

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH30436-LY-296 (4/6)

Short Title: Tax Incentives for Ethyl Alcohol.

(Public)

Sponsors: Representative Tolson.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR TAX INCENTIVES FOR ETHYL ALCOHOL
3 MANUFACTURERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-129.16D is recodified as G.S. 105-129.71.

6 **SECTION 2.** Chapter 105 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 3H.

9 "Tax Incentives for Renewable Fuel.

10 **"§ 105-129.70. Definitions.**

11 The following definitions apply in this Article:

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

17 (2) Renewable fuel. – Either of the following:

18 a. Biodiesel, as defined in G.S. 105-449.60.

19 b. Ethanol either unmixed or in mixtures with gasoline that are
20 seventy percent (70%) or more ethanol by volume.

21 **"§ 105-129.71. Credit for constructing renewable fuel facilities.**

22 (a) Dispensing Credit. – A taxpayer that constructs and installs and places in
23 service in this State a qualified commercial facility for dispensing renewable fuel is
24 allowed a credit equal to fifteen percent (15%) of the cost to the taxpayer of
25 constructing and installing the part of the dispensing facility, including pumps, storage
26 tanks, and related equipment, that is directly and exclusively used for dispensing or
27 storing renewable fuel. A facility is qualified if the equipment used to store or dispense

1 renewable fuel is labeled for this purpose and clearly identified as associated with
2 renewable fuel.

3 The entire credit may not be taken for the taxable year in which the facility is placed
4 in service but must be taken in three equal annual installments beginning with the
5 taxable year in which the facility is placed in service. If, in one of the years in which the
6 installment of a credit accrues, the portion of the facility directly and exclusively used
7 for dispensing or storing renewable fuel is disposed of or taken out of service, the credit
8 expires and the taxpayer may not take any remaining installment of the credit. The
9 taxpayer may, however, take the portion of an installment that accrued in a previous
10 year and was carried forward to the extent permitted under G.S. 105-129.17.

11 (b) Production Credit. – A taxpayer that constructs and places in service in this
12 State a commercial facility for processing renewable fuel is allowed a credit equal to
13 twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the
14 facility. The entire credit may not be taken for the taxable year in which the facility is
15 placed in service but must be taken in seven equal annual installments beginning with
16 the taxable year in which the facility is placed in service. If, in one of the years in which
17 the installment of a credit accrues, the facility with respect to which the credit was
18 claimed is disposed of or taken out of service, the credit expires and the taxpayer may
19 not take any remaining installment of the credit. The taxpayer may, however, take the
20 portion of an installment that accrued in a previous year and was carried forward to the
21 extent permitted under G.S. 105-129.17.

22 (c) No Double Credit. – A taxpayer that claims any other credit allowed under
23 this Chapter with respect to the costs of constructing and installing a facility may not
24 take the credit allowed in this section with respect to the same costs.

25 (d) Sunset. – This section is repealed effective for facilities placed in service on
26 or after January 1, 2008.

27 **"§ 105-129.72. Allocation; cap; carryforward.**

28 (a) Allocation. – The credit allowed by this Article may be taken against the
29 franchise tax levied under Article 3 of this Chapter and the income taxes levied under
30 Article 4 of this Chapter. When the taxpayer claims an installment of a credit under this
31 Article, the taxpayer must elect the percentage of the installment to be applied against
32 the tax levied under Article 3 of this Chapter with any remaining percentage to be
33 applied against the tax levied under Article 4 of this Chapter. This election is not
34 binding for the year in which it is made or for any carryforwards of that installment. A
35 taxpayer may elect a different allocation for each year in which the taxpayer claims an
36 installment of a credit.

37 (b) Cap. – The amount of credit claimed in a taxable year under this Article may
38 not exceed the total amount of tax imposed under Articles 3 and 4 of this Chapter
39 combined.

40 (c) Carryforward. – Any unused portion of a credit allowed under this Article
41 may be carried forward for the next succeeding 25 years. A successor in business may
42 take the credits of a predecessor as if they were carryforwards of a credit allowed to the
43 successor in business.

44 **"§ 105-129.73. Substantiation.**

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

9 **"§ 105-129.74. Reports.**

10 The Department of Revenue must publish by May 1 of each year the following
11 information, itemized by taxpayer, for the 12-month period ending the preceding
12 December 31:

13 (1) The number of taxpayers that took the credits allowed in this Article.

14 (2) The cost of renewable fuel facilities with respect to which credits were
15 taken.

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

17 **SECTION 3.** G.S. 105-130.4(a)(4) reads as rewritten:

18 "(a) As used in this section, unless the context otherwise requires:

19 ...

20 (4) 'Excluded corporation' means any corporation engaged in business as a
21 building or construction contractor, a nonpotable ethyl alcohol
22 manufacturer, a securities dealer, or a loan company or a corporation
23 that receives more than fifty percent (50%) of its ordinary gross
24 income from intangible property."

25 **SECTION 4.** G.S. 105-164.14(j)(3) reads as rewritten:

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

28 ...

29 (3) Industries. – This subsection applies to the following industries:

30 ...

31 h. Nonpotable ethyl alcohol manufacturing.

32 ..."

33 **SECTION 5.** There is appropriated from the General Fund to the
34 Department of Revenue the sum of fifty thousand dollars (\$50,000) for the 2006-2007
35 fiscal year to implement the provisions of this act.

36 **SECTION 6.** Sections 1 through 3 of this act are effective for taxable years
37 beginning on or after January 1, 2006. Section 4 of this act becomes effective January
38 1, 2006, and applies to purchases made on or after that date. The remainder of this act
39 becomes effective July 1, 2006.