

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1755*
Finance Committee Substitute Adopted 6/12/08

Short Title: Various Tax Law Changes.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON THE CREDITS FOR RESEARCH AND DEVELOPMENT, LOW-INCOME HOUSING, MILL REHABILITATION, AND THE STATE PORTS AUTHORITY; TO CONFORM TO CHANGES IN THE INTERNAL REVENUE CODE AND TO REQUIRE AN ADDBACK OF EIGHTY-FIVE PERCENT OF BONUS DEPRECIATION; TO CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX; AND TO REQUIRE PUBLICLY TRADED PARTNERSHIPS TO GIVE THE DEPARTMENT OF REVENUE A LIST OF THE PARTNERS WHO RECEIVED MORE THAN FIVE HUNDRED DOLLARS OF INCOME FROM THE PARTNERSHIP.

The General Assembly of North Carolina enacts:

EXTEND CREDIT FOR RESEARCH AND DEVELOPMENT

SECTION 1.(a) G.S. 105-129.51(b) reads as rewritten:

"(b) This Article is repealed for taxable years beginning on or after January 1, ~~2009-2014.~~"

SECTION 1.(b) This section is effective when it becomes law.

EXTEND LOW-INCOME HOUSING CREDIT

SECTION 2.(a) G.S. 105-129.45 reads as rewritten:

"§ 105-129.45. **Sunset.**

This Article is repealed effective January 1, ~~2010-2015.~~ The repeal applies to developments to which federal credits are allocated on or after January 1, ~~2010-2015.~~"

SECTION 2.(b) This section is effective when it becomes law.

EXTEND MILL REHABILITATION CREDIT

SECTION 3.(a) G.S. 105-129.70 reads as rewritten:

"§ 105-129.70. **Definitions.**

1 The following definitions apply in this Article:

- 2 (1) Certified historic structure. – Defined in section 47 of the Code.
3 (2) Certified rehabilitation. – Defined in G.S. 105-129.36.
4 (3) Cost certification. – The certification obtained by the State Historic
5 Preservation Officer from the taxpayer of the amount of the qualified
6 rehabilitation expenditures or the rehabilitation expenses incurred with
7 respect to a certified rehabilitation of an eligible site.
8 (3a) Development tier area. – Defined in G.S. 143B-437.08.
9 (4) Eligibility certification. – The certification obtained from the State
10 Historic Preservation Officer that the applicable facility comprises an
11 eligible ~~site~~ ~~site and that the rehabilitation is a certified rehabilitation~~.
12 (5) Eligible site. – A site located in this State that satisfies all of the
13 following conditions:
14 a. It was used as a manufacturing facility or for purposes ancillary
15 to manufacturing, as a warehouse for selling agricultural
16 products, or as a public or private utility.
17 b. It is a certified historic structure or a State-certified historic
18 structure.
19 c. It has been at least eighty percent (80%) vacant for a period of
20 at least two years immediately preceding the date the eligibility
21 certification is made.
22 ~~d. The cost certification documents that the qualified rehabilitation~~
23 ~~expenditures for a site for which a taxpayer is allowed a credit~~
24 ~~under section 47 of the Code or the rehabilitation expenses for a~~
25 ~~site for which the taxpayer is not allowed a credit under section~~
26 ~~47 of the Code exceed three million dollars (\$3,000,000) for the~~
27 ~~site as a whole.~~
28 (6) Repealed by Session Laws 2006-252, s. 2.22, effective January 1,
29 2007.
30 (7) Pass-through entity. – Defined in G.S. 105-228.90.
31 (8) Qualified rehabilitation expenditures. – Defined in section 47 of the
32 Code.
33 (9) Rehabilitation expenses. – Defined in G.S. 105-129.36.
34 (10) State-certified historic structure. – Defined in G.S. 105-129.36.
35 (11) State Historic Preservation Officer. – Defined in G.S. 105-129.36."

