

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## TAXATION COMMITTEE

Wednesday, September 22, 2004  
Pioneer Room, State Capitol  
Bismarck, North Dakota

Senator Dwight Cook, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Dwight Cook, Randy A. Schobinger, John O. Syverson, Harvey Tallackson, Thomas L. Trenbeath, Herb Urlacher, Rich Wardner; Representatives Larry Bellew, Wesley R. Belter, David Drovdal, C. B. Haas, Ron Iverson, Frank Klein, Phillip Mueller, Arlo E. Schmidt, Elwood Thorpe, Dave Weiler, Dwight Wrangham, Steven L. Zaiser

**Members absent:** Senators Ronald Nichols, Ben Tollefson; Representatives Mike Grosz, Craig Headland, Kenton Onstad, Ray H. Wikenheiser

**Others present:** See Appendix A

**It was moved by Senator Wardner, seconded by Representative Klein, and carried on a voice vote that the minutes of the July 16, 2004, meeting be approved as distributed.**

### INDUSTRIAL PROPERTY TAX ASSESSMENT INFORMATION

Chairman Cook said American Crystal Sugar Company has filed for property tax abatement based on a challenge of assessment levels for its facilities in North Dakota. He said he requested Ms. Marcy Dickerson, State Supervisor of Assessments, Tax Department, to brief the committee on the issues involved and possible consequences.

Ms. Dickerson distributed copies of her prepared testimony, a copy of which is attached as Appendix B. Ms. Dickerson said American Crystal Sugar Company has filed applications for abatement of assessments on its North Dakota plants in Drayton and Hillsboro and its Minnesota plants in Crookston, East Grand Forks, and Moorhead for taxable year 2003. She said if the company is successful in getting reduced valuations in North Dakota, affected political subdivisions will have no way to make up the lost 2003 property tax revenue. She said there would be no loss of revenue for subsequent tax years because a political subdivision is entitled to levy the same number of dollars levied in the highest levy year of the past three years, regardless of changes in taxable value of property in the district.

Ms. Dickerson described assessment issues regarding the North Dakota facilities and the Minnesota facilities. Her testimony includes a table

showing the North Dakota and Minnesota facility comparisons for production statistics, employment, valuation, and property taxes for 2003.

Senator Cook asked whether any tax year payments prior to 2003 are subject to the application for abatement. Ms. Dickerson said only the 2003 assessment has been protested.

Senator Trenbeath said we have seen property tax abatement requests from other businesses. He asked whether this is a trend that may continue. Ms. Dickerson said there are firms now that specialize in presenting property tax abatement actions. He said these firms are likely to continue appearing on behalf of larger industrial facilities to challenge assessments.

In response to a question from Representative Belter, Ms. Dickerson said American Crystal Sugar Company has acquired some plants in other states at prices, leading the company to believe that market value of North Dakota facilities is less than the assessed value.

Senator Cook asked whether taxes paid under protest are distributed to political subdivisions. Ms. Dickerson said taxes paid under protest are not distributed but are held in a separate fund pending resolution of the protest. She said if the protest is resolved to require refund of a portion of tax payments, distributions will then be made to political subdivisions but will be reduced by the amount of the refund.

Senator Tallackson said when the American Crystal Sugar Company plant was first built in Drayton, the facility was subject to personal property taxes, which have now been eliminated by state law. He said that was a substantial tax benefit to that facility. He said to eliminate a portion of the tax against the facility now would hit other taxpayers in the taxing districts with increased tax burdens.

### TAX PREFERENCES STUDY

Chairman Cook said directors of tax equalization from several counties are present at the meeting to discuss issues relating to application of the farm building and residence property tax exemption which were raised at the previous committee meeting. He invited tax officials to address the committee on this topic.

Mr. Robert D. Wood, Director of Property and Records, Grand Forks County, presented written testimony relating to the farm residence exemption. A copy of his prepared testimony is attached as Appendix C.

Mr. Wood said a number of farms in Grand Forks County are no longer owned by individuals because ownership has been transferred to a corporation or other legal entity formed by the owners. He said these ownership changes have raised a question of application of the farm residence exemption that have been addressed by two opinions of the Attorney General issued this year. He said the opinions have created some confusion by concluding that a farm residence occupied by an individual receiving wages from a corporation would not qualify for the farm residence exemption but would be eligible for exemption as a farm building located on agricultural lands used to provide housing for an employee.

In response to a question from Senator Cook, Mr. Wood said these residences in Grand Forks County are not being taxed at present.

