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SENATE BILL 1416
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Short Title:	Housing Tax Credit Chngs/Estate Tax Chngs.	(Public)
Sponsors:		
Referred to:		

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE LOW-INCOME HOUSING TAX CREDIT BY MAKING IT SIMPLER AND LESS COSTLY WHILE PROVIDING THE SAME LEVEL OF INCENTIVES FOR THE CONSTRUCTION OF LOW-INCOME HOUSING AND TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3E.

"Low-Income Housing Tax Credits.

"**§ 105-129.40. Definitions applicable to Article.**

The definitions in section 42 of the Code and the following definitions apply in this Article:

(1) Housing Finance Agency. – The North Carolina Housing Finance Agency established in G.S. 122A-4.

(2) Pass-Through Entity. – Defined in G.S. 105-129.35.

"**§ 105-129.41:** Reserved.

"**§ 105-129.42. Credit for low-income housing awarded a federal credit allocation on or after January 1, 2003.**

(a) Definitions. – The following definitions apply in this section:

(1) 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.

(2) 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 subsection (c) of this section.

(3) Qualified Residential Unit. – A housing unit that meets the requirements of section 42 of the Code.

(b) Credit. – A taxpayer who is allocated a federal low-income housing 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.

(c) Developments and Amounts. – The following table sets out the housing developments that are qualified North Carolina low-income housing developments and are allowed a credit under this section. The table also sets out the percentage of the development's eligible basis for which a credit is allowed. 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 a credit is allowed. The affordability requirements set out in the chart apply for the duration of the federal tax credit compliance period. If in any year a taxpayer fails to meet these affordability requirements, the credit is forfeited under subsection (h) of this section.

Type of Development	Percentage of Basis for Which Credit Is Allowed
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.	Thirty percent (30%)
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.	Twenty percent (20%)
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 the units are in a High-Income county or city.	Ten percent (10%)
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 the units are in a High-Income county or city.	Ten percent (10%)

(d) Election. – When a taxpayer to whom a federal low-income housing credit is allocated submits to the Housing Finance Agency a request to receive a carryover allocation for that credit, the taxpayer must elect a method for receiving the tax credit allowed by this section. A taxpayer may elect to receive the 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 under this Chapter.

Under the direct tax refund method, a taxpayer elects to apply the credit allowed by this section to the taxpayer's liability under Article 4 of this Chapter. If the credit allowed by this section exceeds the amount of tax imposed by Article 4 for the taxable year, reduced by the sum of all other credits allowable, the Secretary must refund the excess. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before this credit. The provisions that apply to an overpayment of tax apply to the refundable excess of a credit allowed under this section.

Under the loan method, a taxpayer elects to transfer the credit allowed by this section to the Housing Finance Agency and receive a loan from that Agency for the amount of the credit. The terms of the loan are specified by the Housing Finance Agency in accordance with the Qualified Allocation Plan.

(e) Exception When No Carryover. – If a taxpayer does not submit to the Housing Finance Agency a request to receive a carryover allocation, the taxpayer must elect the method for receiving the credit allowed by this section when the taxpayer submits to the Agency federal Form 8609. A taxpayer to whom this subsection applies claims the credit for the taxable year in which the taxpayer submits federal Form 8609.

(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 the credit provided in this Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. 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 Article does not affect the entity's payment of tax on behalf of its owners.

(g) Return and Payment. – A taxpayer may claim the credit allowed by this section 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 allowed under this section, the Secretary must transfer to the Housing Finance Agency the amount of credit allowed the taxpayer. 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 under this section, the Secretary must transfer to the Housing Finance Agency the refundable excess of the credit allowed the taxpayer. 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:

(1) The Agency determines that the taxpayer has complied with the Qualified Allocation Plan and has completed at least fifty percent (50%) of the activities included in the development's eligible basis.

(2) Within 30 days after the development is placed in service date.

(h) Forfeiture. – 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:

(1) When the recapture of part or all of the federal credit is the result of an event that occurs in the sixth or a subsequent calendar year after the calendar year in which the development was awarded a federal credit allocation.

(2) The taxpayer elected to transfer the credit allowed by this section to the Housing Finance Agency.

