MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

GREAT SEAL STATE OF NORTH DAKOTA

ROLL NUMBER

DESCRIPTION

2425

2001 SENATE FINANCE AND TAXATION

SB 2425

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2425

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date 2/7/01

Tape Number	Side A	Side B	Meter #
1	x		47.1-end
		x	0-46.9
2/14/01 - 1	x		0-13
Committee Clerk Signature	Lynelle A. Koss		

Minutes:

Senator Urlacher: Opened the hearing on SB 2425, relating to a property tax exemption for certain assisted living facilities.

Senator Russ Thane: Co-sponsored the bill, testified in support. Written testimony attached.

Shelly Peterson: ND Long Term Care Assoc., testified in support. Written testimony attached. Also provided handout.

Brigid Steele: St. Catherine's Living Center in Wahpeton, testified in support. Provided handout and explains it. We are proposed an assisted living facility.

Senator Wardner: What assistance would the residents get for the $850?

Brigid Steele: Because the facility would be attached to St. Catherine's they would have the 24-hour emergency call system, a meal a day, housekeeping services, and a menu of services they could choose from after that as their needs grow. The heating and everything is included.

Senator Christmann: Are the figures correct for the taxes on your handout?

Brigid Steele: It's correct. It's a little over $2,000 a year in taxes for each apartment. According to Wahpeton's formula.

Senator Christmann: What's they value of the facility today?

Brigid Steele: 3.1 million.

Senator Wardner: Is it in the city of Wahpeton? Are you dealing with the city or the county?

Brigid Steele: I approached the city and filled out the application for tax exemption, it was denied-it was forwarded to the state level for review. The denial was based on the fact that we weren't a charitable organization.

Senator Kroeplin: What percent of the building would be used for common areas?

Brigid Steele: About 36% with congregate dining rooms, laundry facilities, exercise facilities, family rooms, kitchens.

Senator Christmann: Do your county or city commissioners recognize that they can give you this tax break?

Brigid Steele: The issue we're dealing with is the school superintendent. I guess the ruling is that before they consider any tax relief, they have to go before the school board and the school board will not allow it.

Senator Christmann: I believe the school board only has a recommendation on it.

Brigid Steele: It appears to me they have taken their recommendation a lot stronger than mine.

Rick Clayburgh: State Tax Commissioner, testified neutrally. Gives some history of previously legislation. We have been working on this issue. I'm also here as a member of the State Board of Equalization. If an assisted living center is connected to a nursing home, and the nursing home is a nonprofit organization, and the living center was operated by the nonprofit and treated as a nonprofit, then there would be the extension of the exemption for nursing facilities to that living assisted living facility. The issue the Board of Equalization is facing deals with a situation where a nonprofit is operated by a for-profit organization. It is the opinion of the Tax Dept. and I believe in also the Attorney General's opinion then that the exemption does not flow to that nonprofit. The State Board of Equalization is asking for clarification on this issue.

Senator Christmann: If they're connected to a nonprofit nursing home, and they run the assisted living center in a nonprofit way, they would qualify for the exemption?

Rick Clayburgh: They would have to act as nonprofit such as the nursing home under current law.

Senator Christmann: They could be separated facilities?

Rick Clayburgh: No, they have to be physically connected.

Senator Wardner: Does this piece of legislation mandate?

Rick Clayburgh: Yes, it would be a mandatory exemption. Explains more.

Shelby Wolf: Assisted Medicaid Director, testified neutrally. Provided some information.

Rick Clayburgh: There is not an ownership clause in this legislation, it's on how the facility is operated.

Ben Hushka: Fargo City Assessor, testified in opposition. Explains historical perspective in how the assessors have administered the assessment of these properties.

Jerry Lingen: Riverview Place in Fargo, testified in support. At the time we were built, it was very new to our area and state. Explained history of facility. Explained their property taxes. We are a stand alone facility so we don't qualify for the exemption.

Senator Wardner: Are you a nonprofit organization?

Jerry Lingen: Yes.

Senator Wardner: What's your occupancy?

Jerry Lingen: Normally full, with a short waiting list right now.

Senator Wardner: What's the income range of your residents?

Jerry Lingen: $25,000-$27,000 is needed. They generally pay $600-$900 a month depending on need.

Albert Wolf: Wheeler Wolf Law Firm on behalf of Benedictine Living Communities in ND, testified in support. Written testimony and letter attached.

Bev Nielson: School Boards Assoc., testified in opposition. Not because of state's assistance for elderly living, but we feel that should come through the Human Services Dept., not through shrinking the amount of taxable property there is in community because that's where they raise 55% cost of education. This could be a loss of taxable property where something else could've been built which would have been taxable income for the school systems, cities, and counties.

Mark Johnson: ND Assoc. Of Counties, testified in opposition. Written testimony attached.

Senator Urlacher: Closed the hearing. Action delayed.

Discussion 2/14/01. Meter number 0-13.

Terry Traynor: ND Assoc. Of Counties. We recognize the importance of assisted living facilities but we feel there is a mechanism in place. If this is a value to the state as a whole, we would rather see a funding mechanism like homestead tax.

Senator Christmann: Tax Commissioner said that the State Board of Equalization was allowing these if they're operated as a nonprofit?

Terry Traynor: If they're recognized as an extension and they have nonprofit status, the State Board has just extended the traditional property tax exemption to them and there is no reimbursement to the county.

Senator Christmann: Would your organization object to that?

Terry Traynor: They are exempted under state law. We aren't proposing that we go back and start taking the exemptions away, we just hate to see it expanded.

