

C. Business & Energy Tax Credits (Article 3B of Chapter 105)

1. General Information

(Applies to all credits under this article unless otherwise noted.)

a. Franchise, Income, or Gross Premium Tax Election (G.S. 105-129.17(a))

The credits allowed under this article can be taken against franchise or income tax, but not against insurance gross premium tax unless otherwise noted. The 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. This election is binding. All future installments and carryforwards of a credit must be claimed against the same tax.

b. Cap on Credit (G.S. 105-129.17(b))

Total credits, including carryforwards, claimed under this article 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.

c. Credit Carryforward (G.S. 105-129.17(b))

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.

d. Substantiation (G.S. 105-125.18)

The burden of proving eligibility for any credit under this article rests upon the taxpayer. Every taxpayer claiming a credit under this article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. No credit may be allowed to any taxpayer that fails to maintain adequate records or to make them available for inspection.

e. Forms

The Form NC-478 series is used to calculate and report tax credits, including the tax credits allowed under Article 3B, that are limited to fifty percent (50%) of the taxpayer's tax less the sum of all other credits that the taxpayer claims. Forms NC-478A through NC-478H are used to calculate the specific credits without regard to the fifty percent (50%) limitation. Form NC-478 is used to total the specific credits, to determine if the fifty percent (50%) limitation applies, and, if so, to allocate the limited total credit among the specific credits.

Both Form NC-478 and the applicable Form NC-478 series form must be filed for any taxable year in which the taxpayer is eligible to claim a credit or an installment of a credit against the taxpayer's tax liability for that year. This requirement applies even if the taxpayer's tax liability for that year is not large enough for the taxpayer to benefit from the credit.

2. Credit for Investing in Business Property (G.S. 105-129.16)

a. Credit

This credit was effective for taxable years beginning January 1, 1996 or later, and applicable to property placed in service on or after August 1, 1996. The credit expired effective for

business property placed in service on or after January 1, 2002. However, taxpayers can continue to claim installments or carryforwards of unused installments of the credit.

b. Expiration of Credit (G.S. 105-129.16(b))

If business property is disposed of, taken out of service, or moved out of North Carolina prior to the end of the five year period in which the credit is claimed, the credit expires and a taxpayer may not take any remaining installment of the credit except for the portion of an installment that accrued in a previous year and had been carried forward.

3. Credit for Investing in Renewable Energy Property (G.S. 105-129.16A)

(Effective for taxable years beginning on or after January 1, 2000. The credit sunsets effective for renewable energy property placed in service on or after January 1, 2011.)

a. Credit

If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service during the taxable year, the taxpayer is allowed a credit equal to thirty-five (35%) of the cost of the property. No credit is allowed to the extent the cost of the renewable energy property was provided by public funds.

If the taxpayer owns the property, the cost is determined in accordance with section 1012 of the Code and is subject to the limitation on cost provided in section 179 of the Code. If the property is leased, the cost is eight times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The subrentals are not deducted if they are business income for the taxpayer.

If the property serves a single-family dwelling, the credit is taken for the taxable year in which the property is placed in service. For all other property, the credit is taken in five equal installments beginning with the year the property is placed in service.

b. Cap on Credit (G.S. 105-129.16A(c))

The maximum credit allowed for nonresidential property is \$250,000 per installation. Effective for taxable years beginning on or after January 1, 2006, the maximum credit allowed for nonresidential property is \$2,500,000. The credit ceilings for residential property are:

- \$1,400 per dwelling unit for solar energy equipment for domestic water heating. Effective for taxable years beginning on or after January 1, 2006, pool heating is included.
- \$3,500 per dwelling for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating; and
- \$10,500 per installation for any other renewable energy property for residential purposes.

c. Eligible Renewal Energy Property (G.S. 105-129.15)

Any of the following machinery and equipment or real property is considered to be eligible renewable energy property:

- Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; methane production using agricultural and animal

waste or garbage; commercial thermal or electrical generation from renewable energy crops or wood waste material. Effective for taxable years beginning on or after January 1, 2006 electrical generation is no longer restricted to using renewable energy crops or wood waste material. Biomass equipment includes any equipment used for converting, conditioning and storing the liquid fuels, gas and electricity produced with biomass equipment.

