissioner determines that the gross rent charged was excessive, the commissioner may adjust the gross rent to a reasonable amount for purposes of this chapter.

7. "Homestead" means the dwelling occupied as the claimant's principal residence.

8. "Household" means a claimant and an individual related to the claimant as husband or wife who are domiciled in the same homestead.

9. "Household income" means all income received by all persons of a household in a calendar year while members of the household, other than income of a dependent.

10. "Income" means the sum of the following:

a. Federal adjusted gross income as defined in the Internal Revenue Code; and

b. The sum of the following amounts to the extent not included in subdivision a:

(1) All nontaxable income;

(2) The amount of a passive activity loss that is not disallowed as a result of section 469(i) and (m) of the Internal Revenue Code and the amount of passive activity loss carryover allowed under section 469(b) of the Internal Revenue Code;

(3) An amount equal to the total of any discharge of qualified farm indebtedness of a solvent individual excluded from gross income under section 108(g) of the Internal Revenue Code;

(4) Cash public assistance and relief;

(5) Any pension or annuity, including railroad retirement benefits, all payments received under the federal Social Security Act, supplemental

1 security income, and veterans' benefits, which was not exclusively
2 funded by the claimant or spouse, or which was funded exclusively by
3 the claimant or spouse and which funding payments were excluded
4 from federal adjusted gross income in the years when the payments
5 were made;

6 (6) Interest received from the federal government or a state government or
7 any instrumentality or political subdivision thereof;

8 (7) Workforce safety and insurance compensation;

9 (8) Nontaxable strike benefits;

10 (9) The gross amounts of payments received in the nature of disability
11 income or sick pay as a result of accident, sickness, or other disability,
12 whether funded through insurance or otherwise;

13 (10) A lump-sum distribution under section 402(e)(3) of the Internal Revenue
14 Code of 1986, as amended through December 31, 2008;

15 (11) Contributions made by the claimant to an individual retirement account,
16 including a qualified voluntary employee contribution; simplified
17 employee pension plan; self-employed retirement plan; cash or
18 deferred arrangement plan under section 401(k) of the Internal
19 Revenue Code; or deferred compensation plan under section 457 of the
20 Internal Revenue Code;

21 (12) Nontaxable scholarship or fellowship grant;

22 (13) The amount of deduction allowed under section 199 of the Internal
23 Revenue Code; and

24 (14) The amount of deduction allowed under section 220 or 223 of the
25 Internal Revenue Code.

26 11. "Income" does not include:

27 a. Amounts excluded pursuant to sections 101(a) and 102 of the Internal
28 Revenue Code;

29 b. Amounts of any pension or annuity which was exclusively funded by the
30 claimant or spouse and which funding payments were not excluded from
31 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.

12. "Property taxes payable" means the property tax exclusive of special assessments, penalties, and interest payable on the 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 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.

e. Each of the dollar amounts listed in subdivisions a through d must be increased by two thousand dollars for each dependent residing with the claimant.

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. Combined household income. If an individual occupies a homestead with another individual or individuals not related to the individual as husband or 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 57-65-02 must include the total income received by the other individuals 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.

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

57-65-05. Proof of claim.

1 1. Every claimant shall supply to the commissioner, in support of the claim, proof of
2 eligibility under this chapter, including a certificate of rent paid from the owner or
3 manager of the property rented or an affidavit of rent paid verified by the claimant,
4 name and address or owner or managing agent of property rented, changes in
5 homestead, household membership, household income, and size and nature of
6 property claimed as a homestead.

7 2. A disabled individual filing a claim shall submit proof of disability in the form and
8 manner as the commissioner may prescribe. The commissioner may require
9 examination and certification by the claimant's physician or by a physician
10 designated by the commissioner. The cost of any examination must be borne by
11 the claimant, unless the examination proves the disability, in which case the cost of
12 the examination must be borne by the commissioner.

13 3. A determination of disability of a claimant by the social security administration
14 under title II or XVI of the Social Security Act constitutes presumptive proof of
15 disability.

16 **57-65-06. Claim applied against outstanding liability.** The amount of any claim
17 otherwise payable under this chapter may be applied by the commissioner against any
18 delinquent tax liability of any member of the household. If there are two members of the
19 household, the commissioner may apply only one-half of a refund to the separate liability of
20 either member of the household.

21 **57-65-07. Rights to file claim - Right to receive credit.**

22 1. If an individual entitled to relief under this chapter dies before receiving relief, the
23 surviving spouse or dependent of the individual is entitled to file the claim and
24 receive relief. If there is no surviving spouse or dependent, the right to the credit
25 lapses.

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

30 **57-65-08. Owner or managing agent to furnish rent certificate.** The owner or
31 managing agent of any property for which rent is paid for occupancy as a homestead must

1 furnish a certificate of rent paid to an individual who is a renter on December thirty-first, in the
2 form prescribed by the commissioner. If the renter moves before December thirty-first, the
3 owner or managing agent may give the certificate to the renter at the time of moving or mail the
4 certificate to the forwarding address if an address has been provided by the renter. The
5 certificate must be made available to the renter before February first of the year following the
6 year in which the rent was paid. The owner or managing agent must retain a duplicate of each
7 certificate or an equivalent record showing the same information for a period of three years.
8 The duplicate or other record must be made available to the commissioner upon request.

9 **57-65-09. Verification of social security numbers.**

- 10 1. Annually, the commissioner shall furnish a list to the county assessor containing
11 the names and social security numbers of persons who have applied for both
12 homestead credit under section 57-02-08.1 and a property tax refund as renter
13 under this chapter.
- 14 2. Within ninety days of the notification, the county assessor shall investigate to
15 determine if the homestead classification was improperly claimed. If the property
16 owner does not qualify, the county assessor shall notify the county auditor who will
17 determine the amount of homestead benefits that has been improperly allowed.

18 **SECTION 2. EFFECTIVE DATE.** Section 1 of this Act becomes effective for taxable
19 years beginning after December 31, 2008.