

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL 1755\*  
Finance Committee Substitute Adopted 6/12/08  
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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; 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; AND TO INCREASE THE STATEWIDE CAP ON THE QUALIFIED BUSINESS VENTURE TAX CREDIT.

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"(b) This Article is repealed for taxable years beginning on or after January 1, ~~2009~~2014."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This Article is repealed effective January 1, ~~2010~~2015.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.**

The following definitions apply in this Article:

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- (6) Repealed by Session Laws 2006-252, s. 2.22, effective January 1, 2007.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

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

"(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures of at least three million dollars (\$3,000,000) with respect to a certified rehabilitation of an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When

1 the eligible site is placed into service in two or more phases in different years, the  
2 amount of credit that may be claimed in a year is the amount based on the qualified  
3 rehabilitation expenditures associated with the phase placed into service during that  
4 year. In order to be eligible for a credit allowed by this Article, the taxpayer must  
5 provide to the Secretary a copy of the eligibility certification and the cost certification.  
6 The amount of the credit is as follows:

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

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

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

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

32 "**§ 105-129.75. Sunset.**

33 This Article expires January 1, 2011, for rehabilitation projects for which an  
34 application for an eligibility certification is submitted on or after that date.~~for qualified~~  
35 ~~rehabilitation expenditures and rehabilitation expenses incurred on or after January 1,~~  
36 ~~2011."~~

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

#### 40 **EXTEND SUNSET FOR STATE PORTS TAX CREDIT**

41 **SECTION 4.(b)** G.S. 105-130.41(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.(d)** G.S. 105-151.22(d) reads as rewritten:

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

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

5 **IRC UPDATE**

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

7               "(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2007,~~  
8               May 1, 2008, including any provisions enacted as of that date which  
9               become effective either before or after that date."

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

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

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

17              ...

18              (15) ~~The~~ For taxable years 2002-2005, the applicable percentage of the  
19 amount allowed as a special accelerated depreciation deduction under  
20 section 168(k) or section 1400L of the Code, as set out in the table  
21 below. In addition, a taxpayer who was allowed a special accelerated  
22 depreciation deduction under section 168(k) or section 1400L of the  
23 Code in a taxable year beginning before January 1, 2002, and whose  
24 North Carolina taxable income in that earlier year reflected that  
25 accelerated depreciation deduction must add to federal taxable income  
26 in the taxpayer's first taxable year beginning on or after January 1,  
27 2002, an amount equal to the amount of the deduction allowed in the  
28 earlier taxable year. These adjustments do not result in a difference in  
29 basis of the affected assets for State and federal income tax purposes.  
30 The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
<del>2005 and thereafter</del>	0%

36              ...."

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

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

41              ...

42              (15a) The applicable percentage of the amount allowed as a special  
43 accelerated depreciation deduction under section 168(k) of the Code  
44 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 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.(e)** G.S. 105-134.6(c) reads as rewritten:

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

...

(8) ~~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.(f)** G.S. 105-134.6(c) is amended by adding a new subdivision

to read:

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

...

(8a) 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

1                   January 1, 2009. In addition, a taxpayer who was allowed a special  
 2                   accelerated depreciation deduction in taxable year 2007 for property  
 3                   placed in service for that period, and whose North Carolina taxable  
 4                   income for that year reflected that accelerated depreciation deduction  
 5                   must add to federal taxable income in the taxpayer's 2008 taxable year  
 6                   an amount equal to the applicable percentage of the deduction amount  
 7                   allowed in the 2007 taxable year. These adjustments do not result in a  
 8                   difference in basis of the affected assets for State and federal income  
 9                   tax purposes. The applicable percentage under this subdivision is  
 10                   eighty-five percent (85%).

11                   ...."

12                   **SECTION 5.(g)** G.S. 105-130.5(b) is amended by adding a new subdivision

13 to read:

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

16                   ...

17                   (21a) In each of the taxpayer's first five taxable years beginning on or after  
 18                   January 1, 2009, an amount equal to twenty percent (20%) of the  
 19                   amount added to taxable income in taxable year 2008 as accelerated  
 20                   depreciation under subdivision (a)(15a) of this section.

21                   ...."

22                   **SECTION 5.(h)** G.S. 105-134.6(b) is amended by adding a new subdivision

23 to read:

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

27                   ...

28                   (17a) In each of the taxpayer's first five taxable years beginning on or after  
 29                   January 1, 2009, an amount equal to twenty percent (20%) of the  
 30                   amount added to taxable income in taxable year 2008 as accelerated  
 31                   depreciation under subdivision (c)(8a) of this section.

32                   ...."

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

36  
 37 **CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED**  
 38 **LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A**  
 39 **CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX**

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

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

42                   ...

43                   (2) Corporation. – A domestic corporation, a foreign corporation, an  
 44 electric membership corporation organized under Chapter 117 of the

1 General Statutes or doing business in this State, or an association that  
2 is organized for pecuniary gain, has capital stock represented by  
3 shares, whether with or without par value, and has privileges not  
4 possessed by individuals or partnerships. The term includes a mutual  
5 or capital stock savings and loan association or building and loan  
6 association chartered under the laws of any state or of the United  
7 States. The term includes a limited liability company that elects to be  
8 taxed as a ~~C-Corporation~~ corporation under the Code, but does not  
9 otherwise include a limited liability company.

10 ...."

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

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

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

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

25 (1) A regulated investment company. – A regulated investment company  
26 is an entity that qualifies as a regulated investment company under  
27 section 851 of the Code.

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

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

## 33 34 **PUBLICLY TRADED PARTNERSHIPS**

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

36 "**§ 105-154. Information at the source returns.**

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

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

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

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

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

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

- 36 (1) The information return required under subsection (c) of this section is  
37 limited to partners whose distributive share of the partnership's net  
38 income during the tax year was more than five hundred dollars  
39 (\$500.00).  
40 (2) The payment requirements under subsection (d) of this section do not  
41 apply."

42 **SECTION 7.(b)** This section is effective for taxable years beginning on or  
43 after January 1, 2008.  
44

**1 INCREASE QBV TAX CREDIT CAP**

2 **SECTION 8.(a)** G.S. 105-163.012(b) reads as rewritten:

3 "(b) The total amount of all tax credits allowed to taxpayers under  
4 G.S. 105-163.011 for investments made in a calendar year may not exceed ~~seven~~  
5 ~~million dollars (\$7,000,000)~~eight million dollars (\$8,000,000). The Secretary of  
6 Revenue shall calculate the total amount of tax credits claimed from the applications  
7 filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for  
8 investments made in a calendar year exceeds this maximum amount, the Secretary shall  
9 allow a portion of the credits claimed by allocating the maximum amount in tax credits  
10 in proportion to the size of the credit claimed by each taxpayer."

11 **SECTION 8.(b)** This act is effective for investments made on or after  
12 January 1, 2008.

**13 EFFECTIVE DATES**

14 **SECTION 9.** Except as otherwise provided, this act is effective when it  
15 becomes law.  
16