

III. TAX CREDITS
(Articles 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3J, 3K and 4)

A. General Tax Credits

1. General Information

a. Franchise, Income, or Gross Premium Tax Election

The general tax credits allowed in Chapter 105 may be taken against corporate income tax only unless otherwise stated.

b. Forms

Form CD-425 is used to report credits that are not limited to fifty percent (50%) of the tax. The Form NC-478 series is used to calculate and report tax credits 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-478L 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.

Form CD-425 and, if applicable, 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 Dwelling Units for Handicapped Persons (G.S. 105-130.22)

a. Credit

Corporate owners of multifamily rental units located in North Carolina are allowed an income tax credit for each dwelling unit for physically handicapped persons constructed during the income year, subject to the limitations set out below.

The allowable credit is five hundred fifty dollars (\$550) for each dwelling unit that qualifies for use by physically handicapped persons. However, credit is allowed only for the number of such dwelling units completed during the income year that were constructed and required to be built in compliance with Volume I-C of the North Carolina Building Code.

No adjustment is required to be made to the depreciable cost of the unit on account of the allowable credit.

b. Carryforward

If the allowable income tax credit exceeds the taxpayer's income tax liability reduced by all other credits allowed against North Carolina income tax, the excess may be carried forward and claimed by such taxpayer in the next succeeding year only.

c. Eligibility

To qualify for the credit, the units must meet the requirements of Volume I-C of the North Carolina Building Code. Volume I-C is administered by the Building Accessibility Section of the North Carolina Department of Insurance and contains provisions and standards for making buildings and facilities accessible to and usable by physically handicapped persons. This section applies to all buildings and facilities regulated by the North Carolina State Building Code, with the exception of single and two-family dwellings.

d. Substantiation

The corporation must include with the tax return a copy of the occupancy permit on which the building inspector must record the number of qualified units completed during the income year.

3. Credit for Construction of Cogenerating Power Plant (G.S. 105-130.25)

a. Credit

A corporation or partnership, other than a public utility as defined in G.S. 62-3(23), that constructs a cogenerating power plant is allowed a credit for a portion of the cost to purchase and install the electrical or mechanical power generation equipment of that plant. To be eligible for the credit, the corporation or partnership must own or control the power plant at the time of construction.

The allowable credit is equal to ten percent (10%) of the cost paid during the tax year in which the credit is claimed for the purchase and installation of the electrical or mechanical power generation equipment of a cogenerating power plant. The credit may not be taken for the year in which the costs are paid but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the costs are paid.

b. Cogenerating Power Plant Defined

A cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy using natural gas as its primary energy source. A plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel will not qualify for the credit.

c. Alternative Method

An eligible taxpayer may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. Once made, the election is irrevocable. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

If a taxpayer makes this election, the credit may not exceed twenty-five percent (25%) of the amount of tax for the year reduced by the sum of all credits allowed,

except payments of tax by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the next ten (10) taxable years.

d. Application

An application is required to be filed with the Secretary on or before April 15 following the calendar year in which the costs were paid without regard to the method elected by the taxpayer. Under either method, the taxpayer applies for the total credit for the first year eligible.

e. Ceiling

The total amount of all tax credits allowed for payments for construction and installation made in a calendar year may not exceed five million dollars (\$5,000,000). If the total amount of credits for eligible payments applied for by all taxpayers exceeds five million dollars (\$5,000,000), in any one calendar year, the maximum allowable credit will be prorated among all applicants proportionally. If the taxpayer's eligible credit is reduced because of the ceiling, the reduction may be carried forward for the next ten taxable years. The taxpayer must reapply each year for the unused credits.

4. Credit for Real Property Donated for Conservation Purposes (G.S. 105-130.34)

a. Credit

Any C corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year is allowed a credit against its corporate income tax. The credit is twenty-five percent (25%) of the fair market value of the property interest donated, not to exceed five hundred thousand dollars (\$500,000).

b. Eligible Property Interest

To be eligible for this credit the donated interest in real property must be useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, forestland or farmland conservation, watershed protection, conservation of natural areas, conservation of natural or scenic river areas, conservation of predominately natural parkland, or historic land conservation, and the interest in real property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9.

