TAXATION COMMITTEE

The Taxation Committee was assigned three studies:

- Section 1 of House Bill No. 1247 (2023) directed a study of providing a property tax exemption for elevators, warehouses, and other farm structures classified as commercial property, which are privately owned and used to store agricultural products produced by the owner or an individual related to the owner as defined in North Dakota Century Code Section 10-06.1-12.
- Section 1 of Senate Bill No. 2359 (2023) directed a study of the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers.
- The Legislative Management directed a study of economic development tax incentives pursuant to Section 54-35-26.

The Legislative Management assigned the committee the responsibility to receive five reports:

- Annual reports from the Tax Commissioner on statewide property tax increases, pursuant to Section 57-20-04.
- Annual reports from the Department of Commerce's Division of Community Services on renaissance zone progress, pursuant to Section 40-63-03(2).
- Annual reports from the Department of Commerce compiling reports from cities that have renaissance zone property included in a tax increment financing district, pursuant to Section 40-63-03(10).
- Annual reports from the Tax Commissioner summarizing information provided by taxpayers that received a sales tax exemption for raw materials, single-use product contact systems, and reagents used for biologic manufacturing, pursuant to Section 57-39.2-04.19.
- A report from the Tax Commissioner, State Supervisor of Assessments, and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate regarding their findings and recommendations on a study of property tax transparency, pursuant to Section 3 of House Bill No. 1245 (2023).

Committee members were Representatives Jared Hagert (Chairman), Jason Dockter, Jim Grueneich, Patrick Hatlestad, Craig Headland, Donna Henderson, Jim Kasper, Ben Koppelman, Mike Motschenbacher, and Vicky Steiner and Senators Justin Gerhardt, Jordan L. Kannianen, Randy D. Lemm, Merrill Piepkorn, and Mark F. Weber

Senator Doug Larsen served on the committee until his death on October 1, 2023.

Representative Randy A. Schobinger served on the committee until his death on August 13, 2024.

AGRICULTURAL COMMODITY STORAGE STRUCTURE PROPERTY TAX EXEMPTION STUDY

Section 1 of House Bill No. 1247 (2023) directed a study of providing a property tax exemption for elevators, warehouses, and other farm structures classified as commercial property, which are privately owned and used to store agricultural products produced by the owner or an individual related to the owner as defined in Section 10-06.1-12. The study required consideration of the potential shift in property tax burdens if the exemption were to be enacted, the definitions of agricultural property and farm plant as used in Section 57-02-08(15), and the impact of abandoned elevators, potato warehouses, and other farm structures classified as commercial property on the political subdivisions in which they are located, including the cost of refurbishment or removal.

Background

A property tax exemption for warehouses and elevators used for personal use and situated on commercial property was proposed in House Bill No. 1247, as introduced. "Personal use" was defined as "the use of a warehouse or elevator to store or process grain or potatoes produced by the owner of the elevator or warehouse or an individual related to the owner by blood, adoption, or marriage. The term exclud[ed] the use of an elevator or warehouse to store or process grain or potatoes produced by individuals other than the owner of the elevator or warehouse or the owner's relatives." The bill clarified a structure used to process grain or potatoes which results in a value-added physical or chemical change to the potatoes was not included in the exemption.

Testimony in support of the bill as introduced was provided by a representative of the North Dakota Farm Bureau and a property owner and potato producer. This testimony indicated off-farm facilities owned and used by farmers for agricultural product storage should be subject to the same agricultural structure exemption as on-farm storage facilities. Testimony in opposition to the bill as introduced was provided by the North Dakota League of Cities. This testimony

indicated creating a tax exemption for warehouses and elevators used for personal use and situated on commercial property may significantly impact cities' budgets and those to whom the tax burden would be shifted if the exemption is granted. The bill subsequently was amended to provide for this study.

Farm Structure Property Tax Exemption

North Dakota law provides for a property tax exemption for farm structures that fit the criteria in Section 57-02-08(15)(a). However, this exemption is not available for agricultural commodity storage structures located on commercial land. The taxable or exempt status of a farm structure is dependent on the characteristics and location of the specific farm structure being assessed and is a fact-intensive inquiry. When interpreting Section 57-02-08(15), the North Dakota Supreme Court determined the analysis of whether a farm structure is exempt requires a two-part inquiry as to: (1) the character of the land - whether the structure is on agricultural land; and (2) the nature of the structure - whether the structure is used as part of the farm plant.

Requirement to be Located on "Agricultural Lands"

The first part of the inquiry as to whether a structure qualifies as an exempt farm structure under Section 57-02-08(15)(a) is whether the structure is located on agricultural lands. To qualify for a farm structure exemption, the property on which the structure is situated must be classified as agricultural property as defined in Section 57-02-01. "Agricultural property" is defined in Section 57-02-01 as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection.
    a. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
        (1) The land is platted by the owner.
        (2) Public improvements, including sewer, water, or streets, are in place.
        (3) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
        (4) Property is zoned other than agricultural.
        (5) Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
        (6) The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
        (7) The property sells for more than four times the county average true and full agricultural value.
    b. Land that was assessed as agricultural property at the time the land was put to use for extraction of oil, natural gas, or subsurface minerals as defined in section 38-12-01 must continue to be assessed as agricultural property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property under this subsection.

Section 57-02-08(15)(a) also specifically carves out certain structures or improvements from the exemption based on the location of the structures. For example, structures or improvements located on platted land within the corporate limits of a city or located on railroad operating property subject to assessment under Chapter 57-05 are not eligible for the exemption.

The committee reviewed Attorney General opinions that provide guidance for administration of the exemption, including opinions related to the land on which the certain farm structures at issue were situated. The committee also reviewed guidance provided by the Tax Department to political subdivisions regarding administration of the exemption, which is consistent with the Attorney General opinions. The Tax Department's guideline related to the exemption for farm buildings and other improvements indicates the land must be used for raising agricultural crops or grazing farm animals to be eligible for the exemption.

Requirement to be Used or Intended for Use as Part of a "Farm Plant"

Section 57-02-08(15)(a) provides to qualify for the farm structure exemption, the farm structure must be used or intended for use as part of a farm plant. The section also prohibits certain structures or improvements from receiving the exemption based on the use of the structure or improvement. For example, structures or improvements used primarily in connection with a retail or wholesale business other than farming, including 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.

Section 57-02-08(15) does not include a definition of "farm plant." However, Section 57-02-01(17) provides information regarding the definition of "farm" in the context of property taxation. Section 57-02-01(17) provides:

> There shall be a presumption that a unit of land is not a farm unless such unit contains a minimum of ten acres [4.05 hectares], and the taxing authority, in determining whether such presumption shall apply, shall consider such things as the present use, the adaptability to use, and how similar type properties in the immediate area are classified for tax purposes.

The committee reviewed North Dakota Supreme Court opinions in which the court was presented with the issue of whether certain structures are used or intended for use as part of a farm plant for purposes of the property tax exemption. The committee also reviewed guidance provided by the Tax Department to political subdivisions regarding administration of the exemption, which includes a definition of "farm plant" as follows:

> The land must be used for raising agricultural crops or grazing farm animals and used as part of a farm plant. A farm plant is the entire farm enterprise operated as an economic unit. If the unit contains less than 10 acres of land, the taxing authority, in determining whether the unit is a farm, must consider such things as the present use, the adaptability to use, and how similar type properties in the immediate area are classified for tax purposes.

Recent Legislation

The committee reviewed recent legislation related to the study.

House Bill No. 1153 (2019) provided for an exemption of 50 percent of the true and full value of commercial property on which a grain elevator used for personal use is situated. "Personal use" was defined as the use of a grain elevator to store grain produced by the owner of the grain elevator or an individual related to the owner by blood or marriage and excluded the use of a grain elevator to store grain produced by individuals other than the owner of the grain elevator or the owner's relatives. This bill failed to pass.

Senate Bill No. 2041 (2021) provided for a property tax exemption for all warehouses and elevators situated on commercial property used for personal use. "Personal use" was defined as the use of a warehouse or elevator to store or process grain or potatoes produced by the owner of the elevator or warehouse or an individual related to the owner by blood or marriage and excluded the use of an elevator or warehouse to store or process grain or potatoes produced by individuals other than the owner of the elevator or warehouse or the owner's relatives. The bill clarified a structure used to process agricultural commodities which results in a value-added physical or chemical change to the potatoes was excluded from the exemption. The bill was amended to remove the proposed exemption and to recommend the Legislative Management consider studying the provision of a property tax exemption for elevators, warehouses, and other farm structures classified as commercial property. The study was not selected by the Legislative Management for review during the 2021-22 interim.

Senate Bill No. 2279 (2023), as introduced, sought to expand the farm structure exemption under Section 57-02-08(15) to include agricultural commodity storage structures used exclusively for personal use and permanently affixed to land used for an agricultural operation. The bill as introduced required the owner of an agricultural commodity storage structure to file an application with the county auditor to claim the exemption.

The term "agricultural commodities" was defined in the bill to include barley, buckwheat, canola, corn, crambe, flaxseed, hay, hemp, lentils, mustard seed, oats, peas, potatoes, safflower, sorghum, soybeans, sunflower seed, sesame seed, and wheat, all whether harvested as whole grain or other than whole grain. The term "land used for an agricultural operation" was defined as a single tract or multiple tracts of platted or unplatted agricultural or commercial land, which are not required to be contiguous, used for raising agricultural crops, grazing farm animals, or storing or preserving agricultural commodities in a structure or other similar operations normally associated with farming and ranching. "Personal use" was defined as the use of a structure exclusively for postharvest storage and preservation of agricultural commodities produced by the owner of the structure or a direct relative of the owner and excludes use of a structure to store or preserve agricultural commodities produced by individuals other than the owner of the structure or the owner's direct relatives. The bill clarified a structure used to process agricultural commodities which results in a value-added physical or chemical change to the potatoes was excluded from the exemption.

The Senate amended the bill to remove the requirement to submit an application to receive the exemption. The House amended the bill to limit the exemption to apply only to potato storage structures that originally were constructed on agricultural property and met the other criteria for the exemption. The bill failed to pass.

