

F. Low-Income Housing Tax Credits (Article 3E of Chapter 105)

1. Credit for Low-income Housing Awarded a Federal Credit Allocation before January 1, 2003 (G.S. 105-129.41)

a. Credit (G.S. 105-129.41(a))

A taxpayer is allowed a tax credit for low-income housing for North Carolina tax purposes equal to a percentage of the total federal income tax credit allowed for the taxable year under Section 42 of the Code with respect to a qualified North Carolina low-income building.

b. Computation of Credit (G.S. 105-129.41(a))

The amount of the credit is equal to 75% of the total federal credit if the building is located in a tier one or tier two area. For buildings in other tier designations, the credit is equal to 25% of the total federal credit.

The total federal credit is the total allowed during the 10-year federal credit period plus the disallowed first year credit allowed in the 11th year. The total federal credit is calculated based on the qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in the basis.

c. Franchise, Income, or Gross Premiums Tax Election (G.S. 105-129.41(a1))

A taxpayer may claim a credit for low-income housing against franchise, income or insurance gross premiums tax. A taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. The election is binding. Any carryforwards of a credit must be claimed against the same tax.

d. Cap on Credit and Carryforward Provisions G.S. 105-129.41(a2))

Total credits claimed under Article 3E may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits, including carryforwards, against that tax, except tax payments made by or on behalf of the taxpayer.

Unused portions of the credits may be carried forward for the succeeding five years unless otherwise noted, but must be taken against the same tax as on the return on which the credit was first taken.

e. Timing of Credit (G.S. 105-129.41(b))

The credit is taken in five equal installments beginning in the first taxable year in which the federal credit is taken. The amount of the installment for the first year must be multiplied by the applicable fraction under Section 42(f)(2)(A) of the Code. Any reduction in the amount of the first installment as a result of this multiplication is carried forward and may be taken in the first taxable year after the fifth installment is allowed.

f. Allocation (G.S. 105-129.41(b1))

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 at its discretion as long as the owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the federal credit is first claimed 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.

g. Qualified Building (G.S. 105-129.41(c)(1), (2) and (3))

For purposes of the credit, a building is a “qualified North Carolina low-income building” if it was allocated a federal income tax credit under Section 42(h)(1) of the Internal Revenue Code, and meets any of the following conditions:

- i. It is located, at the time the federal credit is allocated to the building, in a tier one or tier two area.
- ii. It is located, at the time the federal credit is allocated to the building, in a tier three or tier four area and 40% of its residential units are both rent-restricted and occupied by individuals whose income is 50% or less of the area median gross income.
- iii. It is located, at the time the federal credit is allocated to the building, in a tier five area and 40% of its residential units are both rent-restricted and occupied by individuals whose income is 35% or less of area median gross income.

h. Special Provision (G.S.105-129.41(c)(1a))

Effective for taxable years beginning on or after January 1, 2001, if a taxpayer qualifies for a federal income tax credit for low-income housing under section 42 of the Code and the property is located in a county that, at the time the federal credit is allocated to the building, has been designated as having sustained severe or moderate damage from a hurricane or a hurricane-related disaster, according to the Federal Emergency Management Agency impact map, revised September 25, 1999, the taxpayer is allowed a credit equal to seventy-five percent (75%) of the total federal credit without regard to tier designation. *(This provision expires January 1, 2005.)*

i. Expiration (G.S. 105-129.41(d))

If, in one of the five years in which an installment of the credit accrues, the taxpayer becomes ineligible for the federal credit, then the credit expires and the taxpayer may not take any remaining installments of the credit. However, the taxpayer may take the portion of an installment that accrued in a previous year and was carried forward.

j. Forfeiture for Disposition (G.S. 105-129.41(e))

If the taxpayer is required, under section 42(j) of the Code, to recapture all or part of the federal credit claimed, the taxpayer must report the recapture event to the Secretary and to the Housing Finance Agency and forfeits the corresponding part of the credit allowed for North Carolina purposes. 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. The taxpayer forfeits all or part of the State credit only if the event resulting in federal recapture occurs during the period of time during which the State credit is taken, which is either five or six years. The federal credit is taken over a period of ten or eleven years.

k. Forfeiture for Change in Ownership (G.S. 105-129.41(f))

If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner’s interest in the pass-through

entity within five years from the date the federal credit is first claimed 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 federal credit is first claimed, the owner must report the change in its percentage ownership to the Secretary and to the Housing Finance Agency and forfeits all or a portion of the State credit.

The amount forfeited is determined by multiplying the amount of the 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.

Forfeiture as provided in this section 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.

1. Liability from Forfeiture (G.S. 105-129.41(g))

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 due date for past taxes and interest is thirty days after the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

2. Credit for Low-income Housing Awarded a Federal Credit Allocation on or after January 1, 2003 (G.S. 105-129.42)

a. Credit (G.S. 105-129.42(b))

A taxpayer who is allocated a federal income tax credit under Section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina low-income housing development is allowed a credit equal to a percentage of the development's eligible basis, as determined pursuant to Section 42(d) of the Code. For the purpose of this section, eligible basis is calculated based on the information contained in the carryover allocation and is not recalculated to reflect subsequent increases or decreases. No credit is allowed for a development that uses tax-exempt bond financing.

b. Definitions (G.S. 105-129.42(a))

These definitions apply:

i. Qualified Allocation Plan

The plan governing the allocation of federal low-income housing tax credits for a particular year, as approved by the Governor after a public hearing and publication in the North Carolina Register.

