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March 10, 2025

House Finance and Taxation Committee

Attn: Chairman Headland

North Dakota Legislative Council

600 East Boulevard Ave

Bismarck, ND 58505

RE: SB2039: A Bil for an Act to amend and reenact subsection 1 of section 57-02-01 of the N.D.C.C., relating to the definition of agricultural property; and to provide an effective date.

March 10, 2025 House Bill Hearing

Dear Chairman Headland and other honorable members of the Finance and Taxation Committee:

Please allow this letter to serve as testimony in support of SB2039, which is presently before this committee this legislative session. My name is Terin Riley, and I am appearing before you on behalf of my clients, interested farmers in Pembina County, North Dakota.

As many of you know, I previously appeared before the Interim Committee on several occasions throughout the study which resulted in the unanimous approval of the language presented in SB2039 this past Summer of 2023/Fall of 2024. It is our position that SB2039 would serve a great justice to the farmers and ranchers of North Dakota, and we remain in support of SB2039, as drafted, and respectfully request that this Committee approve this bill and continue to support and advocate for the protection of equal application under the law for the citizens of the State of North Dakota.

This is the third legislative session in which the issue of N.D.C.C. § 57-02-01 and the statute's applicability and whether the storage of personal commodities before delivery to the first end point user qualifies the storage structure for tax exemption

under the law. As N.D.C.C. § 57-02-01 is currently written, the lack of a definition of what constitutes the continuum of “raising of agricultural crops” has given rise to ambiguity in the law, and left the statute open to personal interpretation, which has resulted in the disparate treatment under the law across the counties. This inequity in application of property taxation has cost my clients a significant amount of time and money to continue to fight at both local and state levels for justice and what is right, which is equal protections and application under the law.

The evolution of N.D.C.C. § 57-02-01 reflects a clear intention of the Legislature to acknowledge that the farming operation is evolving over time, and as such so must the legislation that guides it. The Legislature has already considered that the storage of seeds and plants in a greenhouse for a nursery, as well as the storage of honey in containers are considered to be a part of the agricultural practice of those industries.¹ So too should be the storage of crops and commodities, which may require maintenance and conditioning in order to preserve the crop and commodity from spoiling, before being delivered to the first end point user. The continuum of raising of agricultural crops does not end the minute the crop is harvested from the field. If that was the intention of the industry, Good Agricultural Practices (“GAP”) policies for sanitary storage and conditioning of the crops before delivery to the first end point users would not be required to be completed and re-certified every year by the farmers. Additional information regarding the GAP Audit process can be accessed at the website: <https://www.ams.usda.gov/services/auditing/gap-ghp/audit>. It is common sense that storage and maintenance of the crops and commodities is a part of the “raising of agricultural crops.”

The North Dakota Supreme Court has provided guidance as to the process necessary to make a tax exemption determination, and provided a two-part inquiry as to determination of: (1) the character of the land – whether the structure to be exempted is located on “Agricultural Property” as defined by N.D.C.C. § 57-02-01; and (2) the nature of the structure – whether the structure is “used” as part of the farm plant.² This language of the Legislature as well as the interpretation of the North Dakota Supreme Court clearly identify that the “use” of the building and the land is pivotal to the interpretation and determination of whether a structure qualifies for the property tax exemption.

Currently, there exists ambiguity in the interpretation of how local auditors are interpreting N.D.C.C. § 57-02-01 when making the determination as to whether land qualifies as “Agricultural Property” under the law, before making a determination as to

¹ See North Dakota Office Of State Tax Commissioner Guideline-Property Tax: Exemption Of Farm Buildings And Other Improvements, ¶¶ 10 and 11; (which can be located at <https://www.tax.nd.gov/sites/www/files/documents/guidelines/property-tax/exemption-of-farm-buildings-other-improvements-guideline.pdf>).

² See *Boehm v. Burleigh County*, 130 N.W.2d 170, 173, (N.D. 1964).

the exemption status for buildings and improvements located on the land under N.D.C.C. § 57-02-08(15). Ambiguity has been experienced in several different ways.

