

Article 3H.

Mill Rehabilitation Tax Credit.

**§ 105-129.70. (See note for repeal) Definitions.**

The following definitions apply in this Article:

- (1) Certified historic structure. – Defined in section 47 of the Code.
- (2) Certified rehabilitation. – Defined in G.S. 105-129.36.
- (3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to a certified rehabilitation of an eligible site.
- (3a) Development tier area. – Defined in G.S. 143B-437.08.
- (4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site.
- (5) Eligible site. – A site located in this State that satisfies all of the following conditions:
  - a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.
  - b. It is a certified historic structure or a State-certified historic structure.
  - c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.
  - d. Repealed by Session Laws 2008-107, s. 28.4(a), effective for taxable years beginning on or after January 1, 2008.
- (6) Repealed by Session Laws 2006-252, s. 2.22, effective January 1, 2007.
- (7) Pass-through entity. – Defined in G.S. 105-228.90.
- (8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.
- (9) Rehabilitation expenses. – Defined in G.S. 105-129.36.
- (10) State-certified historic structure. – Defined in G.S. 105-129.36.
- (11) State Historic Preservation Officer. – Defined in G.S. 105-129.36. (2006-40, s. 1; 2006-252, s. 2.22; 2008-107, s. 28.4(a); 2021-180, s. 42.7(a).)

**§ 105-129.71. (See note for repeal) Credit for income-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures of at least three million dollars (\$3,000,000) with respect to a certified rehabilitation of an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

- (1) For an eligible site located in a development tier one or two area, determined as of the date of the eligibility certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.

- (2) For an eligible site located in a development tier three area, determined as of the date of the eligibility certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(a1) Credit for Rehabilitated Railroad Station. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures of at least ten million dollars (\$10,000,000) with respect to a certified rehabilitation of an eligible railroad station is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures. The qualified rehabilitation expenditures must be incurred on or after January 1, 2019, and the credit cannot be claimed for a taxable year beginning prior to January 1, 2021. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year.

For purposes of this subsection, the term "eligible railroad station" is a site located in this State that satisfies all of the following conditions:

- (1) It was used as a manufacturing facility and either (i) was used as a railroad station or (ii) is located adjacent to a site that is or was used as a railroad station.
- (2) It is a certified historic structure or a State-certified historic structure.
- (3) It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.
- (4) It is a designated local landmark as certified by a city on or before June 30, 2027.
- (5) It is located in a development tier one or tier two area, determined as of the date of the eligibility certification.
- (6) It is located in a designated qualified opportunity zone under sections 1400Z-1 and 1400Z-2 of the Code, determined as of the date of the eligibility certification.
- (7) It is issued a certificate of occupancy on or before December 31, 2029.

(b) Allocation. – 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 in 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 eligible site 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 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.

(c) Forfeiture for Change in Ownership. – 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 eligible site is placed in service 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 eligible site 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.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

- (1) The death of the owner.
- (2) 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.

(e) Liability from Forfeiture. – 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. 105-241.21, 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 the penalties provided in G.S. 105-236. (2006-40, s. 1; 2006-252, s. 2.23; 2006-259, s. 47.5; 2007-491, s. 44(1)a; 2008-107, s. 28.4(b); 2019-237, s. 3(b); 2021-180, s. 42.7(a).)

**§ 105-129.72. (See note for repeal) Credit for nonincome-producing rehabilitated mill property.**

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses of at least three million dollars (\$3,000,000) with respect to a certified rehabilitation of an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in a development tier one or two area, determined as of the date of the eligibility certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in a development tier three area.

(b) Allocation. – 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 in 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 eligible site 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 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.

(c) Forfeiture for Change in Ownership. – 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 eligible site is placed in service 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 eligible site 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 allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

- (1) The death of the owner.
- (2) 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.

(e) Liability from Forfeiture. – 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. 105-241.21, 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 the penalties provided in G.S. 105-236. (2006-40, s. 1; 2006-252, s. 2.24; 2007-491, s. 44(1)a; 2008-107, s. 28.4(c); 2021-180, s. 42.7(a).)

#### **§ 105-129.73. (See note for repeal) Tax credited; cap.**

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years. (2006-40, s. 1; 2021-180, s. 42.7(a).)

#### **§ 105-129.74. (See note for repeal) Coordination with Historic Rehabilitation Tax Credit.**

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D or 3L of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A or G.S. 105-129.107 apply to this Article. (2006-40, s. 1; 2019-237, s. 3(c); 2021-180, s. 42.7(a).)

#### **§ 105-129.75. Sunset and applicable expenditures.**

(a) Sunset. – Except for credits allowed under G.S. 105-129.71(a1), this Article expires, and a tax credit allowed under G.S. 105-129.71(a) may not be claimed, for rehabilitation projects not completed and placed in service prior to January 1, 2030.

(b) Delayed Sunset and Applicable Expenditures. – For credits allowed under G.S. 105-129.71(a1), the following applies:

- (1) The qualified rehabilitation expenditures must be incurred on or after January 1, 2019, and before January 1, 2030.
- (2) This Article expires, and a tax credit allowed under G.S. 105-127.71(a1) may not be claimed, for rehabilitation projects not completed and placed in service prior to January 1, 2030. (2006-40, s. 1; 2008-107, s. 28.4(d); 2010-31, s. 31.5(a); 2012-36, s. 12(b); 2015-241, s. 32.3(b); 2019-237, s. 3(d); 2021-180, s. 42.7(a).)

**§ 105-129.75A. (See note for repeal) Report.**

The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

- (1) The number of taxpayers that took the credits allowed in this Article.
- (2) The amount of rehabilitation expenses and qualified rehabilitation expenditures with respect to which credits were taken.
- (3) The total cost to the General Fund of the credits taken. (2010-166, s. 1.8; 2021-180, s. 42.7(a).)