Senator Christmann: What's different about this then what we're doing?

Terry Traynor: I assumed that it's an expansion.

Senator Wardner: Does it affect nonprofit?

Terry Traynor: That's my understanding.

John Walstad: The organization that owns the facility has to be a 501C3 for federal income tax purposes, and their use of the property has to be charitable. This bill extends that concept, not to the operation, but the ownership. The ownership here, would not have to be a charitable organization.

Senator Urlacher: Would this build more uniformity?

John Walstad: It would apply state wide.

Senator Christmann If we adopted this, when it gets plugged into 57-02-08, is that a list of things that are exempt or that the commissioners may exempt?

John Walstad: They would be exempt.

COMMITTEE ACTION:

Motion made by Senator Wardner for a DO NOT PASS, Seconded by Senator Stenehjem. Vote was 6 yeas, 0 nays, 0 absent and not voting. Bill carrier was Senator Wardner.

FISCAL NOTE

Requested by Legislative Council
01/30/2001

Bill/Resolution No.: SB 2425

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There is no change in overall revenues for the state or its political subdivisions.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	**Agency:**	Tax Department
Phone Number:	328-3402	**Date Prepared:**	02/06/2001

Date: 2/14/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2425

Senate Finance and Taxation Committee

☐ Subcommittee on
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Wardner Seconded By Stenehjem

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman	✓				
Senator Wardner-Vice Chairman	✓				
Senator Christmann	✓				
Senator Stenehjem	✓				
Senator Kroeplin	✓				
Senator Nichols	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Wardner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 14, 2001 1:26 p.m.

Module No: SR-27-3355
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2425: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2425 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

SB 2425

TESTIMONY ON SENATE BILL 2425
PREPARED BY SENATOR THANE

Mr. Chairman, members of the Senate Finance and Taxation Committee, for the record, I'm Senator Thane representing the 25th District, which includes Wahpeton and part of Richland County.

This bill adds a new subsection to the North Dakota Century Code, that exempts property from taxation. The new subsection exempts property operated as an assisted living facility as defined in NDCC 50-24.5-01 and which is operated on a non-profit basis. It establishes an effective date, which is taxable in the years beginning after December 31, 2000. The definition section defines assisted living in detail, and includes housing, congregate meals, personal care, supervision, safety, medication services, transportation services, and etc..

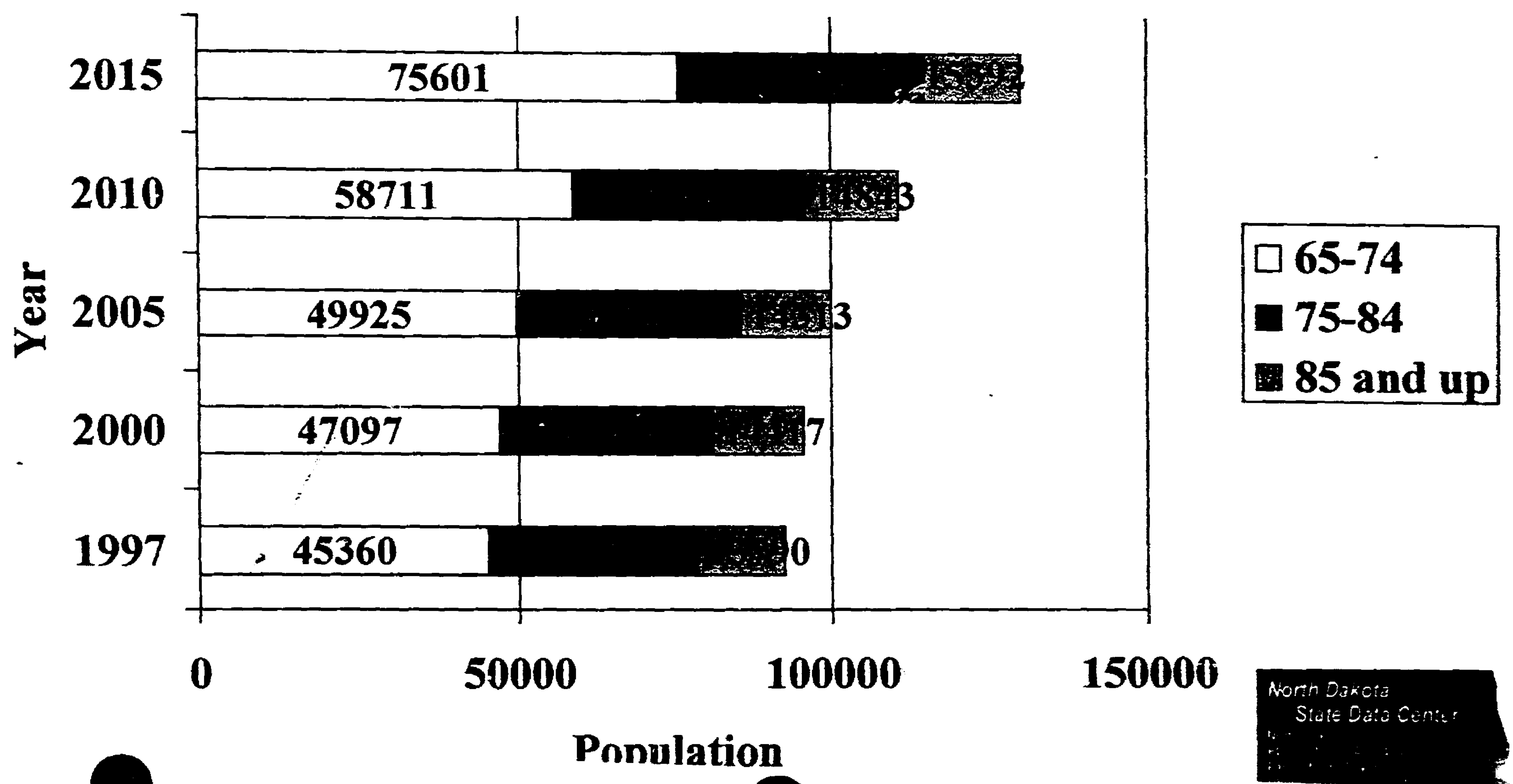
There is more to this bill than the technical aspects. Over a period of many years, our state, through legislative, department, and public action, has arrived at what I believe is now public policy. That public policy is a continuum of care for our elderly, our frail elderly, and those who need skilled nursing care. This policy calls for us to have in place, a system providing the least restrictive environment, and a high quality of care. That care ranges from home based care to basic care, than to assisted living, and finally to skilled nursing care. Assisted living is an intergal part of that continuum and needs to be addressed.

