



Property Tax Newsletter

News and developments

A publication of the Property Tax Division

Cory Fong
Tax Commissioner

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2009 Legislature Begins

The capitol is buzzing with legislators, lobbyists, government officials, employees, and other interested persons - all concerned with legislation that will or will not meet their needs.

It is important to participate in the legislative process. One can do that by following the bills pertaining to property taxation. The North Dakota Legislative Council is the central office for the legislative session and is a source of information. The Office of State Tax Commissioner tracks legislation pertaining to all tax types and will notify assessment officials of important issues. The newspapers publish information regarding hearing schedules. Organizations such as the North Dakota Association of Counties, North Dakota League of Cities, North Dakota Township Officers Association and the North Dakota Association of Assessing Officers follow issues pertaining to their interests.

For property tax issues that you and your governing board consider worthy of new legislation, please contact your local representatives or personnel in the Property Tax Division. January 19 was the deadline for representatives to introduce bills. January 26 is the deadline for senators to introduce bills. As concerned citizens, it is important to voice your opinions to your area legislators and those who are on the Finance and Taxation Committee or other legislative committees. As governmental officials, it is important to provide information that affects the application of the proposed legislation. Anyone can testify at the committee hearings. It is important to provide accurate information and make positive suggestions to the committees.

Information regarding bill status and legislative hearings for the 2009 Legislature is available on the Web site for the North Dakota Legislative Council. Go to www.legis.nd.gov. Individuals who have concerns regarding proposed property tax legislation may also contact the Property Tax Division of the Office of State Tax Commissioner. 

Inside this issue:

- 2009 Legislature Begins..... 1
- Assessment of Wind Turbine Electric Generators..... 1
- Exemption Status of Farm Residence Vacated by Farmer's Widow..... 2
- Homestead Credit Not Available To Daughter When Mother Retains Life Estate interest in Property..... 2
- Section 6 of Assessor's Manual Won't Be Updated 2
- Federal Stimulus Payments Not Considered Income For Homestead Credit Purposes 3
- Twelve Month Period in Which Assessors Must Become Certified ... 3
- Directives From the State Board of Equalization..... 4
- Notice of Increase Requirements..... 4

Assessment of Wind Turbine Electric Generators

A wind turbine electric generation unit with a nameplate capacity of 100 kilowatts or more is subject to assessment by the State Board of Equalization. The leased land on which the unit is located remains locally assessable to the landowner. The use of that land determines how it should be classified.

Property must be used for raising agricultural crops or grazing farm animals to be classified as agricultural property (N.D.C.C. § 57-02-01(1)). The amount of land leased for a wind generator site that is not available for raising crops or grazing animals should be classified as commercial land. However, if part of the leased land remains available for raising crops or grazing animals, that part of the leased land is still agricultural land. For example: two acres are leased as a site for a wind generator but only



Office of
State Tax Commissioner
600 E Blvd. Ave., Dept. 127
Bismarck ND 58505-0599
701.328.3143
www.nd.gov/tax
taxinfo@nd.gov
www.nd.gov

one-half acre is actually taken out of production. The one-half acre should be assessed as commercial property and the other one and one-half acres remain agricultural classification.

The Property Tax Division asks that you notify us of any wind generation units constructed in your jurisdiction. Please provide the location of each wind generation unit and name and address of the owner. Your cooperation will help make sure all assessable properties are assessed.

Reclassification of property from agricultural to commercial should occur for the tax year following change of use of the property. The same applies to any required reclassification of real property. 

Exemption Status of Farm Residence Vacated by Farmer's Widow

The Property Tax Division responded to a question regarding a situation in which a farmer's widow qualified for the farm residence exemption as a retired farmer because she participated in farming activities along with her husband prior to his death. At some point, the widow moved out of the residence into an assisted living facility. If the residence remained vacant, the residence could qualify as a vacant farm residence. The widow's granddaughter and her husband moved into the residence and neither one qualifies for the farm residence exemption. The argument to the local assessment authority was that the widow intended to return to the farm.

It is the position of the North Dakota State Tax Commissioner's Office that there is no statutory provision for holding the farm residence as exempt if the residence is awaiting the occupant's return, like there is for homestead credit applications. Whenever a non-farmer occupies a rural residence, it is taxable unless a qualifying farmer also occupies the residence.

It is also the position of the North Dakota State Tax Commissioner's Office that even if the widow moves back to the residence in the future, she cannot regain the farm residence exemption unless she qualifies as a beginning farmer. 

Homestead Credit Not Available to Daughter When Mother Retains Life Estate Interest in Property

A woman does not qualify for the homeowner's property tax credit according to N.D.C.C. § 57-02-08.1 because her income exceeds the allowable limit. She lives with her daughter who is 52 years old and confined to a wheelchair. The mother deeded the property to her daughter and reserved a life estate in the property. The Office of State Tax Commissioner was asked whether the daughter could qualify for the wheelchair exemption according to N.D.C.C. § 57-02-08(20)(c) as owner when the mother retains life estate interest.

A retained life estate in property means that the grantor retains the right to possession, use and income, if any, of the deeded property. The grantee only receives a bare legal title for the life of the grantor. The individual who holds the retained life estate is entitled to the benefits and obligations that go with the property. Therefore, it is the position of the Office of North Dakota State Tax Commissioner that the grantee (the daughter) is not entitled to the benefit of exemption according to N.D.C.C. § 57-02-08(20)(c) as long as the grantor (the mother) retains the life estate. 

