

Memorandum for Interim Taxation Committee

Issue: Lack of Authority of State Board of Equalization to Reverse New Business Incentives

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Summary: The Jamestown City Council granted new business incentives in the form of a partial property tax exemption and payments in lieu of taxes to the developer of an apartment complex. Another developer of apartment complexes in Jamestown ("Appellant"), protested this decision at the city and county Boards of Equalization. Both of those governing bodies denied Appellant's protests. Appellant asked the State Board of Equalization (SBOE) to reverse the decisions by the local governing bodies to grant (and affirm) the business incentives. The SBOE concluded it lacked statutory authority to reverse local governing body determinations pertaining to new or expanding business incentives, payments in lieu of taxes, or other forms of business incentives such as renaissance zone property tax incentives or tax increment financing.

Analysis: N.D.C.C. § 40-57.1-03 specifically vests discretionary authority to grant business incentives in the form of partial or complete exemptions, and payments in lieu of taxes, with local governing bodies. This statute provides, in relevant part: "The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval." (Emphasis added).

In contrast, the general duties and powers of the SBOE under N.D.C.C. § 57-13-04 are to "equalize the valuation and assessment of property throughout the state, and ... to equalize the assessment, classification, and exemption status of property in this state between assessment districts in the same county, and between the different counties of the state." In part, due to issues which arose in the *Grand Forks Homes, Inc.* case, Senate Bill 2294 was enacted by the 62nd Legislative Assembly to provide the SBOE authority to take corrective action with respect to assessment, valuation, classification, and exemption determinations arising from inconsistent application statewide of the general property tax provisions of N.D.C.C. chapter 57-02.

However, there is no legislative history -- express or implied -- in either Senate Bill 2294, or in any other statute, to indicate that the Legislative Assembly ever intended decisions of local governing bodies whether to grant business incentives should be subject to review by the SBOE. Therefore, the SBOE determined it was without statutory authority to grant the relief sought by Appellant.