ii. Qualified North Carolina low-income housing development

A qualified low-income project or building that is allocated a federal tax credit

under section 42(h)(1) of the Code and is described in below.

iii. Qualified Residential Unit

A housing unit that meets the requirements of Section 42 of the Code.

c. Developments and Amounts (G.S. 105-129.42(c))

The housing developments that are qualified North Carolina low-income housing developments and the percentage of the development's eligible basis for which a credit is allowed are:

- i. If forty percent (40%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of area median income and the units are in a Low-Income county or city, the percentage of the basis for which a credit is allowed is thirty percent (30%).
- ii. If fifty percent (50%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of the area median income and the units are in a Moderate-Income county or city, the percentage of the basis for which a credit is allowed is twenty percent (20%).
- iii. If fifty percent (50%) of the qualified residential units are affordable to households whose income is forty percent (40%) or less of the area median income and ten percent (10%) of the units are in a High-Income county or city, the percentage of the basis for which a credit is allowed is ten percent (10%).
- iv. If twenty-five percent (25%) of the qualified residential units are affordable to households whose income is thirty percent (30%) or less of the area median income and ten percent (10%) of the units are in a High-Income county or city, the percentage of the basis for which a credit is allowed is ten percent (10%).

The designation of a county or city as Low Income, Moderate Income, or High Income and determinations of affordability are made by the Housing Finance Agency in accordance with the Qualified Allocation Plan in effect as of the time the federal credit is allocated. A change in the income designation of a county or city after a federal credit is allocated does not affect the percentage of the developer's eligible basis for which the credit is allowed. The affordability requirements apply for the duration of the federal tax credit compliance period.

d. Election of Method for Receiving Tax Credit (G.S. 105-129.42(d))

When a taxpayer to whom a federal low-income housing credit is allocated submits a request to receive a carryover allocation for that credit to the Housing Finance Agency, the taxpayer must elect to receive the tax credit in the form of either a direct tax refund or a loan generated by transferring the credit to the Housing Finance Agency. Neither a direct tax refund nor a loan received as the result of the transfer of the credit is considered taxable income.

e. Exception When No Carryover (G.S. 105-129.42(e))

If a taxpayer does not submit a request to receive a carryover allocation to the Housing Finance Agency, the taxpayer must elect the method for receiving the credit allowed when the taxpayer files federal Form 8609 with the Agency. The credit is claimed for the taxable year in which the federal Form 8609 is filed.

f. Pass-Through Entity (G.S. 105-129.42(f))

Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed does not affect the entity's payment of tax on behalf of its owners.

g. Return and Payment (G.S. 105-129.42(g))

A taxpayer may claim the credit allowed on a return filed for the taxable year in which the taxpayer receives a carryover allocation of a federal low-income housing credit. The return must state the name and location of the qualified low-income housing development for which the credit is claimed.

If a taxpayer chooses the loan method for receiving the credit, the Secretary must transfer the amount of credit allowed the taxpayer to the Housing Finance Agency. The Agency must loan the taxpayer the amount of the credit on terms consistent with the Qualified Allocation Plan. The Housing Finance Agency is not required to make a loan to a qualified North Carolina low-income housing development until the Secretary transfers the credit amount to the Agency.

If the taxpayer chooses the direct tax refund method for receiving the credit allowed, the Secretary must transfer the refundable excess of the credit allowed the taxpayer to the Housing Finance Agency. The Agency holds the refund due the taxpayer in escrow, with no interest accruing to the taxpayer during the escrow period. The Agency must release the refund to the taxpayer upon the occurrence of the earlier of the following:

- i. The Agency determines that the taxpayer has complied with the Qualified Allocation Plan and has completed at least fifty percent (50%) of the eligible activities included in the development's eligible base.
- ii. Within 30 days after the development is placed in service date.

h. Forfeiture (G.S. 105-129.42(c) and (h))

The credit is forfeited if, in any tax year, the taxpayer fails to meet the affordability requirements, as determined by the Housing Finance Agency.

A taxpayer that receives a credit under this section must immediately report any recapture event under Section 42 of the Code to the Housing Finance Agency. If the taxpayer or any of its owners are required, under Section 42(j) of the Code, to recapture all or part of a federal credit with respect to a qualified North Carolina low-income development, the taxpayer forfeits the corresponding part of the credit allowed under this section. This requirement does not apply in the following circumstances:

- i. When the recapture of part or all of the federal credit is the result of an event that occurs in the sixth or subsequent calendar year after the calendar year in which the development was awarded a federal credit allocation.
- ii. The taxpayer elected to transfer the credit allowed to the Housing Finance Agency.

i. Liability from Forfeiture (G.S. 105-129.42(i))

A taxpayer that forfeits all or part of the credit allowed is liable for all past taxes

avoided and any refund claimed as a result of the credit plus interest at the rate established under G.S. 105-241.1(i). The interest rate is computed from the date the Secretary transferred the credit amount to the Housing Finance Agency. The past taxes, refund and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the taxes, refund, and interest by the due date is subject to the penalties provided in G.S. 105-236.

3. Substantiation (G.S. 105-129.43)

A taxpayer allowed a credit under Article 3E must maintain and make available for inspection any information or record required by the Secretary or the Housing Finance Agency. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer.

4. Sunset (G.S. 105-129.45)

Article 3E is repealed effective January 1, 2006. The repeal applies to developments to which federal credits are allocated on or after January 1, 2006.