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Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1209

Introduced by

Representatives Mueller, Boe, Devlin, Headland, Herbel, Onstad

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 nonfarm income limitations for the farm residence property tax

3 exemption; and to provide an effective date.

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

5   **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the North Dakota

6 Century Code is amended and reenacted as follows:

7   15.   a.   All farm structures and improvements located on agricultural lands.

8   (1)   This subsection must be construed to exempt farm buildings and

9   improvements only, and may not be construed to exempt from taxation

10   industrial plants, or structures of any kind not used or intended for use

11   as a part of a farm plant, or as a farm residence.

12   (2)   Any structure or improvement used primarily in connection with a retail

13   or wholesale business other than farming, any structure or improvement

14   located on platted land within the corporate limits of a city, or any

15   structure or improvement located on railroad operating property subject

16   to assessment under chapter 57-05 is not exempt under this

17   subsection. For purposes of this paragraph, "business other than

18   farming" includes processing to produce a value-added physical or

19   chemical change in an agricultural commodity beyond the ordinary

20   handling of that commodity by a farmer prior to sale.

21   (3)   The following factors may not be considered in application of the

22   exemption under this subsection:

23   (a)   Whether the farmer grows or purchases feed for animals raised

24   on the farm.

1   (b)   Whether animals being raised on the farm are owned by the

2   farmer.

3   (c)   Whether the farm's replacement animals are produced on the

4   farm.

5   (d)   Whether the farmer is engaged in contract feeding of animals on

6   the farm.

7   b.   It is the intent of the legislative assembly that this exemption as applied to a

8   residence must be strictly construed and interpreted to exempt only a

9   residence that is situated on a farm and which is occupied or used by a

10   person who is a farmer and that the exemption may not be applied to property

11   which is occupied or used by a person who is not a farmer. For purposes of

12   this subdivision:

13   (1)   "Farm" means a single tract or contiguous tracts of agricultural land

14   containing a minimum of ten acres [4.05 hectares] and for which the

15   farmer, actually farming the land or engaged in the raising of livestock

16   or other similar operations normally associated with farming and

17   ranching, has received annual net income from farming activities which

18   is fifty percent or more of annual net income, including net income of a

19   spouse if married, during any of the three preceding calendar years.

20   (2)   "Farmer" means an individual who normally devotes the major portion

21   of time to the activities of producing products of the soil, poultry,

22   livestock, or dairy farming in such products' unmanufactured state and

23   has received annual net income from farming activities which is fifty

24   percent or more of annual net income, including net income of a spouse

25   if married, during any of the three preceding calendar years. "Farmer"

26   includes a "retired farmer" who is retired because of illness or age and

27   who at the time of retirement owned and occupied as a farmer the

28   residence in which the person lives and for which the exemption is

29   claimed. "Farmer" includes a "beginning farmer" who has begun

30   occupancy and operation of a farm within the three preceding calendar

31   years; who normally devotes the major portion of time to the activities of

1   producing products of the soil, poultry, livestock, or dairy farming in

2   such products' unmanufactured state; and who does not have a history

3   of farm income from farm operation for each of the three preceding

4   calendar years.

5   (3)   "Net income from farming activities" means taxable income from those

6   activities as computed for income tax purposes pursuant to chapter

7   57-38 adjusted to include the following:

8   (a)   The difference between gross sales price less expenses of sale

9   and the amount reported for sales of agricultural products for

10   which the farmer reported a capital gain.

11   (b)   Interest expenses from farming activities which have been

12   deducted in computing taxable income.

13   (c)   Depreciation expenses from farming activities which have been

14   deducted in computing taxable income.

15   (4)   When exemption is claimed under this subdivision for a residence, the

16   assessor may require that the occupant of the residence who it is

17   claimed is a farmer provide to the assessor for the year or years

18   specified by the assessor a written statement in which it is stated that

19   fifty percent or more of the net income of that occupant, and spouse if

20   married and both spouses occupy the residence, was, or was not, net

21   income from farming activities.

22   (5)   In addition to any of the provisions of this subsection or any other

23   provision of law, a residence situated on agricultural land is not exempt

24   for the year if it is occupied by an individual engaged in farming who

25   had nonfarm income, including that of a spouse if married, of more than

26   ~~forty~~ <u>fifty-five</u> thousand dollars during each of the three preceding

27   calendar years. This paragraph does not apply to a retired farmer or a

28   beginning farmer as defined in paragraph 2.

29   (6)   For purposes of this section, "livestock" includes "nontraditional

30   livestock" as defined in section 36-01-00.1.

1   (7)   A farmer operating a bed and breakfast facility in the farm residence

2   occupied by that farmer is entitled to the exemption under this section

3   for that residence if the farmer and the residence would qualify for

4   exemption under this section except for the use of the residence as a

5   bed and breakfast facility.

6   **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after

7   December 31, 2004.