

## **E. Historic Rehabilitation Tax Credits (Article 3D of Chapter 105)**

### **1. General Information**

#### **a. Tax Credited (G.S. 105-129.37(a))**

The credits provided in this Article are allowed only against income tax.

#### **b. Credit Limitations (G.S. 105-129.37(b))**

A credit allowed may not exceed the amount of 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.

A credit must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of a credit may be carried forward for the succeeding five years.

#### **c. Forms**

Form CD-425 is used to report any tax credits claimed under this article. This form must be filed for any taxable year in which a credit or an installment of a credit against the taxpayer's tax liability for that year is claimed.

### **2. Credit for Rehabilitating Income-Producing Historic Structure (G.S. 105-129.35)**

#### **a. Credit (G.S. 105-129.35(a), G.S. 105-129.37(a))**

A taxpayer that 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 North Carolina is allowed a State income tax credit equal to twenty percent (20%) of the expenditures that qualify for the federal credit.

#### **b. Allocation (G.S. 105-129.35(b) and (c))**

Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit may allocate the credit among any of its owners at 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 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 with their tax returns for every taxable year in which an allocated credit is claimed. A pass-through entity includes a Subchapter S corporation, a limited liability company, a limited partnership, a general partnership and a joint venture. An owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.

#### **c. Forfeiture for Disposition (G.S. 105-129.37(c))**

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 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 allowed.

**d. Forfeiture for Change in Ownership (G.S. 105-129.37(d))**

If an owner of a pass-through entity that has qualified for the credit allowed 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 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 (G.S. 105-129.37(e))**

Forfeiture for change in ownership is not required if the change in ownership is the result of any of the following:

- i. The death of the owner.
- ii. 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 (G.S. 105-129.37(f))**

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. 105-241.1(i), 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 penalties as provided in G.S. 105-236.

**g. Substantiation (G.S. 105-129.35(a))**

A taxpayer claiming this credit must attach a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been properly rehabilitated to the return.

**3. Credit for Rehabilitating Non-income-Producing Historic Structure (G.S. 105-129.36)**

**a. Credit (G.S. 105-129.36(a), G.S. 105-129.36(b))**

A taxpayer that is not allowed a federal income tax credit under Section 47 of the Code and who incurs rehabilitation expenses for a non-income producing State-certified historic structure is allowed a credit against North Carolina income tax.

The amount of the credit is thirty percent (30%) of the rehabilitation expenses taken in five equal installments beginning with the taxable year in which the property is placed in service.

Rehabilitation expenses do not include the cost of acquiring the property, site work, personal property or cost attributable to the enlargement of the existing property.

**b. Eligibility (G.S. 105-129.36(a))**

To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-

five thousand dollars (\$25,000) within a 24-month period.

**c. Substantiation (G.S. 105-129.36(a))**

To claim the credit, a taxpayer must attach to the return a copy of the certification issued by the State Historic Preservation Officer. The rehabilitation must be certified prior to the commencement of the work.