

January 31, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1233

Page 1, line 1, remove "subsection 1 of section 57-33-04 and"

Page 1, remove lines 5 through 19

Page 3, line 14, after the first "the" insert "unused", after "be" insert "sold,", and after "assigned" insert ", or otherwise transferred by the taxpayer to the tax credit transferor"

Page 3, line 15, after "purchaser" insert "of the power generated by the device" and after "agreement" insert ", or to any North Dakota taxpayer engaged in the sale of electricity at retail to customers or members,"

Page 3, line 17, replace "or subsection 1 of section 57-33-04" with "beginning with the tax year in which the power purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed"

Page 3, after line 17, insert:

- "a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- b. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.
- c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. If the tax credit is sold, assigned, or transferred via a power purchase agreement, the power purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law may have expired for the purchaser.

- d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.
- e. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- f. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- g. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit."

Renumber accordingly