

SENATE BILL NO. 2242

Introduced by

Senators Cook, O'Connell, Wardner

Representatives R. Kelsch, Porter, Williams

1 A BILL for an Act to amend and reenact subsection 15 of section 57-02-08 of the North Dakota
2 Century Code, relating to ownership of a residence by a corporation, limited liability company,
3 limited liability partnership, or limited partnership as a disqualifying factor for the farm building
4 and residence property tax exemption; and to provide an effective date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 15. a. All farm structures and improvements located on agricultural lands.
- 9 (1) This subsection must be construed to exempt farm buildings and
10 improvements only, and may not be construed to exempt from taxation
11 industrial plants, or structures of any kind not used or intended for use
12 as a part of a farm plant, or as a farm residence.
- 13 (2) Any structure or improvement used primarily in connection with a retail
14 or wholesale business other than farming, any structure or improvement
15 located on platted land within the corporate limits of a city, or any
16 structure or improvement located on railroad operating property subject
17 to assessment under chapter 57-05 is not exempt under this
18 subsection. For purposes of this paragraph, "business other than
19 farming" includes processing to produce a value-added physical or
20 chemical change in an agricultural commodity beyond the ordinary
21 handling of that commodity by a farmer prior to sale.
- 22 (3) Any structure or improvement, owned by a corporation, limited liability
23 company, limited liability partnership, or limited partnership and
24 occupied as a residence by an individual who is a shareholder,

1 member, or partner of the legal entity that owns the structure or
2 improvement, is not exempt under this subsection.

3 (4) The following factors may not be considered in application of the
4 exemption under this subsection:

5 (a) Whether the farmer grows or purchases feed for animals raised
6 on the farm.

7 (b) Whether animals being raised on the farm are owned by the
8 farmer.

9 (c) Whether the farm's replacement animals are produced on the
10 farm.

11 (d) Whether the farmer is engaged in contract feeding of animals on
12 the farm.

13 b. It is the intent of the legislative assembly that this exemption as applied to a
14 residence must be strictly construed and interpreted to exempt only a
15 residence that is situated on a farm and ~~which is~~ occupied or used by a
16 ~~person~~ an individual who is a farmer ~~and that the~~ but which is not owned by a
17 corporation, limited liability company, limited liability partnership, or limited
18 partnership and occupied as a residence by an individual who is a
19 shareholder, member, or partner of the legal entity that owns the residence.
20 The exemption may not be applied to ~~property~~ a residence which is not
21 occupied or used by a ~~person~~ an individual who is ~~not~~ a farmer. For purposes
22 of this subdivision:

23 (1) "Farm" means a single tract or contiguous tracts of agricultural land
24 containing a minimum of ten acres [4.05 hectares] and for which the
25 farmer, actually farming the land or engaged in the raising of livestock
26 or other similar operations normally associated with farming and
27 ranching, has received annual net income from farming activities which
28 is fifty percent or more of annual net income, including net income of a
29 spouse if married, during any of the three preceding calendar years.

30 (2) "Farmer" means an individual who normally devotes the major portion
31 of time to the activities of producing products of the soil, poultry,

1 livestock, or dairy farming in such products' unmanufactured state and
2 has received annual net income from farming activities which is fifty
3 percent or more of annual net income, including net income of a spouse
4 if married, during any of the three preceding calendar years. "Farmer"
5 includes a "retired farmer" who is retired because of illness or age and
6 who at the time of retirement owned and occupied as a farmer the
7 residence in which the person lives and for which the exemption is
8 claimed. "Farmer" includes a "beginning farmer" who has begun
9 occupancy and operation of a farm within the three preceding calendar
10 years; who normally devotes the major portion of time to the activities of
11 producing products of the soil, poultry, livestock, or dairy farming in
12 such products' unmanufactured state; and who does not have a history
13 of farm income from farm operation for each of the three preceding
14 calendar years.

15 (3) "Net income from farming activities" means taxable income from those
16 activities as computed for income tax purposes pursuant to chapter
17 57-38 adjusted to include the following:

18 (a) The difference between gross sales price less expenses of sale
19 and the amount reported for sales of agricultural products for
20 which the farmer reported a capital gain.

21 (b) Interest expenses from farming activities which have been
22 deducted in computing taxable income.

23 (c) Depreciation expenses from farming activities which have been
24 deducted in computing taxable income.

25 (4) When exemption is claimed under this subdivision for a residence, the
26 assessor may require that the occupant of the residence who it is
27 claimed is a farmer provide to the assessor for the year or years
28 specified by the assessor a written statement in which it is stated that
29 fifty percent or more of the net income of that occupant, and spouse if
30 married and both spouses occupy the residence, was, or was not, net
31 income from farming activities.

- 1 (5) In addition to any of the provisions of this subsection or any other
2 provision of law, a residence situated on agricultural land is not exempt
3 for the year if it is occupied by an individual engaged in farming who
4 had nonfarm income, including that of a spouse if married, of more than
5 forty thousand dollars during each of the three preceding calendar
6 years. This paragraph does not apply to a retired farmer or a beginning
7 farmer as defined in paragraph 2.
- 8 (6) For purposes of this section, "livestock" includes "nontraditional
9 livestock" as defined in section 36-01-00.1.
- 10 (7) A farmer operating a bed and breakfast facility in the farm residence
11 occupied by that farmer is entitled to the exemption under this section
12 for that residence if the farmer and the residence would qualify for
13 exemption under this section except for the use of the residence as a
14 bed and breakfast facility.

15 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
16 December 31, 2004.