Testimony and Committee Considerations

The committee received testimony from representatives of the Tax Department regarding guidance provided by the Tax Department to local taxing districts related to administration of the farm structure property tax exemption, particularly related to agricultural commodity storage structures. The committee was informed to be exempt from property tax, farm structures and improvements must be located on agricultural lands as defined in Section 57-02-01(11). Local assessors determine whether a structure meets the qualification criteria for the exemption. The Tax Department publishes a guideline to provide guidance to taxing districts regarding the applicability of the exemption for farm buildings and other improvements. If a property owner is dissatisfied with the valuation or classification of property, the property owner may contest the assessment to the local, county, and state boards of equalization.

The committee received testimony from a representative of Northland Potato Growers Association regarding United States Department of Agriculture good agricultural practices related to potato farming and storage. The committee was informed the United States Department of Agriculture good agricultural practices include food safety protocols, such as proper field selection, irrigation and drinking water testing, traceability, employee training, separation requirements, and inspection of equipment and buildings for cleanliness.

The committee received information from a representative of the North Dakota Grain Dealers Association regarding the use of grain elevators in the state. The committee was informed since 1980, the number of elevators is decreasing, but the average capacity of the elevators is increasing. The committee also was informed an elevator used for private purposes is not required to be licensed and is not tracked by the North Dakota Grain Dealers Association. Grain elevators often are centrally located in a city and many grain elevators are located on a railroad right of way and might be under a lease.

The committee received testimony from a representative of interested persons and farmers from Pembina County. The testimony contended, in the context of eligibility decisions regarding the farm structure property tax exemption, inconsistent application of the definition of "agricultural property" across taxing districts has caused disparate tax treatment. The committee was encouraged to consider potential solutions to the inconsistent application of the exemption, including amending the definition of "agricultural property" to include a specific definition of the terms "raising agricultural crops" or "platted" within the definition of "agricultural property." The committee was encouraged to define the terms to provide clarity to assessors and local taxing districts to reduce the extent to which the assessors and local taxing districts can use discretion when determining what constitutes agricultural property.

The committee received testimony from several potato farmers who advocated for legislation to provide an exemption for all agricultural commodity storage structures used for personal use regardless of the location of the property. The farmers expressed concerns regarding inconsistent application of the farm structure property tax exemption across taxing districts, including specific examples. The committee received information regarding property tax assessed against potato storage structures owned by the various potato farmers. Additionally, the committee was informed providing a property tax exemption for privately owned farm structures classified as commercial property and used to store agricultural products for personal use might extend the life of the structures in rural areas and keep farmers interested in purchasing rural real estate.

The committee received testimony from a representative of the North Dakota Farm Bureau in support of creating a property tax exemption for agricultural production structures on plotted lands in unincorporated municipalities. The committee was encouraged to provide facilities owned and used by farmers for the storage of agricultural products, such as warehouses, the same agricultural exemptions available to farm storage structures used for the same purpose.

The committee also received testimony from a representative of the North Dakota Corn Growers Association in support of the study. The committee was informed that farms have changed over the years, and a farm is no longer limited to the area in and immediately around the homestead. Rather, modern farms often include all land, buildings, and equipment necessary for agriculture production for the farming operation, including grain storage, which is a critical part of the farming operation. Farmers often acquire old grain elevators and bring them back to use in rural towns to remain viable and reduce or eliminate the number of vacant structures.

A representative of the North Dakota Association of Counties expressed concern regarding the potential impact of expanding the farm structure property tax exemption to include privately owned agricultural commodity storage structures used for personal use and located on commercial property. The committee was encouraged to exercise caution when considering the expansion of property tax exemptions because new or expanded property tax exemptions shift the property tax burden to owners of taxable property within the taxing district. Property owners receiving property tax

exemptions receive the services that property taxes support, such as law enforcement, fire protection, and maintenance of public roads. The committee also was informed assessors are required to complete uniform assessor training, which is intended to reduce inconsistencies in the assessment process.

The committee received information from several county representatives related to the study. The committee was informed an exemption for all privately owned agricultural commodity storage structures used for personal use and located on commercial property may be difficult to administer because of the difficulty associated with verifying personal use status, particularly in cases of structures rented to other individuals. In addition, many agricultural storage structures were built within city limits to take advantage of amenities not offered on a farm, including roads, railway, utilities, and infrastructure. A representative estimated if the property tax exemption was expanded, $2.66 million of true and full value would be eliminated from the taxable base in Walsh County, and based on 2023 valuations and property taxes levied, an expanded exemption would result in an estimated $53,400 in consolidated tax dollars being shifted for payment by other taxpayers in the county. Recent sales in Walsh County indicate a high demand for existing agricultural storage structures and certain storage structures have been used for various purposes, including continued agricultural storage and alternative purposes. The committee was informed a property's zoning classification does not always align with how the property is classified for property tax assessment purposes.

County representatives provided information regarding the process for an assessor to change the classification of a property for property tax purposes. The committee was informed if development of an agricultural parcel of land occurs in the middle of a year, the value of the parent parcel is spread among the children parcels until the parcel is reviewed on the next assessment date. Assessors review the seven statutory conditions in Section 57-02-01(1)(a) to determine whether a property platted on or after March 30, 1981, must be reclassified to a nonagricultural classification. When valuing an agricultural storage facility located in a city, which is owned by a private party for personal use, an assessor will consider economic factors, such as sales price, age of the structure and equipment, and whether rail lines are operational. The committee was informed taxpayers may use the equalization or abatement process to appeal the local valuation or classification of a parcel of property.

A representative of the North Dakota League of Cities expressed concern regarding the impact of an exemption for privately owned farm structures classified as commercial property and used to store agricultural products for personal use. The committee was informed the North Dakota League of Cities opposes many property tax exemption proposals because exempting property from taxation shifts the revenue generating burden to taxable property. The committee was informed such an exemption would have the largest impact on the remaining taxable property in small cities and townships. The threat of potato warehouses and grain elevators becoming abandoned is not a significant enough threat to justify the ongoing cost of a property tax exemption. The committee was presented with survey data related to agricultural commodity storage structures in the state based on assessor and tax director knowledge of existing agricultural commodity storage structures.

Concerns were expressed by a number of local taxing district representatives, including concerns related to an unfair shift in tax burden associated with imposing the exemption, potential administrative difficulties that may arise related to determining personal use and family relations, and concerns regarding the extent of services supported by property taxes that would be received by property owners who would be exempt under the proposed exemption.

The committee reviewed research compiled by Legislative Council staff, including information regarding property classifications for property tax assessment purposes, definitions of each property classification, historical information related to the definition of agricultural property, information regarding the legislative history of the creation of and each amendment to the definition of agricultural property, and an overview of Attorney General opinions that provide analysis regarding the definition of agricultural property since the creation of the definition.

Committee members expressed mixed opinions regarding the desirability of providing a property tax exemption for privately owned elevators, warehouses, and other farm storage structures classified as commercial property and used for personal use. Some committee members noted the importance of considering the potential shift in tax burden that may result from changes to property tax calculations for agricultural storage facilities located on commercial land and recognizing the value of local services received by owners of agricultural storage structures located on commercial land. Other committee members expressed concerns regarding the inconsistent application of the farm structure exemption and application of the definition of agricultural property across taxing districts.

The committee reviewed a bill draft to amend the definition of "agricultural property" to include the storage of harvested crops until the crop is delivered to the first end-point user in the definition of the term "raising agricultural crops." The committee was informed the bill draft also would clarify which circumstances are appropriate to apply the seven statutory conditions in Section 57-02-01(1)(a) to determine whether unplatted property or property platted before March 30, 1981, is agricultural property. Committee members noted a desire to recommend legislation to address the

concerns expressed by several interested parties throughout the interim and support for the consideration of a potential solution to the issue moving forward.

Committee Recommendation

The committee recommends a bill draft [25.0380.01000] to amend the definition of "agricultural property" to include the storage of harvested crops until the crop is delivered to the first end-point user as defined in the term "raising agricultural crops."

SPECIAL ASSESSMENTS AGAINST POLITICAL SUBDIVISION PROPERTY STUDY

Section 1 of Senate Bill No. 2359 (2023) directed a study of the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers. The study required analysis of the impact on taxpayers not governed by the political subdivision levying special assessments and exploration of forms of taxation policy that minimize the levying of special assessments in the form of taxes through political subdivisions.

Background

As introduced, Section 1 of Senate Bill No. 2359 would have expanded a political subdivision's ability to exceed its maximum property tax levy limits if a political subdivision was levying a tax to pay for land acquisition costs. The substantive portion of the bill was removed in the Senate, leaving the study language as the only remaining bill section.

Cities, recreation service districts, water resource districts, counties, water districts, and townships are authorized to levy special assessments for improvements. Several chapters of Title 40 govern improvements by special assessment in cities. Recreation service districts and counties glean authority to levy special assessments for improvements by adopting the provisions relating to cities by reference. Special assessment levy authority and related procedures for water resource districts are contained in Chapter 61-16.1 and special assessment levy authority and related procedures for water districts are contained in Chapter 61-35. Township special assessment levy authority is governed by an abbreviated statutory procedure in Chapter 58-18.

Purposes for Which Special Assessments are Imposed and the Manner in Which Special Assessments are Calculated

Pursuant to Section 40-22-01, a city may defray the expenses related to a number of improvements by levying special assessments. Improvement costs for which special assessments may be levied include costs for new water supply or sewage systems, or the extension or replacement of existing systems; improvements to a municipal street system, broadly ranging from paving and resurfacing streets to installing Christmas streetlighting decorations; improvements to boulevards or other public places and the maintenance of those improvements; the acquisition of land and easements for flood protection purposes and the construction of necessary works; and the acquisition or leasing of property and easements for parking lots, ramps, and garages and associated construction costs. A city also may establish a special assessment district pursuant to Chapter 40-22.1 for the promotion of business activity and new business development.

For a defined area outside the limits of an incorporated city, the board of county commissioners may initiate a special assessment district and levy special assessments for improvements. Pursuant to Section 11-11-55.1, a county is given all the authority and duties pertaining to special assessments which belong to cities in Chapters 40-22 through 40-28.

Townships may defray expenses of improvements through special assessment districts pursuant to Chapter 58-18. The board of township supervisors may create an improvement district upon petition of at least 60 percent of the property owners in a proposed improvement district area. Each improvement district must be of a size and form to include all properties the township board of supervisors believes will be benefited by the improvement project.

