

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator Nelson

1 A BILL for an Act to create and enact chapter 57-65 of the North Dakota Century Code, relating
2 to refund of rent constituting property taxes for eligible individuals; to provide an appropriation;
3 and to provide an effective date.

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

5 **SECTION 1.** Chapter 57-65 of the North Dakota Century Code is created and enacted
6 as follows:

7 **57-65-01. Definitions.** As used in this chapter:

8 1. "Commissioner" means the tax commissioner.

9 2. "Income" means the sum of the following:

10 a. Federal adjusted gross income as defined in the Internal Revenue Code; and

11 b. The sum of the following amounts to the extent not included in subdivision a:

12 (1) All nontaxable income;

13 (2) The amount of a passive activity loss that is not disallowed as a result
14 of section 469, paragraph (i) and (m) of the Internal Revenue Code and

15 the amount of passive activity loss carryover allowed under section
16 469(b) of the Internal Revenue Code;

17 (3) An amount equal to the total of any discharge of qualified farm
18 indebtedness of a solvent individual excluded from gross income under
19 section 108(g) of the Internal Revenue Code;

20 (4) Cash public assistance and relief;

21 (5) Any pension or annuity including railroad retirement benefits, all payment
22 received under the federal Social Security Act, Supplemental Security
23 Income, and veterans benefits, which was not exclusively funded by the
24 claimant or spouse, or which was funded exclusively by the claimant or

- 1 spouse and which funding payments were excluded from federal
2 adjusted gross income in the years when the payments were made;
3 (6) Interest received from the federal or a state government or any
4 instrumentality or political subdivision thereof;
5 (7) Workforce safety and insurance compensation;
6 (8) Nontaxable strike benefits;
7 (9) The gross amounts of payments received in the nature of disability
8 income or sick pay as a result of accident, sickness, or other disability,
9 whether funded through insurance or otherwise;
10 (10) A lump-sum distribution under section 402-(e)(3) of the Internal
11 Revenue Code of 1986, as amended through December 31, 1995;
12 (11) Contributions made by the claimant to an individual retirement account,
13 including a qualified voluntary employee contribution; simplified
14 employee pension plan; self-employed retirement plan; cash or
15 deferred arrangement plan under section 401(k) of the Internal
16 Revenue Code; or deferred compensation plan under section 457 of the
17 Internal Revenue Code;
18 (12) Nontaxable scholarship or fellowship grant;
19 (13) The amount of deduction allowed under section 199 of the Internal
20 Revenue Code; and
21 (14) The amount of deduction allowed under section 220 or 223 of the
22 Internal Revenue Code.
- 23 3. "Income" does not include:
24 a. Amounts excluded pursuant to the Internal Revenue Code, sections 101(a)
25 and 102;
26 b. Amounts of any pension or annuity which was exclusively funded by the
27 claimant or spouse and which funding payments were not excluded from
28 federal adjusted gross income in the years when the payments were made;
29 c. Surplus food or other relief in kind supplied by a governmental agency;
30 d. Relief granted under this chapter;

- 1 e. Child support payments received under a temporary or final decree of
2 dissolution or legal separation; or
- 3 f. Restitution payments received by eligible individuals and excludable interest
4 as defined in section 803 of the Economic Growth and Tax Relief
5 Reconciliation Act of 2001, Public Law 107-16.
- 6 4. "Household means" a claimant and an individual related to the claimant as
7 husband or wife who are domiciled in the same homestead.
- 8 5. "Household income" means all income received by all persons of a household in a
9 calendar year while members of the household, other than income of a dependent.
- 10 6. "Homestead" means the dwelling occupied as claimants principal.
- 11 7. "Dependent" means any person who is considered a dependent under sections
12 151 and 152 of the Internal Revenue Code.
- 13 8. a. "Claimant" means a person, other than a dependent, as defined under
14 sections 151 and 152 of the Internal Revenue Code disregarding section
15 152(b)(3) of the Internal Revenue Code, who filed a claim authorized by this
16 chapter and who was a resident of this state during the calendar year for
17 which the claim for relief was filed.
- 18 b. The claimant must have resided in a rented or leased unit on which ad
19 valorem taxes or payments made in lieu of ad valorem taxes, including
20 payments of special assessments imposed in lieu of ad valorem taxes, are
21 payable at some time during the calendar year covered by the claim.
- 22 c. "Claimant" does not include a resident of a nursing home, intermediate care
23 facility, long-term residential facility, or a facility that accepts group residential
24 housing payments whose rent constituting property taxes is paid pursuant to
25 the supplemental security income program under title XVI of the Social
26 Security Act, the medical assistance program pursuant to title XIX of the
27 Social Security Act or any other state or federal assistance program.
- 28 If only a portion of the rent constituting property taxes is paid by these programs, the resident
29 shall be a claimant for purposes of this chapter, but the refund calculated pursuant to section
30 57-65-02 shall be multiplied by a fraction, the numerator of which is income, reduced by the
31 total amount of income from the above sources other than vendor payments under the medical

1 assistance program or the general assistance medical care program and the denominator of
2 which is income plus vendor payments under the medical assistance program or the general
3 assistance medical care program, to determine the allowable refund pursuant to this chapter.