Representative Belter asked whether Mr. Wood could provide examples of unfairness he perceives in the current situation. Mr. Wood said a young farmer and spouse who earn slightly more than \$40,000 nonfarm income per year would have a farm residence subject to property taxes. He said a large farmer earning more than \$100,000 annual nonfarm income and residing in a residence on a farm owned by a corporation would pay no property taxes on that home, even if it has a value of \$300,000 or more. Representative Belter asked if the large farmer in the hypothetical example was not incorporated, would he be paying property tax on that residence. Mr. Wood said the large farmer in the example, if not incorporated, would be subject to property taxes because his nonfarm income would disqualify him from the exemption.

Senator Trenbeath asked whether it would make the situation more fair to exclude eligibility for property tax exemption for farm laborers who own a certain percentage of the farming operation that is incorporated. Mr. Wood said he cannot suggest how to resolve the issue.

Representative Klein said it should be remembered that farmers pay substantial taxes on agricultural land. Mr. Wood said that is correct but all agricultural property is subject to equal assessment and taxation, while farm residences may be exempt or taxable only because of a factor such as whether the farming operation is incorporated. He said he views these issues as fairness issues, whether one is comparing other businesses to farms or comparing some farms to other farms.

Senator Cook asked Mr. Wood when there are two residences located on the same farm whether a single application for exemption is filed or whether an application must be filed for each home. Mr. Wood

said an application for exemption must be filed for each home located on a farm.

Senator Urlacher asked whether Mr. Wood knows how surrounding states deal with this assessment issue. Mr. Wood said he believes North Dakota is the only state that allows a farm building and residence property tax exemption.

Representative Schmidt said the income limitations in the property tax exemption would mean if farm income results in a loss for the year, any nonfarm income would disqualify the owner from the exemption. He said in these situations it appears the law penalizes people who most need the help from the exemption. Mr. Wood agreed.

Mr. Larry Osborn, Supervisor of Tax and Property, Richland County, presented written testimony, a copy of which is attached as Appendix D.

Mr. Osborn said with regard to the earlier discussion on assessment of the American Crystal Sugar Company facilities, he did assessments for the facilities for the last three years. He said company representatives argued for a \$7 million valuation reduction for required maintenance of the facility. He said local tax officials pointed out that valuation of the facilities has included an annual 3 percent depreciation for maintenance for the facilities that should have been adequate to cover maintenance costs.

Mr. Osborn said Richland County Commissioners asked him to illustrate for the Taxation Committee some of the problems that arise with application of the farm building and residence property tax exemption. He said his testimony presents 17 fact situations drawn from applications for the exemption in Richland County. He reviewed the examples. He said he believes on many occasions the law requires putting the wrong farmers on the tax roll. He said when a farmer is struggling to keep the farm afloat, it may be necessary to take on outside jobs, which will often make the farmer subject to taxation on the residence. He said the farmer being put on the tax roll sees this as a double penalty because he must take an outside job to keep the farm going and then is subject to property taxes on the farmhouse.

Mr. Osborn said with regard to the question of changing the law regarding assessment of farm homes, consideration must be given to the time of implementing new laws. He said in Richland County there are 767 farm homes that might be subject to assessment. He said he believes a minimum of two years would be needed to assess this much property if a new law changes assessment status.

Senator Cook asked how many of the 767 farm homes in Richland County would be valued at more than \$75,000. Mr. Osborn said he cannot give a precise answer because the homes have not been assessed but a rough guess would be that about 50 percent would be over \$75,000 valuation.

Senator Urlacher asked how the proximity of a farm home to a city affects valuation. Mr. Osborn said

a home located nearer to a large city has higher market value and so does the agricultural property.

Senator Wardner asked what the actual property tax bill would be for a farm residence in Richland County. Mr. Osborn said rough estimates would be that a farm home of \$100,000 valuation would be subject to about \$1,800 annual property tax in Richland County.

Senator Urlacher asked whether Mr. Osborn has suggestions to alter application of the exemption to help struggling young farmers. Mr. Osborn said adjustments in the statutory provision could be made but he has no specific recommendations. He said he has had several farmers comment to him that it would be a benefit to completely eliminate the farm building and residence property tax exemption. He said some farmers have told him that, when neighbors build homes of \$300,000 or more value, they recognize that if all farm buildings were subject to taxes, there would be a resulting reduction in property taxes on all agricultural property, which could result in a lower overall property tax bill for some farmers.

