

SALEABILITY AND TRANSFERABILITY OF TAX CREDITS

This memorandum was requested to provide information on this history of salable or transferable tax credits in North Dakota. Information was also requested regarding the availability of angel investor credits and renewable energy credits in other states and any transferable features associated with those credits.

HISTORY OF SALEABLE OR TRANSFERABLE TAX CREDITS IN NORTH DAKOTA

Saleable tax credits were first authorized in North Dakota by the 2007 Legislative Assembly. Unused credits earned for research and experimental expenditures, under North Dakota Century Code Section 57-38-30.5, and for the installation of biomass, geothermal, solar, or wind energy devices, under Section 57-38-01.8, were allowed to be sold, transferred, or assigned to another taxpayer. House Bill No. 1018 (2007) broadened the scope of the existing research expense credit by allowing a taxpayer to sell, transfer, or assign up to \$100,000 in unused credits to other taxpayers.

The ability to sell or transfer the credit for installing biomass, geothermal, solar, or wind energy devices was added during the 2007 legislative session through the passage of Senate Bill No. 2298 and House Bill No. 1233. Senate Bill No. 2298 allowed for the transfer of the credit to the purchaser of an energy device installed after December 31, 2006, if ownership of the device was transferred at the time installation was complete and the device was fully operational. The credit was not allowed to be transferred to any subsequent purchasers. House Bill No. 1233 allowed for a taxpayer's unused credits to be sold, assigned, or otherwise transferred 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 constructed or expanded an electricity transmission line in this state after August 1, 2007. The amount of the credit that could be transferred to a taxpayer constructing or expanding an electricity transmission line could not exceed the amount expended by the taxpayer to acquire or install the line during the taxable year. The amount of credit claimed by a purchaser could not exceed 60 percent of the purchaser's income tax liability. The total amount of credits that could be sold by all taxpayers was also limited to \$3 million per biennium. The transferability provisions provided in House Bill No. 1233 were ultimately removed by the 2009 Legislative Assembly.

The 2007 Legislative Assembly also created an angel fund investment tax credit, though this credit was not made transferable until the 2011 legislative session through the passage of House Bill No. 1057. The bill permitted an investor in an angel fund to sell or transfer up to \$100,000 of credits to another taxpayer in the hopes of attracting more out-of-state capital to North Dakota. A taxpayer's ability to sell, transfer, or assign earned or excess tax credits was only available for the first two taxable years beginning after December 31, 2010, and was only available for credits earned as a result of investments in an angel fund established after July 31, 2011.

TAX CREDITS FOR WIND ENERGY DEVICES AND ANGEL FUND INVESTMENTS

State income tax credits pertaining to wind energy devices are less prevalent than credits offered for angel fund investments and the transferable nature of such credits seems to be slowly being phased out across the country. Income tax credits aimed at incentivizing angel investments in startup or early stage businesses are much more prevalent and are available in over 25 states. Only a small portion of these states allow for the credit to be sold, assigned, or transferred to other taxpayers. The following chart summarizes information related to states that allow the credit to be sold, assigned, or transferred.

State	Name of credit	Description
Arkansas	Equity investment tax credit	A taxpayer is allowed a credit against state income tax liability for purchases of an equity interest in a qualified business. The credit shall not exceed 33.3 percent of the actual purchase price paid for the equity interest to the business. The amount of the credit claimed cannot exceed 50 percent of a taxpayer's net state income tax liability. Any amount exceeding a taxpayer's liability may be carried forward for the next succeeding 10 years. An original investor earning tax credits may sell its tax credits only once, either in whole or in part.
Georgia	Angel investor tax credit	An individual making a qualified investment in a qualified business is allowed a credit in the amount of 35 percent of the amount invested. The maximum amount that may be claimed by an individual, for one or more qualified investments in a taxable year, is limited to \$50,000. Any unused credit amount may be carried forward to the next succeeding five taxable years. The credit shall not be transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse incident to divorce.

State	Name of credit	Description
Kansas	Angel investor tax credit	An income tax credit is allowed for an investor that makes a cash investment in the qualified securities of a qualified Kansas business. The credit is equal to 50 percent of the investors' cash investment. A maximum of \$50,000 is allowed for investments in a single Kansas business or a total of \$250,000 of tax credits per year per investor for investments in all qualified businesses. The cumulative aggregate amount of credits shall not exceed \$6 million in any taxable year. Any investor who has not owed any Kansas income tax in the immediate past three taxable years, and who does not reasonably believe that it will owe any tax for the current taxable year shall be deemed to acquire a transferable credit limited to an amount equal to 50 percent of the cash investment. The interest may be transferred to any natural person. The transferee may claim the credit against the transferee's Kansas income tax liability. The credit may only be transferred one time.
Kentucky	Angel Investment Act	Qualified investors making qualified investments in an enhanced incentive county may be eligible for up to a 50 percent tax credit. Qualified investors making qualified investments in all other counties may be eligible for up to a 40 percent tax credit. A tax credit may be transferred by a qualified investor to an individual taxpayer. The tax credit is nonrefundable and amounts claimed in any tax year shall not exceed 50 percent of the total amount of the credit awarded or transferred to the taxpayer. Unused credits may be carried forward to the next 15 taxable years. The total amount of tax credits available to both the Kentucky Investment Fund Act and the Kentucky Angel Investment Act programs is no more than \$40 million. For each calendar year, the total amount of tax credits available for the Kentucky Angel Investment Act program shall not exceed \$3 million. The total amount of tax credits approved to a qualified investor in a calendar year shall not exceed \$200,000 in the aggregate.
Nebraska	Angel investment tax credit	Up to \$3 million in refundable tax credits may be issued each year in each year commencing in 2011 and continuing through 2017 pursuant to the Nebraska Angel Investment Tax Credit Act. The credit is a refundable tax credit equal to 35 percent of a qualified investor's or qualified fund's investment in a qualified small business. Qualified investors and qualified funds that make investments in qualified small businesses or divisions thereof located in certain economically distressed areas of Nebraska may be eligible for a refundable tax credit equal to 40 percent of its investment. The total maximum amount of credits that can be allocated in a calendar year to a qualified investor for the investor's cumulative qualified investments is \$350,000 for married couples filing jointly and \$300,000 for all other filers. This is the maximum amount of tax credits that can be allocated, not the maximum cumulative qualified investment. No greater than \$1 million in tax credits is allowed to all qualified investors and qualified funds in any one qualified small business over the life of the Angel investment tax credit program.
South Carolina	High Growth Small Business Job Creation Act	An angel investor is entitled to a nonrefundable income tax credit equal to 35 percent of its qualified investment made in a qualified business. The total amount of credits may not exceed in the aggregate \$5 million for all taxpayers for any one calendar year. The aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year shall not exceed \$100,000 each year, not including any carry forward credits. The amount of the tax credit allowed an individual under this chapter for a taxable year shall not exceed an individual's net income tax liability. An unused credit amount is allowed to be carried forward for 10 years from the close of the taxable year in which the qualified investment was made. The credit is transferable by an angel investor to the investors heirs and legatees upon the investor's death or to the investors spouse incident to divorce. The credit may be sold, exchanged, or otherwise transferred, and may be carried forward for a period of 10 taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may be transferred only once.