

# PROPERTY TAX MEASURE QUESTIONS

Prepared by the North Dakota Legislative Council staff for the  
Property Tax Measure Review Committee -- August 2011

This memorandum includes provisions of the initiated measure prohibiting property taxes and potential questions that may be submitted to the Attorney General or others for input to assist the committee in determining the estimated fiscal effect of the measure.

**BELOW IS INPUT FROM EMPOWER THE TAXPAYER – SPONSORS OF MEASURE 2 TO THE POTENTIAL QUESTIONS THE NORTH DAKOTA LEGISLATIVE COUNCIL STAFF ARE CONSIDERING SUBMITTING TO THE ATTORNEY GENERAL AND/OR OTHERS FOR INPUT.**

## SECTION 1

### Questions relating to Section 1 of the measure include:

1. Does the lack of underscoring of new language in the section have any effect on the provision? **No.**
2. Does the measure affect current laws requiring payments in lieu of property taxes? **See Memo prepared by Empower the Taxpayer titled: Payments in Lieu of Property Taxes.**
3. How are special assessments affected by the measure? **See Memo prepared by Empower the Taxpayer titled: Special Assessment & Special Levies.**
4. How are special fund or debt service levies affected by the measure? **See Memo prepared by Empower the Taxpayer titled: Special Assessments & Special Levies.**

## SECTION 2

### Questions relating to subsection 1 of Section 2 of the measure include:

5. What is included in "taxes upon real property which were used before 2012 to fund the operations of counties, cities, townships, school districts, park districts, water districts, fire protection districts, soil conservation districts, and other political subdivisions with authority to levy taxes"? **First, the date 2012 has been referred to the Attorney General to determine the effective date of the Measure. The Attorney General was sent a request for an opinion in July 2011 by Representative Dan Ruby. Nonetheless, what is included, (regardless of the determined effective date of Measure 2), is all funding of the identified political subdivisions that were funded at that date from mills imposed that were collected against property – i.e. property taxes.**

Do these taxes include only those resulting from general fund levies or do they include special fund levies, debt service levies, special assessments, and others? **They would include general fund and in some cases may include "debt service levies". It does not include either special assessments or special fund levies unless those are determined to be for funding of legally imposed obligations of the subdivision and are necessary to "fully and properly" fund those obligations. See also Memos prepared by Empower the Taxpayer titled:**

**Limitation/Non-limitation of State Funding Responsibility,**  
**Special Assessments & Special Levies and,**  
**Legally Imposed Obligations.**

6. Are the revenues from named state sources to replace the "actual amount" of taxes upon real property which were used prior to 2012 or must these revenues replace local taxes at "an amount to be determined by the Legislative Assembly" in accordance with subsection 3 of Section 2 of the measure? **Measure 2 directs the Legislative Assembly to devise a formula to fully and properly fund the legally imposed obligations of the political subdivisions. In short, it is the responsibility of the Legislative Assembly to devise a formula that will continually "fully and properly fund legally imposed obligations" of political subdivisions on an ongoing basis. Thus the amount funded will vary from budget period to budget period as well as based on the growth or shrinkage of each political subdivision. The "revenues**



named" include – "and other state resources" and are not limited only to named tax derived revenue sources.

**7.** If assessment of property ceases, how will the state determine the amount of property tax to replace for each political subdivision in the future? Measure 2 directs the Legislative Assembly to devise a formula to fully and properly fund the legally imposed obligations of the political subdivisions. This responsibility is not based on property assessment; it is based on full and proper funding of legally imposed obligations. Assessment or non-assessment of property, nor the amount of property tax that is or has been collected is the measure of what must be fully and properly funded. However, the amount of property tax collection will be a good measure of what is likely to be required to fully and properly fund legally imposed obligations.

Will population changes affect tax replacement? The amount funded will vary from budget period to budget period based on the growth or shrinkage of each political subdivision. Population changes will be a factor in determination of what will constitute full and proper funding.