Several years ago, I chaired a Steering Committee to explore the feasibility of a facility connected with St. Catherine's Living Center. We toured several facilities on the Minnesota side - some were only functional and low in price, some were very nice and very expensive. The position the Steering Committee took, at that time, was that a facility would meet the needs of those with modest retirement income and that no one should be turned out because of loss of ability to pay. Plans were developed, a capital fundraising plan was organized and difficulties began. Under existing law, efforts to obtain a tax exempt status met with negative results. In order for us and other not-for-profit homes to seriously consider assisted living, we vitally need this status.

The changing demographics of our state, the growing numbers of elderly, and the aging of the baby-boomers demand that we provide for them. This publication Demographic Challenges for Elderly Care in North Dakota ,by Richard Rathge, spells out what is ahead.

Please consider positive action on this bill and a "Do Pass." Thank you!

1997 Population and Projections of the Elderly - 65 and Up



Testimony on SB 2425
Senate Finance and Taxation Committee
February 7, 2001

Chairman Urlacher and members of the Senate Finance and Taxation Committee, thank you for the opportunity to testify on SB 2425. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here today on behalf of our members, nursing facilities, basic care facilities and assisted living facilities.

I am here today in support of SB 2425 and respectively request a "DO PASS."

Over 90% of the nursing facilities in North Dakota are non-profit, meaning their mission and focus is to deliver quality long term care regardless of a persons ability to pay. Each year many contribute countless hours of care to those from whom compensation is not received. This contribution of care is returned to the facility through not having to pay property taxes. This seems a fair exchange to both parties.

In the past few years nursing facilities have been asked to expand their services and help meet the needs of senior adults living in the community, through the development of assisted living and congregate housing. This type of housing with services is appropriate for the person who needs a little bit of help but not twenty-four hour skilled nursing care.

North Dakota as you may know, institutionalizes individuals in nursing facilities at the highest rate of any state in the nation. Over 100 years ago North Dakota began developing nursing facilities and today we have 88 facilities spread throughout North Dakota. North Dakota taxpayers will spend over $125 million a year caring for about 3600 individuals in need of care this year. We spend this much money and the demographic tidal wave of senior adults will not hit us for another decade or two.

Consumers are searching for options and choices to remain in their communities for as long as possible. An identified need has been ground floor housing with the ability to contract for services when and if they need them. The nursing home profession in North Dakota is committed to provide the full continuum of care and empower North Dakotans with choice.

North Dakota is an aging state. From 1980 to 1990, North Dakota's population declined 2.1% however our older population age 80 and over grew 36%. According to the United

States Census Bureau, in 1990, 118,175 or 18.5% of North Dakota residents were 60 or over. In the year 2020 it is projected that more than 161,000 or 22.4% of North Dakotans will be age 60 or over. The fastest growing age group in North Dakota are those 85 years of age and over, a projected increase of 78%, growing from 11,240 people in 1990 to 20,000 individuals in 2020.

We will never have enough room or staff - young people to care for all these individuals in nursing facilities. Housing with options, keeping these people spread throughout North Dakota in our communities is the answer. SB 2425 will allow non-profit nursing facilities to continue to develop these affordable housing options and not be burdened with property taxes.

Today, each non-profit nursing facility negotiates with their political sub-division the amount of property taxes. Some have negotiated very well (Cando) and don't have to pay property taxes, and some must begin paying taxes on day one when the project opens. Some, five years ago received a five year tax abatement and now the tax liability is requiring a $125 month rent increase to be passed on to a 90-year old resident living on a fixed income.

Let's help keep older North Dakotans in our communities with the options of affordable housing. Senior congregate / assisted living housing projects are truly economic development for North Dakota and help keep our rural population stable. Non-profit nursing facilities did a great job developing services for individuals needing twenty-four hour skilled care, lets support them developing assisted living and congregate housing.

Your support of SB 2425 is appreciated. I would be happy to answer any questions you might have at this time.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

January 16, 2001

Ms. Shelly Peterson
ND Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501-1914

PH: (701) 222-0660
FX: (701) 223-0977

RE: Senate Resolution Regarding Real Estate Taxes For Senior Assisted Living Complexes

Dear Shelly:

Thank you for faxing me the Senate Concurrent Resolution No. 4001 regarding the study of real estate taxes as they apply to senior congregate / assisted living facilities.

