

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 251
Finance Committee Substitute Adopted 6/23/99

Short Title: Modify Historic Rehabilitation Credit.

(Public)

Sponsors:

Referred to:

March 8, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE HISTORIC REHABILITATION TAX CREDIT TO BE
3 ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS.

4 The General Assembly of North Carolina enacts:

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

7 **"ARTICLE 3D.**
8 **"HISTORIC REHABILITATION TAX CREDITS."**

9 Section 2. G.S. 105-130.42(a) is recodified as G.S. 105-129.35 in Article 3D
10 of Chapter 105 of the General Statutes.

11 Section 3. G.S. 105-130.42(b) is recodified as G.S. 105-129.36 in Article 3D
12 of Chapter 105 of the General Statutes.

13 Section 4. G.S. 105-130.42(c) is recodified as G.S. 105-129.37 in Article 3D
14 of Chapter 105 of the General Statutes.

15 Section 5. Article 3D of Chapter 105 of the General Statutes, as enacted and
16 amended by this act, reads as rewritten:

17 **"ARTICLE 3D.**
18 **"HISTORIC REHABILITATION TAX CREDITS."**

1 **"§ 105-129.35. Credit for rehabilitating ~~Income-Producing Historic Structure.~~ income-**
2 **producing historic structure.**

3 (a) Credit. – A taxpayer who is allowed a federal income tax credit under section
4 47 of the Code for making ~~qualifying~~ qualified rehabilitation expenditures for a certified
5 historic structure located in this State is allowed a credit ~~against the tax imposed by this~~
6 ~~Part. The amount of the credit is equal to~~ twenty percent (20%) of the expenditures that
7 qualify for the federal credit.

8 (b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-
9 269.15, a pass-through entity that qualifies for the credit provided in this section may
10 allocate the credit among any of its owners in its discretion as long as the amount of
11 credit allocated to an owner does not exceed the owner's adjusted basis in the pass-
12 through entity, as determined under the Code, at the end of the taxable year in which the
13 certified historic structure is placed in service. Owners to whom a credit is allocated are
14 allowed the credit as if they had qualified for the credit directly. A pass-through entity
15 and its owners must include with their tax returns for every taxable year in which an
16 allocated credit is claimed a statement of the allocation made by the pass-through entity
17 and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-
18 269.15.

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

20 (1) Certified historic structure. – Defined in section 47 of the Code.

21 (2) Pass-through entity. – An entity or business, including a limited
22 partnership, a general partnership, a joint venture, a Subchapter S
23 Corporation, or a limited liability company, all of which is treated as
24 owned by individuals or other entities under the federal tax laws, in
25 which the owners report their share of the income, losses, and credits
26 from the entity or business on their income tax returns filed with this
27 State. For the purpose of this section, an owner of a pass-through entity
28 is an individual or entity who is treated as an owner under the federal
29 tax laws.

30 (3) Qualified rehabilitation expenditures. – Defined in section 47 of the
31 Code.

32 **"§ 105-129.36. Credit for rehabilitating ~~Nonincome-Producing Historic Structure.~~ non-**
33 **income-producing historic structure.**

34 (a) Credit. – A taxpayer who is not allowed a federal income tax credit under
35 section 47 of the Code and who makes rehabilitation expenses for a ~~certified~~ State-
36 certified historic structure located in this State is allowed a credit ~~against the tax imposed~~
37 ~~by this Part. The amount of the credit is equal to~~ thirty percent (30%) of the rehabilitation
38 expenses. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed
39 twenty-five thousand dollars (\$25,000) within a 24-month period. To claim the credit
40 allowed by this subsection, the taxpayer must attach to the return a copy of the
41 certification obtained from the State Historic Preservation Officer verifying that the
42 historic structure has been rehabilitated in accordance with this subsection.

43 (b) Definitions. – The following definitions apply in this ~~subsection~~ section:

1 (1) ~~Certified historic structure.— A structure that is individually listed in the~~
2 ~~National Register of Historic Places or is certified by the State Historic~~
3 ~~Preservation Officer as contributing to the historic significance of a~~
4 ~~National Register Historic District or a locally designated historic~~
5 ~~district certified by the United States Department of the Interior.~~

