

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 181*
Finance Committee Substitute Adopted 9/5/01**

Short Title: Pass-Through Entity/Housing Tax Credit.

(Public)

Sponsors:

Referred to:

February 19, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO ALLOW A PASS-THROUGH ENTITY TO ALLOCATE A HOUSING
3 TAX CREDIT TO ANY OF ITS OWNERS AT THE DISCRETION OF THE
4 PASS-THROUGH ENTITY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 105-129.15 is amended by adding a new subdivision to
7 read:

8 "(4a) Pass-through entity. – Defined in G.S. 105-129.35."

9 **SECTION 2.** G.S. 105-129.16B reads as rewritten:

10 **"§ 105-129.16B. Credit for low-income housing.**

11 (a) Credit. – A taxpayer that is allowed for the taxable year a federal income tax
12 credit for low-income housing under section 42 of the Code with respect to a qualified
13 North Carolina low-income building, is allowed a credit under this Article equal to a
14 percentage of the total federal credit allowed with respect to that building. For the
15 purposes of this section, the total federal credit allowed is the total allowed during the
16 10-year federal credit period plus the disallowed first-year credit allowed in the 11th
17 year. For the purposes of this section, the total federal credit is calculated based on
18 qualified basis as of the end of the first year of the credit period and is not recalculated
19 to reflect subsequent increases in qualified basis. For buildings that meet condition
20 (c)(1) or (c)(1a) of this section, the credit percentage is seventy-five percent (75%). For
21 other buildings, the credit percentage is twenty-five percent (25%).

22 (b) Timing. – The credit must be taken in equal installments over the five years
23 beginning in the first taxable year in which the federal credit is claimed for that
24 building. During the first taxable year in which the credit allowed under this section
25 may be taken with respect to a building, the amount of the installment must be
26 multiplied by the applicable fraction under section 42(f)(2)(A) of the Code. Any
27 reduction in the amount of the first installment as a result of this multiplication is
28 carried forward and may be taken in the first taxable year after the fifth installment is
29 allowed under this section.

1 (b1) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-
2 269.15, a pass-through entity that qualifies for the credit provided in this section may
3 allocate the credit among any of its owners in its discretion as long as the amount of
4 credit allocated to an owner does not exceed the owner's adjusted basis in the pass-
5 through entity, as determined under the Code, at the end of the taxable year in which the
6 federal credit is first claimed. Owners to whom a credit is allocated are allowed the
7 credit as if they had qualified for the credit directly. A pass-through entity and its
8 owners must include with their tax returns for every taxable year in which an allocated
9 credit is claimed a statement of the allocation made by the pass-through entity and the
10 allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

11 (c) Definitions. – The definitions in section 42 of the Code apply in this section.
12 In addition, as used in this section the term "qualified North Carolina low-income
13 building" means a qualified low-income building that was allocated a federal credit
14 under section 42(h)(1) of the Code, was not allowed a federal credit under section
15 42(h)(4) of the Code, and meets any of the following conditions:

16 (1) It is located in an area that, at the time the federal credit is allocated to
17 the building, is a tier one or two enterprise area, as defined in G.S.
18 105-129.3.

19 (1a) It is located in a county that, at the time the federal credit is allocated
20 to the building, has been designated as having sustained severe or
21 moderate damage from a hurricane or a hurricane-related disaster,
22 according to the Federal Emergency Management Agency impact map,
23 revised on September 25, 1999. Those counties are Bertie, Beaufort,
24 Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin,
25 Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash,
26 New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt,
27 Washington, Wayne, and Wilson Counties.

28 (2) It is located in an area that, at the time the federal credit is allocated to
29 the building, is a tier three or four enterprise area, and forty percent
30 (40%) of its residential units are both rent-restricted and occupied by
31 individuals whose income is fifty percent (50%) or less of area median
32 gross income as defined in the Code.

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

38 (d) Expiration. – If, in one of the five years in which an installment of the credit
39 under this section accrues, the taxpayer is no longer eligible for the corresponding
40 federal credit with respect to the same qualified North Carolina low-income building,
41 then the credit under this section expires and the taxpayer may not take any remaining
42 installment of the credit. If, in one of the five years in which an installment of the credit
43 under this section accrues, the building no longer qualifies as a low-income building

1 under subdivision (2) or (3) of subsection (c) of this section because less than forty
2 percent (40%) of its residential units are both rent-restricted and occupied by individuals
3 who meet the income requirements, then the credit under this section expires and the
4 taxpayer may not take any remaining installments of the credit. The taxpayer may,
5 however, take the portion of an installment that accrued in a previous year and was
6 carried forward to the extent permitted under G.S. 105-129.17.

7 (e) Forfeiture. Forfeiture for Disposition. – If the taxpayer is required under
8 section 42(j) of the Code to recapture all or part of a federal credit under that section
9 with respect to a qualified North Carolina low-income building, the taxpayer forfeits the
10 corresponding part of the credit allowed under this section with respect to that qualified
11 North Carolina low-income building. ~~A taxpayer that forfeits a credit under this section
12 is liable for all past taxes avoided as a result of the credit plus interest at the rate
13 established under G.S. 105-241.1(i), computed from the date the taxes would have been
14 due if the credit had not been allowed. The past taxes and interest are due 30 days after
15 the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by
16 the due date is subject to the penalties provided in G.S. 105-236. If the credit was
17 allocated among the owners of a pass-through entity, the forfeiture applies to the owners
18 in the same proportion that the credit was allocated.~~

19 (f) Forfeiture for Change in Ownership. – If an owner of a pass-through entity
20 that has qualified for the credit allowed under this section disposes of all or a portion of
21 the owner's interest in the pass-through entity within five years from the date the federal
22 credit is first claimed and the owner's interest in the pass-through entity is reduced to
23 less than two-thirds of the owner's interest in the pass-through entity at the time the
24 federal credit is first claimed, the owner forfeits a portion of the credit. The amount
25 forfeited is determined by multiplying the amount of credit by the percentage reduction
26 in ownership and then multiplying that product by the forfeiture percentage. The
27 forfeiture percentage equals the recapture percentage found in the table in section
28 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the
29 five years in which the credit is claimed. Forfeiture as provided in this subsection is not
30 required if the change in ownership is the result of any of the following:

31 (1) The death of the owner.

32 (2) A merger, consolidation, or similar transaction requiring approval by
33 the shareholders, partners, or members of the taxpayer under
34 applicable State law, to the extent the taxpayer does not receive cash or
35 tangible property in the merger, consolidation, or other similar
36 transaction.

37 (g) Liability From Forfeiture. -- A taxpayer or an owner of a pass-through entity
38 that forfeits a credit under this section is liable for all past taxes avoided as a result of
39 the credit plus interest at the rate established under G.S. 105-241.1(i), computed from
40 the date the taxes would have been due if the credit had not been allowed. The past
41 taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or
42 owner of a pass-through entity that fails to pay the taxes and interest by the due date is
43 subject to the penalties provided in G.S. 105-236."

1 **SECTION 3.** G.S. 105-129.17(a) reads as rewritten:

2 "(a) Tax Election. – The credits allowed in this Article are allowed against the
3 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4
4 of this Chapter. In addition, the credit allowed under G.S. 105-129.16B is allowed
5 against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer must
6 elect the tax against which a credit will be claimed when filing the return on which the
7 first installment of the credit is claimed. This election is binding. Any carryforwards of
8 a credit must be claimed against the same tax."

9 **SECTION 4.** This act is effective for taxable years beginning on or after
10 January 1, 2001, and applies to buildings that are placed in service on or after January 1,
11 2001.