4 d. Notwithstanding subdivision c, if the claimant was a resident of the nursing
5 home, intermediate care facility, long-term residential facility, or facility for
6 which the rent was paid for the claimant by the group residential housing
7 program for only a portion of the calendar year covered by the claim, the
8 claimant may compute rent constituting property taxes by disregarding the
9 rent constituting property taxes from the nursing home or facility and use only
10 that amount of rent constituting property taxes or property taxes from the
11 nursing home or facility and use only that amount of rent constituting property
12 taxes or property taxes payable relating to that portion of the year when the
13 claimant was not in the facility. The claimant's household income is the
14 income for the entire calendar year covered by the claim.

15 e. In the case of a claim for rent constituting property taxes of a part-year
16 resident, the income and rental reflected in this computation shall be for the
17 period of residency only. Any rental expenses paid which may be reflected
18 in arriving at federal adjusted gross income cannot be utilized for this
19 computation. When two individuals of a household are able to meet the
20 qualifications for a claimant, they may determine among them as to who the
21 claimant shall be. If they are unable to agree, the matter shall be referred to
22 the commissioner of revenue whose decision shall be final.

23 f. If a homestead is occupied by two or more renters, who are not husband and
24 wife, the rent shall be deemed to be paid equally by each, and separate
25 claims shall be filed by each. The income of each shall be renter's household
26 income for purposes of computing the amount of credit to be allowed.

27 9. "Disabled claimant" means any claimant who has a disability.

28 10. "Disability means:

29 a. Inability to engage in any substantial gainful activity by reason of any
30 medically determinable physical or mental impairment which can be expected

- 1 to result in death or has lasted or can be expected to last for a continuous
2 period of not less than twelve months, or
- 3 b. Blindness; and the term "blindness" means central acuity of 20/200 or less in
4 the better eye with the use of a correcting lens. An eye which is accompanied
5 by a limitation in the fields of vision such that the widest diameter of the visual
6 field subtends an angle no greater than 20 degrees shall be considered as
7 having a central visual acuity of 20/200 or less.
- 8 c. An individual shall be determined to be under a disability only if the physical or
9 mental impairment or impairments are of such severity that the individual is
10 not only unable to do previous work cannot, considering age, education, and
11 work experience, engage in any other kind of substantial gainful work which
12 exists in the state economy, regardless of whether the work exists in the
13 immediate area of residence, or whether a specific job vacancy exists for the
14 individual, or whether the individual would be hired on applying for work. For
15 purposes of the preceding sentence, "work which exists in the state
16 economy" means work which exists in significant numbers either in the area
17 where the individual lives or in several areas of the state.
- 18 d. A "physical or mental impairment" is an impairment that results from
19 anatomical, physiological, or psychological abnormalities which are
20 demonstrable by medically accepted clinical and laboratory diagnostic
21 techniques.
- 22 11. "Rent constituting property taxes" means nineteen percent of the gross rent
23 actually paid in cash, or its equivalent, or the portion of rent paid in lieu of property
24 taxes, in any calendar year by a claimant for the right of occupancy of the
25 claimant's homestead in this state in the calendar year, and which rent constitutes
26 the basis, in the succeeding calendar year of a claim for relief under this chapter by
27 the claimant.
- 28 12. a. "Gross rent" means rental paid for the right of occupancy, at arm's length, of a
29 homestead, exclusive of charges for any medical services furnished by the
30 landlord as a part of the rental agreement, whether expressly set out in the
31 rental agreement or not.