**8.** The state budgets biennially, while political subdivisions budget annually. How will the state determine the level of political subdivisions' budgets for the upcoming two years? We would think that it will be done as it is currently done by the state for its biennium budget and as annually budgeted subdivisions do; that is, on projected expenses. Budgeting forward is always based on estimates, nothing changes under Measure 2 – we expect the Legislative Assembly will do for subdivision funding just as they do currently for state budgeting.

**Questions relating to subsection 2 of Section 2 of the measure include:**

**9.** Will the Legislative Assembly have any discretion in determining the level of local education spending or will school districts have sole discretion on spending education funding? The Legislative Assembly will have exactly the same discretion over K-12 funding it currently has relative to the portion of the K-12 budget it currently funds using general fund revenues and any other revenue source it currently uses to fund the portion of K-12 that is currently being funded by the state. It will not have any discretion over the how School Boards chose to expend the portion of funding that is now being funded with local revenue sources. The amount over which the School Board will have sole discretion will be the percent of each school's budget that is being locally funded as of the effective date of Measure 2. Based on current state/local funding of K-12 the amount over which School Boards will have sole discretions is approximately 30%.

**10.** What is the definition of "the share of elementary and secondary education not funded through state revenue sources before 2012"? It is exactly what it says, "The share of elementary and secondary education not funded through state revenue sources before 2012". This would not include the amounts funded from local revenue sources, federal funds or donations.

Does this share include federal funds? No.

**11.** If the state revenue sources identified are not adequate to provide the level of funding necessary: (The revenue sources include all tax revenues as well as all other state resources other than tax revenue. We note that Measure 2 imposes a mandatory duty on the Legislative Assembly to fund K-12 education. Thus, K-12 funding is a required priority funding responsibility. If the Legislative Assembly chooses to fund special interest spending and/or non-constitutionally required funding rather than using its resources to fund required expenditures it would have to increase taxes. Or it could choose to not fund discretionary (i.e. special interest and non-mandated) spending and instead fund those things it is constitutionally required to fund.)

- a.** Would the allocation of oil and gas gross production tax and oil extraction tax collections for other purposes based on constitutional or statutory provisions be affected? No, not relative to other constitutional provisions, however, it will trump statutory provisions.
- b.** Would the Legislative Assembly be required to raise the tax rates on these sources of revenue to generate the funding needed?



Section 4(1) of Measure 2 identifies eight specific taxing sources and then states, "and other state resources". This is all inclusive; it covers all other state resources both tax generated and otherwise. As noted above, if the Legislative Assembly chooses to fund discretionary (i.e. special interest and other non-mandated) spending consuming all state resources not leaving a sufficient amount to fund K-12 or political subdivision legally imposed obligations it will have to face the voters and taxpayers when it raises taxes. It is likely that if this were to occur taxpayers would challenge the Legislature's choice to fund discretionary (i.e. special interest and non-mandatory) spending rather than constitutionally mandated spending. Finally, our analysis of state revenue and the impact of this Measure relative to the economic activity abolishing of property taxes will stimulate there will be no need to "raise the tax rates on these sources of revenue to generate funding needed", in fact this Measure will enhance overall state revenue streams.

**Questions relating to subsection 3 of Section 2 of the measure include:**

**12.** What is the definition of "to fully and properly fund"? See Memo prepared by Empower the Taxpayer titled: Limitation/Non-limitation on State Funding Responsibility.

**13.** What is the definition of "legally imposed obligations"? See Memo prepared by Empower the Taxpayer titled: Legally Imposed Obligations.

**14.** Will the state be responsible for payment of local governments' outstanding bonds? In most cases no. In some cases the State may be responsible. Where the bonds, special assessments or levies were used to fund legally imposed obligations the state will be obligated. Where the funds were used to fund non-legally imposed obligations the state will not be obligated to fund them.

