

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 872
SENATE BILL 1241

AN ACT TO MODIFY THE CARRY-FORWARD AND OTHER PROVISIONS OF
THE DISTILLERY TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.27 is rewritten to read:

"§ 105-130.27. Credit against corporate income tax for construction of a fuel ethanol distillery.—(a) Credit Allowed. Any corporation which constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses shall be allowed a credit against the tax imposed by this Division. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the distillery, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the Secretary of Revenue. The credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

(b) Definitions. For purposes of this section:

- (1) 'Alternative fuel source' includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.
- (2) 'Qualified uses' of the ethanol made by the distillery are limited to use as a fuel by motor vehicles or airplanes, use as a de-icer, and use in processes associated with the removal of pollutants from coal and other sources of fuel. More than eighty percent (80%) of the ethanol made by the distillery must be intended for qualified uses in order to be eligible for the credit allowed by this section.

(3) A 'distillery' includes only equipment associated with making, storing, and distributing ethanol and the related and necessary support facilities all of which are located and regularly used on the same premises.

(c) Application. The credit may not be taken for the year in which the payments for construction and installation are made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the payments were made. To be eligible for the credit, a taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 following the calendar year in which the payments were made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation the Secretary may require.

(d) Ceiling. The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed two million five hundred thousand dollars (\$2,500,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total amount of tax credits claimed for payments made in a calendar year exceeds two million five hundred thousand dollars (\$2,500,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. Provided, however, if the total amount of tax credits claimed under G.S. 105-151.6 for payments made in the calendar year is less than two million five hundred thousand dollars (\$2,500,000), the Secretary shall allow an additional amount of credit under this subsection, allocated proportionally among applicants, until the total amount of all tax credits allowed equals five million dollars (\$5,000,000). In no case may the total amount of all tax credits allowed under G.S. 105-151.6 and this section for payments made in a calendar year exceed five million dollars (\$5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next succeeding ten years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the payments for which a credit is claimed shall be considered as if they had been made in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed.

(e) Carry-forward. The amount of the credit allowed under this section may be carried forward for the next succeeding ten taxable years.

(f) Special Corporations. If the corporation is a 'Special Corporation' as described by G.S. 105-130.13, the corporation may elect to pass-through the credit allowed by this section to its shareholders in the same manner in which a partnership passes credits through to its partners. If this election is made, the credit may not be claimed by the corporation. Once made, this election may not be revoked and it applies for all subsequent years.

(g) Expiration. This section applies only to costs incurred during taxable years beginning prior to January 1, 1993."

Sec. 2. G.S. 105-151.6 is rewritten to read:

"§ 105-151.6. Credit against personal income tax for construction of a fuel ethanol distillery.—(a) Credit Allowed. Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses shall be allowed a credit against the tax imposed by this Division. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the distillery, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the Secretary of Revenue. The credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

(b) Definitions. For purposes of this section:

- (1) 'Alternative fuel source' includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.
- (2) 'Qualified uses' of the ethanol made by the distillery are limited to use as a fuel by motor vehicles or airplanes, use as a de-icer, and use in processes associated with the removal of pollutants from coal and other sources of fuel. More than eighty percent (80%) of the ethanol made by the distiller must be intended for qualified uses in order to be eligible for the credit allowed by this section.
- (3) A 'distillery' includes only equipment associated with making, storing, and distributing ethanol and the related and necessary support facilities all of which are located and regularly used on the same premises.

(c) Application. The credit may not be taken for the year in which the payments for construction and installation are made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the payments were made. To be eligible for the credit, a taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 following the calendar year in which the payments were made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation the Secretary may require.

(d) Ceiling. The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed two million five hundred thousand dollars (\$2,500,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total amount of tax credits claimed for payments made in a calendar year exceeds two million five hundred thousand dollars (\$2,500,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. Provided, however, if the total amount of tax credits claimed under G.S. 105-130.27 for payments made in the calendar year is less than two million five hundred thousand dollars (\$2,500,000), the Secretary shall allow an additional amount of credit under this subsection, allocated proportionally among applicants, until the total amount of all tax credits allowed equals five million dollars (\$5,000,000).

In no case may the total amount of all tax credits allowed under G.S. 105-130.27 and this section for payments made in a calendar year exceed five million dollars (\$5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next succeeding ten years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the payments for which a credit is claimed shall be considered as if they had been made in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed.

(e) Carry-forward. The amount of the credit allowed under this section may be carried forward for the next succeeding ten taxable years.

(f) Special Corporations. The credit allowed under this section includes the credit passed through from a partnership and the credit passed through an electing special corporation as described in G.S. 105-130.27. The investment in the distillery made by the partnership or the special corporation will be considered to have been made by the taxpayer for purposes of this section.

(g) Expiration. This section applies only to costs incurred during taxable years beginning prior to January 1, 1994."

Sec. 3. This act is effective for taxable years beginning on or after January 1, 1988.

In the General Assembly read three times and ratified this the 14th day of August, 1987.