- 1 b. The gross rent of a resident of a nursing home or intermediate care facility is
2 three hundred fifty dollars per month. The gross rent of a resident of an adult
3 foster care home is five hundred fifty dollars per month. Beginning for rent
4 paid in 2002, the commissioner shall annually adjust for inflation the gross
5 rent amounts states in this paragraph. The adjusted must be made in
6 accordance with section 1(f) of the Internal Revenue Code, except that for
7 purposes of this paragraph the percentage increase shall be determined from
8 the year ending June 30, 2001, to the year ending on June thirtieth of the year
9 in which the rent is paid. The commissioner shall round the gross rents to the
10 nearest ten dollar amount. If the amount ends in five dollars, the
11 commissioner shall round it up to the next ten dollar amount. The
12 determination of the commissioner under this paragraph is not a rule under
13 the Administrative Procedure Act.
- 14 c. If the landlord and tenant have not death with each other at arm's length and
15 the commissioner determines that the gross rent charged was excessive, the
16 commissioner may adjust the gross rent to a reasonable amount for purposes
17 of this chapter.
- 18 d. Any amount paid by a claimant residing in property assessed pursuant to
19 section 273-124, subdivision 3, 4, 5, or 6 for occupancy in that property shall
20 be excluded from gross rent for purposes of this chapter. However, property
21 taxes imputed to the homestead of the claimant or the dwelling unit occupied
22 by the claimant that qualifies for homestead treatment pursuant to section
23 273-124, subdivision 3, 4, 5, or 6 shall be included within the term "property
24 taxes payable" as defined in subdivision 13, notwithstanding the fact that
25 ownership is not in the name of the claimant.
- 26 12. "Property taxes payable" means the property tax exclusive of special assessments,
27 penalties, and interest payable on the a claimant's homestead after deductions
28 made under sections _____ and any other state paid property tax credits in
29 any calendar year, and after any refund claimed and allowable under section
30 290A.04, subdivision 2h, that is first payable in the year that the property tax is
31 payable. In this case of a claimant who makes ground lease payments, "property

1 taxes payable" includes the amount of the payments directly attributable to the
 2 property taxes assessed against the parcel on which the house is located. No
 3 apportionment or reduction of "property taxes payable" shall be required for the
 4 use of a portion of the claimant's homestead for a business purpose if the claimant
 5 does not deduct any business depreciation expenses for the use of a portion of the
 6 homestead in the determination of federal adjusted gross income. When a
 7 homestead is owned by two or more person as joint tenants or tenants in common,
 8 such tenants shall determine between them which tenant may claim the property
 9 taxes payable on the homestead. If they are unable to agree, the matter shall be
 10 referred to the commissioner who decision shall be final. Property taxes are
 11 considered payable in the year prescribed by law for payment of the taxes.

12	Household	Percent of	Percent Paid by	Maximum State
13	Income	Income	Claimant	Refund
14	\$0 to 3,589	1.0 percent	5 percent	\$1,190
15	3,590 to 4,779	1.0 percent	10 percent	1,190
16	4,780 to 5,969	1.1 percent	10 percent	1,190
17	5,970 to 8,369	1.2 percent	10 percent	1,190
18	8,370 to 10,759	1.3 percent	15 percent	1,190
19	10,760 to 11,949	1.4 percent	15 percent	1,190
20	11,950 to 13,139	1.4 percent	20 percent	1,190
21	13,140 to 15,539	1.5 percent	20 percent	1,190
22	15,540 to 16,729	1.6 percent	20 percent	1,190
23	16,730 to 17,919	1.7 percent	25 percent	1,190
24	17,920 to 20,319	1.8 percent	25 percent	1,190
25	20,320 to 21,509	1.9 percent	30 percent	1,190
26	21,510 to 22,699	2.0 percent	30 percent	1,190
27	22,700 to 23,899	2.2 percent	30 percent	1,190
28	23,900 to 25,089	2.4 percent	30 percent	1,190
29	25,090 to 26,289	2.6 percent	30 percent	1,190
30	26,290 to 27,489	2.7 percent	30 percent	1,190
31	27,490 to 28,679	2.8 percent	35 percent	1,190

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1	28,680 to 29,869	2.9 percent	40 percent	1,190
2	29,870 to 31,079	3.0 percent	40 percent	1,190
3	31,080 to 32,269	3.1 percent	40 percent	1,190
4	32,270 to 33,459	3.2 percent	40 percent	1,190
5	33,460 to 34,649	3.3 percent	45 percent	1,080
6	34,650 to 35,849	3.4 percent	45 percent	960
7	35,850 to 37,049	3.5 percent	45 percent	830
8	37,050 to 38,239	3.5 percent	50 percent	720
9	38,240 to 39,439	3.5 percent	50 percent	600
10	38,440 to 40,629	3.5 percent	50 percent	360
11	40,630 to 41,819	3.5 percent	50 percent	120

12 The payment made to a claimant is the amount of the state refund calculated under this
13 subdivision. No payment is allowed if the claimant's household income is \$41,820 or more.

