

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1461

Short Title: Franchise Tax Credit for CIP.

(Public)

Sponsors: Representatives Sexton, H. Hunter; Arnold, Cansler, Capps, Clary, Culp, Davis, Eddins, Gulley, Hardy, Moore, Morris, Rayfield, Shubert, Warwick, and Weatherly.

Referred to: Finance.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW A CREDIT AGAINST THE FRANCHISE TAX FOR
PROPERTY TAXES PAID ON CONSTRUCTION IN PROGRESS.

The General Assembly of North Carolina enacts:

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

"§ 105-127.1. Credit for property tax paid on construction in progress.

(a) Credit. – A person, firm, or corporation required to file a report and remit a tax under this Article is allowed a credit against the tax imposed by this Article equal to the amount of property taxes the taxpayer paid at par during the calendar year next preceding the due date of the franchise tax return on construction in progress. In addition, a person, firm, or corporation that must file a report and remit a tax under this Article that is the owner of a pass-through entity that is not subject to the tax imposed under this Article is allowed a credit against the tax imposed by this Article equal to the taxpayer's pro rata share of the amount of property taxes the pass-through entity paid at par during the calendar year next preceding the due date of the franchise tax return on construction in progress. The total credit allowed under this section for the taxable year may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all

1 credits allowed against this tax, except payments of tax made by or on behalf of the
2 taxpayer. To claim the credit, the taxpayer must attach to the return a copy of the tax
3 receipt for the property taxes for which a credit is claimed. The receipt must indicate that
4 the taxes have been paid and the amount and date of the payment.

5 (b) Adjustment. – If a taxing unit gives a taxpayer a credit or refund for any of the
6 property taxes for which the taxpayer claimed a credit under this section, the taxpayer
7 must notify the Secretary of Revenue within 90 days. The Secretary shall then
8 recompute the credit allowed under this section and make any resulting adjustment of
9 franchise tax for the taxable year for which the credit was claimed.

10 (c) Definition. – For the purposes of this section, the term "construction in
11 progress" has the same meaning as defined in G.S. 105-273."

12 Section 2. G.S. 105-273 reads as rewritten:

13 **"§ 105-273. Definitions.**

14 When used in this Subchapter (unless the context requires a different meaning): The
15 following definitions apply in this Subchapter:

16 (1) ~~"Abstract" means the Abstract.~~ – The document on which the property of
17 a taxpayer is listed for ad valorem taxation and on which the appraised
18 and assessed values of the property are recorded.

19 (2) ~~"Appraisal" means both Appraisal.~~ – Both the true value of property and
20 the process by which true value is ascertained.

21 (3) ~~"Assessment" means both Assessment.~~ – Both the tax value of property
22 and the process by which the assessment is determined.

23 (4) Repealed by Session Laws 1973, c. 695, s. 15.

24 (4a) Business personal property. – Personal property that is not nonbusiness
25 property.

26 (5) ~~"Collector" or "tax collector" means any person charged with the duty of~~
27 ~~collecting taxes for a county or municipality.~~ Collector. – A tax
28 collector.

29 (5a) Contractor" means a Construction in progress. – Tangible business
30 personal property that is on-site but which the taxpayer has not yet
31 begun to depreciate for federal income tax purposes because the
32 property has not been placed in service.

33 (5b) Contractor. – A taxpayer who is regularly engaged in building,
34 installing, repairing, or improving real property.

35 (6) ~~"Corporation" includes Corporation.~~ – A nonprofit corporation and every
36 type of organization having capital stock represented by shares.

37 (6a) ~~"Discovered property" includes all Discovered property.~~ – All of the
38 following:

39 a. Property that was not listed during a listing period.

40 b. Property that was listed but the listing included a substantial
41 understatement.

42 c. Property that has been granted an exemption or exclusion and
43 does not qualify for the exemption or exclusion.

