

May 18, 2010

H 1829. IRC UPDATE (=S 1183). Filed 5/18/10. *TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.*

Identical to S 1183, filed 5/17/10.

Intro. by Luebke, Brubaker, Carney, Gibson. GS 105

June 3, 2010

H 1829. ECON. DEVPT. AND TAX COLLECTION CHANGES (NEW). Filed 5/18/10. House committee substitute makes the following changes to 1st edition. Deletes the provisions of the 1st edition and replaces it with *AN ACT TO EXTEND THE MILL REHABILITATION CREDIT; TO MAKE CHANGES TO THE CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY; TO ESTABLISH A CREDIT FOR CONSTRUCTING A RENEWABLE ENERGY PROPERTY FACILITY; TO LOWER THE SALES TAX COMPLIANCE BURDEN ON SMALL RETAILERS; TO RELIEVE THE ANNUAL REPORT COMPLIANCE BURDEN ON SMALL BUSINESS; TO REDUCE THE FRANCHISE TAX BURDEN ON CONSTRUCTION COMPANIES; AND TO IMPROVE THE TAX AND DEBT COLLECTION PROCESS, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.*

Mill Rehabilitation credit. Amends GS 105-129.75 to extend the sunset on the mill rehabilitation credit from January 1, 2011, to January 1, 2014.

Changes to credit for investing in renewable energy property. Amends GS 105-129.15 to define *installation* and *pass-through entity*. Changes the definition of *cost* to remove the distinction between when property is owned by the taxpayer and when the property is leased by the taxpayer from another, to provide that cost is determined according to regulations adopted under Section 1012 of the code, subject to specified limitation on cost provided in the code.

Amends GS 105-129.16A to broaden the tax credit for renewable energy property by allowing a pass-through entity to allocate the credit among any of its owners, provided that the owner's adjusted basis in the pass-through entity is at least 40% of the amount of the credit allocated to that owner. Sets out graduated forfeiture provisions applicable to owners who qualify for the credit but then dispose of all or a portion of their interest in the pass-through entity within five years from the date the renewable energy property was placed in service, with exceptions to the forfeiture requirement for changes in ownership resulting from an owner's death or from certain approved mergers or consolidations. Provides that taxpayers who forfeit the credit are liable for all past taxes avoided as a result of the credit, plus interest, due 30 days after the date of the forfeiture. Effective for taxable years beginning on or after January 1, 2010.

Establish credit for constructing a renewable energy property facility. Enacts new GS 105-121.16I specifying that a taxpayer that constructs and places in service a commercial facility for the manufacture of renewable energy property is allowed a credit of 25% of the cost to the taxpayer of constructing and equipping the facility. Credit must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If the facility is disposed of or taken out of service in one of the years in which the installment of a credit accrues, the credit expires and the taxpayer loses the remaining installments. Taxpayer may, however, take the portion of an installment that accrued previously and was carried forward to the extent permitted under GS 105-129.17. Taxpayer may not take this credit if taxpayer claims any other tax credit allowed for construction of same facility. Repealed effective for a renewable energy facility placed in service on or after January 1, 2014.

Lower sales tax compliance burden on small retailers. Amends GS 105-164.16(b1) to require monthly returns and payments of state sales and use taxes by taxpayers who are consistently liable for at least \$100 but less than \$15,000 (was, \$10,000) per month in state sales and use taxes, effective October 1, 2010. Amount increases to \$20,000 on July 1, 2011. Makes same changes in GS 105-164.16(b2) (prepayment of next month's tax liability). Requires the secretary of revenue, when conducting a review of taxpayer's sales and use tax payment schedule requirements under GS 105-164.16(b3), to identify the taxpayers who are no longer required to make a monthly prepayment of the next month's sales and use tax liability because of the change in the sales tax payment threshold, and to notify those taxpayers of the change.

