



# North Dakota Legislative Council

Prepared for the Taxation Committee  
LC# 25.9075.01000  
August 2023

## PROPERTY TAX EXEMPTION FOR AGRICULTURAL COMMODITY STORAGE STRUCTURES STUDY – BACKGROUND MEMORANDUM

Section 1 of House Bill No. 1247 (2023) ([Appendix A](#)) provides for 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. The study must include 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.

Supporting, opposing, and neutral testimony was provided for the introduced version of the bill. Supporting testimony was provided by a representative of the North Dakota Farm Bureau and a property owner and potato producer. Testimony in support of the introduced version of the bill argued 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. The North Dakota League of Cities provided testimony opposing the introduced version of the bill. 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. Subsequent amendments to the bill created this study, which was passed by both chambers.

### 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.

Section 57-02-08(15)(a) provides:

All property described in this section to the extent herein limited shall be exempt from taxation:

[...]

15. a. All farm structures and improvements located on agricultural lands.
  - (1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
  - (2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display

and sale of grown horticultural or nursery products is not a farm building or improvement.

- (3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in section 19-24.1-01, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes 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.
- (4) The following factors may not be considered in application of the exemption under this subsection:
  - (a) Whether the farmer grows or purchases feed for animals raised on the farm.
  - (b) Whether animals being raised on the farm are owned by the farmer.
  - (c) Whether the farm's replacement animals are produced on the farm.
  - (d) Whether the farmer is engaged in contract feeding of animals on the farm.

The North Dakota Supreme Court stated the legislative intention underscoring this farm structure exemption is to "encourage the construction of buildings and improvements on farms, and to that end classified this particular type of property as exempt from taxation."<sup>1</sup>

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.<sup>2</sup>

### **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. For purposes of calculating property tax, property is classified as either residential, commercial, agricultural, or centrally assessed consistent with the definitions contained in Section 57-02-01. 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.

This requirement is consistent with guidance issued by the Attorney General in 2002 in regard to the application of the farm structure exemption to certain potato warehouses and grain elevators located on former railroad lease sites.<sup>3</sup> The Attorney General opined to receive the agricultural structure exemption under Section 57-02-08(15)(a), the land must be considered "agricultural land" as defined in Section 57-02-01. In reaching this conclusion, the Attorney General reasoned that because the North Dakota Supreme Court determined classification for property taxation purposes must be done under legislative authority, and there are five legislatively created classes of property for the purpose of property taxation, the threshold requirement for application of this exemption is that the property must be located on agricultural land as defined in Section 57-02-01.<sup>4</sup>

"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

<sup>1</sup>Eisenzimmer v. Bell, 75 N.D. 733, 738, 32 N.W.2d 891 (1948).

<sup>2</sup>See *id.*

<sup>3</sup>See 2002 N.D. Op. Att'y Gen. No. L-31; 2002 N.D. Op. Att'y Gen. No. L-70.

<sup>4</sup>See 2002 N.D. Op. Att'y Gen. No. L-31 (citing *Soo Line R. Co. v. State*, 286 N.W.2d 459, 465 (N.D. 1979)).

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.<sup>5</sup>

The 2002 Attorney General opinions are specifically related to the land on which the farm structures at issue were situated. In one opinion, the Attorney General opined a grain elevator located on unplatted railroad land within city limits which is owned by a farmer and used for storage as part of the farm operation is not agricultural property and therefore does not qualify for the agricultural structure or improvement exemption under Section 57-02-08(15).<sup>6</sup> In a separate 2002 opinion, the Attorney General similarly opined property on a railroad lease site privately owned by farmers or farm groups which have potato warehouses located upon them is not agricultural property and therefore does not qualify for the agricultural structure exemption.<sup>7</sup>

The 2002 Attorney General opinions provide guidance for administration of the exemption. As recently as 2021, the Attorney General reiterated in an advisory opinion that the 2002 opinions continue to be the opinion of the Attorney General's office.<sup>8</sup> The guidance provided by the Attorney General is the analysis to be followed unless the question is addressed by the courts directly or the law changes in such a manner that the opinion is no longer valid. The Tax Department also provides guidance 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 ([Appendix B](#)) indicates to be eligible for the exemption, the land must be used for raising agricultural crops or grazing farm animals.