A recreation service district may levy special assessments to provide services, including police protection, sewer and water, garbage removal, and public road construction and maintenance. Pursuant to Section 11-28.2-04.1, a recreation service district is deemed to be a "municipality" for purposes of the special assessment provisions in Chapters 40-22 through 40-27.

Chapter 61-16.1 governs the administration of special assessments by water resource districts. Pursuant to Section 61-16.1-15, a water resource board may provide for the cost of construction, alteration, repair, operation, and maintenance of a water resource district project through issuance of improvement warrants or with funds raised by special assessments, a general tax levy, issuance of revenue bonds, or a combination of these methods.

Chapter 61-35 governs the administration of special assessments by water districts. Under Section 61-35-14, a water district board of directors may provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments and may issue improvement bonds in anticipation of the levy and

collection of special assessments. Section 61-35-48 also allows a water district to defray the expense of certain improvements by special assessment.

Authority for a Political Subdivision to Levy Special Assessments Against Property Owned by a Political Subdivision

Political subdivisions with special assessment levy authority are statutorily authorized to levy special assessments against property owned by a political subdivision and to levy property taxes to pay for special assessments levied against a political subdivision's property without a levy limitation.

Sections 40-23-07 and 40-23.1-06 provide property of a political subdivision is not exempt from special assessments. Section 40-23-07 provides in pertinent part "[b]enefited property belonging to counties, cities, school districts, park districts, and townships is not exempt from [special] assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law." Section 40-23.1-06 is applicable to the alternative allocation of special assessments under Chapter 40-23.1 and contains language almost identical to the language in Section 40-23-07.

Sections 61-16.1-21 and 61-35-61 similarly provide political subdivisions are not exempt from special assessments levied by a water resource board or water district. Pursuant to these sections, political subdivisions are required to provide for the payment of these special assessments, special assessment installments, and interest by the levy of taxes according to law.

Section 57-15-41 allows a political subdivision to exceed its otherwise applicable maximum property tax levy limits if the political subdivision is levying tax to pay special assessments or to pay the debt service on bonds issued to prepay special assessments. Section 57-15-41 provides in pertinent part "no tax levy limitations provided by any statute of this state apply to tax levies by any county, city, school district, park district, or township for the purpose of paying any special assessments or paying debt service on bonds issued to prepay special assessments made in accordance with the provisions of title 40, against property owned by such county, city, school district, park district, or township." Section 57-15-41 also requires any surplus in the special assessment fund to be placed in the general fund of the political subdivision. Sections 61-16.1-21 (water resource board) and 61-35-61 (water district) similarly prohibit the application of statutory tax limitations to tax levies made by a political subdivision for the purpose of paying any special assessments levied under each corresponding chapter. As such, in the circumstance in which a political subdivision levies special assessments against property owned by a political subdivision, the political subdivision responsible for paying the special assessment may levy a general tax to raise revenue sufficient to pay the special assessment, without limitation.

Testimony and Committee Considerations

The committee received testimony from representatives of the Tax Department regarding property tax and special assessment data reported by the counties to the Tax Department. The committee was informed each county auditor is required to prepare and transmit to the Tax Commissioner a complete abstract of the county tax list, which includes the taxable valuation of property subject to general property tax, general and special property taxes levied by the state and its political subdivisions, taxes levied on classes of property, county mill rates, and ad valorem and special property taxes per capita. The information is compiled in a statistical report, which is published annually by the Tax Department and is available on the Tax Department's website. The committee also was informed the Tax Department does not have an auditing mechanism for political subdivision data reported to the Tax Department related to property tax levies.

The Tax Department also provided data related to taxes levied by taxing districts to pay for special assessments levied against the taxing district's property and examples of special assessments levied against property owned by political subdivisions. The committee was informed from tax year 2019 through 2023, counties levied $165,016 to pay special assessments levied against county property; townships levied $392,140 to pay special assessments levied against township property; cities levied $4,532,591 to pay special assessments and drain assessments levied against city property; park districts levied $70,142,726 to pay special assessments levied against park property; and school districts levied $28,699,134 to pay special assessments levied against school property.

The committee received testimony from a representative of the North Dakota Association of Counties regarding special assessments levied against county property. For tax year 2023, counties levied more than $25,000 to pay special assessments levied against county property and some counties pay for special assessments using the county's general fund rather than creating a separate mill levy for the amount owed. The committee was informed the issue of special assessments levied on political subdivision property is more of a city, city park district, and school district issue than a county issue.

The committee received information from a representative of the North Dakota League of Cities regarding the study. The committee received a general overview of the special assessment process and was informed cities are the main political subdivision using special assessments for improvements. If a political subdivision owns property within the

special assessment district, the political subdivision is assessed a benefit and is responsible for paying the special assessments associated with the benefit. To pay the special assessment, the political subdivision may use revenue generated from a general property tax levy against all property in the political subdivision. The committee also was informed of the potential impact of exempting political subdivision property from special assessments. If a political subdivision owns property within a special assessment district and is not assessed a benefit to pay for the improvement, the other property in the special assessment district will be responsible for a higher share of the improvement cost.

The committee received information from a city representative regarding special assessments levied by the city against other political subdivision property. The committee was encouraged to treat political subdivision property in the same manner as other property in the special assessment district to ensure the special assessment burden is not disproportionately shifted to other property owners.

The committee was encouraged by a public school representative to re-evaluate the special assessment process as it relates to special assessments levied against political subdivision property. When a special assessment improvement district includes property owned by a political subdivision other than the political subdivision levying the special assessments, property taxes in the political subdivision in which the property is situated generally increase because the cost of the special assessments may be passed through to the taxpayers within the political subdivision. The committee was encouraged to explore policy considerations, including requiring special assessment agreements between political subdivisions or implementing a mechanism to empower counties and school districts to opt-out of or deny special assessment projects.

Committee members noted the importance of allocating costs for new infrastructure in cities to ensure the infrastructure cost associated with new school construction is appropriately allocated to the taxpayers in those school districts. The committee did not identify concerns relating to the ability of a political subdivision to levy special assessments against property owned by a political subdivision or ways in which the process could be improved.

Conclusions

The committee makes no recommendations regarding its study of the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers.

ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Section 54-35-26, enacted by Senate Bill No. 2057 (2015), provides for the review of a specified list of economic development tax incentives and requires each incentive be reviewed at least once every 6-year period. The Legislative Management selected the interim Taxation Committee to review tax incentives during the 2023-24 interim.

Background

The practice of legislatively mandating the periodic review of economic development tax incentives began to gain popularity following the 2007-09 recession. As states continued to look at austerity options and ways to grow economies, reviewing tax incentives was viewed as sound public policy to ensure state dollars were being spent in a prudent and effective manner.

In 2012, The Pew Charitable Trusts (Pew) began tracking the progress states were making in evaluating tax incentives and published a report entitled *Evidence Counts: Evaluating State Tax Incentives for Jobs and Growth*. The report identified states leading the way in evaluating the effectiveness of tax incentives, states meeting some of the criteria for effective evaluations, and states not meeting any criteria in terms of the scope or quantity of evaluations. In the most recent May 2019 update, Pew identified 16 states leading the way in evaluating incentives, 15 states making progress in evaluating incentives, and 19 states trailing behind in evaluating incentives. The report describes the leading states as those with well-designed plans for regular reviews, experience in producing quality evaluations that measure economic impacts, and a process for applying the results of evaluations to inform policy decisions. North Dakota was identified as one of the states leading the way in evaluating incentives.

Tax Incentive Evaluation Law

Section 54-35-26 directs the review of specified economic development tax incentives by an interim committee selected by the Legislative Management. The review entails an assessment of whether each listed incentive is serving the purposes for which it was enacted in a cost-effective and equitable manner. The statute requires each of the economic development tax incentives listed in Section 54-35-26 to be analyzed within each 6-year period and provides the following eight items that may be considered when evaluating incentives:

1. The extent of achievement of the goals of the incentive and whether unintended consequences have developed in its application;
2. Whether the design and application of the incentive can be improved;

3. The extent of complementary or duplicative effects of other incentives or governmental programs;
4. Whether the incentive has a positive influence on business behavior or rewards business behavior that is likely to have occurred without the incentive;
5. The effect of the incentive on the state economy, including the extent of primary sector operation of the recipient and any competitive disadvantage imposed or benefit conferred on other state businesses, any benefit or burden created for local government, and the extent of the incentive's benefit that flows to out-of-state concerns;
6. The employment opportunities generated by the incentive and the extent those represent career opportunities;
7. Whether the incentive is the most effective use of state resources to achieve desired goals; and
8. If the committee's analysis of the incentive is constrained by lack of data, whether statutory or administrative changes should be made to improve collection and availability of data.

Summary of the Current 6-year Review Cycle

The following table provides an overview of the current 6-year economic development tax incentive review cycle:

Current 6-Year Review Cycle		
2021-22 Interim	**2023-24 Interim**	**2025-26 Interim**
Research expense credit	Biodiesel fuel credits	
Agricultural commodity processing facility investment credit	Internship program credit	
Seed capital investment credit	Workforce recruitment credit	
Soybean or canola crushing facility construction or retrofit credit	Coal severance and conversion tax exemptions	
Manufacturing automation equipment credit	Oil and gas gross production and oil extraction tax exemptions	
New or expanding business exemptions	Fuel tax refunds for certain users	
Manufacturing and recycling equipment sales tax exemption	Carbon dioxide capture and injection sales tax exemption	
New jobs credit from income tax withholding		

2023-24 Review of Incentives

The committee selected seven incentives to review from the list provided in Section 54-35-26. Although the committee initially selected a group of seven incentives, including the renaissance zone credits and exemptions, biodiesel fuel credits, internship program credit, angel fund investment credit, workforce recruitment credit, carbon dioxide capture and injection sales tax, and development or renewal area incentives, the committee reconsidered its selection. The committee determined it may be important to review energy-related incentives provided under Section 54-35-26 this interim, particularly in light of the potential impact of the initiated measure related to ad valorem property tax elimination. After reconsideration, the committee selected the biodiesel fuel credits, internship program credit, workforce recruitment credit, coal severance and conversion tax exemptions, oil and gas gross production and oil extraction tax exemptions, fuel tax refunds for certain users, and carbon dioxide capture and injection sales tax exemption for study.