I have completed the architectural, construction and development of over 50 senior congregate / assisted living facilities, of which the majority have been completed in the last ten years. Ninety-Eight percent (98%) of these facilities have been for non-profit nursing homes or hospitals.

I have found the pattern of how assessors have approached the taxation of these projects all over the board. They range from total exemption to \$1800/unit/year. This translates to \$150/month added to an already high rent number. It also means that some projects are identical in size and unit type but one community will have rents for their seniors at \$100/month more than their neighboring community only because of real estate taxes.

To help our clients, I have compiled a spreadsheet showing what each of 14 different projects are paying in real estate taxes. Those that are listed as proposed are now final.

I have had projects stalled for as long as two years due to the inability of our clients to come to agreement with local assessors over the amount of real estate taxes that the project could afford because of rent limitations in the marketplace. We have had other clients with five years of real estate tax abatements where the old assessor has retired and now a new assessor computes the tax liability at \$1,500/unit / year, requiring a \$125/month rent increase to be passed on to a 90-year old resident on a fixed income.

Senior congregate / assisted living facilities are economic development for North Dakota communities. In the majority of cases, approximately 60% of the residents entering a new congregate or assisted living facility are selling single-family homes, which are purchased and renovated by young families with an average of two children per family.

If you construct 16 units at 60% = 10 single family homes multiplied by two children means the local school district gains 20 children. The state's contribution per student averages \$220 / child. This translates into an increase of \$44,000 for the local school district. By keeping seniors in their communities, the local banks retain their deposits of their seniors to lend to the young families.

Sixty percent (60%) of all health care costs are spent in the first six months and last six months of life, according to national statistics. By keeping seniors in their communities, their health care dollars go to retaining local doctors, clinics, nursing homes and hospitals for their services, as well as the young, working families. Senior congregate / assisted living facilities are a win/win asset to the nursing homes and communities they serve.

TRIEBWASSER
HELENSKE
&
ASSOCIATES

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MANAGEMENT

616 MAIN AVENUE
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I read in a Kipplinger Letter that 85% of all seniors return to where they lived and worked 10 years prior to their retirement by the age of 72, if appropriate senior housing is available. When I look back over the 50 plus projects that I have done, 25% to 40% of the residents living in senior congregate / assisted living projects are returning from locations more than 200 miles from the subject project.

Senior congregate / assisted living projects are truly economic development for the communities that develop them.

I would be happy to testify or make a presentation to explain the benefits of these facilities to their communities and the State of North Dakota.

If I can be of further assistance, please call.

Sincerely,

Norman E. Triebwasser

Norman E. Triebwasser

NET/jh
Encls.

UMMARY OF REAL ESTATE TAX AGREEMEN[illegible]R SENIOR CONGREGATE HOUSING PROJECTS

Augu[illegible], 2000

Community	# Of Units	Years 0-5	Years 6-10	Years 11-15	Years 16-20	Year 20
Mayville, ND PILOT	16	$1,000 / Yr. $62.50 / Unit	$1,000 / Yr.	$1,000 / Yr.	$1,000 / Yr.	
Hillsboro, ND PILOT	14	$1,000 / Yr. $71 / Unit	$8,800 / Yr. $629 / Unit	$8,800 / Yr. $629 / Unit	$8,800 / Yr. $629 / Unit	
Trollwood Fargo, ND	147	$85,584 (1999) $582.20 / Unit				
The Heritage Jamestown, ND	29	$ 0	$14,065 / Yr. $485 / Unit	$16,000 / Yr. $551 / Unit	$16,000 / Yr. $551 / Unit	
Valley City, ND PILOT	24	$4600 / Yr. $191 / Unit	$10,000 / Yr. $416 / Unit	$21,000 / Yr. $875 / Unit	$21,000 / Yr. $875 / Unit	
Milnor, ND PILOT	12	$ 0	$5,000 / Yr. $416 / Unit	$7,500 / Yr. $625 / Unit	$10,000 / Yr. $833 / Unit	
Finley, ND PILOT	12	$ 0	$5,000 / Yr. $416 / Unit	$6,000 / Yr. $500 / Unit	$8,000 / Yr $666 / Unit	$10,000 $833 / Unit
New Rockford, ND Proposed Payment	16	$ 0	$5,000 / Yr. $312.50 / Unit	$6,000 / Yr. $375 / Unit	$7,500 / Yr. $468 / Unit	
Cando, ND City gave abatement forever.	12	$ 0	$ 0	$ 0	$ 0	
Lakota, ND PILOT	16	$ 0	$5,000 / Yr. $312.50 / Unit	$6,000 / Yr. $375 / Unit	$7,000 / Yr. $437.50 / Unit	
Halstad, MN Proposed Agreement	16	$6,000 / Yr. $375 / Unit	$6,000 / Yr. $375 / Unit	$6,000 / Yr. $375 / Unit	$6,000 / Yr. $375 / Unit	
Twin Valley, MN Proposed Agreement	16	$6,000 / Yr. $375 / Unit	$6,000 / Yr. $375 / Unit	$6,000 / Yr. $375 / Unit	$6,000 / Yr. $375 / Unit	
Perham, MN This project is owned by a Hospital District, which is tax-exempt in MN.	31	$ 0	$ 0	$ 0	$ 0	
Lisbon, ND Proposed PILOT	16	$ 0	$6,656 / Yr. $416 / Unit	$10,000 / Yr. $625 / Unit	$13,328 / Yr. $833 / Unit	