Lands required to be dedicated pursuant to local government regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

c. Substantiation

The taxpayer must file with its income tax return for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public

benefits set forth in this subsection, and a self-contained appraisal report or summary appraisal report. For fee simple absolute donations of real property, the taxpayer may provide documentation of the county's appraised value of the property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

d. Carryforward

If the allowable income tax credit exceeds the taxpayer's tax liability reduced by all other credits allowed against North Carolina income tax, the excess may be carried forward and deducted in the next five succeeding years.

e. Limitations

The portion of the fair market value of the property used to calculate the allowable tax credit is not allowed as a charitable contribution deduction.

5. Credit for Conservation Tillage Equipment (G.S. 105-130.36)

a. Credit

A corporation that purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed an income tax credit equal to twenty-five percent (25%) of the cost of the equipment paid during the taxable year.

b. Conservation Tillage Equipment Defined

Conservation tillage equipment means planters such as those commonly known as "no-till" planters designed to minimize disturbance of the soil in planting crops or trees, including equipment that may be attached to equipment already owned by the taxpayer. The term also means equipment designed to minimize disturbance of the soil in reforestation site preparation. The inclusion of reforestation equipment that may be attached to equipment already owned by the taxpayer is limited to those items of equipment generally known as "KG-Blades", "drum-choppers", or "V-Blades".

c. Cap on Credit

This credit may not exceed two thousand five hundred dollars (\$2,500) for any taxable year of any taxpayer.

d. Restrictions

The credit may only be claimed by the first purchaser of the equipment and may not be claimed by a corporation that purchases the equipment for resale or for use outside this State.

e. Carryforward

If the credit exceeds the taxpayer's income tax liability, the excess may be carried over and claimed in the next five (5) succeeding years.

f. Basis Reduction

The basis in any equipment for which a credit is allowed under this section shall be reduced by such credit.

6. Credit for Gleaned Crop (G.S. 105-130.37)

a. Credit

A corporation that grows a crop and permits the gleaning of the crop is allowed an income tax credit equal to ten percent (10%) of the market price of the quantity of the gleaned crop.

b. Definitions

These definitions apply:

i. Gleaning

The harvesting of a crop that has been donated by the grower to the nonprofit organization that will distribute the crop to individuals or other nonprofit organizations it considers appropriate recipients of the food.

ii. Market price

The season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of Agriculture and Consumer Services, or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that crop.

iii. Nonprofit organization

An organization to which charitable contributions are deductible under the Code.

c. Cap on Credit

The allowable credit cannot exceed the taxpayer's tax liability.

d. Carryforward

Any unused portion of the credit may be carried forward for the succeeding five (5) years.

e. Restrictions

A charitable contribution deduction is not allowed under G.S. 105-130.5(b)(5) for any items for which this credit is claimed.

7. Credit for Certain Telephone Subscriber Line Charges (G.S. 105-130.39)

a. Credit

A corporation that provides local telephone services to low income residential customers at reduced rates is allowed a credit equal to the difference between the amount of receipts the corporation would have received from those low-income customers had the regular rates been charged and the amount billed to those low income customers.

b. Restrictions

The credit is allowed only for a reduction in local telephone service rates and fees. No credit is allowed for any reduction in interstate subscriber line charges.

c. Cap on Credit

The credit may not exceed the amount of corporate income tax for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the corporation.

8. Credit for Use of North Carolina Ports (G.S. 105-130.41)

a. Credit

An income tax credit is available to a corporation whose waterborne cargo is loaded onto or unloaded from an ocean carrier calling at the North Carolina ports of Wilmington or Morehead City. The credit is allowed against corporate income tax in an amount equal to the excess of the wharfage, handling (in or out) and throughput charges assessed on the cargo for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. For purposes of this section, the terms “handling” (in and out) and “wharfage” have the meanings provided in the State Ports Tariff Publications, “Wilmington Tariff, Terminal Tariff #6,” and “Morehead City Tariff, Terminal Tariff #1” and the term “throughput” has the same meaning as “wharfage” but applies only to bulk products, both dry and liquid. The credit sunsets for taxable years beginning on or after January 1, 2009.

