

June 2011

## PROPERTY TAX MEASURE REVIEW COMMITTEE - BACKGROUND MEMORANDUM

### STUDY RESPONSIBILITIES

North Dakota Century Code Section 16.1-01-17 ([Appendix A](#)) provides that at least 90 days prior to the statewide election at which an initiated measure will be voted upon, the Legislative Council is to coordinate the determination of the estimated fiscal impact of the initiated measure. The Legislative Management is to hold hearings, receive public testimony, and gather information from agencies and institutions relating to the estimated fiscal impact of the initiated measure. At least 30 days prior to the election, the Legislative Council is to provide information regarding the estimated fiscal impact to the Secretary of State, who shall include a notice within the analysis of the initiated measure specifying where copies of the statement of the estimated fiscal impact of the initiated measure can be obtained.

To comply with this section, the Legislative Management directed a study of the potential effects of initiated measure No. 2 ([Appendix B](#)) appearing on the primary election ballot on June 12, 2012, to prohibit imposition of property taxes. This responsibility has been assigned to the Property Tax Measure Review Committee.

### BACKGROUND Property Tax

Property tax is an ad valorem tax assessed on the value of all real property unless the property, such as personal property, is specifically exempted. Except for a one-mill levy for the University of North Dakota School of Medicine and Health Sciences, property taxes are determined, levied, collected, and expended at the local level for support of schools; counties; cities; townships; and other local political subdivisions including, park districts, rural fire protection districts, hospital districts, soil conservation districts, rural ambulance districts, recreation service districts, the Garrison Diversion Conservancy District, the Southwest Water Authority, and all special assessments for rural districts. The property tax is determined by multiplying a mill rate times the real property's taxable value.

#### Mill Rates

A mill rate is the amount of tax paid per dollar of the taxable value of property. One mill is equal to one-tenth of one cent or \$1 for each \$1,000 of taxable value. Mill rates are established based on the revenue needs of the taxing district. The mill rate is determined by dividing the total taxes to be collected (revenue needs) in each taxing district by the total taxable value of property within the district.

### Taxable Value

Prior to 1981, all real property was in one class, and the standard of value for property tax was market value with property being taxed at a fraction of the market value. Limitations were in place that limited the number of mills which could be levied. Pursuant to law, all real property was included in one class, and the assessed value was to be the same as the true and full value. However, a de facto classification system existed where counties were assessing the different classifications of property at a different percentage of true and full value. For example, a county may have assessed agricultural property at 10 percent of true and full value, residential property at 13 percent of true and full value, and centrally assessed property at 24 percent of true and full value.

The 1981 Legislative Assembly changed the procedures for determining the value of property for tax purposes to include provisions for establishing the true and full value, assessed value, and taxable value of property and a new classification system.

Currently, taxable value of property is determined based on the true and full value and the assessed value of the property. The true and full value of residential and commercial property is the local assessor's estimate of the market value of the property. For residential property, the assessed value is 50 percent of the true and full value, and the taxable value is 9 percent of the assessed value. For commercial property, the assessed value is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

The true and full value of agricultural property is based on productivity and is calculated by North Dakota State University (NDSU) using the capitalized average annual gross return of the land. The Tax Commissioner receives information from NDSU and certifies to the county directors of tax equalization the estimated average true and full agricultural value of farm and grazing land in each county. The assessed value of agricultural property is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

Property tax assessments for railroads, investor-owned public utilities, and airlines are determined by the State Board of Equalization. The assessed value of these centrally assessed properties is 50 percent of the true and full value, and the taxable value is 10 percent of the assessed value.

### Other Taxes

Taxes paid in lieu of property taxes include:

- **Telecommunications carriers** - Telecommunications carriers are assessed a tax of 2.5 percent of their adjusted gross receipts by the State Board of Equalization.