Section 6 of Assessor's Manual Won't be Updated

Section 6 of the Assessor's Manual contains cost and depreciation information for residential and commercial property. Section 6 was last updated in October 2005. The Office of ND State Tax Commissioner does not plan to update the section.

A retained life estate in property means that the grantor retains the right to possession, use and income, if any, of the deeded property.

Assessment officials who intend to use those cost and depreciation schedules in Section 6 of the Assessor's Manual need to update the tables to reflect current market conditions. As an alternative, assessment officials may purchase cost manuals from other sources. Marshall Swift Cost Services and Vanguard Appraisals, Inc. both offer cost manuals. There is a fee for those cost manuals.

The Property Tax Division of the Tax Commissioner's Office would like to obtain a list of available resources for cost services. We ask assessment officials who use other cost services to please notify LuElla Dahme of the name and contact information for their service provider. Any assessment official looking for a cost provider may obtain a copy of the list from this office. 

Federal Stimulus Payments Not Considered Income For Homestead Credit Purposes

In 2008, the federal government issued checks to Americans as part of its economic stimulus program.

For federal and North Dakota State income tax purposes, those payments are not considered taxable income. Therefore, the Office of North Dakota State Tax Commissioner takes the position that income received from the federal stimulus payments is not considered income for purposes of homestead credit applications. 

Twelve Month Period in Which Assessors Must Become Certified

North Dakota Century Code 11-10.1-05(2) provides that assessors of townships and cities with less than 5,000 population cannot serve more than 12 months without being certified by the state supervisor of assessments as township/class II city assessors.

City assessors are appointed to their office. Their terms begin on July 1 following the date of their appointment unless provided otherwise by ordinance. Township assessors may be elected or appointed at the annual meeting in March. The term for township assessors begins on the first day of January following their election or appointment.

County directors of tax equalization are responsible for monitoring assessor certification within their counties. Therefore, they need to know the date on which assessors begin serving their terms. Township assessors appointed at the March 2008 annual meeting begin their terms on January 1, 2009, and have until December 31, 2009, to become certified by the state supervisor of assessments. Individuals appointed in September 2007 as assessors of cities with less than 5,000 population began their terms on July 1, 2008, unless specified otherwise by ordinance. Those individuals would have until June 30th, 2009, to become certified by the state supervisor of assessments. Governing boards also need to be aware of the certification requirements and the time allowed by statute to meet the requirements.

Individuals appointed as assessors of cities with more than 5,000 are allowed three years in which to become certified by the state supervisor of assessments. Their terms begin on July 1 following the date on which their appointment becomes effective unless otherwise provided by ordinance.

Whenever an individual serving as assessor is not certified by the state supervisor of assessments, the assessments of the jurisdiction for that year must be reviewed and approved by either a certified county director of tax equalization or a certified class I city assessor. The cost of the assessment review must be paid by the jurisdiction needing the review. 

Assessment officials who intend to use those cost and depreciation schedules in Section 6 of the Assessor's Manual need to update the tables to reflect current market conditions.

Directives From the State Board of Equalization

The North Dakota State Board of Equalization has the authority and responsibility to equalize assessments of property within assessment districts of the same county and between the different counties of the state.

In August each year, the State Board of Equalization (Board) hears appeals by individual property owners and reviews assessment statistics pertaining to the current year assessments. The Board finalizes action on the assessments usually in September and the Tax Commissioner, as secretary of the Board, certifies the Board's findings to the county auditor of each county. North Dakota Century Code § 57-13-08 specifies that "upon receipt of the report of the proceedings of the state board of equalization, the county auditor shall (emphasis added) add to or deduct from each tract or lot of real property in the auditor's county the required percentage of the valuation thereof . . ." The word "shall" in the statute means must. The county auditor must make the indicated changes directed by the State Board of Equalization. It is not necessary for the governing board of a city or county to consider the action. 

Notice of Increase Requirements

North Dakota Century Code § 57-12-09 requires assessors to provide property owners with a notice of increase in assessment whenever the assessor increases the true and full value of a property by more than 10 percent over than the last assessment.

The assessor has three options for delivering the notice. The assessor may physically hand deliver the notice to the property owner, mail the notice to the property owner's last-known address, or the assessor may email the notice to the property owner provided the owner has consented to receive email notification and provides verification of receipt. Delivery of the notice to the property owner by the assessor must be completed at least 15 days prior to the meeting date of the local board of equalization. Completion of delivery is indicated by hand delivering the notice to the property owner, by placing the notice in the mail and having it postmarked on that day, or by receiving email verification from the property owner that the message was received.

There is often confusion about the notification requirements whenever a local board of equalization (township or city) or the county board of equalization must notify an individual property owner of its intent to increase the assessment of an assessment parcel. In order for the equalization board (township, city or county) to increase an assessment, the board must first hold a meeting to consider the action. There is no statutory authority for a county director of tax equalization to send a notice of increase to an individual prior to the meeting date of the county board of equalization unless the county director also serves as assessor for a jurisdiction that has no local board of equalization. The county board of equalization must direct the county auditor to notify a property owner of its intention to increase an individual assessment. The board would then recess the equalization meeting to allow time for delivery of the notice. The county board of equalization would reconvene the meeting to take action on the issues. 

Delivery of the notice to the property owner by the assessor must be completed at least 15 days prior to the meeting date of the local board of equalization.

Electronic Newsletter

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