Senator Urlacher said the property tax exemption requires a minimum of 10 acres of farmland. He asked whether Mr. Osborn believes the limit is appropriate. Mr. Osborn said the acreage limitation is probably a carryover from long ago that might no longer be appropriate.

Senator Cook asked what improvements Mr. Osborn might suggest for the property tax exemption for farm buildings and residences other than eliminating the property tax exemption. Mr. Osborn said the situation with exemption of these properties has gotten worse for tax officials and farmers. He said it is clear that the law should be cleaned up but he has no specific suggestions. He said he would be glad to assist with consideration of how to improve the application of the exemption.

Mr. Don Siebert, Tax Equalization Director, Ward County, said he has 31 years' experience as tax equalization director for the county and he is a retired farmer. He said the farm building and residence property tax exemption has always been a problem in application and in perception of fairness among farmers.

Mr. Siebert said the statutory provision states that an assessor may require an application for the exemption. He said he suggests that all Ward County assessors should require applications but in several townships the assessor will not do so. He said he believes the law should require everyone to file a claim for the exemption each year and that there should be a method to allow the assessor to verify income amounts of applicants with the Tax Department.

Representative Klein asked Mr. Siebert how long it would take assessors to assess every farm home in Ward County. Mr. Siebert said he would estimate at

least three years would be required and probably four years would be necessary.

Mr. Leon Samuel, Tax Equalization Director, Morton County, said he has 28 years assessment experience and the farm building and residence property tax exemption is the biggest headache. He said there are many examples of how applying the exemption becomes difficult. He said as an example, there is a situation of a dairy farmer whose spouse is a nurse and the residence was subject to taxes because of nonfarm income exceeding the limitations in the statute. He said the farmer and spouse were divorced and the residence became exempt because there was no nonfarm income. He said the farmer remarried and the new spouse also has more than \$40,000 nonfarm income. He said the residence in question remains exempt for three years because for one year there was no nonfarm income.

Mr. Samuel said he has been in the situation of having to put the residence of a young beginning farmer on the tax rolls because the spouse made a minimal amount of nonfarm income but it exceeded the income from the farming operation.

Mr. Samuel said the problems with applying the exemption are getting worse. He said as times and circumstances change, the factors that must be considered have become more difficult and unfair. He said changing the statutory provision to adjust the income amounts or comparisons will still require a line to be drawn and a local assessment decision to be made, so problems will continue.

Representative Delmore said the three-year status for nonfarm income as a disqualifying factor would mean that if the spouse in the example quit work for a year, the couple would receive another three years of property tax exemption. Mr. Samuel said that is correct.

Representative Haas said if a farmer divorced his spouse every three years, they could be exempt forever regardless of nonfarm income. Mr. Samuel said that is correct.

Ms. Gwen Tatum, Tax Equalization Director, Dickey County, said for the past four years Dickey County has required an application from every farmer for the farm building and residence exemption. She said the law allows an option to require applications and taxpayers have complained when applications are required from some but not all taxpayers. She said the county decided that to be fair everyone should be required to apply for the exemption each year.

Ms. Tatum said it appears to her that many farmers do not read the application form. She said applications are not filled out properly so they must be returned to the farmer for corrections. She said Dickey County officials think that farmers completing applications have gotten better with experience but it remains a problem to get properly completed applications. She said as a result of applying the exemption

and requiring applications, 25 residences were added to the tax rolls in Dickey County that did not qualify for the exemption.

Ms. Tatum said the question of what is a retired farmer is sometimes difficult. She said it would help to set a minimum age to be considered to be a retired farmer. She said relatively young individuals who quit farming and take high-paying jobs off the farm continue to be eligible for the exemption as retired farmers.

Ms. Tatum said the requirement of considering farm income versus nonfarm income is extremely difficult. She said Dickey County has developed a worksheet with help from the Tax Department for use by farmers in determining eligibility.

Ms. Tatum said the committee has before it a bill draft that would eliminate consideration of the previous three years' income of applicants for the farm residence exemption. She said this would help with application of the exemption.

Ms. Tatum said the committee has before it a bill draft that would limit the farm residence exemption to \$75,000 of value of a residence. She said this would create a huge assessing burden and would probably add very little taxable valuation. She said she believes most farm residences in Dickey County would be under \$75,000 valuation.

Ms. Tatum said revamping the entire assessment process for farm residences might be in order. She said having state-level assessors with assistance from local officials would promote uniformity of application and valuation.

Ms. Tatum said when legislators consider legislation regarding the farm building and residence exemption, opinions of county tax equalization directors and other assessment officials should be considered because they will recognize application problems that will be encountered.

