

Sixty-first  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2033

Introduced by

Legislative Council

(Energy Development and Transmission Committee)

1 A BILL for an Act to amend and reenact section 57-38-01.8 of the North Dakota Century Code,  
2 relating to an income tax credit for installation of geothermal, solar, wind, or biomass energy  
3 devices; 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, wind, or**  
8 **biomass energy 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, wind, or  
11 biomass energy device installed before January 1, ~~2014~~ 2015, in a building or on  
12 property owned or leased by the taxpayer in North Dakota. The credit provided in  
13 this section for a device installed before January 1, 2001, must be in an amount  
14 equal to five percent per year for three years, and for a device installed after  
15 December 31, 2000, must be in an amount equal to three percent per year for five  
16 years of the actual cost of acquisition and installation of the geothermal, solar,  
17 wind, or biomass energy device and must be subtracted from any income tax  
18 liability of the taxpayer as determined pursuant to the provisions of this chapter.
- 19 2. For the purposes of this section:
- 20 a. "Biomass energy device" means a system using agricultural crops, wastes, or  
21 residues; wood or wood wastes or residues; animal wastes; landfill gas; or  
22 other biological sources to produce fuel or electricity.
- 23 b. "Geothermal energy device" means a system or mechanism or series of  
24 mechanisms designed to provide heating or cooling or to produce electrical or

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

1                   the liability for tax under this chapter, the excess may be used as a credit  
2                   carryover to each of the five succeeding taxable years.

3                   b. Any excess tax credits earned for wind energy devices installed after  
4                   September 30, 2008, and before August 1, 2011, may be used as a credit  
5                   carryover to each of the twenty succeeding taxable years.

6                   c. For any tax credits for geothermal, solar, or biomass energy devices installed  
7                   after September 30, 2008, and wind energy devices installed after July 31,  
8                   2011, the excess may be used as a credit carryover to each of the ten  
9                   succeeding taxable years.

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

23               ~~a. A purchaser of the tax credit must claim the credit beginning with the tax year~~  
24               ~~in which the purchase agreement is fully executed by the parties and the~~  
25               ~~geothermal, solar, or wind energy device is installed. A purchaser of a tax~~  
26               ~~credit under this section has only the right to claim and use the credit under~~  
27               ~~the terms that would have applied to the tax credit transferor, except that in~~  
28               ~~the case of a credit that is sold, assigned, or otherwise transferred by the~~  
29               ~~taxpayer to the tax credit transferor, the credit allowed under this section may~~  
30               ~~not exceed sixty percent of the liability for tax of the tax credit purchaser~~  
31               ~~under this chapter. This subsection does not limit the ability of the tax credit~~

- 1                   purchaser to reduce the tax liability of the purchaser, regardless of the actual  
2                   tax liability of the tax credit transferor.
- 3                   b. ~~The tax credit transferor may sell the credit to only one tax credit purchaser~~  
4                   ~~each taxable year. The tax credit purchaser may not sell, assign, or~~  
5                   ~~otherwise transfer the credit purchased under the purchase agreement.~~
- 6                   e. ~~If the taxpayer elects to sell, assign, or otherwise transfer an excess credit~~  
7                   ~~under this subsection, the tax credit transferor and the tax credit purchaser~~  
8                   ~~shall file jointly with the tax commissioner a copy of the purchase agreement~~  
9                   ~~affecting the tax credit transfer and a statement containing the name,~~  
10                   ~~address, and taxpayer identification number of any party to the transfer; the~~  
11                   ~~total installed cost of the qualifying geothermal, solar, or wind energy device;~~  
12                   ~~the amount of the credit being transferred; the gross proceeds received by the~~  
13                   ~~transferor; and the tax year for which the credit may be claimed. The~~  
14                   ~~purchase agreement must state clearly the purchase price associated with~~  
15                   ~~the tax credit sold. The taxpayer and the purchaser also shall file a document~~  
16                   ~~allowing the tax commissioner to disclose tax information to either party for~~  
17                   ~~the purpose of verifying the correctness of the transferred tax credit. The~~  
18                   ~~purchase agreement, supporting statement, and confidentiality waiver must~~  
19                   ~~be filed within thirty days after the date the purchase agreement is fully~~  
20                   ~~executed. The tax commissioner may audit the returns and assess or issue~~  
21                   ~~refunds, notwithstanding any other time limitation prescribed under law which~~  
22                   ~~may have expired for the purchaser.~~
- 23                   d. ~~If the amount of the credit available under this section is changed as a result~~  
24                   ~~of an amended return filed by the transferor or as the result of an audit~~  
25                   ~~conducted by the internal revenue service or the tax commissioner, the~~  
26                   ~~transferor shall report to the purchaser the adjusted credit amount within thirty~~  
27                   ~~days of the amended return or within thirty days of the final determination~~  
28                   ~~made by the internal revenue service or the tax commissioner. The tax credit~~  
29                   ~~purchaser shall file amended returns reporting the additional tax due or~~  
30                   ~~claiming a refund as provided in section 57-38-38 or 57-38-40.~~

- 1           e. ~~The total amount of credits that can be sold by all taxpayers is limited to three~~  
2           ~~million dollars each biennium. This limit applies on the basis of the date of~~  
3           ~~installation of the geothermal, solar, or wind energy device.~~
- 4           f. ~~Gross proceeds received under the purchase agreement by the tax credit~~  
5           ~~transferor for the sale, assignment, or transfer of the tax credit must be~~  
6           ~~allocated to North Dakota. The amount assigned under this subsection may~~  
7           ~~not be reduced by the taxpayer's income apportioned to North Dakota or any~~  
8           ~~North Dakota net operating loss of the taxpayer.~~
- 9           g. ~~Within four years after the date of the credit assignment, the tax~~  
10           ~~commissioner may audit the returns of the credit transferor and the purchaser~~  
11           ~~to verify the correctness of the amount of the transferred credit and, if~~  
12           ~~necessary, assess the credit purchaser if additional tax is found due. This~~  
13           ~~subdivision does not limit or restrict any other time period prescribed in this~~  
14           ~~chapter for the assessment of tax.~~
- 15           h. ~~The tax commissioner may adopt rules to permit verification of the validity,~~  
16           ~~timeliness, and limitations on the sale of the tax credit transferred under this~~  
17           ~~section.~~
- 18           &. For geothermal, solar, wind, or biomass energy devices installed after  
19           December 31, 2006, if ownership of a device is transferred at the time installation  
20           is complete and the device is fully operational, the purchaser of the device is  
21           eligible for the tax credit under this section. Subsequent purchasers of the device  
22           are not eligible for the tax credit.

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