**15.** Will the state be responsible for payment of local governments' future indebtedness? This will depend on whether or not the indebtedness is necessary to fund the requirements to meet the full and proper legally imposed obligations. We understand this question to be related to bonding debt. Generally bonding debt is incurred to fund capital expenditures such as infrastructure (roads and building). Where such infrastructure falls under the full and proper funding of legally imposed obligations the state will be responsible. Where it does not funding will be the responsibility of the local political subdivision, not the state.

If so, will the state have any way to limit the cost of building projects and other expenditures funded by indebtedness? Limitations will be based on what is determined to be full and proper funding, but only of legally imposed obligations. See responses to #12 and #13 above.

**SECTION 3**

**Questions relating to subsection 2 of Section 3 of the measure include:**

**16.** What effect does the change from "full and true value of all of the taxable property in the state" to "market value of all of the property in the state" have on the amount of general obligation bonds that may be issued by the state? See Memo prepared by Empower the Taxpayer titled: Bonding Limits.

**17.** Who will determine the "market value of all of the property in the state," assuming there will not be assessment officials if property taxes are eliminated? We would suggest this be done by one of our universities. Currently the determination of how to tax agricultural land is done this way, determination of a market value for this land would be logical. Commercial and residential property is currently monitored by a number of private entities. The legislature could select any of these entities for the purposes of establishing a market value for the non-ag land in the state. However, the purpose for determination of Market Value is to limit the amount of indebtedness the government can impose on taxpayers by using real property as collateral. With passage of Measure 2 we would suggest the Legislative Assembly chose a different method of limiting bonded indebtedness other than real property valuation. Possibly it should be limited to a percent of personal income. If the Property Tax Measure Review Committee would like Empower the Taxpayer to develop a proposed method or methods we would be pleased to do so.



In addition, "market value of all of the property in the state" is not limited to real property, so will it become necessary to determine market value for personal property as well? **No. Measure 2 addresses only property taxes.**

## **SECTION 4**

### **Questions relating to Section 4 of the measure include:**

**18.** Will the bonding capacity for local governments increase because the initiated measure replaces "assessed" value with "market" value? **No. See Memo prepared by Empower the Taxpayer titled:**

#### **Bonding Limits.**

**19.** How will market value be determined for all types of property? **See responses to #16 and #17 above.**

**20.** What effect does removal of the term "taxable" have when referring to the value of property in a political subdivision? **None. The removal of the term "taxable" occurs because the limit on indebtedness, with passage of Measure 2, will eliminate property taxes thus "taxable" property is a misnomer and would no longer make any sense.**

**21.** What would be the impact on a political subdivision's general obligation bonds if there is no property tax revenue to be used as collateral? **Whether it is the state or any other political subdivision there should be no impact. Bonding is done through a bonding entity. That entity evaluates the collateral requirement to determine bonding viability. It is the ability of the entity seeking bonds (whether state or otherwise) to generate revenue to fund the repayment of the revenue represented by the bond. This revenue can be any method available or any other collateral resource besides tax revenue. Revenue bonds would not be impacted at all since they will be funded by a "fee revenue stream", based on the facility funded, for repayment.**

## **SECTION 5**

### **Questions relating to Section 5 of the measure include:**

**22.** Could political subdivisions use the special assessments process to replace property tax revenues? **Political subdivisions can use special assessments for any purpose the voters approve.**

**23.** If the state is to be the funding source for repayment of political subdivisions' indebtedness, will political subdivisions need legislative approval prior to issuing debt? **The state would fund political subdivision indebtedness only where the indebtedness is necessary to fully and properly fund legally imposed obligations. In this case it would be the state and not the political subdivision that incurs the indebtedness thus there would need to be no approval. If the state wished to request, and the political subdivision agreed, to utilize local "collateral" to secure a bond there would need to be no approval by the state but rather by the political subdivision.**