Relieve annual report compliance burden on small business. Amends GS 55-16-22(c) to change the filing date for annual corporate reports to secretary of state from the 15th day of the third month following the close of the corporation's fiscal year to the 15th day of the fourth month. Revises GS 57-2-23 to further clarify that annual reports of domestic and foreign limited liability companies to secretary of state need not restate information required on annual report if information has not changed and if company so certifies on its report. Provides that a limited liability company's first annual report is due by April 15 of the year following the year in which the company files its articles of organization.

Provides that a limited liability company (LLC) formed on or after September 1, 2001, but before January 1, 2010, and has filed an annual report each year after the year in which it was formed is not required to file any additional annual reports for those years. An LLC formed on or after January 1, 2010, but before April 15, 2010, does not have to file an annual report until April 15, 2011. An LLC that has filed more annual reports than required is not allowed a refund of the filing fee but is not required to pay the filing fee when filing the annual report due April 15, 2011. Requires the Secretary of State to explain why some do not have to pay the fee and provide a place on the annual report form for an LLC to state that it is not subject to the filing fee.

Reduce franchise tax burden on construction companies. Specifies that a taxpayer that paid franchise tax in taxable years 2007, 2008, or 2009 that included billings in excess of costs in its capital base may apply to the Department of Revenue for a refund of any excess tax paid to the extent that the refund is the result of the change in law enacted by SL 2009-422 (An act to remove billings in excess of costs from the franchise tax capital base for taxpayers using the percentage of completion method of revenue recognition). Request for refund must be made on or before January 1, 2011, and is barred thereafter. Amends SL 2009-422 to make that act apply retroactively for taxable years beginning on or after January 1, 2007.

Improve tax and debt collection process. Amends GS 147-86.20(1) to include taxes in definition of accounts receivable for purposes of Article 6, GS Chapter 147, concerning state treasurer and amends GS 147-86.25 to require state controller to add overdue tax debts as defined by GS 105-243.1 to existing setoff debt collection program. Deletes provision of statute dealing with notification of debtor and contesting setoff.

Makes setoff debt program applicable to businesses as well as individuals and adds community colleges to list of agencies that are specifically authorized to participate in setoff debt collection program. Specifies that a federal identification number may be used in lieu of a Social Security number.

Effective January 1, 2011, amends GS 105-242(b) to allow the Secretary of Revenue (Secretary) to give financial institutions information identifying a taxpayer owing tax debt and the amount of the debt. Requires the financial institution receiving the information to determine the amount of intangible property it holds that belongs to the taxpayer and inform the Secretary. Requires the Secretary to reimburse the financial institution for the costs of providing the information.

Sets out new procedure for attachment and garnishment from financial institutions of intangible personal property, including electronic and other notification procedures. Makes conforming changes.

June 8, 2010

H 1829. ECON. DEVPT. AND TAX COLLECTION CHANGES. Filed 5/18/10. House amendment makes the following changes to 2nd edition.

Changes effective date to October 1, 2011 (was July 1, 2011) for amendments to GS 105-164.16(b1) and (b2), as amended, which require a taxpayer who is consistently liable for at least \$100 but less than \$20,000 a month in state and local sales and use taxes to file a return and pay monthly, or a taxpayer who is consistently liable for at least \$20,000 a month to prepay. Amends GS 105-129.16A (credit for renewable energy property investment) to require a lessor of property to provide the taxpayer, upon request, with a statement that describes the renewable energy property and states its cost. Amends GS 105-259(b) to also allow disclosure of tax information to a taxpayer claiming a credit under GS 105-129.16A. Reletters the bill subsections accordingly.

June 29, 2010

H 1829. RENEWABLE ENERGY INCENTIVES (NEW) . Filed 5/18/10. Senate committee substitute makes the following changes to 3rd edition.

Deletes the amendment to GS 105-129.75 that extended the sunset date for the mill rehabilitation credit.