36 **SECTION 3.(b)** G.S. 105-129.71(a) reads as rewritten:

37 "(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for
38 making qualified rehabilitation expenditures of at least three million dollars
39 (\$3,000,000) with respect to a certified rehabilitation of an eligible site is allowed a
40 credit equal to a percentage of the expenditures that qualify for the federal credit. The
41 credit may be claimed in the year in which the eligible site is placed into service. When
42 the eligible site is placed into service in two or more phases in different years, the
43 amount of credit that may be claimed in a year is the amount based on the qualified
44 rehabilitation expenditures associated with the phase placed into service during that

1 year. In order to be eligible for a credit allowed by this Article, the taxpayer must
2 provide to the Secretary a copy of the eligibility certification and the cost certification.
3 The amount of the credit is as follows:

- 4 (1) For an eligible site located in a development tier one or two area,
5 determined as of the date of the eligibility certification, the amount of
6 the credit is equal to forty percent (40%) of the qualified rehabilitation
7 expenditures.
8 (2) For an eligible site located in a development tier three area, determined
9 as of the date of the eligibility certification, the amount of the credit is
10 equal to thirty percent (30%) of the qualified rehabilitation
11 expenditures."

12 **SECTION 3.(c)** G.S. 105-129.72(a) reads as rewritten:

13 "(a) Credit. – A taxpayer who is not allowed a federal income tax credit under
14 section 47 of the Code and who makes rehabilitation expenses of at least three million
15 dollars (\$3,000,000) with respect to a certified rehabilitation of an eligible site is
16 allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit
17 may not be taken for the taxable year in which the property is placed in service, but
18 must be taken in five equal installments beginning with the taxable year in which the
19 property is placed in service. When the eligible site is placed into service in two or more
20 phases in different years, the amount of credit that may be claimed in a year is the
21 amount based on the rehabilitation expenses associated with the phase placed into
22 service during that year. In order to be eligible for a credit allowed by this Article, the
23 taxpayer must provide to the Secretary a copy of the eligibility certification and the cost
24 certification. For an eligible site located in a development tier one or two area,
25 determined as of the date of the eligibility certification, the amount of the credit is equal
26 to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site
27 located in a development tier three area."

28 **SECTION 3.(d)** G.S. 105-129.75 reads as rewritten:

29 "**§ 105-129.75. Sunset.**

30 This Article expires January 1, 2011, for rehabilitation projects for which an
31 application for an eligibility certification is submitted on or after that date.~~for qualified~~
32 ~~rehabilitation expenditures and rehabilitation expenses incurred on or after January 1,~~
33 ~~2011."~~

34 **SECTION 3.(e)** This section is effective for taxable years beginning on or
35 after January 1, 2008.

37 **EXTEND SUNSET FOR STATE PORTS TAX CREDIT**

38 **SECTION 4.(b)** G.S. 105-130.41(d) reads as rewritten:

39 "(d) Sunset. – This section is repealed effective for taxable years beginning on or
40 after January 1, ~~2009-2014.~~"

41 **SECTION 4.(d)** G.S. 105-151.22(d) reads as rewritten:

42 "(d) Sunset. – This section is repealed effective for taxable years beginning on or
43 after January 1, ~~2009-2014.~~"

44 **SECTION 4.(e)** This section is effective when it becomes law.

IRC UPDATE

SECTION 5.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2007,~~
May 1, 2008, including any provisions enacted as of that date which
 become effective either before or after that date."

SECTION 5.(b) Notwithstanding subsection (a) of this section, any
 amendments to the Internal Revenue Code enacted after January 1, 2007, that increase
 North Carolina taxable income for the 2007 taxable year become effective for taxable
 years beginning on or after January 1, 2008.

SECTION 5.(c) G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in
 determining State net income:

...
 (15) ~~The~~ For taxable years 2002-2005, the applicable percentage of the
 amount allowed as a special accelerated depreciation deduction under
 section 168(k) or section 1400L of the Code, as set out in the table
 below. In addition, a taxpayer who was allowed a special accelerated
 depreciation deduction under section 168(k) or section 1400L of the
 Code in a taxable year beginning before January 1, 2002, and whose
 North Carolina taxable income in that earlier year reflected that
 accelerated depreciation deduction must add to federal taxable income
 in the taxpayer's first taxable year beginning on or after January 1,
 2002, an amount equal to the amount of the deduction allowed in the
 earlier taxable year. These adjustments do not result in a difference in
 basis of the affected assets for State and federal income tax purposes.
 The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005 and thereafter	0%

...."

