

Article 3B.

Business 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), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass-through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code.
- (3) Recodified as § 105-129.15(5).
- (4) Hydroelectric generator. – A machine that produces electricity by water power or by the friction of water or steam.
- (4a) Repealed by Session Laws 2002-87, s. 3, effective August 22, 2002.
- (4b) Installation of renewable energy property. – Renewable energy property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own.
- (5) Purchase. – Defined in section 179 of the Code.
- (6) Renewable biomass resources. – Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes.
- (7) 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. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.
 - b. Combined heat and power system property. – Defined in section 48 of the Code.
 - c. Geothermal equipment that meets either of the following descriptions:
 1. It is a heat pump that uses the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

- 2. It uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating or cooling.
 - d. 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.
 - e. 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.
 - f. 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 or relaying the electricity by cable from the turbine motor to the power grid.
- (8) Renewable fuel. – Either of the following:
- a. Biodiesel, as defined in G.S. 105-449.60.
 - b. Ethanol either unmixed or in mixtures with gasoline that are seventy percent (70%) or more ethanol by volume. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1998-55, s. 2; 1999-342, s. 2; 1999-360, s. 1; 2000-173, s. 1(a); 2001-431, s. 1; 2002-87, s. 3; 2004-153, s. 1; 2005-413, s. 4; 2006-162, s. 23; 2009-548, s. 1; 2010-167, s. 2(a).)

§§ 105-129.15A, 105-129.16: Repealed by Session Laws 2005-413, ss. 6 and 7, effective September 20, 2005.

§ 105-129.16A. (See subsections (e) through (h) for sunset provisions) Credit for investing in renewable energy property.

(a) Credit. – A taxpayer that has constructed, purchased, or leased renewable energy property is allowed a credit equal to thirty-five percent (35%) of the cost of the property if the property is placed in service in this State during the taxable year. In the case of renewable energy property that serves a nonbusiness purpose, 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. Upon request of a taxpayer that leases renewable energy property, the lessor of the property must give the taxpayer a statement that describes the renewable energy property and states the cost of the property. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds. For the purposes of this section, "public funds" does not include grants made under section 1603 of the American Recovery and Reinvestment Tax Act of 2009.

(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.

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

- (1) Business. – A ceiling of two million five hundred thousand dollars (\$2,500,000) applies to each installation of renewable energy property placed in service for a business purpose. Renewable energy property is placed in service for a business purpose if the useful energy generated by the property is offered for sale or is used on-site for a purpose other than providing energy to a residence.
- (2) Nonbusiness. – The following ceilings apply to renewable energy property placed in service for a nonbusiness purpose:
 - a. One thousand four hundred dollars (\$1,400) per dwelling unit for solar energy equipment for domestic water heating, including 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. Eight thousand four hundred dollars (\$8,400) for each installation of geothermal equipment.
 - d. Ten thousand five hundred dollars (\$10,500) for each installation of any other renewable energy property.
- (3) Eco-Industrial Park. – A ceiling of five million dollars (\$5,000,000) applies to each installation of renewable energy property placed in service at an Eco-Industrial Park certified under G.S. 143B-437.08 for a business purpose described in subdivision (1) of this subsection.

(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) Sunset. – Except for taxpayers covered by subsection (f) of this section, this section is repealed effective for renewable energy property placed into service on or after January 1, 2016.

(f) Delayed Sunset. – This section is repealed effective for renewable energy property placed in service on or after January 1, 2017, except as provided in subsection (g) of this section.

(g) Alternate Delayed Sunset. – This section is repealed effective for renewable energy property utilizing renewable biomass resources placed in service on or after May 5, 2017.

