

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 953

Short Title: Make Conservation Tax Credit Transferrable. (Public)

Sponsors: Representatives Jordan, Moffitt, McGrady, and Collins (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Finance.

April 18, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE THE CONSERVATION TAX CREDIT TRANSFERRABLE.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.34 reads as rewritten:
"§ 105-130.34. Credit for certain real property donations.

(a) Credit. – Any C Corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity for one of the qualifying uses listed in this subsection and accepted in perpetuity for the qualifying use for which the property is donated. The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

The credit allowed under this section for one or more qualified donations made in a taxable year may not exceed five hundred thousand dollars (\$500,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

- (1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.
- (2) A self-contained appraisal report or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.



1 (b) Cap. – The credit allowed by this section may not exceed the amount of tax
2 imposed by this Part for the taxable year reduced by the sum of all credits allowed, except
3 payments of tax made by or on behalf of the taxpayer.

4 (c) Carryforward. – Any unused portion of this credit may be carried forward for the
5 next succeeding five years.

6 (c1) Transfer. – In lieu of claiming a credit, a taxpayer may transfer the credit to another
7 taxpayer as provided in this section.

8 (1) A taxpayer may transfer any unused but otherwise allowable credit for use
9 by another taxpayer.

10 (2) A credit transferred under this subsection may be applied against any tax
11 imposed by this Article.

12 (3) A taxpayer that transfers a credit must file with the Secretary in the manner
13 prescribed by the Secretary a report listing the person to whom the credit has
14 been transferred and the amount of the transfer.

15 (4) A fee of two percent (2%) of the amount of credit transferred is due upon the
16 transfer of the credit to another taxpayer. The fee is due from the taxpayer
17 that is transferring the credit and is payable at the time the report is filed
18 under subdivision (2) of this subsection. The fee is to be used by the
19 Department of Revenue for administration of this section and
20 G.S. 105-151.12.

21 (5) A taxpayer to whom a credit is transferred may subsequently transfer the
22 credit to another taxpayer in accordance with the provisions of this
23 subsection.

24 (6) If it is later determined, upon audit or otherwise, that a donation of property
25 did not satisfy the requirements of subsection (a) of this section with respect
26 to the use of the property, the duration of the donation, or the qualification of
27 the donee, the taxpayer that claimed the credit is liable for any past taxes
28 avoided as a result of the credit.

29 (7) If the value of a credit is reduced based on a determination of the actual fair
30 market value of the donation, the credits claimed by the original taxpayer
31 and all subsequent transferees are reduced proportionately, and each
32 taxpayer is liable for any past taxes avoided by the taxpayer as a result of the
33 credit.

34 (d) No Double Benefit. – That portion of a qualifying donation that is the basis for a
35 credit allowed under this section is not eligible for deduction as a charitable contribution under
36 G.S. 105-130.9."

37 **SECTION 2.** G.S. 105-151.12 reads as rewritten:

38 **"§ 105-151.12. Credit for certain real property donations.**

39 (a) Credit. – An individual or pass-through entity that makes a qualified donation of an
40 interest in real property located in North Carolina during the taxable year that is useful for (i)
41 public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
42 conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi)
43 conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation
44 of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of
45 predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit
46 against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value
47 of the donated property interest. To be eligible for this credit, the interest in property must be
48 donated in perpetuity for one of the qualifying uses listed in this subsection and accepted in
49 perpetuity for the qualifying use for which the property is donated. The person to whom the
50 property is donated must be the State, a local government, or a body that is both organized to
51 receive and administer lands for conservation purposes and qualified to receive charitable

1 contributions under the Code. Lands required to be dedicated pursuant to local governmental
2 regulation or ordinance and dedications made to increase building density levels permitted
3 under a regulation or ordinance are not eligible for this credit.

4 To support the credit allowed by this section, the taxpayer must file with the income tax
5 return for the taxable year in which the credit is claimed the following:

6 (1) A certification by the Department of Environment and Natural Resources
7 that the property donated is suitable for one or more of the valid public
8 benefits set forth in this subsection. The certification for a qualified donation
9 made by a pass-through entity must be filed by the pass-through entity.

10 (2) A self-contained or summary appraisal report as defined in Standards Rule
11 2-2 in the latest edition of the Uniform Standards of Professional Appraisal
12 Practice as promulgated by the Appraisal Foundation for the property. For
13 fee simple absolute donations of real property, a taxpayer may submit
14 documentation of the county's appraised value of the donated property, as
15 adjusted by the sales assessment ratio, in lieu of an appraisal report.

16 ...

17 (b) Cap. – The credit allowed by this section may not exceed the amount of tax imposed
18 by this Part for the taxable year reduced by the sum of all credits allowed, except payments of
19 tax made by or on behalf of the taxpayer.

20 Any unused portion of this credit may be carried forward for the next succeeding five years.

21 (c) Repealed by Session Laws 1998-212, s. 29A.13(b).

22 (d) Repealed by Session Laws 2007-309, s. 2, effective for taxable years beginning on
23 or after January 1, 2007.

24 (e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205,
25 the offer of donation must be made before December 31, 2003 to qualify for the credit allowed
26 by this section.

27 (f) Repealed by Session Laws 2007-309, s. 2, effective for taxable years beginning on
28 or after January 1, 2007.

29 (g) Transfer. – In lieu of claiming a credit, a taxpayer may transfer the credit to another
30 taxpayer as provided in this section.

31 (1) A taxpayer may transfer any unused but otherwise allowable credit for use
32 by another taxpayer.

33 (2) A credit transferred under this subsection may be applied against any tax
34 imposed by this Article.

35 (3) A taxpayer that transfers a credit must file with the Secretary in the manner
36 prescribed by the Secretary a report listing the person to whom the credit has
37 been transferred and the amount of the transfer.

38 (4) A fee of two percent (2%) of the amount of credit transferred is due upon the
39 transfer of the credit to another taxpayer. The fee is due from the taxpayer
40 that is transferring the credit and is payable at the time the report is filed
41 under subdivision (2) of this subsection. The fee is to be used by the
42 Department of Revenue for administration of this section and
43 G.S. 105-151.12.

44 (5) A taxpayer to whom a credit is transferred may subsequently transfer the
45 credit to another taxpayer in accordance with the provisions of this
46 subsection.

47 (6) If it is later determined, upon audit or otherwise, that a donation of property
48 did not satisfy the requirements of subsection (a) of this section with respect
49 to the use of the property, the duration of the donation, or the qualification of
50 the donee, the taxpayer that claimed the credit is liable for any past taxes
51 avoided as a result of the credit.

1 (7) If the value of a credit is reduced based on a determination of the actual fair
2 market value of the donation, the credits claimed by the original taxpayer
3 and all subsequent transferees are reduced proportionately, and each
4 taxpayer is liable for any past taxes avoided by the taxpayer as a result of the
5 credit."

6 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,
7 2013.