## **SECTION 7**

### **Questions relating to Section 7 of the measure include:**

**24.** If the measure is approved by voters in June 2012, may political subdivisions retain property tax revenues collected from January through June 2012? **Political subdivisions will be entitled to assess and retain property taxes until the date Measure takes effect. The date it becomes effective is, at this point, not resolved. An opinion has been requested of the Attorney General regarding the effective date of the Measure.**

**25.** If the measure is approved by voters in June 2012, will all statutory provisions related to property taxes and budgets of political subdivisions become void or will a determination need to be made regarding which ones remain effective? **STATUTORY PROVISIONS RELATING TO PROPERTY TAXES: Passage of Measure 2 will not repeal or void every statute or provision relating to or mentioning property taxes. Measure 2 takes away local jurisdictions ability to levy property tax, however, this does not mean that statutes relating to property taxes become void. Provisions within statutes pertaining to property taxes will become inconsequential, but still remain a valid law, as will the rest of the provisions in any statute pertaining to property taxes. The Legislature can determine how statutes and provisions are applied after passage of Measure 2. If the legislature is unable or unwilling to do so, the courts will make**



the necessary determinations. "[Courts] construe statutes in a practical manner, and consider the context of statutes and the purpose for which they were enacted." *Bragg v. Burlington Resources Oil and Gas Co. LP*, 2009, 763 N.W.2d 481. There should be little concern about the effect of Measure 2 on current statutory provisions, it's passage will not create a gap in the laws. "Statutes must be construed to avoid absurd and ludicrous results." *Stutsman County v. State Historical Soc'y*, 371 N.W.2d 321, 325 (N.D.1985). See Memo prepared by Empower the Taxpayer titled: **Validity of Statutes Relating to Property Taxes.**

**STATUTORY PROVISIONS RELATING TO POLITICAL SUBDIVISIONS:** statutes and provisions in statutes relating to budgets of local jurisdictions will remain valid after passage of Measure 2. That every local jurisdiction must prepare a budget is required by statute, and is unrelated to property taxes. These budgets are currently used as a guide to determine the amount local jurisdictions levy in property and other taxes. After passage of Measure 2, these same budgets will be just as important for determining how much "will be required for the proper maintenance, expansion, or improvement of the municipality during the year." N.D. Cent. Code § 40-40-04. See Memo prepared by Empower the Taxpayer titled: **Validity of Statutes Relating to Budgets of Political Subdivisions.**

**26.** Would the Legislative Assembly need to provide funding to replace property taxes for all of calendar years 2012 and 2013? The legislature will need to provide funding to replace property taxes from the effective date of the Measure. As noted above the Attorney General has been asked to issue an opinion regarding the effective date of the Measure.

What are the potential amounts necessary for 2012 and 2013? What are the potential sources of funding available to replace property tax revenues, including tax rate changes necessary to generate the funding necessary? The League of Cities and the Association of Counties should be able provide this information. However, the "potential amount necessary" will not exceed projected property tax collection amounts less the cost to collect same as projected by cities and counties. Potential sources of funding are identified in the Measure – those sources include "other state resources". Other state resources would include state royalties from oil as well as land payments relative to natural resources received by the state. In addition, other "potential sources of funding" would be prioritizing of discretionary spending that is funded with general funds.

When would the Legislative Assembly need to meet to appropriate this funding? What would be the estimated impact for the 2013-15 biennium? As noted above, the Attorney General has been requested to issue an opinion as to the effective date. It will be up to the Legislative leadership to determine when to meet based on the "effective date" and the scope of the work effort.

**Other questions relating to the measure include:**

**27.** May a political subdivision foreclose on property for nonpayment of property taxes if the taxes were not paid prior to the effective date of the initiated measure? **Yes.**

**28.** Will home schools or schools on Indian reservations be affected by the initiated measure? **No.**

**29.** What effect will the initiated measure have on tax increment financing? Since property taxes are the source of TIF there will be NO need for same. In other words, every property owner will effectively be receiving the benefits that currently are reserved by those special few currently granted this form of income.

**30.** What effect will the initiated measure have on the ability of political subdivisions to consolidate? **None.**