

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Department of Commerce)

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

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

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

7 1. Any taxpayer filing a North Dakota income tax return pursuant to the
8 provisions of this chapter may claim a credit for the cost of a geothermal,
9 solar, wind, or biomass energy device installed before January 1, ~~2014~~ 2015,
10 in a building or on property owned or leased by the taxpayer in North Dakota.
11 The credit provided in this section for a device installed before January 1,
12 2001, must be in an amount equal to five percent per year for three years,
13 and for a device installed after December 31, 2000, must be in an amount
14 equal to three percent per year for five years of the actual cost of acquisition
15 and installation of the geothermal, solar, wind, or biomass energy device and
16 must be subtracted from any income tax liability of the taxpayer as
17 determined pursuant to the provisions of this chapter.

18 6. The credit allowed under this section may not exceed the liability for tax
19 under this chapter. If the amount of credit determined under this section
20 exceeds the liability for tax under this chapter, the excess may be used as a
21 credit carryover to each of the five succeeding taxable years. For tax credits

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1 earned after December 31, 2008, the excess may be used as a credit carry
2 over to each of the ten succeeding taxable years.

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

17 a. A purchaser of the tax credit must claim the credit beginning with the
18 tax year in which the purchase agreement is fully executed by the
19 parties and the geothermal, solar, or wind energy device is installed.
20 A purchaser of a tax credit under this section has only the right to
21 claim and use the credit under the terms that would have applied to
22 the tax credit transferor, except that in the case of a credit that is sold,
23 assigned, or otherwise transferred by the taxpayer to the tax credit
24 transferor, the credit allowed under this section may not exceed sixty

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1 percent of the liability for tax of the tax credit purchaser under this
2 chapter. This subsection does not limit the ability of the tax credit
3 purchaser to reduce the tax liability of the purchaser, regardless of
4 the actual tax liability of the tax credit transferor.

5 b. The tax credit transferor may sell the credit to only one tax credit
6 purchaser each taxable year. The tax credit purchaser may not sell,
7 assign, or otherwise transfer the credit purchased under the purchase
8 agreement.

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

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

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1 purchaser to verify the correctness of the amount of the transferred
2 credit and, if necessary, assess the credit purchaser if additional tax
3 is found due. This subdivision does not limit or restrict any other time
4 period prescribed in this chapter for the assessment of tax.

5 h. The tax commissioner may adopt rules to permit verification of the
6 validity, timeliness, and limitations on the sale of the tax credit
7 transferred under this section.

8 i. This section is effective for credits earned before January 1, 2011.

9 **SECTION 2. EFFECTIVE DATE.** This Act is effective for tax credits earned after
10 December 31, 2008.