

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1030

Short Title: Franchise Tax Credit for CIP.

(Public)

Sponsors: Senator Reeves.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A CREDIT AGAINST THE FRANCHISE TAX FOR
PROPERTY TAXES PAID ON CONSTRUCTION IN PROGRESS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-127.1. Credit for property tax paid on construction in progress.

(a) Credit. – A person required to file a report and remit a tax under this Article is allowed a credit against the tax imposed by this Article equal to the amount of property taxes the taxpayer paid at par during the calendar year next preceding the due date of the franchise tax return on construction in progress. In addition, a person that must file a report and remit a tax under this Article that is the owner of a pass-through entity that is not subject to the tax imposed under this Article is allowed a credit against the tax imposed by this Article equal to the taxpayer's pro rata share of the amount of property taxes the pass-through entity paid at par during the calendar year next preceding the due date of the franchise tax return on construction in progress. The total credit allowed under this section for the taxable year may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed against this tax, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer must attach to the return a copy of the tax receipt for the property taxes for

1 which a credit is claimed. The receipt must indicate that the taxes have been paid and the
2 amount and date of the payment.

3 (b) Adjustment. – If a taxing unit gives a taxpayer a credit or refund for any of the
4 property taxes for which the taxpayer claimed a credit under this section, the taxpayer
5 must notify the Secretary of Revenue within 90 days. The Secretary shall then recompute
6 the credit allowed under this section and make any resulting adjustment of franchise tax
7 for the taxable year for which the credit was claimed.

8 (c) Definition. – For the purposes of this section, the term 'construction in
9 progress' has the same meaning as defined in G.S. 105-273."

10 Section 2. G.S. 105-273 reads as rewritten:

11 **"§ 105-273. Definitions.**

12 ~~When used in this Subchapter (unless the context requires a different meaning):~~ The
13 following definitions apply in this Subchapter:

14 (1) ~~"Abstract" means the~~ Abstract. – The document on which the
15 property of a taxpayer is listed for ad valorem taxation and on
16 which the appraised and assessed values of the property are
17 recorded.

18 (2) ~~"Appraisal" means both~~ Appraisal. – Both the true value of property
19 and the process by which true value is ascertained.

20 (3) ~~"Assessment" means both~~ Assessment. – Both the tax value of
21 property and the process by which the assessment is determined.

22 (4) Repealed by Session Laws 1973, c. 695, s. 15.

23 (4a) Business personal property. – Personal property that is not non-
24 business property.

25 (5) ~~"Collector" or "tax collector" means any person charged with the~~
26 ~~duty of collecting taxes for a county or municipality.~~ Collector. – A
27 tax collector.

28 (5a) ~~"Contractor" means a~~ Construction in progress. – Tangible business
29 personal property that is on site but which the taxpayer has not yet
30 begun to depreciate for federal income tax purposes because the
31 property has not been placed in service.

32 (5b) Contractor. – A taxpayer who is regularly engaged in building,
33 installing, repairing, or improving real property.

34 (6) ~~"Corporation" includes~~ Corporation. – A nonprofit corporation and
35 every type of organization having capital stock represented by
36 shares.

37 (6a) ~~"Discovered property" includes all~~ Discovered property. – All of the
38 following:

- 39 a. Property that was not listed during a listing period.
40 b. Property that was listed but the listing included a substantial
41 understatement.
42 c. Property that has been granted an exemption or exclusion and
43 does not qualify for the exemption or exclusion.