Representative Delmore asked what the Tax Department is able to do to assist local tax officials on issues that arise. Ms. Tatum said the Tax Department does not do assessments but provides a resource for tax directors for advice on issues regarding application of the exemption. Representative Delmore asked how state-level assessors would be funded. Ms. Tatum said she is not certain how that could be accomplished but funding might come from what is spent now on local assessments and there should be a fair way to fund that state-level assistance.

Senator Cook asked whether the township has the option to decide whether to appoint or employ its own assessor or whether the county controls that decision. Ms. Tatum said it is up to the township to determine who will do assessments for the township. She said this gives the township board of supervisors substantial control over assessments and exemption decisions.

Senator Wardner said it appears that establishing true and full value for farm residences and buildings

could be a problem if township officials exert improper control over determinations. Ms. Tatum said the problem exists now and would be increased if all buildings and residences are subject to taxes. She said it would take a lot of time and people to do assessments for these residences and buildings and results would be more consistent if one person did all valuations.

In response to a question from Senator Syverson, Ms. Tatum said a significant problem in assessment is resignations of assessors. She said it is becoming more difficult to get people to take the job.

Representative Mueller asked whether adjustments to the statutory provision would eliminate problems for local assessors. Ms. Tatum said problems will not go away and at some point someone has to make a decision on application of the exemption and there will be problems with those decisions.

Chairman Cook called on Ms. Dickerson for comments on the farm building and residence exemption. Ms. Dickerson distributed copies of prepared testimony to relate to the committee information and opinions she has received from local tax officials. A copy of her prepared testimony is attached as Appendix E. Attached to her prepared testimony is a copy of prepared testimony from Mr. Dean Dewald, Tax Equalization Director, Kidder County, who was unable to attend the committee meeting.

Ms. Dickerson said McKenzie County Director of Tax Equalization Barb Bauman used one township in McKenzie County as an example and calculated the mill rate and taxes that would apply if all farm residences were put on the tax rolls. Under these calculations, the consolidated levy would be reduced from .258 to .190 and as a result some landowners actually would have paid less in total land and building property taxes, even with taxes applied to a \$90,000 residence.

Ms. Dickerson said comments she received from tax equalization directors who did not want their names revealed cited problems with township officials who refused to follow the law or who interfered with assessment decisions.

Ms. Dickerson said she is unable to find any other state that provides a property tax exemption for farm buildings or farm residences. She said most states give some type of preferential tax treatment for farmland but exemptions for structures are not provided. She reviewed provisions of laws in other states relating to assessment and provided examples of states in which farm structures are assessed at different rates from other structures.

Representative Delmore asked Ms. Dickerson what the state can do to help local assessors with farm buildings and residence assessment problems. Ms. Dickerson said legislative solutions to eliminate problems is the best option she can see at the state level.

Committee counsel asked Ms. Dickerson whether the sales ratio study would be helpful in valuing farm residences. Ms. Dickerson said the sales ratio study would provide some assistance but there are very few sales to compare in rural areas so the sales ratio study is limited in that respect.

Representative Drovdal said complaints he has heard in his area relate to nonresidents who buy farms to use for recreational purposes, such as hunting, and they receive an exemption for farm buildings and residences. Ms. Dickerson said those problems do occur and if the ownership of the farm is in a corporation, the residence becomes considered a farm building and nonfarm income limitations do not apply to the issue of whether the residence is exempt from property taxes.

Ms. Dickerson said she was also requested to provide information to the committee on property tax relief in nearby states and comparisons of property tax levels in surrounding states and North Dakota. A copy of her prepared testimony is attached as Appendix F. Ms. Dickerson said property taxes on North Dakota residential property no longer compare as favorably with residential property taxes in surrounding states. She said this is due largely to property tax relief programs that are in place in other states but not in North Dakota.

Ms. Dickerson said Montana provides a 31 percent homestead exemption for all residential property. She said South Dakota provides a 30 percent reduction for all agricultural and single-family, owner-occupied residential property. She said Minnesota applies class rates to valuation of various classes of property, reducing tax rates for residential and agricultural homesteads. She provided statistical information illustrating property taxes in North Dakota compared to surrounding states. She said the information indicates that property taxes in North Dakota are generally higher than in surrounding states. She presented statistical information showing exemptions or tax reduction amounts for residential property in 28 states.