(h) Delayed Sunset Conditions. – A taxpayer is eligible for the delayed sunset provided by subsection (f) or (g) of this section if the taxpayer makes a timely application for the extension, pays the application fee, and meets both of the following conditions on or before January 1, 2016:

(i) incurred at least the minimum percentage of costs of the project and (ii) completed at least the minimum percentage of the physical construction of the project. For a project with a total size of less than 65 megawatts of direct current capacity, the minimum percentage of incurred costs and partial construction is at least eighty percent (80%). For a project with a total size of 65 megawatts or more of direct current capacity, the minimum percentage of incurred costs and partial construction is at least fifty percent (50%).

An application and payment must be filed with the Secretary on or before October 1, 2015. The application must include the location of the project, an estimate of the total cost of the project, the total anticipated credit to be claimed, and the total size in megawatt capacity of each project proposed or under construction. The nonrefundable fee to be paid with the application is one thousand dollars (\$1,000) per megawatt of capacity, with a minimum fee of five thousand dollars (\$5,000).

A taxpayer must provide the documentation required under this subsection to the Department on or before March 1, 2016, to verify that the taxpayer meets the minimum percentage of incurred costs and partial construction required to be eligible for the sunset extension:

- (1) A written certification signed by the taxpayer that, prior to January 1, 2016, at least the minimum percentage of the physical construction of the project was completed and that at least the minimum percentage of the total cost of the project was incurred.
- (2) A notarized copy of a written report prepared by an independent engineer duly licensed in the State of North Carolina with expertise in the design and construction of installations of renewable energy property stating that at least the minimum percentage of the physical construction of the project was completed prior to January 1, 2016.
- (3) A notarized copy of a written report prepared by a certified public accountant duly licensed to practice in the State of North Carolina with expertise in accounting for and taxation of renewable energy property and that was prepared in accordance with AT Section 201 of the American Institute of Certified Public Accountants Standards for Agreed-Upon Procedures Engagements stating that the minimum percentage of the total cost of the project was paid or incurred as determined under Section 461 and other relevant sections of the Code prior to January 1, 2016. (1999-342, s. 2; 2005-413, s. 5; 2009-548, s. 2; 2010-4, s. 1; 2010-147, s. 5.4; 2010-167, s. 2(b); 2015-6, s. 2.6; 2015-11, s. 1; 2015-264, s. 54.3; 2017-57, s. 38.13.)

§ 105-129.16B: Recodified as G.S. 105-129.41 by Session Laws 2002-87, s. 2, as amended by Session Laws 2003-416, s. 1, effective August 22, 2002, and applicable to credits for buildings for which a federal tax credit is first claimed for a taxable year beginning on or after January 1, 2002.

§ 105-129.16C: Repealed effective for taxable years beginning on or after January 1, 2006.

**§ 105-129.16D. (Repealed effective for facilities placed in service on or after January 1, 2014)
Credit for constructing renewable fuel facilities.**

(a) Dispensing Credit. – A taxpayer that constructs and installs and places in service in this State a qualified commercial facility for dispensing renewable fuel is allowed a credit equal to fifteen percent (15%) of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and clearly identified as associated with renewable fuel.

The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the portion of the facility directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, 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.

(b) Production Credit. – A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel is allowed a credit equal to twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility. The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, 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.

Notwithstanding subsection (d) of this section, this section is repealed effective for facilities placed in service on or after January 1, 2020, in the case of a taxpayer that meets both of the following conditions:

- (1) Signs a letter of commitment with the Department of Commerce on or before September 1, 2013, stating the taxpayer's intent to construct and place into service in this State a commercial facility for processing renewable fuel.
- (2) Begins construction of the facility on or before December 31, 2013.

(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars (\$400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities. In order to claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million dollars (\$400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service and the investment requirements of this subsection are no longer satisfied, the credit expires and the taxpayer may take any remaining installment of the credit only to the extent allowed under subsection (b) of this section. The taxpayer may, however, take the portion of an installment under this subsection that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. Notwithstanding the provisions of G.S. 105-129.17, a taxpayer may carry forward unused portions of the credit allowed under this subsection for the succeeding 10 years.

