GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **2**

HOUSE BILL 474*

Committee Substitute Favorable 8/23/05

Short Title: Mill Rehabilitation Tax Credit.	(Public)
Sponsors:	
Referred to:	

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES.

Whereas, the State of North Carolina has lost more than 164,000 jobs in the textile industry during the past decade; and

Whereas, the State of North Carolina has also lost a large number of manufacturing jobs in other industries such as tobacco and furniture; and

Whereas, the losses of these manufacturing jobs have resulted in the vacancy of numerous mill buildings, many of which are historic; and

Whereas, a large vacant mill can be a cancer in a community if it remains vacant and unused, resulting in the deterioration of surrounding neighborhoods and commercial districts, crime, vandalism, vagrancy, arson, and a loss of community spirit; and

Whereas, renovated for new adaptive uses or for new industrial or business uses, a large old factory or mill can have significant environmental, economic development, cultural, tourism, tax base, and affordable housing benefits for a community; and

Whereas, the Historic Rehabilitation Tax Credits created by the North Carolina General Assembly in 1997 have proved to be successful in the revitalization of numerous major historic buildings; and

Whereas, additional incentives would help encourage the rehabilitation of the numerous industrial buildings that have been vacated in recent years, especially those in smaller towns and counties that have been hardest hit by the loss of manufacturing jobs; and

Whereas, the rehabilitation of historic buildings has been proven to be a successful economic development strategy for creating jobs and stimulating new investment; and

Whereas, Virginia and South Carolina have each adopted generous incentives for the rehabilitation of similar buildings that are resulting in new investment in their communities; Now, therefore,

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.

"Mill Rehabilitation Tax Credit.

"**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. – Defined in G.S. 105-129.35.

(2) Certified rehabilitation. – Defined in G.S. 105-129.36.

(3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.

(4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.

(5) Eligible site. – A site located in this State that satisfies all of the following conditions:

a. It was designed for use or was used as a manufacturing facility or for purposes ancillary to manufacturing or as a facility for providing utility services.

b. It is a certified historic structure or a State-certified historic structure.

c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the time at which the eligibility certification is made.

d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed two million dollars ($2,000,000) for the site as a whole.

(6) Enterprise tier area. – Defined in G.S. 105-129.3.

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

(8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.

(9) Rehabilitation expenses. – Defined in G.S. 105-129.36.

(10) State-certified historic structure. – Defined in G.S. 105-129.36.

(11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"**§ 105-129.71. Credit for income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) 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 Article 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 eligible site is placed in service, 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.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site 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 eligible site 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.

"**§ 105-129.72. Credit for non-income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. 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. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

(1) For eligible sites located in an enterprise tier one, two, or three area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to fifty percent (50%) of the rehabilitation expenses.

(2) For eligible sites located in an enterprise tier four or five area, determined as of the time the eligibility certification is obtained, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses.

(b) 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 Article 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 eligible site is placed in service, 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.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site 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 eligible site 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. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(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. Tax credited; cap.**

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

"**§ 105-129.74. Coordination with Article 3D of this Chapter.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article.

"**§ 105-129.75. Sunset.**

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after that date.