Chairman Cook called on committee counsel for presentation of a memorandum entitled *Farm Buildings Property Tax Exemption History*. Committee counsel said the first property tax exemption for agricultural buildings in North Dakota was enacted in 1919 and simply provided a property tax exemption for "all structures and improvements on agricultural lands." He said for a period of 50 years, the farm building exemption was changed very little. He said in 1973 legislation was enacted to restrict the application of the farm building exemption based on income, activities, and retirement considerations.

Committee counsel said the farm building and residence exemption has been amended in 1981, 1983, 1985, 1991, 1995, 1997, and 1999. He said as circumstances of rural residents have changed, the Legislative Assembly has tried to adjust the

exemption to apply the benefits to those who are truly farmers. He said all of these legislative changes were intended to address perceived unfairness in application of the exemption to changing circumstances.

Chairman Cook called on committee counsel to review three bill drafts prepared to address application of the property tax exemption for farm residences.

Committee counsel reviewed a bill draft [50138.0100] to limit the amount of the exemption to \$75,000 of true and full value of a farm residence. He said the bill draft would not make a residence fully taxable if it has a valuation of more than \$75,000. He said the exemption would allow \$75,000 to be subtracted from the true and full value of any qualifying farm residence. He said this would be similar in operation to the property tax exemption allowed under current law for new residential property which may be granted by cities or counties.

Committee counsel reviewed a bill draft [50137.0200] that would limit the farm residence exemption only to qualified farmers whose household income from all sources for the most recent taxable year does not exceed \$40,000. He said the bill specifies that income is based on total income as shown on the federal income tax return before any adjustments and would include income of the farmer, farmer's spouse, and any individual over age 17 residing in the home who is not a full-time student enrolled in secondary or higher education. He said the bill draft also requires that assessors shall require exemption claimants to file an annual claim for the exemption. He said the bill draft eliminates current provisions relating to consideration of nonfarm income and net income from farming activities.

Committee counsel reviewed a bill draft [50144.0100] that would require any claimant of the farm residence exemption to provide to the assessor an affidavit stating entitlement to the exemption and an authorization signed by each individual whose income is considered in determining eligibility to allow the Tax Commissioner to examine the returns of those individuals and disclose to the assessor whether the claimant does or does not qualify for the exemption. He said the bill draft would not allow disclosure of income amounts or other information from tax returns but would only allow the Tax Commissioner to disclose whether the claimant is or is not entitled to the exemption.

Chairman Cook said the bill drafts came about after he discussed issues relating to the exemption with Ms. Dickerson and committee counsel. He said the bill drafts are intended to initiate discussion on certain aspects of the administration of the exemption and qualifications.

Chairman Cook called on Mr. Ken Yantes, Township Officers Association, for comments relating to the bill drafts. Mr. Yantes said the association supports continuing the farm building and residence property tax exemption. He said the association would not

support approval of any of the bill drafts. He said the association likes the aspect of current law that allows decisions on exemption and assessment at the local level. He said there is a mechanism in the law for appeals and review from the decision of the assessor to the Township Board of Equalization, County Board of Equalization, and State Board of Equalization.

Senator Cook asked whether the state or county ever steps in because taxes are too low. Mr. Yantes said that would not be likely because appeals must be initiated by taxpayers, whose only cause for complaint would be a perception that taxes are too high. Senator Cook said that points out a problem with the current system that when some taxpayers are not paying their fair share, there is no remedy.

Senator Trenbeath said current law allows the State Board of Equalization to increase values countywide for agricultural land.

Senator Tallackson said the Township Officers Association has not reviewed these bill drafts and asked whether the association will consider these issues when it holds its annual meeting. Mr. Yantes said the association will hold an annual meeting in December and these issues will be discussed.

Chairman Cook called on Ms. Sandy Clark, North Dakota Farm Bureau, for comments relating to the bill drafts. Ms. Clark said she has not had much time to review the bill drafts or to request consideration of the Farm Bureau Governing Board but based on prior positions of the board, the Farm Bureau would probably oppose all the bill drafts.

Senator Cook asked how many Farm Bureau members would be affected by limiting the exemption to individuals with \$40,000 or less annual income from all sources. Ms. Clark said she is not sure how many members would be affected. Senator Cook said he believes the result would be that some members would become exempt who are now subject to taxes and some who are now exempt would become subject to taxes on residences. He said the idea of making the change would be to benefit those who most need the exemption because they have lower income from all sources. He suggested that the Farm Bureau should consider that aspect of the exemption.

Ms. Clark said the Farm Bureau believes the current system works in most cases. She said there are some areas where improvements might be made but the basic approach works for North Dakota farmers.

