

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH80376-LY-236 (4/18)

Short Title: Renewable Energy Tax Credits.

(Public)

Sponsors: Representative Luebke.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO RECODIFY, EXTEND, AND EXPAND THE TAX CREDITS FOR  
3 RENEWABLE ENERGY.

4 The General Assembly of North Carolina enacts:

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

7 "Article 3H.

8 "Renewable Energy Tax Credits.

9 "§ 105-129.70. Definitions.

10 The following definitions apply in this Article:

- 11 (1) Hydroelectric generator. – A machine that produces electricity by  
12 water power or by the friction of water or steam.
- 13 (2) Pass-through entity. – Defined in G.S. 105-228.90.
- 14 (3) Renewable biomass resources. – Organic matter produced by  
15 terrestrial and aquatic plants and animals, such as standing vegetation,  
16 aquatic crops, forestry and agricultural residues, landfill wastes, and  
17 animal wastes.
- 18 (4) Renewable energy property. – Any of the following machinery and  
19 equipment or real property:
- 20 a. Biomass equipment that uses renewable biomass resources for  
21 biofuel production of ethanol, methanol, and biodiesel;  
22 anaerobic biogas production of methane utilizing agricultural  
23 and animal waste or garbage; or commercial thermal or  
24 electrical generation from renewable energy crops or wood  
25 waste materials. The term also includes related devices for  
26 converting, conditioning, and storing the liquid fuels, gas, and  
27 electricity produced with biomass equipment.

- 1           b.     Hydroelectric generators located at existing dams or in  
2                 free-flowing waterways, and related devices for water supply  
3                 and control, and converting, conditioning, and storing the  
4                 electricity generated.
- 5           c.     Solar energy equipment that uses solar radiation as a substitute  
6                 for traditional energy for water heating, active space heating  
7                 and cooling, passive heating, daylighting, generating electricity,  
8                 distillation, desalination, detoxification, or the production of  
9                 industrial or commercial process heat. The term also includes  
10                related devices necessary for collecting, storing, exchanging,  
11                conditioning, or converting solar energy to other useful forms  
12                of energy.
- 13          d.     Wind equipment required to capture and convert wind energy  
14                 into electricity or mechanical power and related devices for  
15                 converting, conditioning, and storing the electricity produced.

16   **"§ 105-129.71. Credit for investing in renewable energy property.**

17       (a)     Credit. – If a taxpayer that has constructed, purchased, or leased renewable  
18         energy property places it in service in this State during the taxable year, the taxpayer is  
19         allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the  
20         case of renewable energy property that serves a single-family dwelling, the credit must  
21         be taken for the taxable year in which the property is placed in service. For all other  
22         renewable energy property, the entire credit may not be taken for the taxable year in  
23         which the property is placed in service but must be taken in five equal installments  
24         beginning with the taxable year in which the property is placed in service.

25       (b)     Expiration. – If, in one of the years in which the installment of a credit  
26         accrues, the renewable energy property with respect to which the credit was claimed is  
27         disposed of, taken out of service, or moved out of State, the credit expires and the  
28         taxpayer may not take any remaining installment of the credit. The taxpayer may,  
29         however, take the portion of an installment that accrued in a previous year and was  
30         carried forward to the extent permitted under G.S. 105-129.72. No credit is allowed  
31         under this section to the extent the cost of the renewable energy property was provided  
32         by public funds.

33       (c)     Ceilings. – The credit allowed by this section may not exceed the applicable  
34         ceilings provided in this subsection.

35           (1)     Nonresidential Property. – A ceiling of two million five hundred  
36                 thousand dollars (\$2,500,000) per installation applies to renewable  
37                 energy property placed in service for any purpose other than  
38                 residential.

39           (2)     Residential Property. – The following ceilings apply to renewable  
40                 energy property placed in service for residential purposes:

- 41                a.     One thousand four hundred dollars (\$1,400) per dwelling unit  
42                        for solar energy equipment for domestic water heating and pool  
43                        heating.

1           b.     Three thousand five hundred dollars (\$3,500) per dwelling unit  
2                   for solar energy equipment for active space heating, combined  
3                   active space and domestic hot water systems, and passive space  
4                   heating.

5           c.     Ten thousand five hundred dollars (\$10,500) per installation for  
6                   any other renewable energy property for residential purposes.

7           (d)    No Double Credit. – A taxpayer that claims any other credit allowed under  
8                   this Chapter with respect to renewable energy property may not take the credit allowed  
9                   in this section with respect to the same property. A taxpayer may not take the credit  
10                  allowed in this section for renewable energy property the taxpayer leases from another  
11                  unless the taxpayer obtains the lessor's written certification that the lessor will not claim  
12                  a credit under this Chapter with respect to the property.

