

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 287*

Short Title: New Historic Preservation Tax Credit. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); Bingham, Daniel, Gunn, Hise, J. Jackson, Lowe, Pate, Robinson, Smith, Smith-Ingram, Van Duyn, and Woodard.

Referred to: Rules and Operations of the Senate.

March 16, 2015

A BILL TO BE ENTITLED
AN ACT TO ENACT A HISTORIC PRESERVATION TAX CREDIT.
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 3L.

"Historic Rehabilitation Tax Credits Investment Program.

"§ 105-129.100. Credit for rehabilitating income-producing historic structure.

(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to the sum of the following:

(1) Base amount. – The percentage of qualified rehabilitation expenditures at the levels provided in the table below:

<u>Expenses</u>	<u>OverUp To</u>	<u>Rate</u>
<u>0</u>	<u>\$10 million</u>	<u>15.00%</u>
<u>\$10 million</u>	<u>\$20 million</u>	<u>10.00%</u>

(2) Development tier bonus. – An amount equal to five percent (5%) of qualified rehabilitation expenditures not exceeding twenty million dollars (\$20,000,000) if the certified historic structure is located in a development tier one or two area.

(3) Targeted investment bonus. – An amount equal to five percent (5%) of qualified rehabilitation expenditures not exceeding twenty million dollars (\$20,000,000) if the certified historic structure is located on an eligible targeted investment site.

(b) Pass-Through Entity. – 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 section 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 certified historic structure 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) Definitions. – The following definitions apply in this section:



- 1 (1) Certified historic structure. – Defined in section 47 of the Code.
2 (2) Development tier area. – Defined in G.S. 143B-437.08.
3 (3) Eligibility certification. – A certification obtained from the State Historic
4 Preservation Officer that the site comprises an eligible targeted investment
5 site.
6 (4) Eligible targeted investment site. – A site located in this State that satisfies
7 all of the following conditions:
8 a. It was used as a manufacturing facility or for purposes ancillary to
9 manufacturing, as a warehouse for selling agricultural products, or as
10 a public or private utility.
11 b. It is a certified historic structure.
12 c. It has been at least sixty-five percent (65%) vacant for a period of at
13 least two years immediately preceding the date the eligibility
14 certification is made.
15 (5) Pass-through entity. – Defined in G.S. 105-228.90.
16 (6) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.
17 (7) State Historic Preservation Officer. – The Deputy Secretary of the Office of
18 Archives and History of the North Carolina Department of Cultural
19 Resources, or the Deputy Secretary's designee, who acts to administer the
20 historic preservation programs within the State.
21 (8) Targeted investment. – Qualified rehabilitation expenditures on a certified
22 historic structure that is located on an eligible targeted investment site.
23 (d) Limitations. – The amount of credit allowed under this section with respect to
24 qualified rehabilitation expenditures for an income-producing certified historic structure may
25 not exceed four million five hundred thousand dollars (\$4,500,000).
26 **§ 105-129.101. Credit for rehabilitating non-income-producing historic structure.**
27 (a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47
28 of the Code and who has rehabilitation expenses of at least ten thousand dollars (\$10,000) for a
29 State-certified historic structure located in this State is allowed a credit equal to fifteen percent
30 (15%) of the rehabilitation expenses.
31 (b) Limitations. – The amount of credit allowed under this section with respect to
32 rehabilitation expenses for a non-income-producing certified historic structure may not exceed
33 twenty-two thousand five hundred dollars (\$22,500) per discrete property parcel. In the event
34 that the taxpayer is the transferee of a State-certified historic structure for which rehabilitation
35 expenses were made, the taxpayer as transferee is allowed a credit under this section only if the
36 transfer takes place before the structure is placed in service. In this event, no other taxpayer
37 may claim such credit. A taxpayer is allowed to claim a credit under this section no more than
38 once in any five-year period, carryovers notwithstanding.
39 (c) Definitions. – The following definitions apply in this section:
40 (1) Certified rehabilitation. – Repairs or alterations consistent with the Secretary
41 of the Interior's Standards for Rehabilitation and certified as such by the
42 State Historic Preservation Officer.
43 (2) Discrete property parcel. – A lot or tract described by metes and bounds, a
44 deed or plat of which has been recorded in the deed records of the county in
45 which the property is located, and on which a State-certified historic
46 structure is located, or a single condominium unit in a State-certified historic
47 structure.
48 (3) Placed in service. – The later of the date on which the rehabilitation is
49 completed or the date on which the property is used for its intended purpose.
50 (4) Rehabilitation expenses. – Expenses incurred in the certified rehabilitation of
51 a certified historic structure and added to the property's basis. The expenses

1 must be incurred within any 24-month period per discrete property parcel.
2 The term does not include the cost of acquiring the property, the cost
3 attributable to the enlargement of an existing building, the cost of site work
4 expenditures, or the cost of personal property.

5 (5) State-certified historic structure. – A structure that is individually listed in
6 the National Register of Historic Places or is certified by the State Historic
7 Preservation Officer as contributing to the historic significance of a National
8 Register Historic District or a locally designated historic district certified by
9 the United States Department of the Interior.

10 (6) State Historic Preservation Officer. – Defined in G.S. 105-129.100(c)(7).

11 **"§ 105-129.102. Rules; fees.**

12 (a) Rules. – The North Carolina Historical Commission, in consultation with the State
13 Historic Preservation Officer, may adopt rules needed to administer any certification process
14 required by this Article.