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

Section 57-02-08(15)(a) provides in order 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 provides in pertinent part:

This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.

<sup>5</sup> Section 57-02-08(15)(a)(3).

<sup>6</sup> 2002 N.D. Op. Att'y Gen. No. L-70.

<sup>7</sup> 2002 N.D. Op. Att'y Gen. No. L-31.

<sup>8</sup> 2021 WL 3160275, at \*1 (N.D.A.G. July 21, 2021).

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 or used by a medical marijuana manufacturing facility as defined in Section 19-24.1-01 are not eligible for the exemption.<sup>9</sup>

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 North Dakota Supreme Court has been 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. For example, in *Boehm v. Burleigh County*, the North Dakota Supreme Court considered the question of whether a dwelling, structure, or other building located upon land used primarily for growing, cultivating, raising, and marketing trees, shrubs, flowers, and plants was used or intended for use as part of the farm plant for purposes of the farm structure exemption.<sup>10</sup> In this case, the Court noted the question of what property is used as a "farm plant" is "made rather difficult by the fact that the term 'farm' is inexact. It has been employed by the courts and legislatures many times but not always with the same meaning."<sup>11</sup> In resolving this question, the Court examined dictionary definitions, secondary sources, and case law from other jurisdictions. Related to the definition of "farm" in the context of the Court's analysis of land used primarily for growing, cultivating, raising, and marketing trees, shrubs, flowers, and plants, the Court determined:

The meaning of the words 'farm' or 'farm plant' must, therefore, be construed in their ordinary sense, as no contrary intention appears nor is the term explained by the statute. The definitions set forth above clearly demonstrate to us the ordinary meaning of the word. As ordinarily understood, we believe 'farm,' for tax-exemption purposes, may be defined as a rural tract or plot of ground with buildings and improvements devoted to agricultural purposes and implies the cultivation of the land under natural conditions for the purposes of production or use in aid thereof, and that the term 'agriculture' is sufficiently broad to include 'horticulture.'<sup>12</sup>

The Court ultimately concluded in circumstances "where the land, buildings and improvements, located in a rural area, are used solely for the purpose of growing, cultivating, raising and marketing trees, shrubs, flowers and plants, by the use of plows, cultivators and other farm machinery and equipment, and the work consists of sowing of seed and propagation by grafting, budding and other methods, using knowledge of plant germination, soil content and growing habits of plant life, which are made subject to the same forces of nature as any other product grown in soil without the use of specialized or artificial processes, constitutes a farm plant within the tax exemption statute."<sup>13</sup> The statute was later amended to include language specifically providing that "farm buildings or improvements" include a greenhouse or other building used for specific purposes enumerated in statute.<sup>14</sup>

The Tax Department has interpreted the qualification criteria for the farm structure exemption and has provided taxing districts with specific guidance regarding the exemption. The Tax Department specifically defined a "farm plant" in a published guideline related to the exemption ([Appendix B](#)), which provides in pertinent part:

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.

This guideline is a helpful resource for local taxing districts to aid in understanding the qualification criteria for the farm structure property tax exemption and provides insight regarding the administration of the exemption available under current law.

<sup>9</sup> Section 57-02-08(15)(a)(3).

<sup>10</sup> 130 N.W.2d 170 (N.D. 1964).

<sup>11</sup> *Id.* at 173.

<sup>12</sup> *Id.* at 176.

<sup>13</sup> *Id.*

<sup>14</sup> Section 57-02-08(15)(a)(2).

## RECENT LEGISLATION

### 2019 Legislation

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 ultimately failed to pass.

### 2021 Legislation

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 ultimately 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.

### 2023 Legislation

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 introduced bill 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 ultimately failed to pass.

## SUGGESTED STUDY APPROACH

The committee may wish to proceed with the study by seeking input from various stakeholders, including the Tax Department, representatives of local governing bodies, representatives of farming and ranching industries, and the public regarding the feasibility, desirability, and potential shift in property tax burdens related to providing a property tax exemption for elevators, warehouses, and other farm structures situated on commercial property and owned and used to store agricultural products produced by the owner or an individual related to the owner. The committee also may wish to seek input from local governing bodies related to the impact of abandoned elevators, potato warehouses, and other farm structures classified as commercial property on the political subdivisions in which the structures are located, including the cost of refurbishment or removal.

ATTACH:2