Ms. Clark said the Farm Bureau does not believe that everyone who claims the exemption should be entitled to the farm home exemption. She said there are needs for limits and the Legislative Assembly has established the existing limits to try to apply the exemption to those who should get the benefit. She said the Farm Bureau believes farmers and ranchers are paying their fair share of the property tax burden.

Representative Delmore said the testimony received today shows there are many inequities in current application of the farm home exemption. She asked whether the Farm Bureau would admit that there are problems with current law. Ms. Clark said the Farm Bureau does not object to further consideration of the issue but would probably not support the approaches of these bill drafts.

Mr. Eric Aasmundstad, President, North Dakota Farm Bureau, said the policy of the Farm Bureau is simply support for the farmstead exemption. He said the Farm Bureau will certainly discuss the issues that have been raised today among its membership to see if it has suggestions to make the exemption more fair for farmers.

Representative Drovdal said there are inequities in the farm residence exemption that have been raised. He said many of these inequities have been pointed out by farmers. He said the objective of the Legislative Assembly is to seek fairness among farmers, not to raise taxes for farmers.

Senator Wardner said local control of property tax assessments is a good thing but there are problems in some areas where laws are not being properly applied. Ms. Clark said the North Dakota Farm Bureau does not support local decisions that do not follow the law.

Representative Haas said he believes North Dakota will continue to see vacant farmsteads being used as temporary or recreational residences. He asked how the state can establish statutory standards to recognize what is a real farm. Ms. Clark said it is very difficult to address every situation that may arise. She said one thing is for certain, if farm homes are subjected to property taxes, more farmers will move to town. She said if you are going to pay property taxes, you might as well live in town to obtain the benefit of services provided by cities.

Mr. Aasmundstad said he agrees with the position of the Township Officers Association. He said local control should always be involved in property tax decisions. He said honesty and integrity of local officials is what must be depended on.

Representative Zaiser referred to the information presented on McKenzie County taxes if the farm building and residence property tax exemption is eliminated. He said it appears some farmers would pay less taxes in total if homes are subjected to property taxes. Mr. Aasmundstad said he would like to see a more thorough analysis because he has a hard time believing that as a farmer, his taxes would decrease if he has more property subject to assessment and taxation.

Chairman Cook called on Mr. Terry Marohl, Richland County farmer, for comments on the farm building and residence property tax exemption. Mr. Marohl said he is not able to farm full time and lives on seven acres of land in a rural area. He said he became convinced that assessments on rural

property were not equal among townships and he brought his concerns to the county. He said a reassessment of several properties as a result added \$600,000 property tax revenue for the county.

Mr. Marohl said he pays \$2,300 annual property taxes on his seven-acre farm, which includes a modest residence. He said he has a neighbor currently building a \$500,000 home that will be exempt from property taxes. He said he has other neighbors building houses costing approximately \$750,000 and relatives of those individuals are building similar homes near Wahpeton and all of these homes will be exempt from property taxes.

Mr. Marohl said the outbuildings on his farm used to store farm machinery are taxed on a square-foot basis. He said similar structures and structures substantially more expensive on farms are not taxed at all.

Mr. Marohl said he and his family enjoy living in a rural area and would not want to live in town. He said the current method of taxing and exempting rural property should be fairer.

Chairman Cook called on Mr. Arvid Winkler, township assessor from Barnes County, for comments on the property tax exemption for farm buildings and residences. Mr. Winkler said he would recommend the bill draft limiting the exemption to \$75,000 of the value of a farm residence to address the problem described by Mr. Marohl relating to high-value homes not being subject to any taxes. He said his concern with that approach would be that the effective date of the legislation should be delayed to allow assessors to complete necessary assessments.

Mr. Winkler said the bill draft requiring verification of claims for exemption by the Tax Commissioner has merit, but he questions how long it would take the Tax Commissioner to verify claims from thousands of farmers.

Senator Cook asked, if the Tax Commissioner could promptly get responses back to assessors on income verification, whether Mr. Winkler would support that approach. Mr. Winkler said that would resolve his biggest concern with that approach.

In response to a question from Senator Wardner, Mr. Winkler said he believes there are 36 assessors in Barnes County.

Senator Urlacher said he believes the parties interested in the farm building and residence property tax exemption would be well-served by sitting down to agree on a fair approach to improving the system. He asked whether Mr. Winkler would participate in that effort. Mr. Winkler said he would assist with such an effort, but no one has approached him.