The committee received background information for each of the selected incentives which provided an explanation of the incentive, the perceived intent of the Legislative Assembly in creating or altering each incentive, and the data and testimony required to effectively review each incentive. The committee received information from representatives of the Tax Department regarding the number of claimants, amounts claimed for each incentive, and other information related to the incentives selected for review. The committee also solicited testimony from interested parties regarding the incentives selected for study.

The committee discussed the difficulty of evaluating the impact and effectiveness of the incentives selected for study without access to a broad range of relevant data and testimony from interested parties. Committees selected to conduct the economic development tax incentives study in past interims have encountered difficulties accessing data related to use of the incentives selected for study and, in response to those difficulties, a past committee recommended legislation to provide access to the information, now codified at Section 57-01-02(17). This section authorizes disclosure of tax credits or deductions with five or fewer claimants upon request by the Chairman of the Legislative Management.

In response to the committee's and the Chairman of the Legislative Management's request for fiscal information pertaining to the economic development tax incentives selected for study this interim, the committee was informed the Tax Department was unwilling to disclose the number of claimants and amount claimed for the sales tax exemption selected for study because the exemption was claimed by five or fewer claimants. In reaching this conclusion, the Tax Department explained Section 57-01-02(17) references the disclosure of tax credits and deductions, but does not

reference the disclosure of tax exemptions; thus, Tax Department policy prevents disclosure of the number of claimants and amount claimed for tax exemptions, including the carbon dioxide capture and injection sales and use tax exemption, if the exemptions were claimed by five or fewer claimants.

The committee expressed frustration regarding the difficulty of receiving information related to the utilization of the incentives selected for study with five claimants or fewer. The committee reviewed a bill draft to make clear the requirement under Section 57-01-02(17) for the Tax Commissioner to disclose the amount of a tax incentive claimed or earned by a taxpayer upon receiving a written request from the Chairman of the Legislative Management or the chairman of a standing committee of the Legislative Assembly applies to all tax incentives, including deductions, credits, and exemptions. The committee expressed hope that the proposed legislation, if enacted, would clarify issues when requesting data related to the utilization of all incentives selected for study, regardless of the number of claimants. The committee noted the importance of this data to fully evaluate the incentives as required in this study.

Biodiesel Fuel Credits

Explanation of the Credits

A variety of income tax credits are available to taxpayers for the production or sale of biodiesel fuel. Section 57-38-30.6 provides for a biodiesel fuel production facility construction or retrofit income tax credit in the amount of 10 percent per year for 5 years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or to construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent biodiesel fuel or green diesel fuel by volume. Lifetime credit limits are capped at $250,000 per taxpayer and credits exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

Section 57-38-01.22 provides for an income tax credit for blending biodiesel fuel or green diesel fuel and is available to a taxpayer licensed by the Tax Commissioner as a fuel supplier who blends biodiesel fuel or green diesel fuel in this state. The amount of the credit is equal to 5 cents per gallon of biodiesel fuel or green diesel fuel of at least a 5 percent blend. Any credit amount exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

Section 57-38-01.23 provides for an income tax credit for adapting a facility to allow for sales of biodiesel or green diesel fuel and is available to a taxpayer licensed by the Tax Commissioner as a fuel retailer. The amount of the credit is equal to 10 percent per year for 5 years of the direct costs incurred by the fuel retailer to adapt or add equipment to a facility to enable the facility to sell diesel fuel containing at least 2 percent biodiesel fuel or green diesel fuel by volume. Credit amounts exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years, but a taxpayer is limited to claiming no more than $50,000 in credits over any combination of taxable years.

Perceived Goals in Creating or Altering the Credits

Provisions relating to biodiesel credits were enacted in 2003 and pertained to credits for producing or blending diesel fuel. The perceived goal of the Legislative Assembly in creating the credit was to encourage the development of biodiesel production or blending facilities. It was noted the credit would assist in reducing dependence on foreign energy sources and dependence on farm subsidies because the credit likely would result in increased demand for the state's soybean crops. The credit was viewed as a tool to help stimulate the development of a new industry in North Dakota. The estimated fiscal effect of the corporate income tax credit for biodiesel production and blending equipment costs could not be determined during the 2003 legislative session. The credit was expanded in 2009 to apply to costs incurred to construct or retrofit a facility for the purposes of producing crushed soybeans or canola, and expanded in 2011 to apply to costs incurred to construct or retrofit a facility for the purpose of producing or blending diesel fuel containing at least 2 percent green diesel fuel by volume.

Additional biodiesel credits were added in 2005 to provide for an income tax credit to biodiesel blenders, in the amount of 5 cents per gallon of biodiesel fuel of at least a 5 percent blend, and a credit to biodiesel retailers equal to 10 percent per year for 5 years of the direct costs incurred by the fuel retailer to adapt or add equipment to enable a facility to sell diesel fuel containing at least 2 percent biodiesel fuel by volume. The perceived goal of the Legislative Assembly in creating these credits was to incentivize development of the renewable fuels industry in North Dakota. Enactment of the credits was viewed as a significant step toward biodiesel production in this state. Both credits were expanded in 2011 to apply to the blending or sale of green diesel fuel in addition to biodiesel fuel. Credit provisions were modified in 2013 to clarify that a licensed fuel supplier must blend biodiesel fuel or green diesel fuel in this state to qualify for the credit.

Testimony and Committee Considerations.

The committee received fiscal data from a representative of the Tax Department regarding the biodiesel fuel credits, including the number and dollar amount of credits claimed from tax year 2018 through 2022. The data indicated the biodiesel fuel blending credit has been claimed by 16 corporate income taxpayers and 20 individual income taxpayers over the 5-year period, with credits totaling over $3.8 million and $526,000, respectively. The biodiesel fuel equipment

costs credit has been claimed by seven individual income taxpayers over the 5-year period, with credits totaling over $88,000. The biodiesel facility construction credit has not been claimed over the 5-year period. The committee also received testimony in support of retaining the credits from representatives of Petro Serve USA, Archer Daniels Midland Company, Clean Fuels Alliance America, North Dakota Soybean Growers Association, Northern Canola Growers Association, and the Economic Development Association of North Dakota.

A representative from Petro Serve USA, which owns and operates 33 convenience stores across North Dakota and Minnesota and collected and paid $7,061,172 in state gas and fuel taxes in this state in the last year, provided testimony in support of retaining the credits. The testimony indicated the biodiesel fuel blending credit has helped create jobs on family farms and employment opportunities on rural main streets in North Dakota. Targeted tax incentives, like the biodiesel fuel credits, along with product education, may help the soy industry to grow to be more effective and self-sufficient.

Representatives from Archer Daniels Midland Company, which employs approximately 450 people in 17 communities across the state and conducts $2 billion worth of business with North Dakota-based vendors, including farmers, provided testimony in support of retaining the credits. The committee was informed Archer Daniels Midland Company plays an important role in achieving the goals of the biodiesel fuel credits by increasing the demand for crops grown in North Dakota and promoting energy independence by producing biodiesel fuel in the state. The committee was encouraged to consider making small changes to the existing biodiesel fuel credits, including allowing the credit to apply to a company's entire North Dakota unitary group rather than only the company's legal entity. The committee also was encouraged to extend the expiration of the credit from 5 to 10 years. In addition, because the longstanding federal biofuel blenders tax credit is set to expire at the end of 2024 and will be replaced by a carbon intensity-based producer tax credit, the committee was informed it may be beneficial to change the state credit to a similar producer tax credit.

A representative of Clean Fuels Alliance America provided testimony in support of retaining the credits. The testimony indicated biodiesel and renewable fuels reduce dependence on finite fossil fuels and lower greenhouse emissions. Additionally, the production and use of biodiesel and renewable diesel can bolster the state's economy. In North Dakota, the biodiesel and renewable diesel industry provides $781 million in economic activity, over 2,000 jobs, and more than $111 million in wages. According to the testimony, if the state promotes renewable fuels, the state can attract new investments and technologies and position North Dakota as a leader in the renewable energy sector.

The committee also was informed the credits are important to the soybean and canola industries. Testimony provided by a representative of the North Dakota Soybean Growers Association indicated biodiesel fuel is made through the transesterification of vegetable oils and animal fats, such as soybean oil, and typically is blended with petroleum diesel. Soybean oil comprises 44 percent of feedstock inputs to United States biodiesel, renewable diesel, and other biofuel production. In addition, the testimony indicated the biodiesel fuel production facility construction tax credit helps drive investment in the construction of facilities in the state. For example, the committee was made aware of a proposal to build a biodiesel fuel facility near Grand Forks, which would benefit from the biodiesel fuel production facility construction tax credit.

Representatives from the Northern Canola Growers Association also testified in support of retaining the state biodiesel fuel credits, and indicated a change from a blenders tax credit to a producers tax credit may be positive for the biodiesel fuel industry in the state. North Dakota canola growers account for 80 to 85 percent of canola production in the nation, and the industry generates 5,500 jobs with $500 million in labor income and $50 million in state and local government revenue.

The committee did not receive testimony in support of eliminating the biodiesel fuel credits. The committee did not identify any concerns relating to the credits or ways in which the credits could be improved.

Conclusions

The committee makes no recommendation regarding the biodiesel fuel credits.

Internship Program Credit

Explanation of the Credit

Section 57-38-01.24 provides for an internship program income tax credit. The credit is available to income taxpayers that are employers in this state and have a qualifying internship program. A qualifying internship program must be located in this state and requires the taxpayer to supervise and evaluate an intern enrolled in an institution of higher education or in a vocational technical education program in North Dakota and who is seeking a degree or certification in a field closely related to the work being undertaken during the internship. The internship also must provide academic credit or count toward the completion of a vocational technical education program being pursued by the intern. The amount of the credit is equal to 10 percent of the stipend or salary paid to an intern employed by the taxpayer. A taxpayer may claim no more than $3,000 in credits over any combination of taxable years and may claim a credit for up to five interns

employed at the same time. A passthrough entity entitled to the credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level and passed through to the entity's partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity.