14 3. The commissioner shall construct and make available to taxpayers a
15 comprehensive table showing property taxes to be paid and refund allowed at
16 various levels of income and assessment. The table shall follow the schedule of
17 income percentages, maximums and other provisions specified in subdivision 2,
18 except that the commissioner may graduate the transition between income
19 brackets. All refunds shall be computed in accordance with tables prepared and
20 issued by the commissioner of revenue.

21 **SECTION 2.** Section 57-65-03 of the North Dakota Century Code is created and
22 enacted as follows:

23 **Combined Household income.**

24 If a person occupies an homestead with another person or persons not related to the
25 person as husband and wife, excluding dependents, roomers or boarders on contract, and has
26 property tax payable with respect to the homestead, the household income of the claimant or
27 claimants for the purpose of computing the refund allowed by section 290A.04 shall include the
28 total income received by the other persons residing in the homestead. For purposes of this
29 section, "dependent" includes a parent of the claimant or spouse who lives in the claimant's
30 homestead and does not have an ownership interest in the homestead. If a person occupies a

1 homestead with another person or persons not related as husband and wife or as dependents,
2 the property tax payable or rent constituting property tax shall be reduced as follows:

3 If the other person or persons are residing at the homestead under rental or lease
4 agreement, the amount of property tax payable or rent constituting property tax shall be that
5 portion not covered by the rental agreement.

6 **SECTION 3.** Section 57-65-05 of the North Dakota Century Code is created and
7 enacted as follows:

8 **One claimant per household.**

9 Only one claimant per household per year is entitled to relief under this chapter.

10 Payment of the claim for relief may be made payable to the husband and wife as one claimant.

11 The commissioner, upon written request, may issue separate checks, to the husband or wife for
12 one-half of the relief provided the original check has not issued or has been returned.

13 Individuals related as husband and wife who were married during the year may elect to file joint
14 claim which shall include each spouse's income, rent constituting property taxes, and property
15 tax payable. Husbands and wives who were married for the entire year and were domiciled in
16 the same household for the entire year must file a joint claim.

17 The maximum dollar amount allowable for a joint claim shall not exceed the amount that
18 one person could receive.

19 **SECTION 4.** Section 57-65-06 of the North Dakota Century Code is created and
20 enacted as follows:

21 **Proof of claim.**

22 Every claimant shall supply to the commissioner, in support of the claim, proof of
23 eligibility under this chapter, including amount of rent paid accrued, name and address or owner
24 or managing agent of property rented, changes in homestead, household membership,
25 household income, size and nature of property claimed as a homestead.

26 Disabled person filing claims shall submit proof of disability in the form and manner as
27 the department may prescribe. The department may require examination and certification by
28 the claimant's physician or by a physician designated by the department. The cost of any
29 examination shall be borne by the claimant, unless the examination proves the disability, in
30 which case the cost of the examination shall be borne by the department.

1 A determination of disability of a claimant by the Social Security Administration under
2 Title II or Title XVI of the Social Security Act shall constitute presumptive proof of disability.

3 **SECTION 5.** Section 57-65-07 of the North Dakota Century Code is created and
4 enacted as follows:

5 **Claims of tenants in leasehold cooperatives.**

6 The cooperative manager of a leasehold cooperative shall furnish a statement of each
7 tenant by March 31 of the year in which the property tax is payable showing each unit's share of
8 the gross property tax and each unit's share of any property tax credits. Each tenant may apply
9 for a property tax refund under this chapter as a homeowner based on each tenant's share of
10 property taxes. The tenant may not include any rent constituting property taxes paid on that
11 unit. For the purpose of this section, a leasehold cooperative is formed on the day that
12 leasehold cooperative status is granted by the appropriate county official.

13 **SECTION 6.** Section 57-65-08 of the North Dakota Century Code is created and
14 enacted as follows:

15 **Claim applied against outstanding liability.**

16 The amount of any claim otherwise payable under this chapter may be applied by the
17 commissioner against any delinquent tax liability of any member of the household. If there are
18 two members of the household, the commissioner may apply only one-half of a refund to the
19 separate liability of either member of the household.