- **Rural electric cooperatives** - Effective January 1, 2010, property of rural electric cooperatives is subject to generation, distribution, and transmission taxes pursuant to Chapter 54-33.2.
- **Coal conversion facilities** - The coal conversion tax is in lieu of property taxes on investor-owned or cooperative electrical generating plants which have at least one unit with a generating capacity of 10,000 kilowatts or more of electricity, other coal conversion facilities which consume 500,000 tons or more of coal per year, or coal beneficiation plants. The lands on which the plants are located remain subject to the ad valorem property tax.
- **Oil and gas gross production tax** - Oil and gas gross production tax is imposed in lieu of property taxes on oil and gas-producing properties. The gross production tax for oil is based on the gross value at the well of oil produced. The gross production tax for gas is an annually adjusted flat rate per thousand cubic feet of all nonexempt gas produced in the state.
- **Tourism or concession license fee** - A license fee in lieu of property taxes is imposed for state-owned property leased from the superintendent of the State Historical Board or the director of the Parks and Recreation Department and used for tourism or concession purposes.
- **Potash** - A tax of 2 percent on the sale price of potash and 4 percent on the gross value of all subsurface mineral byproducts of potash production has been imposed in lieu of property taxes for taxable production occurring after June 30, 2011. The land and processing facility, mining facility, or satellite facility is assessed and taxed the same as other property within the taxing district in which the potash property is located.

### Statewide Property Taxes

The following table provides information on the statewide average mill rates, property tax valuations, and ad valorem property taxes levied for taxes payable in 2001-10:

	Average Mill Rate	Taxable Value	Taxes Levied <sup>1</sup>
2001	392.07	\$1,298,333,166	\$509,032,721
2002	390.33	\$1,364,577,713	\$532,629,675
2003	392.78	\$1,427,642,584	\$560,751,909
2004	399.24	\$1,468,874,722	\$586,412,017
2005	402.70	\$1,534,816,263	\$618,065,693
2006	401.66	\$1,642,672,714	\$659,789,374
2007	397.41	\$1,777,593,059	\$706,427,621
2008	392.15	\$1,888,388,390	\$740,540,738
2009	390.02	\$1,990,645,138	\$776,398,475
2010	319.37	\$2,125,303,286	\$678,749,378

<sup>1</sup>The amounts shown include ad valorem property taxes only and do not include payments in lieu of taxes.

Source: Tax Commissioner

## RELATED LEGISLATION

### Use of State or Political Subdivision Services or Property

Section 16.1-10-02(1) provides that no person may use any property belonging to or leased by the state or any state agency or any service which is provided by the state or a state agency or political subdivision for any political purpose.

The definition of political purpose included in Section 16.1-10-02(2) was amended by the 2011 Legislative Assembly in Senate Bill No. 2327 to include a statewide initiated or referred measure, a constitutional amendment or measure, and a political subdivision ballot measure. The 2011 Legislative Assembly also amended subsection 2 to provide that "[f]actual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question."

## STUDY PLAN

The following is a proposed study plan for the committee's consideration in its study of the initiated measure to prohibit imposition of property taxes:

1. Receive testimony from initiative sponsoring committee representatives regarding the provisions of the property tax measure.
2. Receive and review information regarding the types of tax levies imposed on real property and total revenues generated by taxes on real property.
3. Receive testimony from political subdivisions regarding the potential effects on county, city, and school district revenue sources.
4. Receive testimony from other interested persons regarding the committee's study of the initiated constitutional measure to prohibit imposition of property taxes.
5. Receive testimony from the Attorney General's office regarding the provisions of the initiated measure.
6. Receive testimony from agencies, institutions, and departments regarding the estimated fiscal impact of the initiated measure.
7. Determine the estimated fiscal impact of the initiated measure and provide the information to the Secretary of State at least 30 days prior to the June 12, 2012, primary election.
8. Develop recommendations and any bill drafts necessary to implement the recommendations.
9. Prepare a final report for submission to the Legislative Management.

ATTACH:2