Perceived Goals in Creating or Altering the Credit

The internship program credit was enacted with the passage of House Bill No. 1018 (2007). The perceived goal of the Legislative Assembly in creating the credit was to encourage businesses to establish internship programs that potentially could lead to the retention of more North Dakota college graduates in the North Dakota workforce. The only changes made to the credit following its enactment were technical in nature and related to the elimination of the optional long-form filing method in 2009, and the streamlining of the description of a passthrough entity in 2013.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the internship program credit, including the number and dollar amount of credits claimed from tax year 2018 through 2022. The data indicated the credit has been claimed by 4 corporate income taxpayers and 139 individual income taxpayers over the 5-year period, with credits totaling approximately $5,600 and $42,000, respectively.

The committee received testimony in support of retaining the credit from representatives of the Economic Development Association of North Dakota. A representative of the Economic Development Association of North Dakota indicated the internship program credit is of particular interest to the association because workforce is the primary issue preventing growth for companies in North Dakota. The testimony contended the internship program credit is an essential tool for attracting new employees to the state. The committee was encouraged to consider modifying the limitations of the internship credit to encourage more internship opportunities in the state.

The committee also received information from a representative of the Workforce Development Division of the Department of Commerce and the Workforce Development Council, regarding other state-administered programs that may have complimentary or duplicative effects to the internship program credit. The committee received information regarding the operation intern program, which is a state-funded program that provides North Dakota businesses up to $4,000 in matching funds for each internship or apprenticeship, with a limit of five interns or apprentices per program year. The funding may be used for the intern or apprentice's wage, or for items needed for interns to perform their work duties, such as tools and equipment, training, or tuition reimbursement. The committee also received information regarding the department's find the good life in North Dakota program, which is a comprehensive talent attraction initiative launched in June 2022, which uses targeted marketing and a software system that allows the department to collect information from job seekers, connect job seekers with communities of interest and employers in their field, and track the progress of the job seekers as they explore opportunities in the state.

The committee did not receive testimony in support of eliminating the internship program credit. The committee did not identify any concerns relating to the credit or ways in which the credit could be improved.

Conclusions

The committee makes no recommendation regarding the internship program credit.

Workforce Recruitment Credit

Explanation of the Credit

Section 57-38-01.25 provides for a workforce recruitment credit. The income tax credit is available to income taxpayers that are employers in this state and have incurred costs to recruit and hire employees for hard-to-fill employment positions in North Dakota. The credit is equal to 5 percent of the first 12 months of salary paid by the employer to an employee hired to fill a hard-to-fill position for which the annual salary meets or exceeds the state average wage. For purposes of the workforce recruitment credit, the state average wage is equal to 125 percent of the state average wage amount published by Job Service North Dakota at the time the employee is hired.

The credit may be claimed in the tax year following the employee's completion of the first 12 consecutive months of employment. The amount of credit exceeding a taxpayer's liability may be carried forward to each of the 4 succeeding taxable years. A "hard-to-fill employment position" is defined as a position that requires an employer to use extraordinary recruitment methods and a position an employer has been unsuccessful in filling for 6 consecutive months. An employer must use a fee-based recruiter, advertise the position in a publication directed at a particular profession and on a fee-based employment website, and pay a signing bonus, moving expenses, or nontypical fringe benefits to meet the requirement of having used extraordinary recruitment methods.

Perceived Goals in Creating or Altering the Credit

The workforce recruitment credit was created with the passage of House Bill No. 1018 (2007). The perceived goal of the Legislative Assembly in creating the credit was to address the shortage of workers in North Dakota and incentivize employers in this state to use extraordinary recruitment methods to fill high-paying, hard-to-fill positions. The credit was seen as a tool to help stimulate an influx of workers into the state and promote increased business and economic development. The only changes made to the credit following its enactment were technical in nature and related to the elimination of the optional long-form filing method, in 2009, and the streamlining of the description of a passthrough entity, in 2013.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the workforce recruitment credit, including the number and dollar amount of credits claimed from tax year 2018 through 2022. The data indicated the credit has been claimed by 11 individual income taxpayers over the 5-year period, with credits totaling less than $5,000.

The committee received testimony in support of retaining the credit from representatives of the Economic Development Association of North Dakota. A representative of the Economic Development Association of North Dakota indicated the workforce recruitment program credit is of particular interest to the association because workforce is the primary issue preventing growth for companies in North Dakota. The testimony contended the workforce recruitment credit is an essential tool for attracting new employees to the state.

The committee also received information from a representative of the Workforce Development Division of the Department of Commerce and the Workforce Development Council, regarding other state-administered programs that may have complimentary or duplicative effects to the workforce recruitment credit. The committee received information regarding the operation intern program, which is a state-funded program that provides North Dakota businesses up to $4,000 in matching funds for each internship or apprenticeship, with a limit of five interns or apprentices per program year. The funding may be used for the intern or apprentice's wage, or for items needed for interns to perform their work duties, such as tools and equipment, training, or tuition reimbursement. The committee also received information regarding the department's find the good life in North Dakota program, which is a comprehensive talent attraction initiative launched in June 2022 which uses targeted marketing and a software system that allows the department to collect information from job seekers, connect job seekers with communities of interest and employers in their field, and track the progress of the job seekers as they explore opportunities in the state.

The committee did not receive testimony in support of eliminating the workforce recruitment credit. The committee did not identify any concerns relating to the credit or ways in which the credit could be improved.

Conclusions

The committee makes no recommendation regarding the workforce recruitment credit.

Coal Severance and Conversion Tax Exemptions

Imposition of Coal Severance Tax

The coal severance tax is imposed on the act of removing coal from the earth pursuant to Chapter 57-61. The tax is applied to coal severed for sale or industrial purposes, subject to certain exceptions. The tax is in lieu of both the sales and use taxes on coal and the property tax on minerals in the earth. The tax is applied at a rate of 37.5 cents per ton. An additional 2 cents per ton tax is levied for the lignite research fund.

Explanation of Coal Severance Tax Exemptions

Coal used to heat buildings in the state, by the state or any political subdivision of the state, and in agricultural processing facilities in the state or adjacent states is exempt from coal severance tax. A 50 percent reduction of the 37.5 cent tax is allowed for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output. A county may grant a partial or complete exemption from the county's 70 percent portion of the 37.5 cent tax for coal that is shipped out of state. For taxable production beginning after June 30, 2021, a county may grant a partial or complete exemption from the county's 70 percent portion of the coal severance tax for up to 5 years, not to extend past June 30, 2026.

Perceived Goals in Creating or Altering Coal Severance Tax Exemptions

The exemption provided in Section 57-61-01.1, for coal used to heat buildings in the state and coal used by the state or any political subdivision of the state, was enacted by Senate Bill No. 2239 (1981). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of coal by the state and political subdivisions and the use of coal for heating purposes to decrease the state's dependence on other energy sources. The exemption provided in Section 57-61-01.4, for coal used in agricultural processing facilities in the state or adjacent states, was enacted by House Bill No. 1470 (1985). As originally enacted, the exemption included an exemption for coal used in sugar beet

refining plants. The perceived goal of the Legislative Assembly in creating the exemption was to make lignite coal more competitive with coal from Montana and Wyoming for use in agricultural processing facilities and sugar beet refining plants. Proponents of the exemption noted the loss of coal contracts was having a negative impact on employment in coal-producing areas of the state. The exemption was expanded in 2009 to include coal purchased for improvement through beneficiation which is then used in an agricultural commodity processing facility or a facility owned by the state or a political subdivision.

The 50 percent coal severance tax reduction provided in Section 57-61-01.3, for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output, was enacted by Senate Bill No. 2449 (1985). The perceived goal of the Legislative Assembly in providing the tax reduction was to grow the export market for North Dakota coal.

Section 57-61-01.7, which allows a county to grant a partial or complete exemption from the county's 70 percent portion of the severance tax for coal that is shipped out of state, was enacted by House Bill No. 1362 (1993). As originally enacted, the exemption allowed a county to grant a partial or complete exemption from the county's 35 percent portion of the severance tax for coal that is shipped out of state. The perceived goal of the Legislative Assembly in creating the exemption was to prevent the potential closure of a local mine by reducing the tax on coal the mine shipped out of state.

The severance tax exemption for the first 1 million tons of coal per year used as a feedstock by a coal processing facility that utilizes coal as a feedstock in this state under Section 57-61-01.9 was enacted by House Bill No. 1511 (2023). The perceived goal of the Legislative Assembly in providing the exemption was to incentivize companies that process coal as a feedstock for their end products to use North Dakota coal. It was noted the exemption will support and incentivize new uses for North Dakota coal, which will allow the lignite industry to compete in a different market.

The option for a county to exempt up to 70 percent of the coal severance tax for up to 5 years, not to extend past June 30, 2026, under Section 57-61-01 was enacted by House Bill No. 1412 (2021). The perceived goal of the Legislative Assembly when enacting this legislation was to provide an opportunity for counties to provide temporary tax relief to the lignite industry to provide economic stability for the lignite industry. It was noted at the time House Bill No. 1412 was introduced, the North Dakota lignite industry produced more than $5 billion in regional economic impact, over 13,000 direct and indirect jobs, and $125 million in annual state and local tax revenues.

Imposition of Coal Conversion Tax

The coal conversion tax is imposed in lieu of property taxes on the operator of each coal conversion facility pursuant to Chapter 57-60. The land on which the facility is located remains subject to property taxes. The privilege tax on coal conversion facilities is applied based on the type of coal conversion facility. Electrical generating plants are subject to two separate levies. One levy is a .65 mill times 60 percent of installed capacity times the number of hours in the taxable period, and the other levy is .25 mill per kilowatt-hour of electricity produced for sale. Installed capacity means the number of kilowatts a power unit can produce as displayed on the nameplate assigned to the turbine of the power unit. Coal gasification plants are subject to a monthly tax of 13.5 cents per thousand cubic feet of synthetic natural gas produced for sale, or 2 percent of gross receipts, whichever is greater. Plants converting coal to products other than gas are taxed at a rate of 2 percent of gross receipts. Coal beneficiation plants are taxed at a rate of 20 cents per ton of beneficiated coal produced for sale, or 1.25 percent of gross receipts, whichever is greater.