13           (e)    Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and  
14                   G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this  
15                   section may allocate the credit among any of its owners in its discretion as long as an  
16                   owner's adjusted basis in the pass-through entity, as determined under the Code, at the  
17                   end of the taxable year in which the renewable energy is placed in services is at least  
18                   forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a  
19                   credit is allocated are allowed the credit as if they had qualified for the credit directly. A  
20                   pass-through entity and its owners must include with their tax returns for every taxable  
21                   year in which an allocated credit is claimed a statement of the allocation made by the  
22                   pass-through entity and the allocation that would have been required under  
23                   G.S. 105-131.8 or G.S. 105-269.15.

24           **"§ 105-129.72. Limitations.**

25           (a)    Tax Election. – The credits allowed in this Article are allowed against the  
26                   franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4  
27                   of this Chapter. The taxpayer must elect the tax against which a credit will be claimed  
28                   when filing the return on which the first installment of the credit is claimed. This  
29                   election is binding. Any carryforwards of a credit must be claimed against the same tax.

30           (b)    Cap. – The credits allowed in this Article may not exceed fifty percent (50%)  
31                   of the amount of tax against which they are claimed for the taxable year, reduced by the  
32                   sum of all other credits allowed against that tax, except tax payments made by or on  
33                   behalf of the taxpayer. This limitation applies to the cumulative amount of credit,  
34                   including carryforwards, claimed by the taxpayer under this Article against each tax for  
35                   the taxable year. Any unused portion of the credits may be carried forward for the  
36                   succeeding five years.

37           (c)    Forfeiture for Change in Ownership. – If an owner of a pass-through entity  
38                   that has qualified for a credit allowed under this Article disposes of all or a portion of  
39                   the owner's interest in the pass-through entity within five years from the date the  
40                   renewable energy property is placed in service and the owner's interest in the  
41                   pass-through entity is reduced to less than two-thirds of the owner's interest in the  
42                   pass-through entity at the time the renewable energy property was placed in service, the  
43                   owner forfeits a portion of the credit. The amount forfeited is determined by multiplying  
44                   the amount of credit by the percentage reduction in ownership and then multiplying that

1 product by the forfeiture percentage. The forfeiture percentage equals the recapture  
2 percentage found in the table in section 50(a)(1)(B) of the Code.

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

5 (1) The death of the owner.

6 (2) A merger, consolidation, or similar transaction requiring approval by  
7 the shareholders, partners, or members of the taxpayer under  
8 applicable State law, to the extent the taxpayer does not receive cash or  
9 tangible property in the merger, consolidation, or other similar  
10 transaction.

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

18 **"§ 105-129.73. Substantiation.**

19 To claim a credit allowed by this Article, the taxpayer must provide any information  
20 required by the Secretary of Revenue. Every taxpayer claiming a credit under this  
21 Article must maintain and make available for inspection by the Secretary of Revenue  
22 any records the Secretary considers necessary to determine and verify the amount of the  
23 credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and  
24 the amount of the credit rests upon the taxpayer, and no credit may be allowed to a  
25 taxpayer that fails to maintain adequate records or to make them available for  
26 inspection.

27 **"§ 105-129.74. Reports.**

28 For the purposes of this section, 'technology type' refers to which of the following  
29 categorizations describes the renewable energy property: solar thermal, solar electric,  
30 solar daylighting, passive solar, wind, biomass, biofuels, or hydropower. The  
31 Department of Revenue must report to the Revenue Laws Study Committee and to the  
32 Fiscal Research Division of the General Assembly by May 1 of each year the following  
33 information for the 12-month period ending the preceding April 1:

34 (1) The number of taxpayers that claimed the credits allowed in this  
35 Article itemized by technology type and by the taxpayer's legal  
36 structure.

37 (2) The number of renewable energy technology systems that qualified for  
38 a credit itemized by technology type and by the taxpayer's legal  
39 structure.

40 (3) The cost of renewable energy property with respect to which credits  
41 were claimed itemized by technology type and by the taxpayer's legal  
42 structure.

43 (4) The amount of credits generated itemized by technology type and by  
44 the taxpayer's legal structure.

1           (5)    The total cost to the General Fund of the credits claimed itemized by  
2                    technology type and by the taxpayer's legal structure.

3    "**§ 105-129.75. Sunset.**

4           This Article is repealed effective for renewable energy property placed into service  
5            on or after January 1, 2011."

6            **SECTION 2.** The Revenue Laws Study Committee shall study the issue of  
7            whether the credit for investing in renewable energy property, created under this act,  
8            should be capped at one hundred percent (100%) of the taxpayer's tax liability. The  
9            Revenue Laws Study Committee may make an interim report, including any  
10           recommended legislation, on the results of this study to the 2006 Regular Session of the  
11           2005 General Assembly and a final report to the 2007 General Assembly.

12           **SECTION 3.** Section 1 of this act becomes effective for taxable years  
13           beginning on or after January 1, 2006, and applies to renewable energy property placed  
14           into service on or after that date. The remainder of this act is effective when it becomes  
15           law.