

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1233

Introduced by

Representatives Brandenburg, Charging, S. Kelsh, Monson

Senators Erbele, Wanzek

1 A BILL for an Act to amend and reenact section 57-38-01.8 of the North Dakota Century Code,
2 relating to assignment of a wind energy device installation tax credit as part of a power
3 purchase agreement; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy**
8 **devices.**

- 9 1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of
10 this chapter may claim a credit for the cost of a geothermal, solar, or wind energy
11 device installed before January 1, 2011, in a building or on property owned or
12 leased by the taxpayer in North Dakota. The credit provided in this section for a
13 device installed before January 1, 2001, must be in an amount equal to five
14 percent per year for three years, and for a device installed after December 31,
15 2000, must be in an amount equal to three percent per year for five years of the
16 actual cost of acquisition and installation of the geothermal, solar, or wind energy
17 device and must be subtracted from any income tax liability of the taxpayer as
18 determined pursuant to the provisions of this chapter.
- 19 2. For the purposes of this section:
- 20 a. "Geothermal energy device" means a system or mechanism or series of
21 mechanisms designed to provide heating or cooling or to produce electrical or
22 mechanical power, or any combination of these, by a method which extracts
23 or converts the energy naturally occurring beneath the earth's surface in rock
24 structures, water, or steam.

- 1 b. "Solar or wind energy device" means a system or mechanism or series of
2 mechanisms designed to provide heating or cooling or to produce electrical or
3 mechanical power, or any combination of these, or to store any of these, by a
4 method which converts the natural energy of the sun or wind.
- 5 3. If a geothermal, solar, or wind energy device is a part of a system which uses other
6 means of energy, only that portion of the total system directly attributable to the
7 cost of the geothermal, solar, or wind energy device may be included in
8 determining the amount of the credit. The costs of installation may not include
9 costs of redesigning, remodeling, or otherwise altering the structure of a building in
10 which a geothermal, solar, or wind energy device is installed.
- 11 4. A partnership, subchapter S corporation, limited partnership, limited liability
12 company, or any other passthrough entity that installs a geothermal, solar, or wind
13 energy device in a building or on property owned or leased by the passthrough
14 entity must be considered to be the taxpayer for purposes of this section, and the
15 amount of the credit allowed with respect to the entity's investments must be
16 determined at the passthrough entity level. The amount of the total credit
17 determined at the entity level must be passed through to the partners,
18 shareholders, or members in proportion to their respective interests in the
19 passthrough entity.
- 20 5. If a taxpayer entitled to the credit provided by this section is a member of a group
21 of corporations filing a North Dakota consolidated tax return using the combined
22 reporting method, the credit may be claimed against the aggregate North Dakota
23 tax liability of all of the corporations included in the North Dakota consolidated
24 return.
- 25 6. The credit allowed under this section may not exceed the liability for tax under this
26 chapter. If the amount of credit determined under this section exceeds the liability
27 for tax under this chapter, the excess may be used as a credit carryover to each of
28 the five succeeding taxable years.
- 29 7. All or part of the unused credit allowed under this section may be sold, assigned,
30 or otherwise transferred by the taxpayer to the tax credit transferor to the
31 purchaser of the power generated by the device as part of the consideration in a

1 power purchase agreement, or to any North Dakota taxpayer engaged in the sale
2 of electricity at retail to customers or members, and the taxpayer receiving the
3 assignment of the credit is entitled to claim the credit against that taxpayer's tax
4 liability under this chapter beginning with the tax year in which the power purchase
5 agreement was fully executed by the parties and the geothermal, solar, or wind
6 energy device is installed.

7 a. A purchaser of the tax credit must claim the credit beginning with the tax year
8 in which the purchase agreement is fully executed by the parties and the
9 geothermal, solar, or wind energy device is installed. A purchaser of a tax
10 credit under this section has only the right to claim and use the credit under
11 the terms that would have applied to the tax credit transferor. This subsection
12 does not limit the ability of the tax credit purchaser to reduce the tax liability of
13 the purchaser, regardless of the actual tax liability of the tax credit transferor.

14 b. The original purchaser of the tax credit may not sell, assign, or otherwise
15 transfer the credit purchased under the purchase agreement.

16 c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit
17 under this subsection, the tax credit transferor and the tax credit purchaser
18 shall file jointly with the tax commissioner a copy of the purchase agreement
19 affecting the tax credit transfer and a statement containing the name,
20 address, and taxpayer identification number of any party to the transfer; the
21 total installed cost of the qualifying geothermal, solar, or wind energy device;
22 the amount of the credit being transferred; the gross proceeds received by the
23 transferor; and the tax year for which the credit may be claimed. If the tax
24 credit is sold, assigned, or transferred via a power purchase agreement, the
25 power purchase agreement must state clearly the purchase price associated
26 with the tax credit sold. The taxpayer and the purchaser also shall file a
27 document allowing the tax commissioner to disclose tax information to either
28 party for the purpose of verifying the correctness of the transferred tax credit.
29 The purchase agreement, supporting statement, and confidentiality waiver
30 must be filed within thirty days after the date the purchase agreement is fully
31 executed. The tax commissioner may audit the returns and assess or issue

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

24 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
25 December 31, 2006.