SECTION 5.(d) G.S. 105-130.5(a) is amended by adding a new subdivision
 to read:

"(a) The following additions to federal taxable income shall be made in
 determining State net income:

...
 (15a) The applicable percentage of the amount allowed as a special
 accelerated depreciation deduction under section 168(k) of the Code
 for property placed in service after December 31, 2007, but before
 January 1, 2009. In addition, a taxpayer who was allowed a special
 accelerated depreciation deduction in taxable year 2007 for property
 placed in service during that period, and whose North Carolina taxable

1 income for that year reflected that accelerated depreciation deduction
 2 must add to federal taxable income in the taxpayer's 2008 taxable year
 3 an amount equal to the applicable percentage of the deduction amount
 4 allowed in the 2007 taxable year. These adjustments do not result in a
 5 difference in basis of the affected assets for State and federal income
 6 tax purposes. The applicable percentage under this subdivision is
 7 eighty-five percent (85%).

8"

9 **SECTION 5.(e)** G.S. 105-134.6(c) reads as rewritten:

10 "(c) Additions. – The following additions to taxable income shall be made in
 11 calculating North Carolina taxable income, to the extent each item is not included in
 12 taxable income:

13 ...

14 (8) ~~The~~ For taxable years 2002-2005, the applicable percentage of the
 15 amount allowed as a special accelerated depreciation deduction under
 16 section 168(k) or section 1400L of the Code, as set out in the table
 17 below. In addition, a taxpayer who was allowed a special accelerated
 18 depreciation deduction under section 168(k) or section 1400L of the
 19 Code in a taxable year beginning before January 1, 2002, and whose
 20 North Carolina taxable income in that earlier year reflected that
 21 accelerated depreciation deduction must add to federal taxable income
 22 in the taxpayer's first taxable year beginning on or after January 1,
 23 2002, an amount equal to the amount of the deduction allowed in the
 24 earlier taxable year. These adjustments do not result in a difference in
 25 basis of the affected assets for State and federal income tax purposes.
 26 The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005 and thereafter	0%

31"

32 **SECTION 5.(f)** G.S. 105-134.6(c) is amended by adding a new subdivision

33 to read:

34 "(c) Additions. – The following additions to taxable income shall be made in
 35 calculating North Carolina taxable income, to the extent each item is not included in
 36 taxable income:

37 ...

38 (8a) The applicable percentage of the amount allowed as a special
 39 accelerated depreciation deduction under section 168(k) of the Code
 40 for property placed in service after December 31, 2007, but before
 41 January 1, 2009. In addition, a taxpayer who was allowed a special
 42 accelerated depreciation deduction in taxable year 2007 for property
 43 placed in service for that period, and whose North Carolina taxable
 44 income for that year reflected that accelerated depreciation deduction
 45 must add to federal taxable income in the taxpayer's 2008 taxable year
 46 an amount equal to the applicable percentage of the deduction amount
 47 allowed in the 2007 taxable year. These adjustments do not result in a
 48 difference in basis of the affected assets for State and federal income
 49 tax purposes. The applicable percentage under this subdivision is
 50 eighty-five percent (85%).

income for that year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

...."

SECTION 5.(g) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (a)(15a) of this section.

...."

SECTION 5.(h) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (c)(8a) of this section.

...."

SECTION 5.(i) Subsections (c) through (h) of this section are effective for taxable years beginning on or after January 1, 2008. The remainder of this section is effective when it becomes law.

CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX

SECTION 6.(a) G.S. 105-114(b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not

1 possessed by individuals or partnerships. The term includes a mutual
2 or capital stock savings and loan association or building and loan
3 association chartered under the laws of any state or of the United
4 States. The term includes a limited liability company that elects to be
5 taxed as a ~~C-Corporation~~ corporation under the Code, but does not
6 otherwise include a limited liability company.

7"

8 **SECTION 6.(b)** G.S. 105-114.1(a)(5) reads as rewritten:

9 "(5) Noncorporate limited liability company. – A limited liability company
10 that does not elect to be taxed as a ~~C-Corporation~~ corporation under the
11 Code."

