

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2279**

Introduced by

Senators Myrdal, Luick, Weber, Weston

Representatives Grueneich, Monson

1 A BILL for an Act to amend and reenact subsection 15 of section 57-02-08 of the North Dakota
2 Century Code, relating to a property tax exemption for certain potato storage structures; and to
3 provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 15. a. All farm structures and improvements located on agricultural lands.

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

12 (2) "Farm buildings and improvements" includes a greenhouse or other building
13 used primarily for the growing of horticultural or nursery products from seed,
14 cuttings, or roots, if not used on more than an occasional basis for a
15 showroom for the retail sale of horticultural or nursery products. A
16 greenhouse or building used primarily for display and sale of grown
17 horticultural or nursery products is not a farm building or improvement.

18 (3) Any structure or improvement used primarily in connection with a retail or
19 wholesale business other than farming, any structure or improvement,
20 except a potato storage structure as provided in subdivision b. located on
21 platted land within the corporate limits of a city, any structure or
22 improvement used by a manufacturing facility as defined in section
23 19-24.1-01, or any structure or improvement located on railroad operating
24 property subject to assessment under chapter 57-05 is not exempt under

1 this subsection. For purposes of this paragraph, "business other than
2 farming" includes processing to produce a value-added physical or chemical
3 change in an agricultural commodity beyond the ordinary handling of that
4 commodity by a farmer prior to sale.

5 (4) The following factors may not be considered in application of the exemption
6 under this subsection:

7 (a) Whether the farmer grows or purchases feed for animals raised on the
8 farm.

9 (b) Whether animals being raised on the farm are owned by the farmer.

10 (c) Whether the farm's replacement animals are produced on the farm.

11 (d) Whether the farmer is engaged in contract feeding of animals on the
12 farm.

13 b. A potato storage structure that is permanently affixed to commercial property,
14 owned by a farmer, and used exclusively for personal use by the owner, a direct
15 relative of the owner, or another farmer. This exemption only applies to a potato
16 storage structure that was originally constructed on agricultural property. For
17 purposes of this subdivision:

18 (1) "Direct relative" means a spouse, surviving spouse, child, parent, brother,
19 sister, grandparent, great-grandparent, grandchild, great-grandchild, aunt,
20 uncle, niece, nephew, first cousin, or second cousin, whether by blood,
21 adoption, or marriage.

22 (2) "Personal use" means the use of a structure for postharvest storage and
23 preservation of potatoes produced by the owner of the structure, a direct
24 relative of the owner, or a farmer leasing the storage structure associated
25 with rented land. The term does not include the use of a structure to store or
26 preserve potatoes produced by individuals other than the owner of the
27 structure, a direct relative of the owner, or a farmer leasing the storage
28 structure associated with rented land.

29 (3) "Preserve" means the ordinary handling of potatoes prior to sale and does
30 not include processing that results in a value-added physical or chemical
31 change to the potatoes.

1 c. It is the intent of the legislative assembly that this exemption as applied to a
2 residence must be strictly construed and interpreted to exempt only a residence
3 that is situated on a farm and which is occupied or used by a person who is a
4 farmer and that the exemption may not be applied to property which is occupied
5 or used by a person who is not a farmer. For purposes of this subdivision:

6 (1) "Farm" means a single tract or contiguous tracts of agricultural land
7 containing a minimum of ten acres [4.05 hectares] and for which the farmer,
8 actually farming the land or engaged in the raising of livestock or other
9 similar operations normally associated with farming and ranching, has
10 annual gross income from farming activities which is sixty-six percent or
11 more of annual gross income, including gross income of a spouse if
12 married, during any of the two preceding calendar years.

13 (2) "Farmer" means an individual who normally devotes the major portion of
14 time to the activities of producing products of the soil, with the exception of
15 marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming
16 in such products' unmanufactured state and has received annual gross
17 income from farming activities which is sixty-six percent or more of annual
18 gross income, including gross income of a spouse if married, during any of
19 the two preceding calendar years. For purposes of this paragraph, "farmer"
20 includes a:

21 (a) "Beginning farmer", which means an individual who has begun
22 occupancy and operation of a farm within the two preceding calendar
23 years; who normally devotes the major portion of time to the activities
24 of producing products of the soil, poultry, livestock, or dairy farming in
25 such products' unmanufactured state; and who does not have a
26 history of farm income from farm operation for each of the two
27 preceding calendar years.

28 (b) "Retired farmer", which means an individual who is retired because of
29 illness or age and who at the time of retirement owned and occupied
30 as a farmer the residence in which the person lives and for which the
31 exemption is claimed.

- 1 (c) "Surviving spouse of a farmer", which means the surviving spouse of
2 an individual who is deceased, who at the time of death owned and
3 occupied as a farmer the residence in which the surviving spouse
4 lives and for which the exemption is claimed. The exemption under
5 this subparagraph expires at the end of the fifth taxable year after the
6 taxable year of death of an individual who at the time of death was an
7 active farmer. The exemption under this subparagraph applies for as
8 long as the residence is continuously occupied by the surviving
9 spouse of an individual who at the time of death was a retired farmer.
- 10 (3) "Gross income" means gross income as defined under the federal Internal
11 Revenue Code and does not include a gain from the sale or exchange of
12 farm machinery as computed for federal income tax purposes. For purposes
13 of this paragraph, "farm machinery" means all vehicular implements and
14 attachment units designed and sold for direct use in planting, cultivating, or
15 harvesting farm products or used in connection with the production of
16 agricultural produce or products, livestock, or poultry on farms, which are
17 operated, drawn, or propelled by motor or animal power. "Farm machinery"
18 does not include vehicular implements operated wholly by hand or a motor
19 vehicle that is required to be registered under chapter 57-40.3.
- 20 (4) "Gross income from farming activities" means gross income from farming as
21 defined for purposes of determining if an individual is a farmer eligible to use
22 the special estimated income tax payment rules for farmers under section
23 6654 of the federal Internal Revenue Code [26 U.S.C. 6654].
- 24 (5) When exemption is claimed under this subdivision for a residence, the
25 occupant of the residence who it is claimed is a farmer shall provide to the
26 assessor for the year or years specified by the assessor a written statement
27 in which it is stated that sixty-six percent or more of the gross income of that
28 occupant, and spouse if married and both spouses occupy the residence,
29 was, or was not, gross income from farming activities. The individual
30 claiming the exemption also shall provide to the assessor, on a form
31 prescribed by the tax commissioner, the necessary income information to

1 demonstrate eligibility. Any income information provided to the assessor
2 regarding eligibility for an exemption claimed under this subdivision is a
3 confidential record.

4 (6) For purposes of this subsection, "livestock" includes "nontraditional
5 livestock" as defined in section 36-01-00.1.

6 (7) A farmer operating a bed and breakfast facility in the farm residence
7 occupied by that farmer is entitled to the exemption under this section for
8 that residence if the farmer and the residence would qualify for exemption
9 under this section except for the use of the residence as a bed and
10 breakfast facility.

11 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
12 December 31, 2022.