The first ambiguity being that there has been inconsistency in the application of whether or not the seven (7) factors enumerated in N.D.C.C. § 57-02-01(1)(a) apply to all determinations of whether land qualifies as “Agricultural Property.” Some auditors have been immediately referencing the seven (7) factors to determine whether or not the land constitutes “Agricultural Property,” without ever determining whether and when the land has been “platted.” However, in statutory interpretation, we must read the plain language of any statute as it has been defined by the Legislature. Courts interpret statutory language by its plain, ordinary, and commonly understood meaning.³ Punctuation and purposeful subdivisions of a statute are to be noted and recognized in interpreting statutes. It is understood and presumed that the Legislature was intentional in the drafting of the language as it was approved.

Pursuant to the plain language of N.D.C.C. § 57-02-01, as currently written, the first inquiry must establish whether the real property at issue is platted or unplatted; and if platted, it must be determined whether it was platted prior to March 30, 1981 or on or after March 30, 1981. If the real property at issue is platted on or after March 30, 1981, then whether four (4) of the seven (7) factors enumerated in N.D.C.C. § 57-02-01(1)(a) are met becomes relevant to the inquiry.

However, if the land is unplatted or platted prior to March 30, 1981, then the seven (7) factors enumerated in N.D.C.C. § 57-02-01(1)(a) are inapplicable to this initial inquiry. If the land is unplatted or platted prior to March 30, 1981, it is very clear that the Legislature intended that the land “shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals.” (emphasis added).⁴ It necessarily follows that the next inquiry to be considered is whether the land is being used for the “raising of agricultural crops or grazing farm animals.” (emphasis added).⁵

The second ambiguity that is being experienced at local levels is in the undefined term of “raising of agricultural crops.” North Dakota Century Code § 57-02-01, as currently written, does not define what constitutes, or is included in the process of “raising of agricultural crops.” The issue directly at hand is whether or not storage and maintenance of the harvested crop before it is delivered to the end point user (first point of sale) is included in the “raising” of the agricultural crop process. It remains our position, that the storage and maintenance of crops to ensure they do not spoil prior to final delivery is an integral part of the continuum of “raising of agricultural crops.” The same

³ See N.D.C.C. § 1-02-02; and *Grand Forks Homes, Inc. v. State ex rel. State Bd. Of Equalization*, 2011 ND 65, ¶ 11, 795 N.W.2d 335, 339.

⁴ See N.D.C.C. § 57-02-01(1).

⁵ See *Id.*

would be true of the containment and storage of live cattle before they are either sold or sent to butcher.

Another matter that must be addressed is that there currently stand several Attorney General Opinions and one letter on this matter, as was presented by Legislative Counsel at the during the Interim Committee process. What is critical to understand, is that the Legislature is not bound by the Attorney General opinions. It is our legislative body that makes the laws. Our judiciary body is who interprets the laws made by the Legislature. If there is known ambiguity in the law, it is up to our esteemed legislators to clarify exactly what was intended so that those of us to are trained to interpret the law, can appropriately advice our clients. Ambiguity in the law leads to individual discretion, and inequal or disparate treatment under the law, and that inequity cannot stand when the very core of tax equalization, is to ensure that the citizens and landowners are taxed and treated equal across the State under the guise of the law.

The current issue that is creating disparate application and treatment across differing counties would be alleviated with the added language of SB2039, in such that the language clearly defines what constitutes the “raising of agricultural crops” and at what point the “raising of agricultural crops” is completed. Without the definition of “raising of agricultural crops,” the disparity and ambiguity created by the differing interpretations of the statute will continue, thus resulting in some farmers being taxed at a commercial rate for their land and storage structures, where other farmers in neighboring counties that are similarly situated are taxed as agricultural property and their storage structures are exempt. This disparity in treatment under the law has a significant economic impact on those prejudiced farmers, and directly impacts their ability to remain competitive in their individual markets. This inequity under the law cannot be condoned or continue. We are not asking for a new exemption, which has been indicated throughout this process. What we are asking is for equal treatment under the law. It is our position that SB2039 provides for that equal treatment, and we respectfully request your support thereof.

Thank you for your time and consideration regarding these matters, and it is our most sincere hope that you vote in support of SB2039, and continue to support equal application under the law for all of North Dakota’s farmers and ranchers.

Sincerely,

/s/ Terin G. Riley

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