Explanation of Coal Conversion Tax Exemptions

For taxable production beginning after June 30, 2021, through June 30, 2026, with limited exceptions, a coal conversion facility is exempt from the state's 85 percent share of the coal conversion privilege tax for 5 years. In lieu of paying the general fund's 85 percent share of the tax, coal conversion plant operators are required to pay a lignite research tax, which is equal to 85 percent of the coal conversion tax before the temporary exemption, multiplied by 5 percent. Additionally, for the 5-year period, a county may grant a partial or complete exemption from the county's 15 percent share of the coal conversion privilege tax for up to 5 years, not to extend past June 30, 2026.

In addition to the temporary relief available to coal conversion facilities, various types of plants and production receive a full or partial exemption from coal conversion tax. Beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility is exempt from tax. A new or repowered coal-burning electrical generation plant is exempt from the general fund portion of both levies for 5 years. All new coal conversion plants other than electrical generating plants are exempt from the general fund's 85 percent share of the tax for 5 years. A coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions during a taxable period receives a 20 percent reduction in the general fund share of the tax, and an additional reduction of 1 percent for every additional 2 percentage points of carbon dioxide emissions captured, up to a 50 percent reduction for 80 percent or more capture. The reduction is available for 10 years from the date of the first capture or from the date the facility is eligible to receive the credit. A conversion facility that met the carbon dioxide capture requirements before January 1, 2017, is not eligible for the reduction.

Perceived Goals in Creating or Altering the Coal Conversion Tax Exemptions

The exemption provided in Section 57-60-02 for beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility was enacted by House Bill No. 1613 (1989). As originally enacted, the exemption only applied to beneficiated coal produced in excess of 80 percent of the plant's design capacity. The perceived goal of the Legislative Assembly in providing the exemption was to incentivize developers to consider beneficiation projects to help maintain existing coal jobs and create future jobs. The exemption was viewed as providing environmental as well as economic benefits. The exemption was expanded in 2015 to include beneficiated coal produced for use within a coal conversion facility.

The 5-year exemption provided in Section 57-60-02 for the general fund's 85 percent share of tax for new coal conversion plants other than electrical generating plants was enacted by House Bill No. 1574 (1985). As originally enacted, the exemption exempted 65 percent of the tax imposed on the plant for 5 years with the county retaining the ability to grant a full or partial exemption on the remainder of the tax for the same period. The perceived goal of the Legislative Assembly in providing the exemption was to encourage the construction of new coal conversion plants. The exemption was amended in 2001 to reflect changes to the county's portion of the tax, reduced from 35 to 15 percent, for purposes of identifying the amount of tax the county could exempt. House Bill No. 1412 (2021) temporarily removed a county's ability to exempt its share of the coal conversion tax specific to this exemption through June 30, 2026. In lieu of the more specific exemption authority, House Bill No. 1412 provided a county with broader authority to exempt the county's portion of all coal severance tax from coal conversion facilities through June 30, 2026, after which the county's more specific exemption authority related to this exemption will be reinstated.

The 5-year exemption provided in Section 57-60-02 for a new or repowered coal-burning electrical generation plant was enacted by House Bill No. 1606 (1991). As originally enacted, the exemption exempted 65 percent of the tax imposed on new electrical generating plants for 5 years with the county retaining the ability to grant a full or partial exemption on the remainder of tax for the same period. The perceived goal of the Legislative Assembly in providing the exemption was to promote economic development by providing the same tax incentive to electrical generation plants as was provided to coal conversion facilities. It was noted each 400-megawatt plant creates 1,000 direct and indirect jobs and $72 million in business activity. The exemption was amended several times following its enactment. The exemption was amended in 2001 to increase the exemption from 65 percent to 85 percent of the tax imposed and reflect changes to the county's portion of the tax, reduced from 35 to 15 percent, for purposes of identifying the amount of tax the county could exempt. House Bill No. 1412 (2021) temporarily removed a county's ability to exempt its share of the coal conversion tax specific to this exemption through June 30, 2026. In lieu of the more specific exemption authority, House Bill No. 1412 provided a county with broader authority to exempt the county's portion of all coal severance tax from coal conversion facilities through June 30, 2026, after which the county's more specific exemption authority related to this exemption will be reinstated.

The reduction provided in Section 57-60-02.1 for a coal conversion facility that captures carbon dioxide emissions was enacted by Senate Bill No. 2221 (2009). The perceived goal of the Legislative Assembly in providing the tax reduction was to encourage the capture and reduction of carbon dioxide emissions. The tax reduction was amended in 2017 to disqualify coal conversion facilities that met carbon dioxide capture requirements before January 1, 2017, from qualifying for the tax reduction.

The 5-year exemption provided in Section 57-60-02.2 for the general fund's 85 percent share of tax for coal conversion plants and imposition of a temporary lignite research tax in lieu of the state's portion of tax imposed on coal conversion facilities was enacted by House Bill No. 1412 (2021) and is effective through June 30, 2026. House Bill No. 1412 also provided a county the option of exempting the county's portion of the coal conversion tax. The perceived goal of the Legislative Assembly when enacting this legislation was to protect and preserve the lignite industry in the state by providing temporary tax relief from coal conversion taxes for lignite plants in need of economic relief due to the changing fuel markets and certain federal policies and regulations. It was noted the exemption will provide economic stability for the lignite industry as the industry develops additional uses for lignite, including carbon capture. At the time House Bill No. 1412 was introduced, it was noted the North Dakota lignite industry produced more than $5 billion in regional economic impact, over 13,000 direct and indirect jobs, and $125 million in annual state and local tax revenues. It was further noted the seven lignite power plants in North Dakota produced a total of 4,000 megawatts of electricity per year and one 1,000-megawatt lignite power plant provided over $32 million in annual state and local tax revenue.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the coal severance and conversion tax exemptions, including the dollar amount of exemptions claimed in fiscal years 2019 through 2023. The data indicated the total amount of coal severance tax exemptions claimed within the last 5 fiscal years was approximately $429,000 and the total amount of coal conversion tax exemptions claimed within the last 5 fiscal years was approximately $50.9 million. The total amount of coal severance and conversion tax exemptions claimed within the last 5 fiscal years

was approximately $51.3 million. The committee also received testimony in support of retaining the exemptions from representatives of the Lignite Energy Council and the Economic Development Association of North Dakota.

The committee received testimony from a representative of the Lignite Energy Council regarding the status of the coal industry in the state and the exemptions selected for study. The committee was informed the lignite industry supports approximately 13,000 direct and indirect jobs, contributes $100 million in state and local tax revenue, and plays a crucial role in powering a reliable electrical grid. However, concerns exist regarding the impact of recent United States Environmental Protection Agency rules on the reliability of the electrical grid. Though most energy policy is set at the federal level, industry representatives believe the state could help the lignite industry by advocating for positive regulatory outcomes and analyzing taxes and incentives to enhance economic stability for the industry. The testimony indicated the lignite industry invested the tax relief provided during the 2021 legislative session in the future of the lignite industry by developing additional uses for lignite, including carbon capture.

The committee did not receive testimony in support of eliminating the coal conversion or coal severance exemptions. The committee did not identify any concerns relating to the exemptions or ways in which the exemptions could be improved.

Conclusions

The committee makes no recommendation regarding the coal severance and conversion tax exemptions.

Oil and Gas Gross Production and Oil Extraction Tax Exemptions

Imposition of Oil and Gas Gross Production Tax

Pursuant to Chapter 57-51, a gross production tax of 5 percent of the gross value at the well is levied upon oil produced in the state. The gross production tax levied upon gas produced in the state is calculated by multiplying taxable production by an annually adjusted flat rate per thousand cubic feet.

Explanation of Gross Production Tax Exemptions

Production exempt from gross production tax includes:

- Gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding, or from an interest held by an organized Indian tribe.
- Shallow gas produced during the first 24 months of production following the date gas was first sold from a shallow gas well and gas produced from a shallow gas well during testing, but prior to well completion, or during connection to a pipeline.
- Gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well.
- Gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption, which are exempt for a period of 2 years and 30 days from the time of first production.

Perceived Goals in Creating and Altering Gross Production Tax Exemptions

The exemption provided in Section 57-51-02 for gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding, or from an interest held by an organized Indian tribe was enacted by Senate Bill No. 41 (1953). The exemption provided in Section 57-51-02.4, which exempts shallow gas produced from a new or recompleted shallow gas well during the first 24 months of production, was enacted by House Bill No. 1145 (2003). The perceived goal of the Legislative Assembly in creating the exemption was to attract investment in the state's natural resources by encouraging gas well production. The exemption provided in Section 57-51-02.5, for gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well, was enacted by Senate Bill No. 2413 (2009). The perceived goal of the Legislative Assembly in creating the exemption was to reduce flaring and generate electricity from gas that might otherwise be wasted. The limited duration exemption provided in Section 57-51-02.6 for gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption was enacted by House Bill No. 1134 (2013). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of gas that might otherwise be flared.

Imposition of Oil Extraction Tax

The oil extraction tax is levied on the extraction of oil from the earth pursuant to Chapter 57-51.1. As originally enacted, the tax rate was established at 6.5 percent of the gross value of oil at the well, subject to full or partial exemptions. Beginning January 1, 2016, the oil extraction tax rate was reduced from 6.5 to 5 percent and was subject to change depending on the average price of a barrel of crude oil from January 1, 2016, through July 1, 2023. During

this time, if the average price of a barrel of crude oil exceeded the trigger price of $90 for 3 consecutive months, the rate increased to 6 percent on all oil extracted, and the rate remained at 6 percent until the average price of a barrel of crude oil fell below the trigger price of $90 for 3 consecutive months, at which time the rate reverted to 5 percent on all oil extracted. Beginning July 1, 2023, the Legislative Assembly removed the provisions that provided an increased tax rate triggered by an increase in the average price of a barrel of crude oil for all wells, except those located within the exterior boundaries of a reservation, located on trust properties outside reservation boundaries, or straddle wells located on reservation trust land. For these particular wells, a tribe is permitted to make an irrevocable election to opt-out of the oil extraction tax rate triggered by an increase in the average price of a barrel of crude oil by providing written notice to the Tax Commissioner.