b. Limitations and Carryforward

The amount of credit is limited to fifty percent (50%) of the income tax liability for the taxable year reduced by the sum of all credits allowable. Any unused portion of the credit may be carried forward and applied to the income tax liability for the five succeeding years. The maximum cumulative credit that may be claimed by a corporation is two million dollars (\$2,000,000).

c. Substantiation

To obtain the credit, the taxpayer must provide a statement from the State Ports Authority certifying the amount of charges paid on which the credit is based.

9. Credit for Supervisory Fees Paid by Savings and Loan Associations (G.S. 105-130.43)

a. Credit

Savings and loan associations are allowed an income tax credit equal to the amount of supervisory fees paid to the savings and loan division of the Department of Commerce.

b. Cap on Credit

The credit claimed may not exceed the amount of corporate income tax, reduced by the sum of all credits allowed against the tax, except tax payments made by or on behalf of the taxpayer.

c. Restrictions

These fees cannot be deducted in determining taxable income if they are claimed as an income tax credit.

10. Credit for Poultry Composting Facility (G.S. 105-130.44)

a. Credit

An income tax credit is available to corporations for constructing a poultry composting facility in North Carolina for the composting of poultry carcasses from commercial poultry operations. The credit is equal to twenty-five percent (25%) of the installation, materials and equipment costs of construction paid during the taxable year. The credit allowed does not apply to costs paid with funds provided by a State or federal agency.

b. Limitations and Carryforward

The credit may not exceed one thousand dollars (\$1,000) for any single installation. The credit may not exceed the amount of tax for the taxable year reduced by the sum of all tax credits allowable, except payments of tax by or on behalf of the taxpayer. Any unused portions of the credit may not be carried forward.

11. Credit for Manufacturing Cigarettes for Exportation (G.S. 105-130.45)

a. Credit

An income tax credit is allowed to a corporation engaged in the business of manufacturing cigarettes in the United States for exportation to a foreign country, a possession of the United States, and a commonwealth of the United States that is not a state. A corporation must waterborne export cigarettes and other tobacco products through the North Carolina State Ports during the taxable year to qualify for the credit. However, the calculation of the credit is not limited to just cigarettes that are waterborne exported. The amount of credit available is based on the current year's exportation volume compared to the base year's exportation volume. In the case of a successor in business, the amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with all of the corporation's predecessor corporations' combined base year exportation volume, rounded to the nearest whole percentage. The amount of credit may not exceed six million dollars (\$6,000,000) and is computed as follows:

<u>Current Yr.'s Exportation Volume Compared to its Base Yr.'s Exportation Volume</u>	<u>Amount of Credit per 1000 Cigarettes Exported</u>
120% or more	40 cents
119% - 100%	35 cents
99% - 80%	30 cents
79% - 60%	25 cents
59% - 50%	20 cents
Less than 50%	None

b. Substantiation

A corporation that claims this credit must include these items with its tax return:

- A statement of the base year exportation volume. The base year is calendar year 2003.

- A statement of the exportation volume on which the credit is based.
- A list of the corporation's export volumes as shown on its monthly reports to the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury for the months in the tax year for which the credit is claimed.

c. Limitations and Carryforward

The maximum eligible credit for cigarettes exported during the taxable year is the lesser of six million dollars (\$6,000,000) or fifty percent (50%) of the amount of income tax liability for the taxable year reduced by the sum of all other credits. Any unused credit for cigarettes exported may be carried forward for the next succeeding ten (10) years.

d. No Double Credit

A taxpayer may not claim this credit and the credit allowed under G.S. 105-130.46 for the same activity.

e. Sunset

This credit is repealed effective for cigarettes exported on or after January 1, 2018.