(i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit allowed under this section 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.

"**§ 105-129.43. Substantiation.**

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

"**§ 105-129.44. Report.**

The Department of Revenue must report to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was claimed.

(3) The total cost to the General Fund of the credits claimed.

"**§ 105-129.45. Sunset.**

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

SECTION 2. G.S. 105-129.16B is recodified as G.S. 105-129.41 and reads as rewritten:

"**§ 105-129.41. Credit for low-income ~~housing.~~housing awarded a federal credit allocation before January 1, 2003.**

(a) ~~(Effective until January 1, 2005)~~ Credit. – A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) or (c)(1a) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

~~(a) (Effective January 1, 2005) Credit. - A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).~~

(a1) Tax Election. – The credit allowed in this section is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(a2) Cap. – The credit allowed in this section may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this section against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

(b) Timing. – The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building. During the first taxable year in which the credit allowed under this section may be taken with respect to a building, the amount of the installment 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 under this section.

(b1) 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 ~~the amount of credit allocated to an owner does not exceed 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.~~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 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.

(c) ~~Definitions. - The definitions in section 42 of the Code apply in this section. In addition, as~~Qualifying Buildings. – As used in this section the term "qualified North Carolina low-income building" means a qualified low-income building that was allocated a federal credit under section 42(h)(1) of the Code, was not allowed a federal credit under section 42(h)(4) of the Code, and meets any of the following conditions:

(1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3.

(1a) ~~(Expires January 1, 2005)~~ It 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 on September 25, 1999. Those counties are Bertie, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin, Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt, Washington, Wayne, and Wilson Counties.

(2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

(3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(d) Expiration. – If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section expires and the taxpayer may not take any remaining installment of the credit. If, in one of the five years in which an installment of the credit under this section accrues, the building no longer qualifies as a low-income building under subdivision (2) or (3) of subsection (c) of this section because less than forty percent (40%) of its residential units are both rent-restricted and occupied by individuals who meet the income requirements, then the credit under this section expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(e) Forfeiture for Disposition. – If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer <u>must report the recapture event to the Secretary and to the Housing Finance Agency. The taxpayer </u>forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. 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.<u> This subsection does not apply when the recapture of part or all of the federal credit is the result of an event that occurs after the credit period described in subsection (b) of this section.</u>

(f) 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 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 <u>must report the change to the Secretary and to the Housing Finance Agency. The owner </u>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 allowable credit is allocated equally among the five years in which the credit is claimed. Forfeiture as provided in this subsection 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.

(g) 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. 105-241.1(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 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."

SECTION 3. G.S. 105-129.15(4a) is repealed.

SECTION 4. G.S. 105-129.15A reads as rewritten:

"**§ 105-129.15A. Sunset.**

G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in service on or after January 1, 2006. ~~The repeal of G.S. 105-129.16B applies to buildings to which federal credits are allocated on or after January 1, 2006. (2000-173, s. 1(d).)~~"

SECTION 5. G.S. 105-129.17(a) reads as rewritten:

"(a) Tax Election. – The credits allowed in this Article are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. ~~In addition, the credit allowed under G.S. 105-129.16B is allowed against the gross premiums tax levied in Article 8B of this Chapter.~~ 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. Any carryforwards of a credit must be claimed against the same tax."

SECTION 6. G.S. 105-129.19(2a) is repealed.

SECTION 7. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(28) To exchange information concerning a tax credit claimed under Article 3E of this Chapter with the North Carolina Housing Finance Agency."

SECTION 8. G.S. 105-256(a) is amended by adding a new subdivision to read:

"(7) The reports required under G.S. 105-129.19 and G.S. 105-129.44."

SECTION 9. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable ~~is the North Carolina percentage of the credit.~~

~~If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's~~

~~state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.~~

~~The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.~~<u>depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by the lesser of the amount of the death tax paid the other state or an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings.</u>"

SECTION 10. Section 9 of this act is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. The remainder of this act is effective when it becomes law. Section 2 of this act applies to credits for buildings that are awarded a federal credit allocation before January 1, 2003, and for which a federal tax credit is first claimed for a taxable year beginning on or after January 1, 2002.