Explanation of Oil Extraction Tax Exemptions

Production exempt from oil extraction tax includes:

- Liquids produced from a collection system employed to avoid flaring, which are exempt for a period of 2 years and 30 days from the time of first production.
- Production that is exempt from the gross production tax imposed by Chapter 57-51.
- Production from stripper well property or an individual stripper well.
- Incremental production from a secondary recovery project for 5 years from the date incremental production begins.
- Incremental production from a tertiary recovery project for 10 years from the date incremental production begins, or 20 years from the date incremental production begins or certified injection begins if the project injects more than 50 percent carbon dioxide produced from coal and is located outside the Bakken or Three Forks Formations.
- Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks Formations for 5 years from the date incremental production begins, or 10 years from the date incremental production begins or certified injection begins if the project injects more than 50 percent carbon dioxide produced from coal and is located within the Bakken or Three Forks Formations.

The first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation are subject to a partial exemption in the form of a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

A reduced tax rate of 2 percent on the gross value at the well applies to oil extracted from a certified restimulation well, as defined in Section 57-15.1-01, for the first 75,000 barrels of oil extracted or 18 months, whichever occurs first. The reduced rate applies to all certified restimulation wells, except those located within the exterior boundaries of a reservation, located on trust properties outside reservation boundaries, or straddle wells located on reservation trust land. However, for these particular wells, a tribe may make an irrevocable election to opt-in to the tax rate reduction by providing written notice to the Tax Commissioner.

Perceived Goals in Creating and Altering Oil Extraction Tax Exemptions

The limited duration exemption provided in Section 57-51.1-02.1 for liquids produced from a collection system employed to avoid flaring was enacted by House Bill No. 1134 (2013). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of gas that might otherwise be flared. The exemption provided in Section 57-51.1-03(1) for oil that is exempt from the gross production tax imposed by Chapter 57-51, and the exemption provided in Section 57-51.1-03(2) for production from stripper well property or an individual stripper well, were enacted by Initiated Measure No. 6, which was approved by the voters at the general election held on November 4, 1980. The exemptions provided in Section 57-51.1-03(3) for incremental oil produced from secondary and tertiary recovery projects were enacted by House Bill No. 1414 (1991). The perceived goal of the Legislative Assembly in creating the exemption was to provide an exemption to encourage the enhanced recovery of oil that might not otherwise be produced. The enhanced oil recovery exemptions were amended several times following their enactment, including in 2009 to provide an exemption for incremental production from a tertiary recovery project that uses carbon dioxide, and in 2019 to provide an exemption for incremental production from a tertiary recovery project that uses carbon dioxide produced from coal.

The partial exemption in the form of a reduced 2 percent tax rate on the gross value at the well of the first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations, as provided in Section 57-51.1-03(4), was enacted by Senate Bill No. 2397 (2007). The perceived goal of the Legislative Assembly in creating the exemption was to foster a competitive tax environment to encourage industry to continue to develop oil resources in the state. The exemption was amended in 2009 to cap the amount of oil exempted per well at 75,000 barrels of oil produced or the first $4.5 million of gross value at the well, whichever is less, and to include additional parameters regarding application of the rate reduction. However, the provisions added in 2009 expired, effective July 1, 2013.

The partial exemption in the form of a reduced 2 percent tax rate on the gross value at the well for oil extracted from a certified restimulation well for the first 75,000 barrels of oil extracted or 18 months, whichever occurs first, as provided in Section 57-51.1-03(5), was enacted in House Bill No. 1427 (2023). The perceived goal of the Legislative Assembly in creating the partial exemption was to increase the recoverable barrels of oil in the state, provide an incentive to oil companies to invest in older wells, and positively impact the environment, including through continued use of existing infrastructure, wellsite footprints, and natural gas pipelines.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the oil and gas gross production and oil extraction tax exemptions, including the dollar amount of exemptions claimed in fiscal years 2019 through 2023. The data indicated the total amount of oil and gas gross production tax exemptions claimed within the last 5 fiscal years was approximately $345 million and the total amount of oil extraction tax exemptions claimed within the last 5 fiscal years was approximately $917 million. The committee also received testimony in support of retaining the exemptions from representatives of the Department of Mineral Resources, the North Dakota Petroleum Council, and the Economic Development Association of North Dakota.

The committee received information from a representative of the Department of Mineral Resources regarding the oil and gas production outlook for the state. The testimony indicated, as of January 2024, 38 drilling rigs were operating in the state and the state produces about 1.1 million barrels of oil per day. The statewide gas capture rate in 2023 was 95 percent. The committee also received an overview of the next 10 years of oil and gas development in the state, including the use of enhanced oil recovery.

The committee received information from a representative of the Department of Mineral Resources regarding the exemptions selected for study. The committee was informed approximately 160 million cubic feet of gas is issued per day on lease to provide processed heat, which is exempt from the gross production tax under Section 57-51-02. Two city landfills have claimed the gross production tax exemption for shallow gas through the use of methane recovery wells to capture methane to send to industrial boilers and at least three counties have the potential to produce shallow gas which may qualify for the shallow gas exemption under Section 57-51-02.4. According to the testimony, the oil extraction tax exemption under Section 57-51.1-03(2) for production from stripper wells helps stripper wells remain economical and supports, on average, 1 to 1.2 jobs while paying royalties and production tax for the life of the well. In addition to the projects that qualify for an enhanced oil recovery exemption under Section 57-51.1-03(3), there also are several pilot projects underway that may become eligible for an exemption. If additional carbon dioxide is made available in the state, the number of claimants for the enhanced oil recovery exemptions that require use of carbon dioxide likely will increase. The testimony indicated the exemption for incremental production from a tertiary recovery project from a horizontal well under Section 57-51.1-03(3) is adequate because the optimum project is about 12 square miles and takes about 3.5 years to process. Approximately 2.6 percent of permitted drilling wells are non-Bakken wells, which may be eligible to claim the partial exemption under Section 57-51.1-03(4). The partial exemption under Section 57-51.1-03(5) is claimed on three restimulation wells, and hundreds of restimulation wells may be forthcoming. Three projects are actively capturing and injecting carbon dioxide and may have taken advantage of the sales and use tax exemption under Sections 57-39.2-04.14 and 57-40.2-03.3. Dozens of similar projects are anticipated, which may cost an estimated $1 billion to $2 billion for each system to become operational.

The committee received testimony from a representative of the North Dakota Petroleum Council regarding the oil industry and in support of the incentives selected for study. The committee was informed that in April 2024, the statewide gas capture rate was 95 percent, approximately 1.24 million barrels of oil were produced per day, and there were 18,962 producing wells. According to the testimony, since 2008, $26 billion in tax revenue has been generated from oil production, which accounts for 51 percent of all taxes collected in North Dakota. The use of enhanced oil recovery methods could generate an additional 3.2 billion to 7 billion barrels of recoverable oil with the potential to store 1.1 billion to 3.2 billion tonnes of carbon dioxide.

The committee did not receive testimony in support of eliminating the oil and gas gross production and oil extraction tax exemptions. The committee did not identify any concerns relating to the exemptions or ways in which the exemptions could be improved.

Conclusions

The committee makes no recommendation regarding the oil and gas gross production and oil extraction tax exemptions.

Fuel Tax Refunds

Imposition of Fuel Tax

A 23 cent per gallon tax is imposed on motor vehicle fuels, which includes gasoline and gasohol; and on special fuels, which includes diesel, kerosene, compressed natural gas, liquefied petroleum gas, and other fuels except gasoline, gasohol, or aviation fuels pursuant to Chapters 57-43.1 and 57-43.2. Dyed diesel fuel and special fuel other than diesel fuel which is sold for use in unlicensed machinery used for agricultural, industrial, or railroad purposes is exempt from the 23 cent per gallon special fuels tax and is instead subject to a 4 cent per gallon excise tax, with the exception of propane, which is subject to an excise tax of 2 percent. An 8 cent per gallon tax is imposed on aviation fuels pursuant to Chapter 57-43.3. Tax remitted by certain users and on fuel purchased for specified uses is subject to refund.

Explanation of Fuel Refunds for Specified Users

The operator of an emergency medical services operation who purchases motor vehicle fuel, special fuel, or aviation fuel for use in a licensed emergency medical services operation may claim a refund of tax paid. Tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, and maintenance of a public road or airport also is subject to refund. A Native American may claim a refund of motor vehicle fuel or special fuel tax paid if the fuel was purchased from a retail fuel dealer located on the reservation where the Native American is an enrolled member, and in which a motor fuel agreement is not in place, and the fuel was delivered to the Native American purchaser on that reservation. Refunds also are allowed to fuel resellers who sold fuel on which motor vehicle fuel, special fuel, or aviation fuel tax was paid to an agency of the federal government.

Perceived Goals in Creating or Altering the Refund Provisions for Specified Users

The perceived goal of providing fuel tax refunds for specified users is to reduce the tax burden for those users. The first fuel tax refund provisions provided for specified users were enacted by House Bill No. 360 (1937). The provisions allowed for refunds of the tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, or maintenance of a public road or airport. These refund provisions were followed by the enactment of refund provisions for the tax paid on motor vehicle fuel, special fuel, and aviation fuel for resellers who sold fuel on which tax was paid to an agency of the federal government by Senate Bill No. 2177 (1999). Refund provisions providing a motor vehicle fuel and special fuel tax refund for fuel purchased by a Native American from a retail fuel dealer located on the reservation where the Native American is an enrolled member was enacted by Senate Bill No. 2012 (2005). The final refund provision provided for specified users was enacted by House Bill No. 1138 (2007), which provided refunds for motor vehicle fuel, special fuel, and aviation fuel tax paid on fuel purchased by the operator of an emergency medical services operation. The perceived goal of the Legislative Assembly in enacting the fuel tax refund was to lower the operating costs of emergency medical services operations to keep the operations economically viable, especially in rural areas.

Explanation of Fuel Refunds for Specified Uses

The tax paid on motor vehicle fuel purchased for use in nonlicensed equipment used for agricultural or industrial purposes is subject to refund. The amount of tax refunded on motor fuel purchased for industrial purposes must be reduced by one-half cent per gallon for deposit in the agricultural products utilization fund. Tax paid on special fuel purchased for use in a refrigeration unit that has a separate supply tank on a truck or trailer is subject to refund. The amount of special fuel tax refunded on fuel purchased for use in a refrigeration unit must be reduced by 4 cents per gallon to account for the payment of special fuel excise tax. Refunds also are allowed on motor vehicle fuel, special fuel, or aviation fuel if the fuel is removed for sale, resale, or use in another state that requires payment of tax on the fuel.