- 1 (6b) ~~"To discover property" means to~~ To discover property. – To determine
2 any of the following:
3 a. Property has not been listed during a listing period.
4 b. A taxpayer made a substantial understatement of listed property.
5 c. Property was granted an exemption or exclusion and the property
6 does not qualify for an exemption or exclusion.
- 7 (7) ~~"Document" includes~~ Document. – A book, paper, record, statement,
8 account, map, plat, film, picture, tape, object, instrument, ~~and or~~
9 any other thing conveying information.
- 10 (7a) ~~"Failure to list property" includes all~~ Failure to list property. – All of
11 the following:
12 a. Failure to list property during a listing period.
13 b. A substantial understatement of listed property.
14 c. Failure to notify the assessor that property granted an exemption
15 or exclusion under an application for exemption or exclusion
16 does not qualify for the exemption or exclusion.
- 17 (8) ~~"Intangible personal property" means patents,~~ Intangible personal
18 property. – Patents, copyrights, secret processes, formulae, good
19 will, trademarks, trade brands, franchises, stocks, bonds, cash, bank
20 deposits, notes, evidences of debt, leasehold interests in exempted
21 real property, bills and accounts receivable, and other like property.
- 22 (8a) ~~"Inventories" means~~ Inventories. – Either of the following: (i) goods
23 held for sale in the regular course of business by manufacturers,
24 retail and wholesale merchants, and contractors, and (ii) goods held
25 by contractors to be furnished in the course of building, installing,
26 repairing, or improving real property. As to manufacturers, the
27 term includes raw materials, goods in process, and finished goods,
28 as well as other materials or supplies that are consumed in
29 manufacturing or processing, or that accompany and become a part
30 of the sale of the property being sold. The term also includes crops,
31 livestock, poultry, feed used in the production of livestock and
32 poultry, and other agricultural or horticultural products held for
33 sale, whether in process or ready for sale. The term does not
34 include fuel used in manufacturing or processing, nor does it
35 include materials or supplies not used directly in manufacturing or
36 processing. As to retail and wholesale merchants and contractors,
37 the term includes, in addition to articles held for sale, packaging
38 materials that accompany and become a part of the sale of the
39 property being sold.
- 40 (9) ~~"List" or "listing," when used as a noun, means abstract.~~
- 41 (10) Repealed by Session Laws 1987, c. 43, s. 1.
- 42 (10a) ~~"Local tax official" includes a~~ Local tax official. – A county assessor,
43 an assistant county assessor, a member of a county board of

- 1 commissioners, a member of a county board of equalization and
2 review, a county tax collector, and the municipal equivalents of
3 these officials.
- 4 (10b) ~~"Manufacturer"~~ means a Manufacturer. – A taxpayer who is regularly
5 engaged in the mechanical or chemical conversion or
6 transformation of materials or substances into new products for sale
7 or in the growth, breeding, raising, or other production of new
8 products for sale. The term does not include delicatessens, cafes,
9 cafeterias, restaurants, and other similar retailers that are
10 principally engaged in the retail sale of foods prepared by them for
11 consumption on or off their premises.
- 12 (11) ~~"Municipal corporation" and "municipality" mean~~ Municipal
13 corporation. – A municipality.
- 14 (11a) Municipality. – A city, a town, an incorporated village, a sanitary
15 district, a rural fire protection district, a rural recreation district, a
16 mosquito control district, a hospital district, a metropolitan
17 sewerage district, a watershed improvement district, or ~~other~~
18 another district or unit of local government by or for which ad
19 valorem taxes are levied. ~~The terms also include term~~ also includes a
20 consolidated city-county as defined by G.S. 160B-2(1).
- 21 (11b) Non-business property. – Personal property that is used by the
22 owner of the property for a purpose other than the production of
23 income and is not used in connection with a business. The term
24 includes household furnishings, clothing, pets, lawn tools, and lawn
25 equipment.
- 26 (12) ~~"Person" and "he" include any individual, trustee, executor,~~
27 ~~administrator, other fiduciary, corporation, limited liability~~
28 ~~company, unincorporated association, partnership, sole~~
29 ~~proprietorship, company, firm, or other legal entity.~~ Person. –
30 Defined in G.S. 105-228.90.
- 31 (13) ~~"Real property," "real estate," and "land" mean not only the land itself, but~~
32 ~~also~~ Real property. – Land, any buildings, structures,
33 improvements, and permanent fixtures ~~thereon,~~ on the land, and all
34 rights and privileges ~~belonging or in any wise appertaining thereto.~~
35 appertaining in any way to these things. The terms 'real estate' and
36 'land' are synonyms for the term 'real property.' These terms also
37 mean a manufactured home as defined in G.S. 143-143.9(6) if it is
38 a multi-section residential structure ~~(consisting of two or more~~
39 ~~sections);~~ consisting of two or more sections, has the moving hitch,
40 wheels, and axles ~~removed;~~ removed, and is placed upon a
41 permanent enclosed foundation on land owned by the owner of the
42 manufactured home.