12. Credit for Manufacturing Cigarettes for Exportation While Increasing Employment and Utilizing State Ports (G.S. 105-130.46)

a. Credit

A corporation engaged in the business of manufacturing cigarettes for exportation that satisfies the employment level requirement for this credit and exports cigarettes and other tobacco products through the North Carolina State Ports during the taxable year is allowed a credit for manufacturing cigarettes for exportation while increasing employment and utilizing State Ports. The amount of the credit is equal to forty cents (40¢) per one thousand cigarettes exported, however, the amount of credit earned during the taxable year may not exceed ten million dollars (\$10,000,000).

b. Definitions

The following definitions apply:

i. Employment level

The total number of full-time jobs and part-time jobs converted into full-time equivalences.

ii. Exportation

The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.

iii. Full-time job

A position that requires at least one thousand six hundred (1,600) hours of work per year and is intended to be held by one employee during the entire year.

iv. Successor in business

A corporation that through amalgamation, acquisition, consolidation, merger or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the cigarette exportation business.

c. Employment Level

The corporation must maintain an employment level in this State that exceeds the corporation's employment level in the State at the end of the 2004 calendar year by at least eight hundred (800) full-time jobs. A job is located in this State if more than fifty percent (50%) of the employee's duties are performed in this State.

d. Reduction of Credit

A corporation that has previously satisfied the qualification requirements for this credit but that fails to satisfy the employment level requirement in a succeeding year may still claim a partial credit for the year in which the employment level requirement is not satisfied. The partial credit allowed is equal to the credit that would otherwise be allowed multiplied by a fraction. The numerator of the fraction is the excess of the number of full-time jobs in this State over the corporation's employment level in this State at the end of the 2004 calendar year. The denominator of the fraction is eight hundred (800). In the case of a successor business, the numerator of the fraction is the number of full-time jobs by which the corporation's employment level in this State exceeds all its predecessor corporations' combined employment levels in this State at the end of the 2004 calendar year.

e. Tax Election

The credit may be taken against either corporate income tax or franchise tax. When the taxpayer claims this credit, the taxpayer must elect the percentages of the credit claimed against corporate income tax and franchise tax, respectively. This election is binding for the year in which it is made and for any carryforwards. A taxpayer may elect a different allocation for each year in which the taxpayer qualifies for a credit.

f. Ceiling

The total amount of this credit calculated as described above may not exceed fifty percent (50%) of the tax against which the credit is taken reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed for this credit or the credit allowed under G.S. 105-130.45 for previous years.

g. Carryforward

Any unused portion of the credit may be carried forward for the next succeeding ten (10) years. All carryforwards must be taken against the tax against which the credit was originally claimed. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

h. Substantiation

A corporation that claims this credit must include these items with its tax return:

- A statement of the exportation volume on which the credit is based.
- A list of the corporation's export volumes shown on its monthly reports to the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury for the months in the tax year for which the credit is claimed.
- Any other information required by the Department of Revenue.

i. No Double Credit

A taxpayer may not claim this credit and the credit allowed under G.S. 105-130.45 for the same activity.

j. Reports

Any corporation that claims this credit must submit an annual report by May 1 of each year to the Senate Finance Committee, the House of Representatives Finance Committee, the Senate Appropriations Committee, the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly. The report must state the amount of credit earned by the corporation during the previous year, the amount of credit including carryforwards claimed by the corporation during the previous year, and the percentage of domestic leaf content in cigarettes produced by the corporation during the previous year.

k. Sunset

This credit expires for exports occurring on or after January 1, 2018.

13. Credit for Qualifying Expenses of a Production Company (G.S. 105-130.47)

a. Credit

A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a credit against corporate income taxes. The credit is equal to fifteen percent (15%) of the production company's qualifying expenses. The credit is claimed for the taxable year in which the production activities are completed but includes all of the taxpayer's qualifying expenses incurred with respect to the production, including qualifying expenses incurred in earlier years. In the case of an episodic television series, an entire season of episodes is one production.

b. Definitions

These definitions apply:

i. Qualifying Expenses

The sum of the total amount spent in this State for the following by a production company in connection with a production, less the amount paid to a highly compensated individual:

- Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount

included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

- Compensation and wages on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.

