

Article 3D.

Historic Rehabilitation Tax Credits.

§ 105-129.35. 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 twenty percent (20%) of the expenditures that qualify for the federal credit. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

(b) 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) Certified historic structure. – Defined in section 47 of the Code.
- (2) Pass-through entity. – Defined in G.S. 105-228.90.
- (3) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.
- (4) State Historic Preservation Officer. – Defined in G.S. 105-129.36. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 2, 5, 6; 2001-476, s. 19(a); 2003-284, s. 35A.1; 2003-415, ss. 1, 2; 2003-416, s. 4(c); 2004-170, s. 14; 2006-40, s. 2; 2007-461, s. 1.)

§ 105-129.36. Credit for rehabilitating nonincome-producing historic structure.

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a State-certified historic structure located in this State is allowed a credit equal to thirty percent (30%) of the rehabilitation expenses. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand

dollars (\$25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

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

- (1) Certified rehabilitation. – Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer.
- (2) Rehabilitation expenses. – Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.
- (3) State-certified historic structure. – A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.
- (4) State Historic Preservation Officer. – The Deputy Secretary of Archives and History or the Deputy Secretary's designee who acts to administer the historic preservation programs within the State.

(c) Recodified as G.S. 105-129.36A by Session Laws 2003-284, s. 35A.2, effective July 15, 2003. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 3, 5, 6; 2002-159, s. 35(e); 2003-284, ss. 35A.2, 35A.3; 2006-40, ss. 3, 4.)

§ 105-129.36A. Rules; fees.

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

(b) Fees. – The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt a schedule of fees for providing certifications required by this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department of Cultural Resources. An application fee may not exceed one percent (1%) of the completed qualifying rehabilitation expenditures. The proceeds of the fees are receipts of the Department of Cultural Resources and must be used for performing its duties under this Article. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 3, 5, 6; 2002-159, s. 35(e); 2003-284, s. 35A.2.)

§ 105-129.37. Tax credited; credit limitations.

(a) Tax Credited. – The credits provided in this Article are allowed against the income taxes levied in Article 4 of this Chapter.

(b) Credit Limitations. – The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Forfeiture for Disposition. – A taxpayer who is required under section 50 of the Code to recapture all or part of the federal credit for rehabilitating an income-producing historic structure located in this State forfeits the corresponding part of the State credit allowed under G.S. 105-129.35 with respect to that historic structure. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

(d) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under G.S. 105-129.35 disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the rehabilitated historic structure is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the historic structure was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed.

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

- (1) The death of the owner.
- (2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(f) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (1993, c. 527, ss. 1, 2; 1997-139, ss. 1, 2; 1998-98, ss. 36, 69; 1999-389, ss. 4, 5, 6; 2007-491, s. 44(1)a.)

§ 105-129.38. Reports.

The Department of Revenue must publish by May 1 of each year the following information for the 12-month period ending the preceding December 31:

- (1) The number of taxpayers that took the credits allowed in this Article.
- (2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken. (2005-429, s. 2.5.)

§ 105-129.39: Reserved for future codification purposes.