

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

**SESSION LAW 2004-110  
HOUSE BILL 1430**

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO SET THE PUBLIC UTILITY AND INSURANCE REGULATORY FEES, TO EXTEND THE SUNSET ON THE LOW-INCOME HOUSING TAX CREDIT, TO CLARIFY THE SALES TAX INCENTIVES FOR MAJOR PROJECTS, TO MAINTAIN THE CURRENT SALES TAX RATES ON ELECTRICITY USED BY MANUFACTURERS, AND TO ESTABLISH FAMILY COURT FEES.

The General Assembly of North Carolina enacts:

**PART 1. IRC UPDATE**

**SECTION 1.1.** G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

(1b) Code. – The Internal Revenue Code as enacted as of ~~June 1, 2003~~, May 1, 2004, including any provisions enacted as of that date which become effective either before or after that date."

**SECTION 1.2.** Notwithstanding Section 1.1 of this part, any amendments to the Internal Revenue Code enacted after June 1, 2003, that increase North Carolina taxable income for the 2003 taxable year become effective for taxable years beginning on or after January 1, 2004.

**SECTION 1.3.** Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund for an overpayment of tax resulting from a change in the law enacted by this part regarding the exclusion of gain on the sale or exchange of a principal residence by a member of the uniformed services or the Foreign Service of the United States is timely if a demand for the refund is filed on or before November 11, 2004.

**SECTION 1.4.** This part is effective when it becomes law.

**PART 2. REGULATORY FEE FOR UTILITIES COMMISSION**

**SECTION 2.1.** The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2004.

**SECTION 2.2.** The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2004-2005 fiscal year is two hundred thousand dollars (\$200,000).

**SECTION 2.3.** This part becomes effective July 1, 2004.

**PART 3. INSURANCE REGULATORY CHARGE**

**SECTION 3.1.** The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five percent (5%) for the 2004 calendar year.

**SECTION 3.2.** This part is effective when it becomes law.

**PART 4. EXTEND LOW-INCOME HOUSING CREDIT SUNSET**

**SECTION 4.1.** G.S. 105-129.45 reads as rewritten:

"§ 105-129.45. Sunset.

This Article is repealed effective January 1, ~~2006~~2010. The repeal applies to developments to which federal credits are allocated on or after January 1, ~~2006~~2010."

**SECTION 4.2.** G.S. 105-129.42 reads as rewritten:

**"§ 105-129.42. Credit for low-income housing awarded a federal credit allocation on or after January 1, 2003.**

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

- (1) Qualified Allocation Plan. – The plan governing the allocation of federal low-income housing tax credits for a particular year, as approved by the Governor after a public hearing and publication in the North Carolina Register.
- (2) Qualified North Carolina low-income housing development. – A qualified low-income project or building that is allocated a federal tax credit under section 42(h)(1) of the Code and is described in subsection (c) of this section.
- (3) Qualified residential unit. – A housing unit that meets the requirements of section 42 of the Code.

(b) Credit. – A taxpayer who is allocated a federal low-income housing tax credit under section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina low-income housing development is allowed a credit equal to a percentage of the development's ~~eligible~~qualified basis, as determined pursuant to ~~section 42(d)~~section 42 of the Code. For the purpose of this section, ~~eligible~~qualified basis is calculated based on the information contained in the carryover allocation and is not recalculated to reflect subsequent increases or decreases. No credit is allowed for a development that uses tax-exempt bond financing.

(c) Developments and Amounts. – The following table sets out the housing developments that are qualified North Carolina low-income housing developments and are allowed a credit under this section. The table also sets out the percentage of the development's ~~eligible~~qualified basis for which a credit is allowed. The designation of a county or city as Low Income, Moderate Income, or High Income and determinations of affordability are made by the Housing Finance Agency in accordance with the Qualified Allocation Plan in effect as of the time the federal credit is allocated. A change in the income designation of a county or city after a federal credit is allocated does not affect the percentage of the developer's ~~eligible~~qualified basis for which a credit is allowed. The affordability requirements set out in the chart apply for the duration of the federal tax credit compliance period. If in any year a taxpayer fails to meet these affordability requirements, the credit is forfeited under subsection (h) of this section.

Type of Development	Percentage of Basis for Which Credit Is Allowed
Forty percent (40%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of area median income and the units are in a Low-Income county or city.	Thirty percent (30%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of the area median income and the units are in a Moderate-Income county or city.	Twenty percent (20%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is forty percent (40%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)

Twenty-five percent (25%) of the qualified residential units are affordable to households whose income is thirty percent (30%) or less of the area median income and the units are in a High-Income county or city.

Ten percent  
(10%)

(d) Election. – When a taxpayer to whom a federal low-income housing credit is allocated submits to the Housing Finance Agency a request to receive a carryover allocation for that credit, the taxpayer must elect a method for receiving the tax credit allowed by this section. A taxpayer may elect to receive the credit in the form of either a direct tax refund or a loan generated by transferring the credit to the Housing Finance Agency. Neither a direct tax refund nor a loan received as the result of the transfer of the credit is considered taxable income under this Chapter.

Under the direct tax refund method, a taxpayer elects to apply the credit allowed by this section to the taxpayer's liability under Article 4 of this Chapter. If the credit allowed by this section exceeds the amount of tax imposed by Article 4 for the taxable year, reduced by the sum of all other credits allowable, the Secretary must refund the excess. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before this credit. The provisions that apply to an overpayment of tax apply to the refundable excess of a credit allowed under this section.

