GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1064

Short Title: Affordable Housing Tax Credit. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A STATE TAX CREDIT FOR PROVIDING AFFORDABLE HOUSING.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

BUSINESS TAX ~~CREDIT.~~ CREDITS."

Section 2. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.16A. Credit for low-income housing.

(a) Credit. – A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to twenty-five percent (25%) of the federal credit allowed with respect to that building. The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building.

(b) Definitions. – The definitions in section 42 of the Code apply in this section. In addition, as used in this section the term 'qualified North Carolina low-income building' means a qualified low-income building that meets either of the following conditions:

(1) It is located in a tier one or two enterprise area, as defined in G.S. 105-129.3, or in a development zone, as defined in G.S. 105-129.3A.

(2) It is located in a tier three, four, or five enterprise area and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income.

(c) Pass-Through Entities. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners shall include with their tax returns for every taxable year in which an allocated credit is claimed a copy of the allocation made by the pass-through entity.

(d) Forfeiture. – If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies proportionally to the taxpayers to whom the credit was allocated. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Section 3. G.S. 105-129.15 reads as rewritten:

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

(1) Business property. – Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(2) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2a) Pass-Through entity. – An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S

Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this section, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.

(3) Purchase. – Defined in section 179 of the Code."

Section 4. G.S. 105-129.17 reads as rewritten:

"§ 105-129.17. Tax election; cap.

(a) Tax Election. – The ~~credit~~ credits allowed in this Article ~~is~~ are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which ~~the~~ a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of ~~the~~ a credit must be claimed against the same tax.

(b) Cap. – The ~~credit~~ total credits allowed in this Article may not exceed fifty percent (50%) of the tax against which ~~it is~~ they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the ~~credit~~ credits may be carried forward for the succeeding five years."

Section 5. G.S. 105-129.18 reads as rewritten:

"§ 105-129.18. Substantiation.

To claim the ~~credit~~ credits allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection."

Section 6. G.S. 105-129.19 reads as rewritten:

"§ 105-129.19. Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the ~~credit~~ credits allowed in this Article.

(2) The cost of business property with respect to which business property credits were claimed.

(2a) The location of each qualified North Carolina low-income building with respect to which a low-income housing credit was claimed.

(3) The total cost to the General Fund of the credits claimed."

Section 7. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. ~~If~~

<u>If</u> a taxpayer forfeits a tax credit ~~pursuant to G.S. 105-163.014 or Article 3A of~~ <u>or tax benefit pursuant to forfeiture provisions of</u> this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

Section 8. This act is effective for taxable years beginning on or after January 1, 2000.