

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-389
SENATE BILL 251

AN ACT TO ALLOW THE HISTORIC REHABILITATION TAX CREDIT TO BE ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS AND TO REQUIRE CORPORATIONS THAT ARE REQUIRED TO PAY FEDERAL-ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER TO PAY STATE-ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3D.

"Historic Rehabilitation Tax Credits."

Section 2. G.S. 105-130.42(a) is recodified as G.S. 105-129.35 in Article 3D of Chapter 105 of the General Statutes.

Section 3. G.S. 105-130.42(b) is recodified as G.S. 105-129.36 in Article 3D of Chapter 105 of the General Statutes.

Section 4. G.S. 105-130.42(c) is recodified as G.S. 105-129.37 in Article 3D of Chapter 105 of the General Statutes.

Section 5. Article 3D of Chapter 105 of the General Statutes, as enacted and amended by this act, reads as rewritten:

"ARTICLE 3D.

"Historic Rehabilitation Tax Credits.

"§ 105-129.35. Credit for rehabilitating ~~Income-Producing Historic Structure.~~ income-producing historic structure.

(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making ~~qualifying-qualified~~ rehabilitation expenditures for a certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Part. The amount of the credit is equal to~~ twenty percent (20%) of the expenditures that qualify for the federal credit.

(b) Allocation. – 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 as long as the amount of credit allocated to an owner does not exceed the owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the

certified historic structure is placed in service. 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 must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Definitions. – The following definitions apply in this section:

(1) Certified historic structure. – Defined in section 47 of the Code.

(2) 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) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

"§ 105-129.36. Credit for rehabilitating ~~Nonincome-Producing Historic Structure.~~ nonincome-producing historic structure.

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a ~~certified~~ State-certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Part. The amount of the credit is equal to~~ thirty percent (30%) of the rehabilitation expenses. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars (\$25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

(b) Definitions. – The following definitions apply in this ~~subsection:~~ section:

(1) Certified historic structure. – A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.

(2) Certified rehabilitation. – Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer prior to the commencement of the work. ~~The expenditures must, within a 24-month period, exceed twenty five thousand dollars (\$25,000). The North Carolina Historical Commission, in consultation with the State~~

~~Historic Preservation Officer, may adopt rules needed to administer the certification process.~~

- (3) Rehabilitation expenses. – Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.
- (3a) State-certified historic structure. – A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.
- (4) State Historic Preservation Officer. – The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State.

(c) Rules. – The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process required by this section.

"§ 105-129.37. Tax credited; credit limitations.

(a) Tax Credited. – The credits provided in this Article are allowed against the income taxes levied in Article 4 of this Chapter.

(b) Credit Limitations. – The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. ~~The A~~ credit allowed under this section ~~Article~~ may not exceed the amount of tax imposed by this ~~Part~~ the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the Code to recapture all or part of the federal credit for rehabilitating an income-producing historic structure located in this State forfeits the corresponding part of the State credit allowed under G.S. 105-129.35 with respect to that historic structure. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

(d) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under G.S. 105-129.35 disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the rehabilitated historic structure is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the historic structure was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by

the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed.

(e) Exceptions to Forfeiture. – Forfeiture as provided in subsection (d) of this section is not required if the change in ownership is the result of any of the following:

- (1) The death of the owner.
- (2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(f) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity 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 or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Section 6. G.S. 105-151.23(a) is recodified as G.S. 105-129.35; G.S. 105-151.23(b) is recodified as G.S. 105-129.36; and G.S. 105-151.23(c) is recodified as G.S. 105-129.37. Article 3D of Chapter 105 of the General Statutes, as amended by this act, incorporates both G.S. 105-130.42 and G.S. 105-151.23.

Section 7. G.S. 105-163.40 reads as rewritten:

"§ 105-163.40. Time for submitting declaration; time and method for paying estimated ~~tax~~-tax; form of payment.

(a) Due Dates of Declarations. – Declarations of estimated tax are due at the same time as the corporation's first installment payment. Installment payments are due as follows:

- (1) If, before the 1st day of the 4th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax in four equal installments on or before the 15th day of the 4th, 6th, 9th and 12th months of the taxable year.
- (2) If, after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax in three equal installments on or before the 15th day of the 6th, 9th and 12th months of the taxable year.
- (3) If, after the last day of the 5th month and before the 1st day of the 9th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax in two equal installments on or before the 15th day of the 9th and 12th months.

- (4) If, after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax on or before the 15th day of the 12th month of the taxable year.

(b) **Payment of Estimated Tax When Declaration Amended.** – When a corporation submits an amended declaration after making one or more installment payments on its estimated tax, the amount of each remaining installment shall be the amount that would have been payable if the estimate in the amended declaration was the original estimate, increased or decreased as appropriate by the amount computed by dividing:

- (1) The absolute value of the difference between:
 - a. The amount paid and
 - b. The amount that would have been paid if the estimate in the amended declaration was the original estimate by
- (2) The number of remaining installments.

(c) **Short Taxable Year.** – Payment of estimated tax for taxable years of less than 12 months shall be made in accordance with rules promulgated by the Secretary.

(d) **Form of Payment.** – A corporation that is required under the Code to pay its federal-estimated corporate income tax by electronic funds transfer must pay its State-estimated tax by electronic funds transfer."

Section 8. G.S. 105-241(b) reads as rewritten:

"(b) **Electronic Funds Transfer.** – ~~The~~ Except as provided in G.S. 105-163.40, the Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. The twenty thousand dollar (\$20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary shall determine whether, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. If it was not, the Secretary shall suspend the requirement that the taxpayer pay the tax by electronic funds transfer and shall notify the taxpayer in writing that the requirement has been suspended."

Section 9. Sections 1 through 6 of this act are effective for taxable years beginning on or after January 1, 1999. G.S. 105-129.35(b), as amended by this act, is repealed effective January 1, 2002, for property placed in service on or after that date. Sections 7 and 8 of this act become effective for taxable years beginning on or after January 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:34 p.m. this 4th day of August, 1999