

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1456

Introduced by

Representatives Vig, Belter, S. Kelsh

Senators Mathern, Wardner

1 A BILL for an Act to amend and reenact subsections 6 and 7 of section 57-38-01.8 of the North
2 Dakota Century Code, relating to transfer of a wind energy device installation income tax credit;
3 and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsections 6 and 7 of section 57-38-01.8 of the North
6 Dakota Century Code are amended and reenacted as follows:

7 6. The credit allowed under this section may not exceed the liability for tax of any
8 taxpayer claiming the credit under this chapter. If the amount of credit determined
9 under this section exceeds the liability for tax of the taxpayer claiming the credit
10 under this chapter, the excess may be used as a credit carryover to each of the
11 five succeeding taxable years.

12 7. All or part of the unused credit allowed under this section may be sold, assigned, or
13 otherwise transferred by the taxpayer to ~~the purchaser of the power generated by~~
14 ~~the device as part of the consideration in a power purchase agreement, or to any~~
15 North Dakota taxpayer ~~that constructs or expands an electricity transmission line in~~
16 ~~North Dakota after August 1, 2007.~~ The taxpayer receiving the assignment of the
17 credit is entitled to claim the credit against that taxpayer's tax liability under this
18 chapter beginning with the tax year in which the ~~power purchase agreement or the~~
19 ~~tax credit purchase agreement was fully executed by the parties and the~~
20 ~~geothermal, solar, or wind energy device is installed. If the credit is transferred to~~
21 ~~an entity that constructs or expands transmission lines, the amount of credit~~
22 ~~claimed by that entity in any taxable year may not exceed the actual cost of~~
23 ~~acquisition and installation of the transmission lines constructed in North Dakota for~~
24 ~~that taxable year~~ assigned credit was earned.

- 1 a. ~~A purchaser of the tax credit must claim the credit beginning with the tax year~~
2 ~~in which the purchase agreement is fully executed by the parties and the~~
3 ~~geothermal, solar, or wind energy device is installed.~~ A purchaser of a tax
4 credit under this section has only the right to claim and use the credit under
5 the terms that would have applied to the tax credit transferor, except that in
6 the case of a credit that is sold, assigned, or otherwise transferred by the
7 taxpayer to the tax credit transferor, the credit allowed under this section may
8 not exceed sixty percent of the liability for tax of the tax credit purchaser under
9 this chapter. This subsection does not limit the ability of the tax credit
10 purchaser to reduce the tax liability of the purchaser, regardless of the actual
11 tax liability of the tax credit transferor.
- 12 b. The tax credit transferor may sell the credit to only one tax credit purchaser
13 each taxable year. The tax credit purchaser may not sell, assign, or otherwise
14 transfer the credit purchased under the purchase agreement.
- 15 c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit
16 under this subsection, the tax credit transferor and the tax credit purchaser
17 shall file jointly with the tax commissioner a copy of the purchase agreement
18 affecting the tax credit transfer and a statement containing the name, address,
19 and taxpayer identification number of any party to the transfer; the total
20 installed cost of the qualifying geothermal, solar, or wind energy device; the
21 amount of the credit being transferred; the gross proceeds received by the
22 transferor; and the tax year for which the credit may be claimed. The
23 purchase agreement must state clearly the purchase price associated with the
24 tax credit sold. The taxpayer and the purchaser also shall file a document
25 allowing the tax commissioner to disclose tax information to either party for
26 the purpose of verifying the correctness of the transferred tax credit. The
27 purchase agreement, supporting statement, and confidentiality waiver must
28 be filed within thirty days after the date the purchase agreement is fully
29 executed. The tax commissioner may audit the returns and assess or issue
30 refunds, notwithstanding any other time limitation prescribed under law which
31 may have expired for the purchaser.

- 1 d. If the amount of the credit available under this section is changed as a result
2 of an amended return filed by the transferor or as the result of an audit
3 conducted by the internal revenue service or the tax commissioner, the
4 transferor shall report to the purchaser the adjusted credit amount within thirty
5 days of the amended return or within thirty days of the final determination
6 made by the internal revenue service or the tax commissioner. The tax credit
7 purchaser shall file amended returns reporting the additional tax due or
8 claiming a refund as provided in section 57-38-38 or 57-38-40.
- 9 e. The total amount of credits that can be sold by all taxpayers is limited to three
10 million dollars each biennium. This limit applies on the basis of the date of
11 installation of the geothermal, solar, or wind energy device.
- 12 f. Gross proceeds received under the purchase agreement by the tax credit
13 transferor for the sale, assignment, or transfer of the tax credit must be
14 allocated to North Dakota. The amount assigned under this subsection may
15 not be reduced by the taxpayer's income apportioned to North Dakota or any
16 North Dakota net operating loss of the taxpayer.
- 17 g. Within four years after the date of the credit assignment, the tax commissioner
18 may audit the returns of the credit transferor and the purchaser to verify the
19 correctness of the amount of the transferred credit and, if necessary, assess
20 the credit purchaser if additional tax is found due. This subdivision does not
21 limit or restrict any other time period prescribed in this chapter for the
22 assessment of tax.
- 23 h. The tax commissioner may adopt rules to permit verification of the validity,
24 timeliness, and limitations on the sale of the tax credit transferred under this
25 section.

26 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
27 December 31, 2008.