

August 2004

Introduced by

1 A BILL for an Act to amend and reenact subsection 15 of section 57-02-08 of the North Dakota
2 Century Code, relating to qualifications for the farm residence property tax exemption; and to
3 provide an effective date.

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

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

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

- 1 (b) Whether animals being raised on the farm are owned by the
2 farmer.
- 3 (c) Whether the farm's replacement animals are produced on the
4 farm.
- 5 (d) Whether the farmer is engaged in contract feeding of animals on
6 the farm.
- 7 b. ~~It is the intent of the legislative assembly that this~~ The exemption under this
8 subsection as applied to a residence must be strictly construed and
9 interpreted to exempt only a residence that is situated on a farm and which is
10 occupied or used by a person who is a farmer ~~and that the exemption may not~~
11 ~~be applied to property which is occupied or used by a person who is not a~~
12 ~~farmer~~ whose household income for the most recently ended taxable year
13 does not exceed forty thousand dollars. For purposes of this subdivision,
14 "household income" includes income from all sources of residents of the farm,
15 including only the farmer, the farmer's spouse, the farmer's dependents, and
16 any relative of the farmer by blood or marriage. For purposes of this
17 subdivision:
- 18 (1) "Farm" means a single tract or contiguous tracts of agricultural land
19 containing a minimum of ten acres [4.05 hectares] and ~~for~~ on which the
20 farmer; is actually farming the land or engaged in the raising of
21 livestock or other similar operations normally associated with farming
22 and ranching, ~~has received annual net income from farming activities~~
23 ~~which is fifty percent or more of annual net income, including net~~
24 ~~income of a spouse if married, during any of the three preceding~~
25 ~~calendar years.~~ For purposes of this subdivision, "livestock" includes
26 nontraditional livestock as defined in section 36-01-00.1.
- 27 (2) "Farmer" means an individual who ~~normally devotes the major portion~~
28 ~~of time to the activities of producing~~ produces for sale products of the
29 soil, poultry, livestock, or products of dairy farming in such products'
30 unmanufactured state ~~and has received annual net income from~~
31 ~~farming activities which is fifty percent or more of annual net income,~~

- 1 including net income of a spouse if married, during any of the three
2 preceding calendar years. "Farmer" includes a "retired farmer" who is
3 retired because of illness or age and who at the time of retirement
4 owned and occupied as a farmer the residence in which the person
5 lives and for which the exemption is claimed. ~~"Farmer" includes a~~
6 ~~"beginning farmer" who has begun occupancy and operation of a farm~~
7 ~~within the three preceding calendar years; who normally devotes the~~
8 ~~major portion of time to the activities of producing products of the soil,~~
9 ~~poultry, livestock, or dairy farming in such products' unmanufactured~~
10 ~~state; and who does not have a history of farm income from farm~~
11 ~~operation for each of the three preceding calendar years.~~
- 12 (3) ~~"Net income from farming activities" means taxable income from those~~
13 ~~activities as computed for income tax purposes pursuant to chapter~~
14 ~~57-38 adjusted to include the following:~~
- 15 (a) ~~The difference between gross sales price less expenses of sale~~
16 ~~and the amount reported for sales of agricultural products for~~
17 ~~which the farmer reported a capital gain.~~
- 18 (b) ~~Interest expenses from farming activities which have been~~
19 ~~deducted in computing taxable income.~~
- 20 (c) ~~Depreciation expenses from farming activities which have been~~
21 ~~deducted in computing taxable income.~~
- 22 (4) When exemption is claimed under this subdivision for a residence, the
23 assessor ~~may~~ shall require that the occupant of the residence who ~~it is~~
24 ~~claimed is a farmer~~ claims the exemption provide to the assessor for
25 the year ~~or years specified by the assessor~~ a written statement an
26 affidavit in a form provided by the tax commissioner in which it is stated
27 that ~~fifty percent or more of the net income of that~~ the occupant, and
28 ~~spouse if married and both spouses occupy the residence, was, or was~~
29 ~~not, net income from farming activities~~ is entitled to the exemption
30 under the terms of this subdivision. The affidavit must be accompanied
31 by a sealed copy of income tax returns of all members of the household

1 for the most recently ended taxable year. The assessor may not
2 examine income tax returns provided under this subsection but shall
3 forward the affidavit and sealed income tax returns to the tax
4 commissioner, who may examine the returns and inform the assessor
5 whether the claimant does or does not qualify for the exemption under
6 this subsection.

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

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

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

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