Perceived Goals in Creating or Altering the Refund Provisions for Specified Uses

The perceived goal of providing fuel tax refunds for specified uses is to lower the tax burden applied to those specified uses. Refund provisions for tax paid on motor vehicle fuel purchased for use in nonlicensed equipment for industrial or agricultural purposes have been available since the motor vehicle fuel tax law was first enacted by an initiated measure approved by the voters at a statewide election held on June 30, 1926. The amount withheld from the tax refunded on fuel purchased for industrial purposes was set at one-half of one cent per gallon in 1983. The amount withheld from the tax refunded on fuel purchased for agricultural purposes was amended several times over the years until the deduction was eliminated in 2015.

Refund provisions for tax paid on motor vehicle fuel or special fuel removed for sale, resale, or use in another state were first enacted by House Bill No. 1164 (1975). The refund provisions were amended in 1997 to provide time limits for claiming the refund and require a claimant to include proof the fuel purchased for sale or resale in another state was reported to the taxing agency in the claimant's refund application materials. An aviation fuel tax refund for fuel removed for sale, resale, or use in another state was enacted by Senate Bill No. 2177 (1999). The special fuel tax refund provided for consumers who purchase special fuel for use in a refrigeration unit was enacted by Senate Bill No. 2224 (2009). The perceived goal of the Legislative Assembly in offering the refund was to allow drivers refueling at truck stops at which dyed fuel was not available to fill their refrigeration units with clear fuel and receive a refund on the amount of tax paid in excess of the tax that otherwise would have been paid on the dyed fuel.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the fuel tax refunds for certain users, including the dollar amount of refunds claimed in fiscal years 2019 through 2023. The data indicated the motor vehicle fuel tax refunds for the last 5 fiscal years totaled approximately $1.56 million. The special vehicle fuel tax refunds for the last 5 fiscal years totaled $731,489. The aviation vehicle fuel tax refunds for the last 5 fiscal years totaled $29,488. Thus, for all fuel types, including motor vehicle fuel, special fuel, and aviation fuel, the total refunds for the last 5 fiscal years exceeded $2.3 million.

The committee did not receive testimony in support of retaining, eliminating, or modifying the fuel tax refunds. The committee did not identify any concerns relating to the refunds or ways in which the refunds could be improved.

Conclusions

The committee makes no recommendation regarding the fuel tax refunds.

Carbon Dioxide Capture and Injection Sales Tax Exemption

Explanation of the Exemption

Sections 57-39.2-04.14 and 57-40.2-03.3 provide a sales and use tax exemption for tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. To qualify for the exemption, the tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. The purchase of replacement equipment does not qualify for the exemption unless the replacement creates an expansion of the system.

Perceived Goals in Creating and Altering the Exemption

The sales and use tax exemption for tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for use in enhanced recovery of oil or natural gas was created by Senate Bill No. 2318 (2015). The perceived goal of the Legislative Assembly in creating the exemption was to provide a green incentive aimed at encouraging investment in costly carbon dioxide capture and injection systems, reducing carbon dioxide emissions, and increasing oil and gas recovery. The exemption also was viewed as a tool to increase jobs and income tax collections as a result of the construction required to complete systems used to compress, gather, collect, store, transport, or inject carbon dioxide. The only changes to the exemption following its enactment were made in 2019, which expanded the exemption to materials used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage.

Testimony and Committee Considerations

The committee received fiscal data from a representative of the Tax Department regarding the carbon dioxide capture and injection sales and use tax exemption, including the number and dollar amount of exemptions claimed in fiscal years 2019 through 2023. The data indicated the exemption was not claimed in fiscal years 2019, 2020, and 2022. The Tax Department declined to disclose the number of claimants and amount claimed for fiscal years 2021 and 2023, citing a Tax Department policy prohibiting disclosure of exemptions claimed by five or fewer claimants.

The committee received information from a representative from Harvestone Low Carbon Partners, related to the carbon dioxide capture and injection industry and in support of the exemption. The committee was informed Harvestone Low Carbon Partners owns and operates three ethanol biorefineries that buy locally grown corn to convert into clean-burning, American-made renewable fuel and is developing infrastructure projects to capture and permanently sequester carbon dioxide generated in the ethanol production process. The company owns two North Dakota plants--the Blue Flint plant near Underwood and the Dakota Spirit biorefinery near Spiritwood. The Blue Flint plant has been in operation since 2007 and began carbon capture and storage operations in October 2023. The Dakota Spirit biorefinery has been in operation since 2015 and is undergoing advancements for a carbon capture project. The testimony indicated the carbon dioxide capture and injection sales tax exemption was an important component of the overall project economics for the Blue Flint project, and saved the company approximately $1.7 million in sales tax due to the exemption. The investment costs for the Blue Flint project totaled $60 million. The committee was informed the carbon dioxide capture and injection sales tax exemption is important to the advancement of the carbon capture project at Dakota Spirit.

The committee did not receive testimony in support of eliminating or modifying the exemption. The committee did not identify any concerns relating to the exemption or ways in which the exemption could be improved.

Conclusions

The committee makes no recommendation regarding the carbon dioxide capture and injection sales tax exemption.

Recommendation

The committee recommends a bill draft [25.0095.01000] to expand the requirement under Section 57-01-02(17) to require the Tax Commissioner to disclose the amount of a tax incentive, including a credit, deduction, or exemption, claimed or earned by a taxpayer upon receiving a written request from the Chairman of the Legislative Management or the chairman of a standing committee of the Legislative Assembly.

REPORTS RECEIVED BY THE COMMITTEE

Property Tax Increase Report

The committee was assigned the responsibility to receive an annual report from the Tax Department on annual property tax increases pursuant to Section 57-20-04. The report is due by April 1 of each year and must include the annual increase in property taxes levied by each taxing district of the state after adjusting for property that was not taxable in the preceding year and property that is no longer taxable which was taxable in the preceding year. The committee received detailed information regarding the year-to-year change in dollars levied by the top 50 largest counties, cities, and school districts in the state, sorted by taxable value. The 2023 report indicated Pierce County, the City of Mayville, Bowbells School District, and Mapleton City Park District had the highest percentage of growth from 2021 to 2022 within each category, at 11.99, 32.87, 339.36, and 255.83 percent, respectively. The 2024 report indicated Burleigh County, the City of Enderlin, Grand Forks School District, and Lisbon City Park District had the highest percentages of growth from 2022 to 2023 in each category, at 28.93, 27.86, 24.44, and 37.33 percent, respectively.

Renaissance Zone and Tax Increment Financing Reports

The committee was assigned the responsibility to receive an annual report from the Department of Commerce's Division of Community Services on renaissance zone progress, pursuant to Section 40-63-03(2), and a report compiling reports from cities that have renaissance zone property included in a tax increment financing district, pursuant to Section 40-63-03(10). According to the 2022 report on renaissance zone progress, 2,038 projects have been approved and 1,580 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2022 indicated renaissance zones created 11 new businesses, 7 business expansions, and 39 new jobs. The benefits realized by the 45 projects that reached completion in 2022 amounted to $3,322,326 in income tax exemptions and $2,226,657 in property tax exemptions. According to the 2023 report on renaissance zone progress, 2,101 projects have been approved and 1,634 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2023 indicated renaissance zones created 10 new businesses, 9 business expansions, and 63 new jobs. The benefits realized by the 41 projects that reached completion in 2023 amounted to $3,004,825 in income tax exemptions and $5,328,564 in property tax exemptions. Testimony indicated the renaissance zone program is functioning as intended.

Biologic Manufacturing Sales Tax Exemption Report

The committee was assigned the responsibility to receive an annual report from the Tax Department summarizing the information provided by taxpayers that received a sales tax exemption for raw materials, single-use product contact systems, and reagents used for biologic manufacturing, pursuant to Section 57-39.2-04.19. The report was required to include a summary of information received from claimants of the exemption as required by statute, including total sales and use tax liability exempted under Section 57-39.2-04.19, total gross payroll, total property taxes paid and square footage of buildings owned by the taxpayer, total Workforce Safety and Insurance premiums paid, North Dakota unemployment taxes paid, and total state income tax withheld by the taxpayer.

The Tax Department reported the total sales and use tax liability exempted in 2023 was $1,792,476. The total gross payroll, including payroll and taxes paid in multiple states, reported by claimants of the exemption was $89,010,581. The total state income tax withheld, including payroll and taxes paid in multiple states, reported by claimants of the exemption was $2,232,085.

A representative of the Tax Department informed the committee certain elements of data were redacted from the report due to taxpayer confidentiality considerations because of the low number of companies claiming the exemption in 2023. The representative further informed the committee in a situation in which a report would consist of fewer than five taxpayers' information, the Tax Department generally would decline to provide data to ensure confidentiality is protected. The representative explained that aggregating data is a less effective means of protecting confidentiality with a very small data set, and it was necessary to mask certain data points required to be reported under statute because the data points, if unmasked, would make confidential taxpayer information discernable.

Findings and Recommendations on the Study of Property Tax Transparency Report

The committee was assigned the responsibility to receive a report from the Tax Commissioner, State Supervisor of Assessments, and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate regarding their findings and recommendations on a study of property tax transparency as required under House Bill No. 1245 (2023). A representative of the Tax Department provided the report. The committee was informed

the Tax Department regularly evaluates approaches to providing property tax information to members of the public. The Tax Department provides information in the annual property tax statistical report and the biennial publication entitled *State and Local Taxes: An Overview and Comparative Guide*.

The committee was informed the Tax Department and other interested parties are working on potential modifications to the property tax statement to increase transparency and more clearly communicate property tax relief provided to taxpayers. However, the tax software providers used by the counties have varying abilities to accommodate modifications to property tax statements, including limited access to color printing resources. In addition, there is limited space on the property tax statement to include additional information or graphics, such as a pie chart or other visual depiction of property tax information.

The committee was informed representatives of the Tax Department are continuing to discuss with representatives of the Information Technology Department who work with the Geographic Information Systems Hub, representatives of the North Dakota Association of Counties, county auditors, and county tax directors the potential to bring property tax transparency into the digital arena, and develop interactive online tools and resources that would allow taxpayers to see how their tax dollars are spent by the taxing districts in which they live.