GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 1715

Short Title:	Renewable Energy Tax Credits.	(Public)
Sponsors:	Representatives Luebke; Harrison, Insko, and Vinson.	
Referred to:	Finance.	

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO RECODIFY, EXTEND, AND EXPAND THE TAX CREDITS FOR RENEWABLE ENERGY.

The General Assembly of North Carolina enacts:

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

"Article 3H.

"Renewable Energy Tax Credits.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Hydroelectric generator. – A machine that produces electricity by water power or by the friction of water or steam.

(2) Pass-through entity. – Defined in G.S. 105-228.90.

(3) Renewable biomass resources. – Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, landfill wastes, and animal wastes.

(4) Renewable energy property. – Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

c. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

d. Wind equipment required to capture and convert wind energy into electricity or mechanical power and related devices for converting, conditioning, and storing the electricity produced.

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

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

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

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

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

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

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

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

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

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

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

"**§ 105-129.72. Limitations.**

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

(b) Cap. – The credits allowed in this Article may not exceed fifty percent (50%) of the amount of tax against which they are 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 taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credits may be carried forward for the succeeding five years.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for a credit allowed under this Article disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the renewable energy property is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the renewable energy property was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

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

(1) The death of the owner.

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

(e) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity 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. 105-241.1(i), 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 or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.73. Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must 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 taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.74. Reports.**

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

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

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

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

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

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

"**§ 105-129.75. Sunset.**

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

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

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