- Hydroelectric generators located at existing dams or waterways and related devices for water supply and control and converting, conditioning, and storing the electricity generated.
- Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. Solar energy equipment includes any equipment used for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.
- Wind equipment required to capture and convert wind energy into electricity or mechanical power and related devices.

d. Expiration of Credit (G.S. 105-129.16A(b))

If the property is disposed of, taken out of service, or moved out of North Carolina during the five year installment period, the credit expires and a taxpayer may not take any remaining installment of the credit except for the portion of an installment that accrued in a previous year and has been carried forward. No credit is allowed to the extent the cost of the renewable energy property was provided by public funds.

e. Credit Availability (G.S. 105-129.16A(d))

A taxpayer may not claim a credit for renewable energy property under Article 3B if the taxpayer is claiming any other credit allowed in Chapter 105 with respect to renewable energy property. A taxpayer may not take a credit for property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to the property.

4. Credit for Investing in Non-Hazardous Dry Cleaning Equipment (G.S. 105-129.16C)

(Effective for taxable years beginning on or after July 1, 2001. The credit sunsets effective January 1, 2006.)

a. Credit

If a taxpayer that has purchased or leased qualified dry-cleaning equipment, places it in service in this State for commercial purposes during the taxable year, the taxpayer is allowed a credit equal to twenty percent (20%) of the cost of the equipment.

b. Qualified Equipment

Qualified dry-cleaning equipment is equipment that is designed and used primarily to dry-clean clothing and other fabric and does not use any hazardous solvent or any other substance that the Department of Environment and Natural Resources determines to pose a threat to human health or the environment.

c. Hazardous Solvent

Hazardous solvent is a solvent, any portion of which consists of a chlorine-based solvent, a hydrocarbon-based solvent, a hazardous substance as defined in G.S. 130A-310(2), or any substance determined by the Administrator of the Environmental Protection Agency or the Director of the National Institute of Occupational Safety and Health to possess carcinogenic potential to humans

d. Restrictions (G.S. 105-129.16C(b))

No credit is allowed to the extent the cost of the equipment was paid with public funds. A taxpayer that claims any other credit allowed under Chapter 105 of the General Statutes with respect to dry-cleaning equipment may not take the credit allowed in this section with respect to the same equipment.

e. Substantiation (G.S. 105-129.16C(a))

To claim the credit, the taxpayer must file, with the tax return on which the credit is claimed, a certification by the Department of Environment and Natural Resources that the equipment purchased or leased by the taxpayer is qualified dry-cleaning equipment.

5. Credit for Constructing Renewable Fuel Facilities (G.S. 105-129.16D)

Effective for taxable years beginning on or after January 1, 2005, either a dispensing credit or a production credit is allowed for the construction of renewable fuel facilities. Either credit is subject to the tax election and cap on credit amount provisions of G.S. 105-129.17, the substantiation requirements of G.S. 105-129.18, and the requirement in G.S. 105-129.19 that the Department report the credits claimed to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly.

a. Renewable Fuel Defined (G.S. 105-129.15(8))

Renewable fuel is either:

- Biodiesel as defined in G.S. 105-449.60, or
- Ethanol either unmixed or in mixtures with gasoline that are seventy percent (70%) or more ethanol by volume.

b. Dispensing Credit (G.S. 105-129.16D(a))

A taxpayer that constructs and installs and places in service in this State a qualified facility for dispensing renewable fuel is allowed a dispensing credit. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and is clearly identified as associated with renewable fuel.

The credit is equal to fifteen percent (15%) of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel.

The tax credit is claimed in three equal installments beginning with the taxable year in which the facility is placed in service. If, in one of the years during which an installment of the credit is to be claimed, the portion of a facility that is directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, the credit expires

and the taxpayer may not take any remaining installments of the credit; however, the taxpayer may continue to claim any carryforwards of any prior years' installments.

c. Production Credit (G.S. 105-129.16D(b))

A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel is allowed a production credit. The credit is equal to twenty-five (25%) of the cost to the taxpayer of constructing and equipping the facility. The tax credit is claimed in seven equal installments beginning with the taxable year in which the facility is placed in service. If, in one of the years during which an installment of the credit is to be claimed, the facility is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installments of the credit; however, the taxpayer may continue to claim carryforwards of any prior years' installments.

d. No Double Credit (G.S. 105-129.16D(c))

A taxpayer that claims any other tax credit allowed under Chapter 105 with respect to the costs of constructing and installing a renewable energy facility may not take the credit allowed in this section with respect to the same costs.

e. Sunset (G.S. 105-129.16D(d))

The credit allowed in this section sunsets for facilities placed in service on or after January 1, 2008.