6 (2) ~~Certified rehabilitation. – Repairs or alterations consistent with the~~
7 ~~Secretary of the Interior's Standards for Rehabilitation and certified as~~
8 ~~such by the State Historic Preservation Officer prior to the~~
9 ~~commencement of the work. The expenditures must, within a 24-month~~
10 ~~period, exceed twenty five thousand dollars (\$25,000). The North Carolina~~
11 ~~Historical Commission, in consultation with the State Historic Preservation~~
12 ~~Officer, may adopt rules needed to administer the certification process.~~

13 (3) ~~Rehabilitation expenses. – Expenses incurred in the certified~~
14 ~~rehabilitation of a certified historic structure and added to the property's~~
15 ~~basis. The term does not include the cost of acquiring the property, the~~
16 ~~cost attributable to the enlargement of an existing building, the cost of~~
17 ~~sitework expenditures, or the cost of personal property.~~

18 (3a) State-certified historic structure. – A structure that is individually listed
19 in the National Register of Historic Places or is certified by the State
20 Historic Preservation Officer as contributing to the historic significance
21 of a National Register Historic District or a locally designated historic
22 district certified by the United States Department of the Interior.

23 (4) ~~State Historic Preservation Officer. – The Director of the Division of~~
24 ~~Archives and History or the Director's designee who acts to administer~~
25 ~~the historic preservation programs within the State.~~

26 (c) Rules. – The North Carolina Historical Commission, in consultation with the
27 State Historic Preservation Officer, may adopt rules needed to administer the certification
28 process required by this section.

29 **"§ 105-129.37. Tax credited; credit limitations.**

30 (a) Tax Credited. – The credits provided in this Article are allowed against the
31 income taxes levied in Article 4 of this Chapter.

32 (b) Credit Limitations. – The entire credit may not be taken for the taxable year in
33 which the property is placed in service but must be taken in five equal installments
34 beginning with the taxable year in which the property is placed in service. Any unused
35 portion of the credit may be carried forward for the succeeding five years. The A credit
36 allowed under this section Article may not exceed the amount of tax imposed by this Part
37 the tax against which it is claimed for the taxable year reduced by the sum of all credits
38 allowed, except payments of tax made by or on behalf of the taxpayer.

39 (c) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the
40 Code to recapture all or part of the federal credit for rehabilitating an income-producing
41 historic structure located in this State forfeits the corresponding part of the State credit
42 allowed under G.S. 105-129.35 with respect to that historic structure. If the credit was

1 allocated among the owners of a pass-through entity, the forfeiture applies to the owners
2 in the same proportion that the credit was allocated.

3 (d) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that
4 has qualified for the credit allowed under G.S. 105-129.35 disposes of all or a portion of
5 the owner's interest in the pass-through entity within five years from the date the
6 rehabilitated historic structure is placed in service and the owner's interest in the pass-
7 through entity is reduced to less than two-thirds of the owner's interest in the pass-
8 through entity at the time the historic structure was placed in service, the owner forfeits a
9 portion of the credit. The amount forfeited is determined by multiplying the amount of
10 credit by the percentage reduction in ownership and then multiplying that product by the
11 forfeiture percentage. The forfeiture percentage equals the recapture percentage found in
12 the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated
13 equally among the five years in which the credit is claimed.

14 (e) Exceptions to Forfeiture. – Forfeiture as provided in subsection (d) of this
15 section is not required if the change in ownership is the result of any of the following:

16 (1) The death of the owner.

17 (2) A merger, consolidation, or similar transaction requiring approval by the
18 shareholders, partners, or members of the taxpayer under applicable
19 State law, to the extent the taxpayer does not receive cash or tangible
20 property in the merger, consolidation, or other similar transaction.

21 (f) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity
22 that forfeits a credit under this section is liable for all past taxes avoided as a result of the
23 credit plus interest at the rate established under G.S. 105-241.1(i), computed from the
24 date the taxes would have been due if the credit had not been allowed. The past taxes and
25 interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a
26 pass-through entity that fails to pay the taxes and interest by the due date is subject to the
27 penalties provided in G.S. 105-236."

28 Section 6. G.S. 105-151.23(a) is recodified as G.S. 105-129.35; G.S. 105-
29 151.23(b) is recodified as G.S. 105-129.36; and G.S. 105-151.23(c) is recodified as G.S.
30 105-129.37. Article 3D of Chapter 105 of the General Statutes, as amended by this act,
31 incorporates both G.S. 105-130.42 and G.S. 105-151.23.

32 Section 7. This act is effective for taxable years beginning on or after January
33 1, 1999. G.S. 105-129.35(b), as amended by this act, is repealed effective January 1,
34 2002, for property placed in service on or after that date.