Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator Grindberg

A BILL for an Act to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to angel fund investments income tax credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. Angel fund investment tax credit.

<u>1.</u> A taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. ~~The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section.~~ The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars.

<u>2.</u> To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

3. An angel fund:

a. Must be a partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.

b. Must be organized for the purpose of investing in a portfolio of at least six early-stage and mid-state private, nonpublicly traded enterprises with strong growth potential.

c. Must consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.

d. Must not have more than twenty-five percent of its ownership interests owned by an individual investor.

e. Must have at least five hundred thousand dollars in commitments from accredited investors for initial capitalization and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.

f. Must be member-managed and the investor members must make decisions as a group on which enterprises are worthy of investments.

g. Must be certified as an angel fund that meets the requirements of this section by the department of commerce.

h. Must be in compliance with the securities laws of this state.

4. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns more than forty-nine percent of the ownership interests in the enterprise.

5. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.

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, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. 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 tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser 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. The 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 which 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

<u>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.</u>

<u>e.</u> <u>The total amount of credits that can be sold by all taxpayers is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.</u>

<u>g.</u> <u>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.</u>

<u>g.</u> <u>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.</u>

<u>h.</u> <u>The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.</u>

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