Under the loan method, a taxpayer elects to transfer the credit allowed by this section to the Housing Finance Agency and receive a loan from that Agency for the amount of the credit. The terms of the loan are specified by the Housing Finance Agency in accordance with the Qualified Allocation Plan.

(e) Exception When No Carryover. – If a taxpayer does not submit to the Housing Finance Agency a request to receive a carryover allocation, the taxpayer must elect the method for receiving the credit allowed by this section when the taxpayer submits to the Agency federal Form 8609. A taxpayer to whom this subsection applies claims the credit for the taxable year in which the taxpayer submits federal Form 8609.

(f) Pass-Through Entity. – 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 Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this Article does not affect the entity's payment of tax on behalf of its owners.

(g) Return and Payment. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the taxpayer receives a carryover allocation of a federal low-income housing credit. The return must state the name and location of the qualified low-income housing development for which the credit is claimed.

If a taxpayer chooses the loan method for receiving the credit allowed under this section, the Secretary must transfer to the Housing Finance Agency the amount of credit allowed the taxpayer. The Agency must loan the taxpayer the amount of the credit on terms consistent with the Qualified Allocation Plan. The Housing Finance Agency is not required to make a loan to a qualified North Carolina low-income housing development until the Secretary transfers the credit amount to the Agency.

If the taxpayer chooses the direct tax refund method for receiving the credit allowed under this section, the Secretary must transfer to the Housing Finance Agency the refundable excess of the credit allowed the taxpayer. The Agency holds the refund due the taxpayer in escrow, with no interest accruing to the taxpayer during the escrow period. The Agency must release the refund to the taxpayer upon the occurrence of the earlier of the following:

- (1) The Agency determines that the taxpayer has complied with the Qualified Allocation Plan and has completed at least fifty percent

(50%) of the activities included in the development's ~~eligible~~qualified basis.

(2) Within 30 days after the date the development is placed in service.

(h) Forfeiture. – A taxpayer that receives a credit under this section must immediately report any recapture event under section 42 of the Code to the Housing Finance Agency. If the taxpayer or any of its owners are required under section 42(j) of the Code to recapture all or part of a federal credit with respect to a qualified North Carolina low-income development, the taxpayer forfeits the corresponding part of the credit allowed under this section. This requirement does not apply in the following circumstances:

(1) When the recapture of part or all of the federal credit is the result of an event that occurs in the sixth or a subsequent calendar year after the calendar year in which the development was awarded a federal credit allocation.

(2) The taxpayer elected to transfer the credit allowed by this section to the Housing Finance Agency.

(i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit allowed under this section is liable for all past taxes avoided and any refund claimed as a result of the credit plus interest at the rate established under G.S. 105-241.1(i). The interest is computed from the date the Secretary transferred the credit amount to the Housing Finance Agency. The past taxes, refund, and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the taxes, refund, and interest by the due date is subject to the penalties provided in G.S. 105-236."

**SECTION 4.3.** This part is effective when it becomes law.

#### **PART 5. SALES TAX CLARIFICATION**

**SECTION 5.1.** G.S. 105-164.14(j)(1) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

(1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

"  
..."  
**SECTION 5.2.** This part becomes effective July 1, 2004, and applies to sales made on or after that date.

#### **PART 6. MAINTAIN CURRENT SALES TAX RATES ON ELECTRICITY USED BY MANUFACTURERS**

**SECTION 6.1.** G.S. 105-164.4(a)(1g) is repealed.

**SECTION 6.2.** G.S. 105-164.4(a)(1f)b. is reenacted.

**SECTION 6.3.** G.S. 105-164.4(a) is amended by adding a new subdivision

to read:

"(1h) The rate of seventeen-hundredths percent (0.17%) applies to the sales price of electricity sold to an aluminum smelting facility for use in connection with the operation of that facility and measured by a separate meter or measuring device."

**SECTION 6.4.** This part becomes effective October 1, 2004, and applies to sales of electricity made on or after that date. Section 6.3 of this part expires for sales made on or after October 1, 2007.

**PART 7. FAMILY COURT FEES**

**SECTION 7.1.** Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

**"§ 7A-314.1. Family court fees.**

(a) The Administrative Office of the Courts may charge a uniform fee of not more than thirty dollars (\$30.00) per hour to persons receiving the services of a supervised visitation and exchange center through a family court program. The fees collected under this section may be used by the Director of the Administrative Office of the Courts to support the continued operation of supervised visitation and exchange centers which provide services to family court clients regarding domestic violence, substance abuse, mental illness, parental alienation, and other issues.

(b) The Director of the Administrative Office of the Courts may establish a procedure for persons to apply for a reduction in the fee, based upon the person's ability to pay as a result of indigence, status as a victim of domestic violence, or other circumstances."

**SECTION 7.2.** This part is effective when it becomes law.

**PART 8. GENERAL PROVISIONS**

**SECTION 8.1.** This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does this act affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

**SECTION 8.2.** Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7<sup>th</sup> day of July, 2004.

s/ Beverly E. Perdue  
President of the Senate

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

s/ Michael F. Easley  
Governor

Approved 12:15 p.m. this 17<sup>th</sup> day of July, 2004