ii. Highly Compensated Individual

An individual who receives compensation in excess of one million dollars (\$1,000,000) with respect to a single production. If an individual receives compensation in excess of one million dollars (\$1,000,000), none of the compensation is included in the production's qualifying expenses. A highly compensated individual is an individual who receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to a single production, regardless of whether the individual receives the compensation directly from the production company or indirectly from a personal service company or an employee leasing company and regardless of whether the compensation is considered wages or nonemployee compensation.

iii. Production Company (G.S. 105-164.3)

A person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes. However, radio productions do not qualify for the credit (see subsection 14.i below).

iv. Feature Film

A movie that is made for initial distribution in theaters and that is over forty (40) minutes long.

v. Live Sporting Event

A scheduled sporting competition, game, or race that is not originated by a production company, but is originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production where any sporting events are presented through archived historical footage or similar footage taken at least thirty (30) days before it is used.

c. Qualifying Expenses for Compensation and Wages

Compensation and wages paid to employees for services performed in North Carolina on which income tax withholding payments are remitted to the Department of Revenue are eligible for the tax credit regardless of whether paid to residents or non-residents. Payments for per diem, living allowances, and fringe benefits are eligible to the extent they are included in the recipient's taxable wages subject to federal income tax withholding. The amount paid to an individual through a personal services corporation or through an employee-leasing organization is considered compensation and is subject to the "highly compensated individual" limitations in calculating the allowable credit.

d. Qualifying Expenses for Services

Spending for services is eligible for the tax credit regardless of whether paid to residents or non-residents, as long as the services are performed in North Carolina. The amount paid to an individual through a personal services corporation or through an employee leasing organization is subject to the “highly compensated individual” limitation in calculating the allowable credit.

e. Qualifying Expenses for Goods

Spending for goods purchased or leased from a North Carolina business is eligible for the tax credit. This includes fuel, food, airline tickets and other goods if purchased or leased from a business located in North Carolina.

f. Pass-through Entity

Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for this credit does not allocate the credit among any of its owners. Instead, the pass-through entity is considered the taxpayer for purposes of claiming this 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 under this section does not affect the entity’s payment of tax on behalf of its owners and cannot be applied against that liability.

g. Return

The credit is claimed on Form NC-415 filed for the taxable year in which the production activities are completed. Processing of the credit cannot begin until after the income tax return for the taxable year in which the production activities are completed is filed. The taxpayer must satisfy any tax liability for the tax year in which the tax credit is claimed before the credit will be refunded.

h. Credit Refundable

If the credit allowed exceeds the amount of income tax for the taxable year reduced by the sum of all credits allowable, the excess is refundable to the taxpayer. The refundable excess is governed by the same provisions that govern the refund of an income tax overpayment by the taxpayer. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

i. Limitations

The amount of credit allowed under this section with respect to a production that is a feature film may not exceed seven million five hundred thousand dollars (\$7,500,000). There is no maximum credit for other types of productions. No credit is allowed under this section for any production that satisfies one of the following conditions:

- It is political advertising.
- It is a television production of a news program or live sporting event.
- It contains material that is obscene, as defined in G.S. 14-190.1.
- It is a radio production.

j. Substantiation

A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

k. Sunset

This credit is repealed for qualifying expenses occurring on or after January 1, 2010.

14. Credit for Recycling Oyster Shells (G.S. 105-130.48)

a. Credit

A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against corporate income tax. The credit is one dollar (\$1.00) per bushel of oyster shells donated.

b. Limitation

The credit allowed cannot exceed the amount of corporate income tax for the taxable year reduced by the sum of all credits allowable, except corporate income tax payments made by or on behalf of the taxpayer.

c. Carryforward

Any unused portion of this credit may be carried forward for the succeeding five (5) years. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

d. No Double Benefit

A taxpayer that claims this credit may not take a deduction for a contribution allowed under G.S. 105-130.5(b)(5) or G.S. 105-130.9.

e. Substantiation

A taxpayer that claims this credit must obtain and maintain with its records a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer.

f. Sunset

This credit is repealed for taxable years beginning on or after January 1, 2011.