Net.Cor\Sr.TaxSum

St. Catherine's Living Center
Wahpeton, North Dakota
701-642-6667
bmsteele@bhshealth.org

Brigid Steele, Administrator
February 7, 2001

St. Catherine's Living Center
Continuum of Care Services

Home and Community Based Services
(Qualified Service Provider)
▼
Home Care
▼
Assisted Living
(Proposed)
▼
Basic Care
▼
Adult Day Services
(Planned)
▼
Alzheimer's Special Care
▼
Skilled Nursing Care

- Senior Coalition or Richland and Wilken County formed
  - Goal to analyze and plan for health care services for the future baby boomer generation

- Market study performed for Richland Wilken Counties for housing
  - Proposed rents from $843 to $1,056 per month
  - Need of 60 assisted living and 70 independent living apartments

- Other businesses proposed but tax load limited

- St. Catherine's taxes on 49 apartments would be approximately $93,000-$99,500 per year

- Tax load would be passed on to the tenant making the housing and services unaffordable

- Assisted living is a part of St. Catherine's continuum of care, which is consistent with North Dakota's alternative nursing home services.

TESTIMONY OF ALBERT A WOLF
ON BEHALF OF BENEDICTINE LIVING COMMUNITIES
RE: SENATE BILL 2425

Chairman Urlacher and members of the Senate Finance and Taxation Committee.

My name is Albert A. Wolf of Wheeler Wolf Law Firm, Bismarck, North Dakota, appearing on behalf of the Benedictine Living Communities which consists of five (5) skilled nursing homes owned and operated by Benedictine Living Communities in North Dakota. Legislators generally know that BHS purchased these five (5) homes from the Beverly Enterprises about ten (10) years ago and proceeded to upgrade staffing and facilities in each of these locations for the past ten (10) years at the various locations in North Dakota.

During this time, the North Dakota taxpayers, the State Human Services Department and this legislature has focused on the ever increasing cost of skilled nursing care to the State of North Dakota with over 60% of the residents of skilled care facilities receiving Medicaid payments for their care.

Alternative assistance for providing care for the elderly at lesser costs has been a priority established by this legislature and by the Human Services Department for some time. Assisted living facilities have been developing recently throughout the country. Incentives have been provided to skilled nursing homes to develop alternatives to nursing home care to reduce the overall cost of caring for our elderly. Senate Bill 2425 would provide not only further incentives to meet this need, but would in many cases provide the difference between development of assisted type living facilities and not developing such facilities.

Senate Bill 2425 would add one more subsection of property exemption from taxation provisions to § 57-02-08 NDCC, which now contains 39 such exemptions. A portion of § 57-02-08 is attached showing subsections 5 through 9. Subsection 8 deals with public hospitals, nursing homes and other institutions under the control of religious or charitable institutions. Presently there is a great variance in the treatment of these tax-exempt applications from county to county throughout the state. Senate Bill 2425 in its present form or as it may be amended to meet more definitive needs, would establish some uniformity to enable facilities throughout the state to do some long term planning of their financial arrangements to develop such facilities with their financial institutions.

'here are several bills in the legislature this year to modify or redefine the services rovided by housing the elderly in various forms. This includes skilled nursing acilities and basic care facilities both of which have moratoriums for further levelopment in the law presently. These are the only types of elderly housing acilities that are entitled to reimbursement directly for eligible residents under the resent law.

There are other entities that provide independent living with limited services, enior housing facilities with some services for deficiencies of abilities for daily iving and other forms of limited services in senior housing settings. If most of the egislative proposals directed at these definitions are adopted, there should be a vell-defined difference between each of these entities, both in the form of services rovided and their reimbursement eligibility attached to each.

However, the cost reimbursement issue is a separate issue from the real estate tax exemption issue dealt with in Senate Bill 2425 for assisted type living facilities, in addition to those facilities defined in subparagraph 8 of § 57-02-08.

There will be testimony as to specific situations that have developed over the years and that may exist at the present time that will present the problems that would be addressed by Senate Bill 2425 or like legislation in some form. It has been suggested that the language of this bill should not only include assisted living facilities, but should also include independent living facilities with a service component defined specifically, to provide a broader incentive for developing alternatives to skilled care facilities.

It is a well accepted fact in the industry and amongst geriatric medical people that communal housing with assisted living facilities provides an environment which retains the independence of residents more fully then would living without the social and service components often allows for more a depressing environment causing earlier entrance into the skilled nursing home facilities.

An application for real estate tax exemption was submitted to the State Tax Department by a proposed independent living facility for approval in January 2000 as part of a nursing home operation, a not for profit corporation, as a nursing home alternative.

The Administrator of the tax equalization division of the North Dakota Tax Department refused to approve the application and interpreted the law in North Dakota to require a non-profit organization to offer free accommodations and services to indigent persons in the community, with no limits of numbers or time periods and without need for applying for Medicaid assistance, in order to qualify for a real estate tax exempt status. The organization was expected to raise funds from contributors to the non-profit entity to support the operation. This disposition of the State Tax Department tax exemption issue requires legislative review of the law governing this area particularly in light of the policy of the State of North Dakota to reduce the numbers of elderly in nursing home beds and provide alternative services at the least restrictive environment and costs to the state.

