D. Tax Incentives for Recycling Facilities (Article 3C of Chapter 105)

1. General Information

a. Eligibility

In order for a manufacturing plant to be considered a recycling facility at least seventy-five percent (75%) of its products must be made from materials that consist of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term "recycling facility" includes real and personal property located at or on land in the same county and reasonably near the plant site that are used to perform business functions related to the plant or to transport materials and products to or from the plant. A plant may qualify as either a major recycling facility or a large recycling facility.

i. Major Recycling Facility (G.S. 105-129.26(a))

A recycling facility qualifies for the tax credits provided under Article 3C for major recycling facilities if it meets all of the following conditions:

- The facility is located in an area that was an enterprise tier one area at the time the owner began construction of the facility.
- The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.
- The jobs at the recycling facility meet the wage standard in effect as of the date the owner begins construction of the facility.

ii. Large Recycling Facility (G.S. 105-129.26(b))

A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

- The facility is located in an area that was an enterprise tier one area at the time the owner began construction of the facility.
- The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and creates at least 155 new, full-time jobs at the facility.
- The jobs at the recycling facility meet the wage standard in effect as of the date the owner begins construction of the facility.

b. 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 a carryforward of a credit against the taxpayer's tax liability for that year is claimed.

c. Substantiation (G.S. 105-129.26(d))

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.

d. **Forfeiture (G.S. 105-129.26(c))**
If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce, the recycling facility forfeits all tax credits previously received under this Article. Forfeiture does not occur, however if the failure was due to events beyond the owner's control.

Upon forfeiture, the owner is liable for a tax equal to the amount of all past taxes avoided as a result of the tax credits claimed plus interest at the rate established in G. S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

2. **Credit for Investing in Large or Major Recycling Facility (G.S. 105-129.27)**

a. **Credit**
An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

b. **Taxes Credited (G.S. 105-129.27(b))**
The credit provided in this section is allowed against franchise and income tax. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the credit is first claimed. All carryforwards of a credit must be claimed against the same tax.

c. **Credit Carryforward (G.S. 105-129.27(c))**
The credit may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

d. **Change in Ownership of Facility (G.S. 105-129.27(d))**
The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

e. **Forfeiture (G.S 105-129.27(e))**
If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit 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 that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

f. **Limitations (G.S. 105-129.27(f))**
A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

3. **Credit for Reinvestment (G.S. 105-129.28)**
(Repealed effective for taxable years beginning on or after January 1, 2008)

a. **Credit (G.S. 105-129.28(a))**
A major recycling facility that is not accessible by ocean barge or ship and that transports materials to the facility or products away from the facility is allowed a credit against corporate income tax. The credit is equal to the additional transportation and transloading expenses incurred by the facility with respect to the materials and products due to its inability to use ocean barges or ships.

The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs.

To claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

b. **Cap on Credit (G.S. 105-129.28(b))**
The credit allowed to a major recycling facility may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	640,000
2000	3,860,000
2001	8,050,000
2002	9,550,000
2003	10,100,000
2004-2007	10,400,000

c. **Reduction in Credit (G.S. 105-129.28(c))**
For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under G.S.105-129.28(d), as certified by the Secretary of Commerce.

d. **Use of Credited Amount (G.S. 105-129.28(d))**
For the first 10 taxable years after the owner begins construction of the major recycling facility, the owner must use the credit allowed to pay for

- Investment in rail or roads associated with the facility.

- Investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility.
- Investment at or in connection with the recycling facility above the required investment of three hundred million dollars ($300,000,000), if the owner determines that there are no reasonable economic opportunities for the expenditures described above.

Expenses incurred for the purposes allowed in this subsection during a taxable year in the 10-year period may be counted toward a credit allowed in a later taxable year in the 10-year period. If the owner is not able to use the entire credit during the taxable year, the excess may be used in subsequent taxable years. After the end of the ten-year period, any unused credit may be used for investment at or in connection with the recycling facility above the $300,000,000 initial investment.

e. Refundable Credit (G.S. 105-129.28(e))

If the credit allowed by this section exceeds the corporate income tax liability for the taxable year reduced by the sum of all credits allowable, a refund of the excess will be made to the taxpayer. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.