

TAXATION

CHAPTER 784

HOUSE BILL NO. 1520

(Representatives Martinson, Oban)

(Senators Wogsland, Nelson)

(Approved by the Delayed Bills Committee)

MANUFACTURING FACILITY TAX EXEMPTIONS

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax exemption for materials used to construct an agricultural commodity processing facility; to amend and reenact sections 40-57.1-03, 40-57.1-06, 57-15-31, and subsection 4 of section 57-39.2-04.3 of the North Dakota Century Code and subsection 5 of section 57-39.2-04.3 of the North Dakota Century Code as amended by section 1 of chapter 565 of the 1993 Session Laws, relating to a property tax exemption or payments in lieu of taxes which may be granted for new industries and sales tax exemptions for manufacturing machinery and construction materials for agricultural commodity processing facilities; to repeal section 40-57.1-08 of the North Dakota Century Code, relating to limitations on industrial projects that may qualify for tax exemptions for new industries; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-03. Municipalities- Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations. ~~Municipalities are hereby authorized and empowered, in their discretion, as limited hereafter, to grant, after After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all tangible property buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on tangible property buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities grown in this state of up to one hundred percent in the sixth year from the date of commencement of project operations, eighty percent in the seventh year from the date of commencement of project operations, sixty percent in the eighth year from the date of commencement of project operations, forty percent in the ninth year from the date of commencement of project operations, and twenty percent in for all or part of the sixth year through the tenth year from the date of commencement of project operations. An exemption granted under this chapter applies only to the buildings, structures, and improvements on the property.~~

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the

operation of a project upon which initial construction is begun after June 30, 1994. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if such the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, to competitors of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

SECTION 2. AMENDMENT. Section 40-57.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-06. Change in value investment, new location, or change in project operator or use requiring reapplication for tax exemption or payments in lieu of taxes. If at any time the value of the property exempted from taxation under the provisions of this chapter capital investment in the buildings, structures,

fixtures, and improvements comprising the project exceeds the original valuation investment or total investment after an approved reapplication under this section because expansion of the project has increased the investment in the project by more than ten twenty percent, the project operator must reapply in order to receive an exemption or to make payments in lieu of taxes on the added value of the property. If the project operator does not reapply, or if the reapplication is disapproved, the increased valuation will be capital value of the buildings, structures, fixtures, and improvements comprising the project is subject to ad valorem taxation. If at any time a project operator who is exempt from taxation or subject to payments in lieu of taxes under this chapter moves the business to a new location within this state, the project operator must either reapply to retain the remaining balance of the property tax exemption or the option to make payments in lieu of taxes or elect to make application as a new business; but the move shall have. A business relocation has no effect on the income tax exemption of the project operator if it is shown by the project operator to the satisfaction of the state board of equalization that the nature of the business has not been changed by the move and that the effect of the business upon competitors has not been changed by the move. In addition, the a property tax exemption or option to make payments in lieu of taxes provided by this chapter shall apply applies only to the project operator to which whom it is granted and shall be is valid only so long as while the property is used for the purposes stated in the application. If there is a change in use of the property, or if a new project operator takes possession of the property, the property tax exemption shall terminate or option to make payments in lieu of taxes terminates and the project operator must file a new application with the municipality if the project operator wishes consideration for a tax exemption or option to make payments in lieu of taxes for the remainder of the exemption or payments in lieu of taxes period provided pursuant to under section 40-57.1-03.

SECTION 3. AMENDMENT. Section 57-15-31 of the North Dakota Century Code is amended and reenacted as follows:

57-15-31. Determination of levy. The amount to be levied by any county, city, township, school district, park district, or other municipality authorized to levy taxes shall be computed by deducting from the amount of estimated expenditures for the current fiscal year as finally determined, plus the required reserve fund determined upon by the governing board from the past experience of the taxing district, the total of the following items:

1. The available surplus consisting of the free and unencumbered cash balance.
2. Estimated revenues from sources other than direct property taxes.
3. The total estimated collections from tax levies for previous years.
4. Such expenditures as are to be made from bond sources.
5. The amount of distributions received from an economic growth increment pool under section 57-15-61.
6. The estimated amount to be received from payments in lieu of taxes on a project under section 40-57.1-03.