5. All lands used exclusively for burying grounds or cemeteries.
6. All property belonging to schools, academies, colleges, or other institutions of learning, not otherwise used with a view to profit, and all dormitories and boarding halls, including the land upon which they are situated, owned and managed by any religious corporation for educational or charitable purposes for the use of students in attendance upon any educational institution, if such dormitories and boarding halls are not managed or used for the purpose of making a profit over and above the cost of maintenance and operation.
7. All houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected, and any dwellings belonging to religious organizations intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church, together with the lots upon which the same are situated.
8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, and this includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.
9. All real property, not exceeding two acres [.81 hectare] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, must be deemed to be property used exclusively for religious services, and exempt from taxation, whether the real property consists of one tract or more. The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.
10. Property of an agricultural fair association duly incorporated for the purpose of holding agricultural fairs, and not conducted for the profit

St. Benedict's Health Center
A Benedictine Living Community
851 Fourth Avenue East • Dickinson, North Dakota 58601 • (701) 456-7242 • Fax (701) 456-7250

February 7, 2001

Senator Herb Urlacher, Chairman
Senate Finance and Taxation Committee
State Capitol
Bismarck, ND
Via: Facsimile

Dear Herb:

It was my hope to be in attendance today during you committee hearing on SB2425. Unfortunately, I'm unable to attend. I'm hoping that the committee will not take final action today, and that there will still be time to get additional materials to you, as you consider this bill.

As you know, St. Benedict's is contemplating a housing project for aging adults. It is our desire to offer a project that meets the housing needs of area seniors, which has the necessary service mix to be affordable, AND allow those we serve to successfully "age in place". We very much want to partner with those we serve, and help them to have the best possible retirement possible, in the care environment that offers the greatest freedom, flexibility and privacy.

SB2425 holds great promise for those who intend to build an assisted living project. The savings on taxes will, in most instances, be the difference between a financial model that will work, and a project that will never be built. As you know, there has been a flurry of activity attempting to define and regulate services that are less intensive then nursing home care. I'm am watching, with great interest, these activities. What happens with these bills and SB2425 will play a major role in what project St. Benedict's pursues, if any. Whenever possible, I encourage the legislature to take action that will continue to support the highest level of choice at the local community level. In the case of SB2425, a consistent statewide approach to property tax exemption is very appropriate. However, I'm concerned that it may push providers toward building one type of service (i.e. assisted living), in order to obtain the tax break, when another form of service (i.e. independent living with services) may better meet the community's needs.

As mentioned above, I hope to find additional information that can help you as you debate SB2425, including a better review of the status of the definition of "assisted living". In the mean time, if there is anything I can do to help you on this, or any other issue, do not hesitate to contact me. Thank you for your good work in Bismarck!

Sincerely,

Jon Frantsvog
Administrator

TESTIMONY TO THE
SENATE FINANCE & TAXATION COMMITTEE
Prepared February 8, 2001, by the
North Dakota Association of Counties
Mark A. Johnson, Executive Director

CONCERNING SENATE BILL NO. 2425

Chairman Urlacher and members of the committee, as a representative of the North Dakota Association of Counties, I am here to express the concern of county commissioners for yet another property tax exemption.

Every Session, the Legislature is faced with proposals to exempt additional types of property from taxation. Often these are "local option" exemptions, proposed to give local governing bodies the authority to exempt certain properties for economic development or other locally driven reasons. These local option exemptions are difficult in themselves, but SB2425 goes even further. This provides no local input – it simply removes property from the tax roles.

As the attached copy of 57-02-08 indicates, already State Law allows 39 separate statutory property tax exemptions. The value of already exempt property is staggering. This Committee is well aware that ultimately this does not reduce property tax revenues, but results in increased taxes on the fewer and fewer property owners that don't have their own personal exemption.

While we recognize the situation addressed by this well-intentioned piece of legislation; county officials are the ones forced to raise taxes on all other property, each time a new exemption is created or an existing one expanded. The impact of this is not limited to county taxes. It includes cities, city parks, townships, school districts and other entities dependent on property tax revenues such as county social service boards that must fund services for many of the same people to benefit from this exemption.

When the State established the homestead tax credit program, the Legislature wisely funded the exemptions granted. Each session since its creation, the Legislature has appropriated sufficient revenue to reimburse all taxing districts for the credits granted. County officials view the proposal in this legislation as very similar in nature.

It is the position of this Association, that this bill can only be supported, if the costs of the exemption are refunded to the local political subdivisions. If the Legislature believes that there is statewide benefit to granting a property tax exemption in this case, then the benefit extends beyond the borders of the township, the school district, and the county; whose residents must bear the burden of increased taxes.

Mr. Chairman and committee members, I urge a "Do Not Pass" recommendation on Senate Bill 2425, unless funding can be attached.

57-02-08. Property exempt from taxation.

All property described in this section to the extent herein limited shall be exempt from taxation:

1. All property owned exclusively by the United States except any such property which the state and its political subdivisions are authorized by the laws of the United States to tax.

2. All property owned by this state, but no lands contracted to be sold by the state shall be exempt.

3. All property belonging to any political subdivision.

4. Property of Indians if the title of that property is inalienable without the consent of the United States secretary of the interior.

5. All lands used exclusively for burying grounds or cemeteries.

6. All property belonging to schools, academies, colleges, or other institutions of learning, not otherwise used with a view to profit, and all dormitories and boarding halls, including the land upon which they are situated, owned and managed by any religious corporation for educational or charitable purposes for the use of students in attendance upon any educational institution, if such dormitories and boarding halls are not managed or used for the purpose of making a profit over and above the cost of maintenance and operation.

7. All houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected, and any dwellings belonging to religious organizations intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church, together with the lots upon which the same are situated.