20 **SECTION 7.** Section 57-65-09 of the North Dakota Century Code is created and
21 enacted as follows:

22 **Rights to file claim - Right to receive credit.**

- 23 1. If a person entitled to relief under this chapter dies prior to receiving relief, the
24 surviving spouse or dependent of the person shall be entitled to file the claim and
25 receive relief. If there is no surviving spouse or dependent, the right to the credit
26 shall lapse.
- 27 2. If the commissioner cannot locate the claimant within two years from the date that
28 the original warrant was issued, or if a claimant to whom a warrant has been
29 issued does not cash that warrant within two years from the date the warrant was
30 issued, the right to the credit shall lapse, and the warrant shall be deposited in the
31 general fund.

1 **SECTION 8.** Section 57-65-10 of the North Dakota Century Code is created and
2 enacted as follows:

3 **Owner or managing agent to furnish rent certificate.**

4 The owner or managing agent o any property for which rent is paid for occupancy as a
5 homestead must furnish a certificate of rent paid to a person who is a renter on December
6 thirty-first, in the form prescribed by the commissioner. If the renter moves before December
7 thirty-first, the owner or managing agent may give the certificate to the renter at the time of
8 moving, or mail the certificate to the forwarding address if an address has been provided by the
9 renter. The certificate must be made available to the renter before February first of the year
10 following the year in which the rent was paid. The owner or managing agent must retain a
11 duplicate of each certificate or an equivalent record showing the same information for a period
12 of three years. The duplicate or other record must be made available to the commissioner upon
13 request.

14 **SECTION 9.** Section 57-65-11 of the North Dakota Century Code is created and
15 enacted as follows:

16 **Verification of Social Security numbers.**

17 Annually, the commissioner shall furnish a list to the county assessor containing the
18 names and Social Security numbers of persons who have applied for both homestead
19 classification under section 273-13 and a property tax refund as renter under this chapter.

20 Within ninety days of the notification, the county assessor shall investigate to determine
21 if the homestead classification was improperly claimed. If the property owner does not qualify,
22 the county assessor shall notify the county auditor who will determine the amount of homestead
23 benefits that has been improperly allowed. For the purpose of this section, "homestead
24 benefits" has the meaning given in section 273.124, subdivision 13, paragraph (h). The county
25 auditor shall send a notice to persons who owned the affected property at the time the
26 homestead application related to the improper homestead was filed, demanding reimbursement
27 of the homestead benefits plus a penalty equal to one hundred percent of the homestead
28 benefits. The person notified may appeal the county's determination with the Minnesota Tax
29 Court within sixty days of the date of the notice from the county as provided in section 273.124,
30 subdivision 13, paragraph (h).

1 If the amount of homestead benefits and penalty is not paid within sixty days, and if no
2 appeal has been filed, the county auditor shall certify the amount of taxes and penalty to the
3 county treasurer. The county treasurer will add interest to the unpaid homestead benefits and
4 penalty amounts at the rate provided for delinquent personal property taxes for the period
5 beginning sixty days after demand for payment was made until payment. If the person notified
6 is the current owner of the property, the treasurer may add the total amount of benefits, penalty,
7 interest, and costs to the real estate taxes otherwise payable on the property in the following
8 year. If the person notified is not the current owner of the property, the treasurer may collect
9 the amounts due under the Revenue Recapture Act in charter 270A, or use any of the powers
10 granted in sections 277.20 and 277.21 without exclusion, to enforce payment of the benefits,
11 penalty, interest, and costs, as if those amounts were delinquent tax obligations of the person
12 who owned the property at the time the application related to the improperly allowed homestead
13 was filed. The treasurer may relieve a prior owner of personal liability for the benefits, penalty,
14 interest, and costs, and instead extend those amounts on the tax lists against the property for
15 taxes payable in the following year to the extent that the current owner agrees in writing.

16 Any amount of homestead benefits recovered by the county from the property owner
17 shall be distributed to the county, city or town, and school district where the property is located
18 in the same proportion that each taxing district's levy was to the total of the three taxing district's
19 levy for the current year. Any amount recovered attributable to taconite homestead credit shall
20 be transmitted to the _____ auditor to be deposited in the taconite property tax relief
21 account. Any amount recovered that is attributable to supplemental homestead credit is to be
22 transmitted to the commissioner of revenue for deposit in the general fund of the state treasury.
23 The total amount of penalty collected must be deposited in the county general fund.

24 **SECTION 10. APPROPRIATION.** There is appropriated out of any moneys in the
25 general fund in the state treasury, not otherwise appropriated, the sum of \$_____, or so
26 much of the sum as may be necessary, to _____ for the purpose of _____ for
27 the biennium beginning July 1, 2009, and ending June 30, 2011.

28 **SECTION 11. EFFECTIVE DATE.** Section 1 of this Act becomes effective for taxable
29 years beginning after December 31, 2008.