Chairman Cook called on Mr. Herbert Schultz for comments on farm building and residence property tax exemption. Mr. Schultz said he served as an assessor for three townships in Nelson County. He said his attempts to properly administer the exemption as provided by law caused him to be dismissed as

assessor in two townships. He said any time a property tax exemption exists, problems will be created. He said someone will find a way to exploit or abuse a property tax exemption. He described problems he has experienced in his assessment practice. He said he would recommend that all buildings should be put on the tax rolls and the mill levy for all agricultural property would go down. He said that change may shift taxes among properties but at least all property would be fairly taxed.

Representative Belter asked, if there were no exemption for farm residences and buildings, whether there would still be a problem of equality of assessments. Mr. Schultz does not think equality problems would be as significant because valuations of properties can be compared and adjusted to be fairly comparable.

Chairman Cook called on Mr. Steve Ginsbach, Township Officers Association, for comments on the farm building and residence property tax exemption. Mr. Ginsbach said he serves as township assessor in Richland County. He said it is difficult to determine values for farm buildings and residences because arm's-length transactions do not exist much anymore. He said the Township Officers Association will take the issues raised today into consideration and discussions at the annual association meeting.

Chairman Cook invited committee members to comment on the bill drafts relating to the farm building and residence property tax exemption.

Representative Belter said it is apparent there are problems with the exemption as it currently exists and is administered but he would not support any of the bill drafts. He said when the law is administered properly the exemption works quite well. He said he has not had any problems raised regarding this issue in Cass County.

Senator Wardner said he agrees with Representative Belter that the bill drafts should not be moved forward. He said he does not think the bill drafts get to the heart of the existing problems. He said he would like to see those involved in assessments and representatives of farm groups get together to consider and recommend how to promote fairness by changing or improving administration under the existing law.

Senator Trenbeath said he would also like to see an organization take the lead on organizing interested parties for discussion and recommendation regarding improving fairness of applying the farm building and residence property tax exemption.

Senator Urlacher said he would also like interested parties to consult and make necessary recommendations for legislative action.

Representative Delmore said it might be useful to recommend one or more of the committee bill drafts as a means of initiating discussion of the topic during the 2005 Legislative Assembly.

Representative Wrangham said he agrees that this issue should be considered in 2005, but he does not think the committee should put forward anything that would serve to lead interested parties in any particular direction. He thinks interested parties should be free to consider anything that would improve fairness of the existing system.

Representative Schmidt said an interim committee recommendation has substantial weight and the committee should not recommend what the majority of the committee does not believe is an appropriate solution.

Chairman Cook asked whether any committee member wished to move for approval for any bill draft regarding the farm building and residence property tax exemption. No motion was received.

### INCOME TAX STUDY

Chairman Cook called on committee counsel to review a bill draft [50076.0200] relating to composite income tax return filing by passthrough entities. Committee counsel said the committee approved and recommended a similar bill draft at the previous committee meeting but Tax Department staff has recommended additional changes. He said the changes to the bill draft are limited to elimination of corporations as entities subject to withholding when a passthrough entity distributes income to nonresident members.

Chairman Cook called on Ms. Mary Loftsgard, Tax Department Corporate Income Tax Section Supervisor, for information relating to impact of the bill draft on family farms. Ms. Loftsgard said the bill draft would impact family farm operations to the extent that the family farm is owned by a passthrough entity and individual shareholders or members are nonresidents of North Dakota. She said this should be limited to a small number of occurrences. She said a family farm may avoid the withholding requirements of the bill draft by filing a composite return.

**It was moved by Representative Drovdal, seconded by Senator Wardner, and carried on a voice vote that the committee reconsider its action by which it approved and recommended the bill draft relating to composite income tax return filing by passthrough entities.**

**It was moved by Representative Klein, seconded by Senator Urlacher, and carried on a roll call vote that the committee approve and recommend to the Legislative Council the revised bill draft relating to filing of composite income tax returns by passthrough entities.** Senators Cook, Schobinger, Syverson, Tallackson, Urlacher, and Wardner and Representatives Belter, Drovdal, Haas, Klein, Mueller, Schmidt, Weiler, Wrangham, and Zaiser voted "aye." Representatives Bellew, Iverson, and Thorpe voted "nay."