Adds new section amending GS 105-129.16D(d) to extend the sunset date to January 1, 2013 (was, January 1, 2011) for the renewable fuel facility construction credit. Amends GS 105-129.16F(b) to extend the sunset date to January 1, 2013 (was, January 1, 2010) for the biodiesel producers credit.

Amends GS 105-129.15 to add that the cost of property that a taxpayer leases from another is valued pursuant to GS 105-130.4(j)(2), *unless* the property is renewable energy property for which the taxpayer claims either a federal energy credit or a federal grant and makes a lease pass-through election, resulting in a cost determination under the Internal Revenue Code (previous version eliminated the distinction between taxpayer-owned property and taxpayer-leased property). Deletes definition for *pass-through entity*. Clarifies that installation of *renewable energy property* means property that is able to produce usable energy (was, usable renewable energy) on its own. Also includes, in the definition of *renewable energy property*, combined heat and power system property and geothermal equipment meeting certain criteria. Clarifies that wind equipment included in the definition of renewable energy property also covers devices that relay the electricity by cable from the turbine motor to the power grid. Removes, from the list of renewable energy property, certain geothermal heat pumps and geothermal equipment.

Amends GS 105-129.16A to clarify that for renewable energy property serving a nonbusiness purpose (was, a single family dwelling), the credit must be taken for the taxable year in which the property is placed in service. Further clarifies the language and provides different ceiling credits as follows: (1) A business (was, a nonresidential property) has a ceiling of \$2.5

million that applies to *each installation* (was, per installation) of renewable energy property placed in service for a business purpose (was, for any purpose other than residential). 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) A nonbusiness (was, residential property) applies a ceiling to *each installation* of renewable energy property, including \$8,400 for geothermal equipment for each residence (was, per installation for a geothermal heat pump or geothermal equipment), and \$10,500 for any other renewable energy property (was, per installation for residential purposes) for each residence. Makes other technical and conforming changes. Deletes provisions detailing credit allocation for pass-through entities and credit forfeiture explanations, exceptions, and liabilities.

Amends and reorganizes proposed GS 105-129.16l to clarify that a taxpayer places a facility in service if it constructs the facility or converts its existing manufacturing facility to change the product it manufactures. Allows the credit to a taxpayer that places in service (was, constructs and places in service) a commercial facility in NC for the manufacture of renewable energy property *or* a major component subassembly for a solar array or a wind turbine. Makes a conforming change to the section's heading. Requires that the credit be taken in five (was, seven) equal annual installments beginning with the taxable year in which the facility is placed in service.

Deletes sections that lowered the sales tax compliance burden on small retailers, and that lifted the annual reporting requirement on small businesses. Deletes the section that reduced the franchise tax burden on construction companies and the section improving the tax and debt collection process.

Adds new section making identical amendments to GS 153A-455 (pertaining to counties) and GS 160A-459.1 (pertaining to cities) to clarify the authority of local governments to finance energy programs. Finds that counties and cities have integral roles in promoting renewable energy and energy efficiency within their respective jurisdictions. Authorizes a county (and a city) to establish a revolving loan fund *and a loan loss reserve fund* to finance or assist in the financing (was, provide loans to finance) of renewable energy sources and improvements. Further authorizes local government units to establish other local government finance programs funded through federal grants, and to use state and federal grants and loans (was, Energy Efficiency and Conservation Block Grant Funds) and general (was, unrestricted) revenue. Limits the term of any loan provided under the section to 20 years (was, 15 years). Makes additional conforming and clarifying changes.

Adds new section amending GS 105-130.34(a) to clarify that real property donated for a conservation purpose, as delineated in the statute, will be eligible for a credit provided the property is donated in perpetuity for one of the qualifying uses and accepted in perpetuity for that same qualifying use, and the person to whom the property is donated must be the state, a local government, or certain entities. Makes a conforming change to GS 105-151.12(a).

