FORESTRY STEWARDSHIP TAX STUDY

The forestry stewardship tax provisions in North Dakota Century Code Chapter 57-57 were enacted in 1967. At the time of enactment the provisions were called the native woodland tax, because the application was limited to areas of land normally supporting a growth of natural forest cover. The law allowed the owner of a tract of native woodland 10 acres or larger in size to apply to the State Forester to place the tract under the woodland tax. The law required the State Forester to examine the land and enter an order approving the application upon a finding that the native woodland will produce a forest cover. Upon acceptance into the program, the property was to be subjected to a property tax "computed at a rate determined to be equitable by the county commissioners and the State Forester . . ."

In 1973 the law was revised and chapter reference was changed from the native woodland tax to the woodland tax, because the tax benefit was extended to include planted forest cover. Under the 1973 changes, eligibility was provided for natural forest cover 10 acres or larger in size, planted forest cover 5 acres or larger in size and not less than 60 feet wide, or a combination of natural and planted forest cover 10 acres or larger in size.

In 1991 legislation changed the name of the woodland tax to the forestry stewardship tax. An amendment provided that the forestry stewardship tax would apply in any county in which the board of county commissioners has approved by resolution the application of the forestry stewardship tax to all qualifying property in the county. Filing of applications for forestry stewardship tax treatment was changed to be made to the board of county commissioners. If the board has approved application of the chapter in the county, the board is required to forward applications to the State Forester for review of whether the property qualifies. The 1991 legislation changed the tax rate for qualifying property from a rate determined to be equitable by the board of county commissioners and the State Forester to a flat rate of 50 cents per acre.

EVOLUTION OF AGRICULTURAL PROPERTY ASSESSMENTS

Since 1991, detailed soil surveys have been completed for all counties in North Dakota. Statutory provisions have been added to require that in determining relative value of agricultural property parcels, the local assessor shall apply soil type and soil classification data from detailed or general soil surveys, which may be adjusted based on a schedule of modifiers within the county as approved by the State Supervisor of Assessments. It is likely that under prior law, local assessors assigned a relatively low value to forest-covered lands in recognition of diminished productive capacity.

In recent tax years, owners of forest acreage have been surprised by very substantial increases in property tax applied to those lands. Upon exploring the reasons, owners found that the reason behind these increases is the application of assessment based on soil survey information. Assessments for these properties have increased substantially because the soil underlying much of this forested acreage is very high quality soil. A partial solution could have been provided through modifiers to reduce valuation of forested acreage, but it appears some counties did not foresee the potential for substantial assessment increases and did not have modifiers in place.

2013 SENATE BILL NO. 2279

Senate Bill No. 2279 (2013) was introduced to revive the original purpose of the forestry stewardship tax to encourage retention of forested acreage in the state. In counties in which the board of county commissioners had approved application of the forestry stewardship tax, the tax rate of 50 cents per acre continues to apply. However, in counties that had not approved application of the forestry stewardship tax, property taxes on forested acreage were increasing dramatically and causing concern that forested acreage would be lost if owners found they could not afford to maintain the forest cover and pay higher taxes.

As introduced, Senate Bill No. 2279 would have eliminated the requirement for board of county commissioners approval by resolution of the application of the chapter to all qualifying property in the county. The bill would have allowed the county to approve applications on a case-by-case basis for qualifying forest property, with the same size requirements for natural and planted forest cover as in current law. This bill would have grandfathered in the tax treatment for any property that was already receiving the forestry stewardship tax treatment on December 31, 2012. The bill provided that property approved for forestry stewardship tax treatment would be classified as agricultural property for all purposes but must be excluded from calculation of agricultural value for the county under the agricultural property productivity valuation formula. The bill would have removed the set tax rate of 50 cents per acre and substituted agricultural property valuation for forestry stewardship properties based on a true and full value of 50 percent of county average agricultural value per acre for noncropland.

At the initial committee hearing on the bill, the State Forester provided testimony expressing support for the intent of the legislation to make the program available statewide but raising questions about how the amendments would impact real estate taxes for the 658 landowners already enrolled in the forestry stewardship tax program in the eight counties (Benson, Cavalier, Grand Forks, Nelson, Pembina, Ramsey, Walsh, and Wells) that have already approved application of the law to all qualifying forest lands in those counties. He said there are currently 42,140 acres of forest lands enrolled in the program. He said the changes in the bill as introduced would have a very positive benefit for new landowners applying for the program but there may be unintended consequences for the landowners already enrolled. He said the changes in the bill would increase the 50 cents per acre tax enrolled landowners pay by 100 to 150 percent per acre.

During committee discussion of the bill, concern was expressed about the low participation rate, even in participating counties, among landowners who might be eligible for forestry stewardship tax treatment. It was suggested that improved outreach efforts are needed to make property owners and county commissioners aware of the program.

A representative of the Game and Fish Department expressed the department's support for efforts to encourage retention of forest lands. The department offers a private forest conservation program and became aware of this issue when Roulette County residents informed the department that future participation in the program is in jeopardy if the property is taxed at cropland value, which could force several landowners to clear forested land to put it into agricultural production.

Testimony provided by a representative of the North Dakota Association of Counties expressed support for revisions to the forestry stewardship tax to encourage preservation of forested lands. The committee was informed that in Steele County, where substantial increases in taxes caused concerns, modifiers have been implemented but the maximum modifier for trees is a 35 percent reduction in the agricultural value of the property, which still is a substantial amount higher than the 50 cents per acre available under the forestry stewardship tax program.

The State Supervisor of Assessments suggested language be added to the forestry stewardship tax to provide that eligible properties would be subject to equalization and abatement in the same manner as other property taxes.

During committee discussion it was suggested that the tax rate be reduced to 30 percent of the noncropland average agricultural value for the county. The current 50 cents per acre tax was said to be in a range of 24 to 27 percent of noncropland value, and 30 percent would be an increase but not nearly as substantial as applying full soil classification values.

The Senate Finance and Taxation Committee discussion revealed a lack of information needed to make appropriate adjustments to the forestry stewardship tax without potentially serious unintended consequences. The committee ultimately amended the bill into the study resolution under consideration this interim.