8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, and this includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.

9. All real property, not exceeding two acres [.81 hectare] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, must be deemed to be property used exclusively for religious services, and exempt from taxation, whether the real property consists of one tract or more. The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.

10. Property of an agricultural fair association duly incorporated for the purpose of holding agricultural fairs, and not conducted for the profit of any of its members or stockholders; provided, that all property described in this subsection shall be subject to taxation for the cost of fire protection services furnished by any municipal corporation in which said property is located.

11. Property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations, and associations, grand or subordinate, not organized for profit, and used by them for places of meeting and for conducting their business and

ceremonies, and all property owned by any fraternity, sorority, or organization of college students if such property is used exclusively for such purposes; provided, further, that any portion of such premises not exclusively used for places of meeting and conducting the business and ceremonies of such organization shall be subject to taxation.

Provided, further, that if any such organization as contemplated by this subsection is licensed for the sale of alcoholic beverages as defined by the statutes of the state of North Dakota, such portion of such premises where such alcoholic beverages are consumed or sold shall be deemed not to be so used exclusively for conduct of its business and meeting if such beverages are sold at a profit.

Provided, further, that if food other than that served at lodge functions and banquets and food sold or consumed in any fraternity or sorority house, is sold at a profit on the premises, that portion of the premises where such food is sold at a profit shall be deemed not to be used exclusively for places of meeting or conducting the business and ceremonies of such organization; provided, that all property described in this subsection shall be subject to taxation for the cost of fire protection services furnished by any municipal corporation in which said property is located.

12. Repealed by S.L. 1983, ch. 595, § 3.

13. All land used as a public park or monument ground belonging to any military organization, and not used for gain.

14. The armory, and land or lots upon which situated, owned by a regiment, battalion, or company of the North Dakota national guard, and used for military purposes by such organization.

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

(1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.

(2) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

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

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

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

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

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

b. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:

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

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

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

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

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

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

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

(5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. This paragraph does not apply to a retired farmer or a beginning farmer as defined in paragraph 2.

(6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

(7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

16. Property now owned, or hereafter acquired, by a corporation organized, or hereafter created, under the laws of this state for the purpose of promoting athletic and educational needs and uses at any state educational institution in this state, and not organized for profit.

17. Moneys and credits, including shares of corporate stock and membership interests in limited liability companies, except moneyed capital which is so invested or used as to come into direct competition with money invested in bank stock.

18. and 19. Repealed by S.L. 1983, ch. 595, § 3.

20. Fixtures, buildings, and improvements up to the amount of valuation specified, when owned and occupied as a homestead, as hereinafter defined, by any of the following persons:

a. A paraplegic disabled veteran of the United States armed forces or any veteran who has been awarded specially adapted housing by the veterans' administration, or the unremarried surviving spouse if such veteran is deceased.

b. A disabled veteran of the United States armed forces who was discharged under honorable conditions or who has been retired from the armed forces of the United States with an armed forces service-connected disability of fifty percent or greater, or the unremarried surviving spouse if the veteran is deceased, if the income of the veteran and the spouse, or if the veteran is deceased the income of the unremarried surviving spouse, in the calendar year prior to the year for which the exemption is claimed did not exceed the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section exclusive of any compensation or pension for service-connected disability from the United States government.

c. Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or, if deceased, the unremarried surviving spouse of a permanently and totally disabled person. If the spouse of a permanently and totally disabled person owns the homestead or if it is jointly owned by them, the same reduction in assessed valuation applies as long as both reside thereon. The provisions of this subdivision do not reduce the liability for special assessments levied upon the homestead. The phrase "permanently confined to use of a wheelchair" means that the person cannot walk with the assistance of crutches or any other device and will never be able to do so and that a physician selected by the local governing board has so certified.

Any person claiming an exemption under this subsection for the first time shall file with the county auditor an affidavit showing the facts herein required and a description of the property and, in addition, a disabled veteran claiming exemption under subdivision b shall also file with the affidavit a certificate from the United States veterans' administration, or its successors, certifying to the amount of the disability; the affidavit and certificate must be open for public inspection. Any person shall thereafter furnish to the assessor or other assessment officials when requested to do so any information which is believed will support the claim for exemption for any subsequent year.

For purposes of this subsection, "homestead" has the meaning provided in section 47-18-01 except that it also applies to any person who otherwise qualifies under the provisions of this subsection whether or not the person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which the veteran has held title to the exempt property.

21. Repealed by S.L. 1983, ch. 595, § 3.

22. All or any part of fixtures, buildings, and improvements upon any nonfarmland up to a taxable valuation of five thousand dollars, owned and occupied as a home by a blind person. Residential homes owned by the spouse of a blind person, or jointly owned by a blind person and spouse, shall also be exempt within the limits of this subsection as long as the blind person resides in the home. For purposes of this subsection, a blind person shall be defined as one who is totally blind, has visual acuity of not more than 20/200 in the better eye with correction, or whose vision is limited in field so that the widest diameter subtends an angle no greater than twenty degrees. The exemption provided by this subsection extends to the entire building classified as residential, and owned and occupied as a residence by a person who qualifies for the exemption as long as the building contains no more than two apartments or rental units which are leased.

23. All, or any portion of structural improvements other than paving and surfacing to land used exclusively for the business of operating an automobile parking lot within a city open for general public patronage. Where a portion of the structure is exempt from taxation as being open for general public patronage, the amount of such exemption shall be computed by determining the value of the public parking area in proportion to the total value of the structure.