Allowance may be made for a permanent delinquency or loss in tax collection not to exceed five percent of the amount of the levy.

SECTION 4. AMENDMENT. Subsection 4 of section 57-39.2-04.3 of the North Dakota Century Code is amended and reenacted as follows:

4. For purposes of this section, the following definitions apply:
- a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured.
 - b. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.
 - c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in ~~actual~~ manufacturing operations at any time from the initial stage where the raw material is first acted upon and changed in any essential respect received at the plant site through the completion and packaging of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.
 - d. "Machinery" and "equipment" do not include handtools, buildings, or transportation equipment not used directly in manufacturing; ~~office machines and equipment;~~ machines and equipment used primarily in administrative, accounting, sales, or other nonmanufacturing segments of the business; any property that becomes a part of the manufactured product; or any other equipment or machinery not used directly ~~and solely~~ in manufacturing.
 - e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.
 - f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.
 - g. "Used directly" means used ~~solely~~ primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:
 - (1) To effect a direct physical change upon the tangible personal property.
 - (2) To guide or measure a direct physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.

- (3) To test or measure the property on the production line or at a site in the location of production.
- (4) To transport, convey, or handle the tangible personal property during the manufacturing.
- (5) To package the product for sale and shipment.
- (6) To conduct research and development and design activities related to the manufacturing process of the plant.

SECTION 5. AMENDMENT. Subsection 5 of section 57-39.2-04.3 of the North Dakota Century Code, as amended by section 1 of chapter 565 of the 1993 Session Laws, is amended and reenacted as follows:

5. For purposes of this section, the following definitions apply:

- a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.
- b. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing or recycling process.
- c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in ~~actual~~ manufacturing or recycling operations at any time from the initial stage where the raw material is first ~~acted upon and changed in any essential respect~~ received at the plant site through the completion and packaging of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.
- d. "Machinery" and "equipment" do not include handtools, buildings, or transportation equipment not used directly in manufacturing or recycling; ~~office machines and equipment;~~ machines and equipment used primarily in administrative, accounting, sales, or other ~~nonmanufacturing~~ segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly ~~and solely~~ in manufacturing or recycling.
- e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.

- f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.
- g. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.
- g- h. "Used directly" with respect to manufacturing means used solely primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:
- (1) To effect a direct physical change upon the tangible personal property.
 - (2) To guide or measure a direct physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
 - (3) To test or measure the property on the production line or at a site in the location of production.
 - (4) To transport, convey, or handle the tangible personal property during the manufacturing.
 - (5) To package the product for sale and shipment.
 - (6) To conduct research and development and design activities related to the manufacturing process of the plant.

"Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

SECTION 6. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for materials used to construct agricultural commodity processing facility.

1. Gross receipts from sales of tangible personal property used to construct an agricultural commodity processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. The owner of the facility must apply to the commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sale or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to

permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

3. For purposes of this section, the following definitions apply:

- a. "Agricultural commodity processing facility" means buildings, structures, fixtures, and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities. The term does not include a facility that provides only storage, cleaning, drying, or transportation of agricultural commodities.
- b. "Facility" means each part of the facility which is used in a process primarily for the processing of agricultural commodities, including receiving or storing agricultural commodities; transporting the agricultural commodities or product before, during, or after the processing; or packaging or otherwise preparing the product for sale or shipment.
- c. "Tangible personal property" does not include tools or machinery used to construct an agricultural commodity processing facility and does not include machinery or equipment exempted under section 57-39.2-04.3.

SECTION 7. REPEAL. Section 40-57.1-08 of the North Dakota Century Code is repealed.

SECTION 8. EFFECTIVE DATE - EXPIRATION DATE. This Act becomes effective July 1, 1994. Sections 1, 2, 3, and 7 of this Act are effective for taxable years beginning after December 31, 1993; section 4 of this Act is effective for taxable events occurring after June 30, 1995; section 6 of this Act is effective for taxable events occurring after June 30, 1994; and section 5 of this Act is effective for taxable events occurring after June 30, 1994, is effective through June 30, 1995, and after that date is ineffective.

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