12 **SECTION 6.(c)** G.S. 105-125(b) reads as rewritten:

13 "(b) Certain Investment Companies. —~~A corporation doing business in North~~
14 ~~Carolina that qualifies as a "regulated investment company" under section 851 of the~~
15 ~~Code or as a "real estate investment trust" under section 856 of the Code and elects for~~
16 ~~federal income tax purposes to be treated as a "regulated investment company" or as a~~
17 ~~"real estate investment trust,"~~ A corporation doing business in North Carolina that meets
18 one or more of the following conditions may, in determining its basis for franchise tax,
19 deduct the aggregate market value of its investments in the stocks, bonds, debentures, or
20 other securities or evidences of debt of other corporations, partnerships, individuals,
21 municipalities, governmental agencies, or ~~governments~~ governments:

22 (1) A regulated investment company. – A regulated investment company
23 is an entity that qualifies as a regulated investment company under
24 section 851 of the Code.

25 (2) A REIT, unless the REIT is a captive REIT. – The terms 'REIT' and
26 'captive REIT' have the same meanings as defined in
27 G.S. 105-130.12."

28 **SECTION 6.(d)** This section is effective for taxable years beginning on or
29 after January 1, 2009.

30 **PUBLICLY TRADED PARTNERSHIPS**

31 **SECTION 7.(a)** G.S. 105-154 reads as rewritten:

32 **"§ 105-154. Information at the source returns.**

33 (a) Repealed by Session Laws 1993, c. 354, s. 14.

34 (b) Information Returns of Payers. – A person who is a resident of this State, has
35 a place of business in this State, or has an employee, an agent, or another representative
36 in any capacity in this State shall file an information return as required by the Secretary
37 if the person directly or indirectly pays or controls the payment of any income to any
38 taxpayer. The return shall contain all information required by the Secretary. The filing
39 of any return in compliance with this section by a foreign corporation is not evidence
40 that the corporation is doing business in this State.

41 (c) Information Returns of Partnerships. – A partnership doing business in this
42 State and required to file a return under the Code shall file an information return with
43 the Secretary. A partnership that the Secretary believes to be doing business in this State
44

1 and to be required to file a return under the Code shall file an information return when
2 requested to do so by the Secretary. The information return shall contain all information
3 required by the Secretary. It shall state specifically the items of the partnership's gross
4 income, the deductions allowed under the Code, and the adjustments required by this
5 Part. The information return shall also include the name and address of each person who
6 would be entitled to share in the partnership's net income, if distributable, and the
7 amount each person's distributive share would be. The information return shall specify
8 the part of each person's distributive share of the net income that represents corporation
9 dividends. The information return shall be signed by one of the partners under
10 affirmation in the form required by the Secretary.

11 A partnership that files an information return under this subsection shall furnish to
12 each person who would be entitled to share in the partnership's net income, if
13 distributable, any information necessary for that person to properly file a State income
14 tax return. The information shall be in the form prescribed by the Secretary and must be
15 furnished on or before the due date of the information return.

16 (d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business
17 conducted in this State is owned by a nonresident individual or by a partnership having
18 one or more nonresident members, the manager of the business shall report the earnings
19 of the business in this State, the distributive share of the income of each nonresident
20 owner or partner, and any other information required by the Secretary. The manager of
21 the business shall pay with the return the tax on each nonresident owner or partner's
22 share of the income computed at the rate levied on individuals under
23 G.S. 105-134.2(a)(3). The business may deduct the payment for each nonresident owner
24 or partner from the owner or partner's distributive share of the profits of the business in
25 this State. If the nonresident partner is not an individual and the partner has executed an
26 affirmation that the partner will pay the tax with its corporate, partnership, trust, or
27 estate income tax return, the manager of the business is not required to pay the tax on
28 the partner's share. In this case, the manager shall include a copy of the affirmation with
29 the report required by this subsection.

30 (e) Publicly Traded Partnership. – The information return and payment
31 requirements under this section are modified as follows for a publicly traded partnership
32 that is described in section 7704(c) of the Code:

33 (1) The information return required under subsection (c) of this section is
34 limited to partners whose distributive share of the partnership's net
35 income during the tax year was more than five hundred dollars
36 (\$500.00).

37 (2) The payment requirements under subsection (d) of this section do not
38 apply."

39 **SECTION 7.(b)** This section is effective for taxable years beginning on or
40 after January 1, 2008.

41 **EFFECTIVE DATES**

42 **SECTION 8.** Except as otherwise provided, this act is effective when it
43 becomes law.
44