Adds new section amending GS 22B-20 to prohibit a deed restriction, covenant, or similar binding agreement from placing unreasonable restrictions (regulation was previously allowed if it allowed reasonable use) on the location or screening of solar collectors. Defines *unreasonable restrictions* as any restriction that would increase the installation costs of a solar collector by more than 10% of the total initial installation costs, including labor and equipment. Deletes language allowing the prohibition of solar collectors that are visible by a person on the ground, as described. Makes the section effective December 1, 2010, and applicable to deed restrictions, covenants, or similar agreements that run with the land and are recorded on or after that date.

Makes a conforming change to the title to reflect the new and deleted sections.

June 30, 2010

H 1829. RENEWABLE ENERGY INCENTIVES. Filed 5/18/10. Senate amendment makes the following changes to 4th edition.

Deletes proposed changes to GS 22B-20 (regarding deed restrictions and other agreements prohibiting solar collectors). Makes a conforming change to the title and additional technical changes to the title.

July 1, 2010

H 1829. RENEWABLE ENERGY INCENTIVES. Filed 5/18/10. Senate amendment #2 makes the following changes to 4th edition, as amended.

Adds section to enact new GS 105-129.20 requiring a taxpayer who is primarily responsible for designing energy efficient commercial building property installed in property owned by a governmental entity to obtain written allocation of the deduction from the property's owner, in order to claim the federal deduction. Designates the governmental entity that enters into a design contract as the person responsible for making the deduction allocation. Makes a conforming change to the title.

July 8, 2010

H 1829. RENEWABLE ENERGY INCENTIVES. Filed 5/18/10. Conference report recommends the following changes to 5th edition to reconcile matters in controversy.

Amends GS 105-129.16A(c)(2) to specify the following ceilings applicable to renewable energy property (was, each installation of renewable energy property) placed in service for a nonbusiness purpose (previous version applied the ceiling to each residence): (1) \$1,400 *per dwelling unit* for solar energy equipment for domestic water heating; (2) \$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; (3) \$8,400 *for each installation* of geothermal equipment; and (4) \$10,500 *for each installation* of any other renewable energy property.

Deletes the section enacting GS 105-129.20, which required a taxpayer primarily responsible for designing energy efficient commercial building property installed in property owned by a governmental entity to obtain written allocation of the deduction from the property's owner, in order to claim the federal deduction. Instead, amends GS 143-341(3) (pertaining to the Department of Administration's powers and duties) to require the Department to provide written allocation of the federal deduction for designing energy efficient commercial building property installed on or in state-owned property.

Makes a technical and a conforming change.

August 12, 2010

SL 2010-167 (H 1829). RENEWABLE ENERGY INCENTIVES. AN ACT TO PROMOTE THE USE OF RENEWABLE ENERGY BY EXTENDING THE CREDIT FOR CONSTRUCTING RENEWABLE FUEL FACILITIES AND THE CREDIT FOR BIODIESEL PRODUCERS, REVISING THE TAX CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY, REINSTATING AND EXPANDING THE TAX CREDIT FOR A RENEWABLE ENERGY PROPERTY FACILITY, CLARIFYING THE AUTHORITY OF LOCAL GOVERNMENTS TO FINANCE ENERGY PROGRAMS, CLARIFYING THAT REAL PROPERTY DONATED FOR A CONSERVATION PURPOSE CAN BE USED ONLY FOR THAT PURPOSE, AND TO DESIGNATE THE APPROPRIATE PERSON TO PROVIDE A WRITTEN ALLOCATION OF THE FEDERAL §179D TAX DEDUCTION FOR ENERGY EFFICIENT COMMERCIAL BUILDINGS OWNED BY A GOVERNMENTAL ENTITY. Summarized in *Daily Bulletin* 5/18/10, 6/3/10, 6/8/10, 6/29/10, 6/30/10, 7/1/10, and 7/8/10. Enacted August 2, 2010. Effective August 2, 2010, except as otherwise provided.