24. Repealed by S.L. 1983, ch. 595, § 3.

25. All personal property is exempt except:

a. Personal property of entities, other than railroads, required by section 4 of article X of the Constitution of North Dakota to be assessed by the state board of equalization.

b. Any property that is subjected to a tax which is imposed in lieu of ad valorem taxes.

c. Any particular kind or class of personal property, including mobile homes or housetrailers, that is subjected to a tax imposed pursuant to any other provision of law.

26. Fixtures, buildings, and improvements when owned and occupied as a homestead, as hereinafter defined, by a paraplegic disabled person, or if the person is deceased the unremarried spouse, if the income from all sources of the person and spouse, or if the person is deceased the income from all sources of the unremarried surviving spouse, in the calendar year prior to the year for which the exemption is claimed did not exceed the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section. To obtain the exemption for the first time, a certificate from a medical doctor who is approved by the board of county commissioners, accompanied by an affidavit, showing the facts herein required and a description of the property, must be filed with the county auditor. The affidavit and accompanying certificate must be opened to public inspection. Any person claiming the exemption for any year after the first year shall furnish to the assessor or other assessment officials when requested to do so any information which the person believes will support the claim for the exemption for any subsequent year. For purposes of this subsection, "homestead" has the meaning provided in section 47-18-01 except that it also applies to any person who otherwise qualifies under the provisions of this subsection whether or not the person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which the person has held title to the exempt property.

27. Installations, machinery, and equipment of systems in new or existing buildings or structures, designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by utilization of solar, wind, or geothermal energy; provided, that if the solar, wind, or geothermal energy device is part of a system which uses other means of energy, only that portion of the total system directly attributable to solar, wind, or geothermal energy shall be exempt. Provided, however, that any exemptions granted by this subsection shall be valid for a five-year period following installation of any such system. For the purposes of this subsection, solar or wind energy devices shall have the meaning provided in section 57-38-01.8; geothermal energy device means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

28. All fixtures, buildings, and improvements owned by any cooperative or nonprofit corporation organized under the laws of this state and used by it to furnish potable water to its members and customers for uses other than the irrigation of agricultural land.

29. Property to which title is held by a city pursuant to chapter 40-57 which is leased to an entity described in subsection 8 and used by the entity as provided in subsection 8 or subleased to a public school district for educational purposes; provided, that the entity is qualified as an exempt organization under section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended.

30. Property, but not including property used for residential purposes, owned by an organization described in subsection 9 and leased to a public school district for educational purposes; provided, that the property had previously been owned and occupied by the organization for an exempt purpose described in subsection 9 for a period of at least five years.

31. All group homes owned by nonprofit corporations, not organized with a view to profit and recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)], including those for persons with developmental disabilities as defined in section 25-01.2-01, and the real property upon which they are located during the period in which the group homes are under construction or in a remodeling phase and while they are used as group homes. For the purposes of this subsection, the term "group home" means a community-based residential home which provides room and board, personal care, habilitation

services, or supervision in a family environment, and which, once established is licensed by the appropriate North Dakota licensing authority.

32. Minerals in place in the earth which at the time of removal from the earth are then subject to taxes imposed under chapter 57-51 or 57-61.

33. Property used for athletic or recreational activities when owned by a political subdivision and leased to a nonprofit corporation organized for the purpose of promoting public athletic or recreational activities.

34. Any building located on land owned by the state if the building is used at least in part for academic or research purposes by students and faculty of a state institution of higher education.

35. Up to seventy-five thousand dollars of the true and full value of all new single-family residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

a. The governing body of the city, for property within city limits or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.

b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.

c. The first owner after the builder resides on the property, or the builder still owns the property. For purposes of this subsection, "builder" includes a person who builds that person's own residence.

For purposes of this subsection, "single-family residential property" does not include condominium or townhouse property.

36. Up to seventy-five thousand dollars of the true and full value of each unit of all new condominium and townhouse residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.

b. Special assessments and taxes on the property upon which the condominium or townhouse is situated are not delinquent.

c. The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.

37. The governing body of the city, for property within city limits, or of the county, for property outside city limits, may grant a property tax exemption for the portion of fixtures, buildings, and improvements, used primarily to provide early childhood services by a corporation, limited liability company, or organization licensed under chapter 50-11.1 or used primarily as an adult day care center. However, this exemption is not available for property used as a residence.

38. a. A pollution abatement improvement. As used in this subsection, "pollution abatement improvement" means property, exclusive of land and improvements to the land such as ditching, surfacing, and leveling, that is:

(1) Part of an agricultural or industrial facility which is used for or has for its ultimate purpose, the prevention, control, monitoring, reducing, or eliminating of pollution by treating, pretreating, stabilizing, isolating, collecting, holding, controlling, measuring, or disposing of

waste contaminants; or

(2) Part of an agricultural or industrial facility and required to comply with local, state, or federal environmental quality laws, rules, regulations, or standards.

b. The exemption under this subsection applies only to that portion of the valuation of property attributable to the pollution abatement improvement on which construction or installation was commenced after December 31, 1992, and does not apply to the valuation of any property that is not a necessary component of the pollution abatement improvement. The governing body of the city, for property within city limits, or the governing board of the county, for property outside city limits, shall determine whether the property proposed for exemption is a pollution abatement improvement and may grant an exemption for the pollution abatement improvement based upon the requirements of this subsection.

39. The leasehold interest in property owned by the state which has been leased for pasture or grazing purposes or upon which payments in lieu of property taxes are made by the state.