

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2033

Introduced by

Legislative Council

(Energy Development and Transmission Committee)

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, solar,
3 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 are amended and reenacted as follows:

- 7 1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of
8 this chapter may claim a credit for the cost of a geothermal, solar, wind, or biomass
9 energy device installed before January 1, ~~2011~~ 2015, in a building or on property
10 owned or leased by the taxpayer in North Dakota. The credit provided in this
11 section for a device installed before January 1, 2001, must be in an amount equal
12 to five percent per year for three years, and for a device installed after
13 December 31, 2000, must be in an amount equal to three percent per year for five
14 years of the actual cost of acquisition and installation of the geothermal, solar,
15 wind, or biomass energy device and must be subtracted from any income tax
16 liability of the taxpayer as determined pursuant to the provisions of this chapter.
- 17 6. The credit allowed under this section may not exceed the liability for tax under this
18 chapter. If the amount of credit determined under this section exceeds the liability
19 for tax under this chapter, the excess may be used as a credit carryover to each of
20 the five succeeding taxable years. For tax credits for energy devices installed after
21 September 30, 2008, the excess may be used as a credit carryover to each of the
22 ten succeeding taxable years.
- 23 7. All or part of the unused credit allowed under this section may be sold, assigned, or
24 otherwise transferred by the taxpayer to the purchaser of the power generated by

the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.

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

1 amount of the credit being transferred; the gross proceeds received by the
2 transferor; and the tax year for which the credit may be claimed. The
3 purchase agreement must state clearly the purchase price associated with the
4 tax credit sold. The taxpayer and the purchaser also shall file a document
5 allowing the tax commissioner to disclose tax information to either party for
6 the purpose of verifying the correctness of the transferred tax credit. The
7 purchase agreement, supporting statement, and confidentiality waiver must
8 be filed within thirty days after the date the purchase agreement is fully
9 executed. The tax commissioner may audit the returns and assess or issue
10 refunds, notwithstanding any other time limitation prescribed under law which
11 may have expired for the purchaser.

- 12 d. If the amount of the credit available under this section is changed as a result
13 of an amended return filed by the transferor or as the result of an audit
14 conducted by the internal revenue service or the tax commissioner, the
15 transferor shall report to the purchaser the adjusted credit amount within thirty
16 days of the amended return or within thirty days of the final determination
17 made by the internal revenue service or the tax commissioner. The tax credit
18 purchaser shall file amended returns reporting the additional tax due or
19 claiming a refund as provided in section 57-38-38 or 57-38-40.
- 20 e. The total amount of credits that can be sold by all taxpayers is limited to three
21 million dollars each biennium. This limit applies on the basis of the date of
22 installation of the geothermal, solar, or wind energy device.
- 23 f. Gross proceeds received under the purchase agreement by the tax credit
24 transferor for the sale, assignment, or transfer of the tax credit must be
25 allocated to North Dakota. The amount assigned under this subsection may
26 not be reduced by the taxpayer's income apportioned to North Dakota or any
27 North Dakota net operating loss of the taxpayer.
- 28 g. Within four years after the date of the credit assignment, the tax commissioner
29 may audit the returns of the credit transferor and the purchaser to verify the
30 correctness of the amount of the transferred credit and, if necessary, assess
31 the credit purchaser if additional tax is found due. This subdivision does not

1 limit or restrict any other time period prescribed in this chapter for the
2 assessment of tax.

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

6 i. This subsection is effective for credits earned before January 1, 2011.

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