- 1 (13a) ~~"Retail Merchant" means a~~ Retail merchant. – A taxpayer who is
2 regularly engaged in the sale of tangible personal property,
3 acquired by a means other than manufacture, processing, or
4 producing by the merchant, to users or consumers.
- 5 (13b) ~~"Substantial understatement" means the~~ Substantial understatement. –
6 The omission of a material portion of the value, quantity, or other
7 measurement of taxable property. The determination of materiality
8 in each case shall be made by the assessor, subject to the taxpayer's
9 right to review of the determination by the county board of
10 equalization and review or board of commissioners and appeal to
11 the Property Tax Commission.
- 12 (14) ~~"Tangible personal property" means all~~ Tangible personal property. –
13 All personal property that is not intangible and that is not
14 permanently affixed to real property.
- 15 (15) ~~"Tax" and "taxes" include the~~ Tax. – The principal amount of any tax,
16 costs, penalties, and interest imposed upon property tax or dog
17 license tax.
- 18 (15a) Tax collector. – A person charged with the duty of collecting taxes
19 for a county or municipality.
- 20 (16) ~~"Taxing unit" means a~~ Taxing unit. – A county or municipality
21 authorized to levy ad valorem property taxes.
- 22 (17) ~~"Taxpayer" means any~~ Taxpayer. – A person whose property is
23 subject to ad valorem property taxation by any county or
24 municipality ~~and any or~~ person who, under the terms of this
25 Subchapter, has a duty to list property for taxation.
- 26 (18) ~~"Valuation" means appraisal~~ Valuation. – Appraisal and assessment.
- 27 (19) ~~"Wholesale Merchant" means a~~ Wholesale merchant. – A taxpayer
28 who is regularly engaged in the sale of tangible personal property,
29 acquired by a means other than manufacture, processing, or
30 producing by the merchant, to other retail or wholesale merchants
31 for resale or to manufacturers for use as ingredient or component
32 parts of articles being manufactured for sale."

33 Section 3. G.S. 105-275(16) reads as rewritten:

- 34 "(16) ~~Non-business Property. As used in this subdivision, the term~~
35 ~~"non-business property" means personal property that is used by the~~
36 ~~owner of the property for a purpose other than the production of~~
37 ~~income and is not used in connection with a business. The term~~
38 ~~includes household furnishings, clothing, pets, lawn tools, and lawn~~
39 ~~equipment. The term does not include property other than motor~~
40 ~~vehicles, mobile homes, aircraft, watercraft, or engines for~~
41 ~~watercraft."~~

42 Section 4. G.S. 105-228.90(b) is amended by adding a new subdivision to
43 read:

1 "(4) Pass-through entity. – An entity or business, including a limited
2 partnership, a general partnership, a joint venture, a Subchapter S
3 Corporation, or a limited liability company, all of which is treated
4 as owned by individuals or other entities under the federal tax laws,
5 in which the owners report their share of the income, losses, and
6 credits from the entity or business on their income tax returns filed
7 with this State. For the purpose of this Article, an owner of a pass-
8 through entity is an individual or entity who is treated as an owner
9 under the federal tax laws."

10 Section 5. G.S. 105-163.010(7) reads as rewritten:

11 "~~(7) Pass-through entity. —An entity or business, including a limited~~
12 ~~partnership, a general partnership, a joint venture, a Subchapter S~~
13 ~~Corporation, or a limited liability company, all of which is treated~~
14 ~~as owned by individuals or other entities under the federal tax laws,~~
15 ~~in which the owners report their share of the income, losses, and~~
16 ~~credits from the entity or business on their income tax returns filed~~
17 ~~with this State. For the purpose of this Part, an owner of a pass-~~
18 ~~through entity is an individual or entity who is treated as an owner~~
19 ~~under the federal tax laws. Defined in G.S. 105-228.90."~~

20 Section 6. Section 1 of this act is effective for taxable years beginning on or
21 after January 1, 2000. The remainder of this act is effective when it becomes law.