15 (b) Fees. – The North Carolina Historical Commission, in consultation with the State
16 Historic Preservation Officer, may adopt a schedule of fees for providing any certifications
17 required by this Article, or Article 3D or 3H as they provided as of December 31, 2014. In
18 establishing the fee schedule, the Commission shall consider the administrative and personnel
19 costs incurred by the Department of Cultural Resources. An application fee may not exceed one
20 percent (1%) of the completed qualifying rehabilitation expenditures. The proceeds of the fees
21 are receipts of the Department of Cultural Resources and must be used for performing its duties
22 under this Article.

23 **"§ 105-129.103. Tax credited; credit limitations.**

24 (a) Tax Credited. – The credits provided in this Article are allowed against the franchise
25 tax imposed in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or
26 the gross premiums tax imposed in Article 8B of this Chapter. The taxpayer may take a credit
27 allowed by this Article against only one of the taxes against which it is allowed. The taxpayer
28 must elect the tax against which a credit will be claimed when filing the return on which it is
29 claimed, and this election is binding. Any carryforwards of a credit must be claimed against the
30 same tax.

31 (b) Return. – A taxpayer may claim a credit allowed by this Article on a return filed for
32 the taxable year in which the certified historic structure was placed into service. When an
33 income-producing certified historic structure as defined in G.S. 105-129.100 is placed into
34 service in two or more phases in different years, the amount of credit that may be claimed in a
35 year is the amount based on the qualified rehabilitation expenditures associated with the phase
36 placed into service during that year.

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

41 (d) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the
42 Code to recapture all or part of the federal credit for rehabilitating an income-producing historic
43 structure located in this State forfeits the corresponding part of the State credit allowed under
44 G.S. 105-129.100 with respect to that historic structure. If the credit was allocated among the
45 owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that
46 the credit was allocated.

47 (e) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has
48 qualified for the credit allowed under G.S. 105-129.100 disposes of all or a portion of the
49 owner's interest in the pass-through entity within five years from the date the rehabilitated
50 historic structure is placed in service and the owner's interest in the pass-through entity is
51 reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the

1 historic structure was placed in service, the owner forfeits a portion of the credit. The amount
2 forfeited is determined by multiplying the amount of credit by the percentage reduction in
3 ownership and then multiplying that product by the forfeiture percentage. The forfeiture
4 percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the
5 Code.

6 (f) Exceptions to Forfeiture. – Forfeiture as provided in subsection (e) of this section is
7 not required if the change in ownership is the result of any of the following:

8 (1) The death of the owner.

9 (2) A merger, consolidation, or similar transaction requiring approval by the
10 shareholders, partners, or members of the taxpayer under applicable State
11 law, to the extent the taxpayer does not receive cash or tangible property in
12 the merger, consolidation, or other similar transaction.

13 (g) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that
14 forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus
15 interest at the rate established under G.S. 105-241.21, computed from the date the taxes would
16 have been due if the credit had not been allowed. The past taxes and interest are due 30 days
17 after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to
18 pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

19 (h) Substantiation. – To claim a credit allowed by this Article, the taxpayer must
20 provide any information required by the Secretary of Revenue, including a copy of the
21 certification obtained from the State Historic Preservation Office verifying that the historic
22 structure has been rehabilitated in accordance with the requirements set out in this Article, and
23 a copy of the eligibility certification if the historic structure is located in an eligible targeted
24 investment site and the target investment bonus is claimed. Every taxpayer claiming a credit
25 under this Article must maintain and make available for inspection by the Secretary of Revenue
26 any records the Secretary considers necessary to determine and verify the amount of the credit
27 to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount
28 of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to
29 maintain adequate records or to make them available for inspection.

30 (i) No Double Credit. – A taxpayer that claims a credit under this Article may not also
31 claim a credit under Article 3D or Article 3H of this Chapter with respect to the same activity.

32 **"§ 105-129.104. Report; tracking.**

33 (a) The Department must include in the economic incentives report required by
34 G.S. 105-256 the following information itemized by taxpayer:

35 (1) The number of taxpayers that took the credits allowed in this Article.

36 (2) The amount of rehabilitation expenses and qualified rehabilitation
37 expenditures with respect to which credits were taken.

38 (3) The total cost to the General Fund of the credits taken.

39 (b) The Department shall include in the economic incentives report required by
40 G.S. 105-256 the following information:

41 (1) The total amount of tax credits claimed and the total amount of tax credits
42 taken against current taxes, by type of tax, during the relevant tax year.

43 (2) The total amount of tax credits carried forward, by type of tax.

44 **"§ 105-129.105. Sunset.**

45 This Article expires for qualified rehabilitation expenditures and rehabilitation expenses
46 incurred on or after January 1, 2021."

47 **SECTION 2.** G.S. 105-129.75 reads as rewritten:

48 **"§ 105-129.75. Sunset.**

49 This Article expires January 1, 2015, for rehabilitation projects for which an application for
50 an eligibility certification is submitted on or after that date. Eligibility certifications under this
51 Article expire January 1, 2023."

1 **SECTION 3.** Section 1 of this act becomes effective January 1, 2015, and applies
2 to qualified rehabilitation expenditures and rehabilitation expenses incurred on or after that
3 date. Section 2 of this act is effective when it becomes law.