

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-342
HOUSE BILL 1472

AN ACT TO SIMPLIFY AND MODERNIZE TAX CREDITS FOR INVESTING IN
RENEWABLE ENERGY SOURCES.

The General Assembly of North Carolina enacts:

Section 1. The following sections of Chapter 105 of the General Statutes are repealed:

- § 105-130.23. Credit against corporate income tax for solar energy equipment in residential buildings.
- § 105-151.2. Credit for solar energy equipment.
- § 105-130.26. Credit for conversion of industrial boiler to wood fuel.
- § 105-151.5. Credit for conversion of industrial boiler to wood fuel.
- § 105-130.27A. Credit for construction of a peat facility.
- § 105-130.29. Credit for construction of an olivine brick facility.
- § 105-130.30. Credit for construction of a methane gas facility.
- § 105-151.10. Credit for construction of a methane gas facility.
- § 105-130.31. Credit for installation of a wind energy device.
- § 105-151.9. Credit for installation of a wind energy device.
- § 105-130.32. Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.
- § 105-151.8. Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.
- § 105-130.33. Credit against corporate income tax for installation of a hydroelectric generator.
- § 105-151.7. Credit for installation of a hydroelectric generator.

Section 2. Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Business Tax Credit and Energy Tax Credits.

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

- (1) Business property. – Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable

- under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.
- (2) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).
 - ~~(3) Purchase. — Defined in section 179 of the Code.~~
 - (3) Hydroelectric generator. – A machine that produces electricity by water power or by the friction of water or steam.
 - (4) Purchase. – Defined in section 179 of the Code.
 - (5) 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.
 - (6) 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.

"§ 105-129.16. Credit for investing in business property.

(a) Credit. – If a taxpayer that has purchased or leased business property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit

allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars (\$4,500). 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 five years in which the installment of a credit accrues, the business 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. 105-129.17.

(c) No Double Credit. – A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business 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 business property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not capitalize the property for tax purposes under the Code and the lessor will not claim the credit allowed in this section with respect to the property.

"§ 105-129.16A. 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. 105-129.17. 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 hundred fifty thousand dollars (\$250,000) 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.

- 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.

"§ 105-129.17. Tax election; cap.

(a) Tax Election. – ~~The credit~~credits allowed in this Article ~~is~~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 the credit will be claimed when filing the return on which the first installment of ~~the~~a credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. —~~The~~A credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is 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 credit may be carried forward for the succeeding five years.

"§ 105-129.18. Substantiation.

To claim ~~the~~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 ~~the~~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.

"§ 105-129.19. Reports.

The Department of Revenue shall report to the Legislative Research Commission 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 ~~credit~~credits allowed in this Article.
- (2) The cost of business property and renewable energy property with respect to which credits were claimed.
- (3) The total cost to the General Fund of the credits claimed."

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 4. This act is effective for taxable years beginning on or after January 1, 2000.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:41 p.m. this 22nd day of July, 1999