### STREAMLINED SALES TAX STUDY

Chairman Cook called on committee counsel to review a bill draft [50073.0400] relating to North Dakota compliance with the streamlined sales tax agreement. Committee counsel said the bill draft is very similar to the bill draft considered at the previous committee meeting and he would point out only areas of difference. He said the bill draft provides that for home rule counties and cities, beginning in 2006 sales taxes imposed on farm machinery and repair parts and alcoholic beverages become gross receipts taxes. He said this would bring city and county provisions into compliance with state provisions converting taxes on farm machinery and repair parts and alcoholic beverages into gross receipts taxes effective in 2006. He said that making the provision by statute would avoid the necessity of each county and city holding an election on the question of making this change. He said this would not change the rate of tax in any county or city or the application of taxes to any items but would only change the name of the tax from a sales tax to a gross receipts tax to comply with the streamlined sales tax agreement.

Committee counsel said the bill draft contains a new provision requiring that beginning in 2006 retailers would collect city and county sales, use, and gross receipts taxes without regard to any cap or threshold on purchases provided by city or county ordinance, resolution, or charter. He said a taxpayer would be allowed to file with the Tax Commissioner for a refund of the difference between the amount of taxes paid and the amount that would have been due if the cap or threshold provided by the city or county were applied.

Committee counsel said other changes in the bill draft relate to imposition after 2006 of sales taxes on tobacco products and use taxes on farm machinery and repair parts and alcoholic beverages under the gross receipts tax laws enacted for those products. He said the bill draft also converts the state 1 percent lodging tax for the Lewis and Clark Bicentennial promotion into a gross receipts tax.

Chairman Cook called on Mr. Gary Anderson, Director of Income, Sales, and Special Taxes, Tax Department, for comments on the bill draft. Mr. Anderson distributed copies of information showing transactions generally subject to a cap or threshold under city sales taxes. He said caps or thresholds generally apply only to transactions involving purchases of more than \$2,500. He said considering the limited number of eligible transactions, the Tax Department should be able to administer the refund provision in the bill draft without additional staff. A copy of the information provided by Mr. Anderson is attached as Appendix G.

Representative Belter asked what would happen if North Dakota does not enact this bill draft. Mr. Anderson said North Dakota would not be in compliance with the streamlined sales tax agreement



and companies that register with states for tax collection under the agreement would not be required to register in North Dakota. He said another significant consequence would be that North Dakota would not be allowed to sit on the governing board for the streamlined sales tax agreement.

Representative Wrangham said he thinks this is bad policy to take away the rights of cities and counties to decide local tax issues. He said he would like to see the governing board for the streamlined sales tax agreement reconsider its position of not allowing caps on local sales taxes.

Representative Iverson said he does not believe North Dakota should support the streamlined sales tax agreement. He said he believes the agreement is a stealth tax increase.

Representative Weiler asked whether an individual who makes a \$300 purchase through an Internet retailer would be subject to a tax obligation. Mr. Anderson said the individual would be liable for North Dakota use tax on the purchase. Representative Weiler said if the individual is unaware of the use tax obligation, the individual has committed a criminal offense. Representative Weiler said two years from now if the streamlined sales tax agreement is in place and in force, the same purchase with a registered retailer would result in tax collection at the retailer level and the purchaser would not be in violation of law. Mr. Anderson said that is correct.

Chairman Cook called on Mr. Jerry Hjelmstad, North Dakota League of Cities, who said the League of Cities would support the bill draft with the changes that have been incorporated. Representative Wrangham asked if the League of Cities would prefer to keep local caps and thresholds on sales taxes. Mr. Hjelmstad said cities would like to have that flexibility but will support refunds for purchasers if streamlined sales tax agreement compliance requires that approach.

**It was moved by Representative Mueller, seconded by Senator Wardner, and carried on a roll call vote that the committee approve and recommend to the Legislative Council the bill draft making changes in North Dakota sales, use, and gross receipts tax laws to comply with the streamlined sales tax agreement.** Senators Cook, Syverson, Tallackson, Trenbeath, Urlacher, and Wardner and Representatives Drovdal, Haas, Klein, Mueller, Schmidt, Thorpe, Weiler, and Zaiser voted "aye." Senator Schobinger and Representatives Bellew, Belter, Iverson, and Wrangham voted "nay."

**It was moved by Senator Tallackson, seconded by Senator Wardner, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.** Senators Cook, Schobinger, Syverson, Tallackson, Trenbeath, Urlacher, and Wardner and Representatives Bellew, Belter, Drovdal, Haas, Iverson, Klein, Mueller, Schmidt, Thorpe, Weiler, and Zaiser voted "aye." No negative votes were cast.

**It was moved by Representative Drovdal, seconded by Representative Zaiser, and carried that the meeting be adjourned sine die.** No further business appearing, Chairman Cook adjourned the meeting sine die.

---

John Walstad  
Code Revisor

ATTACH:7