

## Article 3C.

### Tax Incentives For Recycling Facilities.

#### § 105-129.25. Definitions.

The following definitions apply in this Article:

- (1) Reserved.
- (2) Reserved.
- (3) Repealed by Session Laws 2010-166, s. 2.1, effective July 1, 2010.
- (4) Machinery and equipment. – Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (5) Major recycling facility. – A recycling facility that qualifies under G.S. 105-129.26(a).
- (6) Owner. – A person who owns or leases a recycling facility.
- (7) Post-consumer waste material. – Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.
- (8) Purchase. – Defined in section 179 of the Code.
- (9) Recycling facility. – A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant. (1998-55, s. 12; 2010-166, s. 2.1.)

#### § 105-129.26. Qualification; forfeiture.

(a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

- (1) The facility is located in an area that, at the time the owner began construction of the facility, was a development tier one area as defined in G.S. 143B-437.08.
  - (2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars (\$300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.
  - (3) Repealed by Session Laws 2014-3, s. 14.2, effective May 29, 2014.
- (b) Repealed by Session Laws 2010-166, s. 2.1, effective July 1, 2010.
- (c) Forfeiture. – If the owner of a major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur,

however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.21, computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. – To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall 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 owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

- (1) The number and location of major recycling facilities qualified under this Article.
- (2) The number of new jobs created by each recycling facility.
- (3) The amount of investment in each recycling facility.
- (4) The amount of credits taken under this Article. (1998-55, s. 12; 2005-429, s. 2.4; 2007-491, s. 44(1)a; 2010-166, ss. 1.3, 2.1; 2013-414, s. 33; 2014-3, s. 14.2.)

#### **§ 105-129.27. Credit for investing in major recycling facility.**

(a) Credit. – An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. – The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. – The credit provided in this section may not exceed the amount of tax against which it is 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 owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. – The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. – If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. 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. 105-241.21, 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.

(f) No Double Credit. – A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9 or G.S. 105-129.88. (1998-55, s. 12; 1999-369, s. 5.3; 2007-491, s. 44(1)a; 2009-445, s. 3(a); 2010-166, s. 2.1.)

**§ 105-129.28:** Repealed by Session Laws 1998-55, s, 19, effective for taxable years beginning on or after January 1, 2008.

**§§ 105-129.29 through 105-129.34. Reserved for future codification purposes.**