If a taxpayer that claimed a credit under this subsection fails to meet the requirements of this subsection but meets the requirements of subsection (b) of this section, the taxpayer forfeits the difference between the alternative credit claimed under this subsection and the credit allowed under subsection (b) of this section. A taxpayer that forfeits part of the alternative credit under this subsection is liable for the additional taxes avoided plus interest at the rate established under

G.S. 105-241.21, computed from the date the additional taxes would have been due if the credit had not been allowed. The additional taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the additional taxes and interest by the due date is subject to penalties provided in G.S. 105-236.

(c) No Double Credit. – A taxpayer may not claim the credits allowed under subsections (b) and (b1) of this section with respect to the same facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the costs of constructing and installing a facility may not take the credit allowed in this section with respect to the same costs.

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, 2014. (2004-153, s. 2; 2006-66, s. 24.7(a); 2006-259, s. 19.5(a); 2007-323, s. 31.9(a); 2010-95, s. 2; 2010-167, s. 1(a); 2012-36, s. 2; 2013-363, s. 11.3(a); 2016-113, s. 10.)

§ 105-129.16E. Expired effective January 1, 2010, pursuant to the terms of former subsection (d) of this section.

§ 105-129.16F: Repealed by Session Laws 2012-36, s. 3, effective for taxable years beginning on or after January 1, 2014.

§ 105-129.16G. Expired effective January 1, 2014, pursuant to the terms of former subsection (b) of this section.

§ 105-129.16H. (Repealed) Credit for donating funds to a nonprofit organization or unit of State or local government to enable the nonprofit or government unit to acquire renewable energy property.

Repealed pursuant to terms of former subsection (d) of this section. See note. (2007-397, s. 13(a); 2008-107, s. 28.25(a); 2008-134, s. 70; 2013-414, s. 32.)

§ 105-129.16I. Repealed effective for a renewable energy property facility placed in service on or after January 1, 2014, pursuant to Session Laws 2010-167, s. 3(a).

§ 105-129.16J. Temporary unemployment insurance refundable tax credit.

(a) Credit. – A small business that makes contributions during the taxable year to the State Unemployment Insurance Fund with respect to wages paid for employment in this State is allowed a credit equal to twenty-five percent (25%) of the contributions. A small business is a business whose cumulative gross receipts from business activity for the taxable year do not exceed one million dollars (\$1,000,000).

(b) Refundable. – Notwithstanding G.S. 105-129.17, the credit allowed by this section is subject to the following:

- (1) The credit may only be claimed against the income taxes imposed by Article 4 of this Chapter.
- (2) If the credit exceeds the amount of tax imposed by Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the excess is refundable. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in that Article. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(c) Applicability. – This section applies only to taxable years 2010 and 2011. (2010-31, s. 31.1A(a).)

§ 105-129.17. Tax election; cap.

(a) Tax Election. – The credit allowed in G.S. 105-129.16A is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. All other 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 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. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 13; 2000-140, ss. 63(a), 88; 2001-431, s. 3; 2002-87, s. 5; 2009-548, s. 3.)

§ 105-129.18. (See Editor's note for repeal) 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. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 14; 2000-140, ss. 63(b), 88.)

§ 105-129.19. Report.

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by taxpayer:

- (1) The number of taxpayers that took the credits allowed in this Article.
- (2) The cost of renewable energy property with respect to which credits were taken.
- (2a) Repealed by Session Laws 2002-87, s. 6, effective August 22, 2002.
- (3) The total cost to the General Fund of the credits taken. (1996, 2nd Ex. Sess., c. 13, s. 3.12; 1997-277, s. 3; 1999-342, s. 2; 1999-360, ss. 1, 15; 2000-140, ss. 63(c), 88; 2001-414, s. 10; 2002-87, s. 6; 2005-429, s. 2.3; 2010-166, s. 1.2.)

§§ 105-129.20 through 105-129.24. Reserved for future codification purposes.