- 1 (6b) ~~"To discover property" means to~~ To discover property. – To determine any
2 of the following:
3 a. Property has not been listed during a listing period.
4 b. A taxpayer made a substantial understatement of listed property.
5 c. Property was granted an exemption or exclusion and the property
6 does not qualify for an exemption or exclusion.
- 7 (7) ~~"Document" includes~~ Document. – A book, paper, record, statement,
8 account, map, plat, film, picture, tape, object, instrument, and or any
9 other thing conveying information.
- 10 (7a) ~~"Failure to list property" includes all~~ Failure to list property. – All of the
11 following:
12 a. Failure to list property during a listing period.
13 b. A substantial understatement of listed property.
14 c. Failure to notify the assessor that property granted an exemption
15 or exclusion under an application for exemption or exclusion
16 does not qualify for the exemption or exclusion.
- 17 (8) ~~"Intangible personal property" means patents,~~ Intangible personal property.
18 – Patents, copyrights, secret processes, formulae, good will, trademarks,
19 trade brands, franchises, stocks, bonds, cash, bank deposits, notes,
20 evidences of debt, leasehold interests in exempted real property, bills
21 and accounts receivable, and other like property.
- 22 (8a) ~~"Inventories" means~~ Inventories. – Either of the following: (i) goods held
23 for sale in the regular course of business by manufacturers, retail and
24 wholesale merchants, and contractors, and (ii) goods held by contractors
25 to be furnished in the course of building, installing, repairing, or
26 improving real property. As to manufacturers, the term includes raw
27 materials, goods in process, and finished goods, as well as other
28 materials or supplies that are consumed in manufacturing or processing,
29 or that accompany and become a part of the sale of the property being
30 sold. The term also includes crops, livestock, poultry, feed used in the
31 production of livestock and poultry, and other agricultural or
32 horticultural products held for sale, whether in process or ready for sale.
33 The term does not include fuel used in manufacturing or processing, nor
34 does it include materials or supplies not used directly in manufacturing
35 or processing. As to retail and wholesale merchants and contractors, the
36 term includes, in addition to articles held for sale, packaging materials
37 that accompany and become a part of the sale of the property being sold.
- 38 (9) ~~"List" or "listing," when~~ List. – When used as a noun, the term 'list' or
39 'listing' means abstract.
- 40 (10) Repealed by Session Laws 1987, c. 43, s. 1.
- 41 (10a) ~~"Local tax official" includes a~~ Local tax official. – A county assessor, an
42 assistant county assessor, a member of a county board of

- 1 commissioners, a member of a county board of equalization and review,
2 a county tax collector, and the municipal equivalents of these officials.
- 3 (10b) ~~"Manufacturer" means a~~ Manufacturer. – A taxpayer who is regularly
4 engaged in the mechanical or chemical conversion or transformation of
5 materials or substances into new products for sale or in the growth,
6 breeding, raising, or other production of new products for sale. The term
7 does not include delicatessens, cafes, cafeterias, restaurants, and other
8 similar retailers that are principally engaged in the retail sale of foods
9 prepared by them for consumption on or off their premises.
- 10 (11) ~~"Municipal corporation" and "municipality" mean~~ Municipal corporation. –
11 A municipality.
- 12 (11a) Municipality. – A city, a town, an incorporated village, a sanitary
13 district, a rural fire protection district, a rural recreation district, a
14 mosquito control district, a hospital district, a metropolitan sewerage
15 district, a watershed improvement district, or ~~other another~~ district or
16 unit of local government by or for which ad valorem taxes are levied.
17 ~~The terms also include term~~ also includes a consolidated city-county as
18 defined by G.S. 160B-2(1).
- 19 (11b) Nonbusiness property. – Personal property that is used by the owner of
20 the property for a purpose other than the production of income and is
21 not used in connection with a business. The term includes household
22 furnishings, clothing, pets, lawn tools, and lawn equipment.
- 23 (12) ~~"Person" and "he" include any individual, trustee, executor,~~
24 ~~administrator, other fiduciary, corporation, limited liability company,~~
25 ~~unincorporated association, partnership, sole proprietorship, company,~~
26 ~~firm, or other legal entity.~~ Person. – Defined in G.S. 105-228.90.
- 27 (13) ~~"Real property," real estate," and "land" mean not only the land itself, but also~~
28 Real property. – Land, any buildings, structures, improvements, and
29 permanent fixtures thereon, on the land, and all rights and privileges
30 belonging or in any wise appertaining thereto. appertaining in any way to
31 these things. The terms 'real estate' and 'land' are synonyms for the term
32 'real property.' These terms also mean a manufactured home as defined
33 in G.S. 143-143.9(6) if it is a multi-section residential structure
34 ~~(consisting of two or more sections);~~ consisting of two or more sections,
35 has the moving hitch, wheels, and axles removed; removed, and is
36 placed upon a permanent enclosed foundation on land owned by the
37 owner of the manufactured home.
- 38 (13a) ~~"Retail Merchant" means a~~ Retail merchant. – A taxpayer who is regularly
39 engaged in the sale of tangible personal property, acquired by a means
40 other than manufacture, processing, or producing by the merchant, to
41 users or consumers.
- 42 (13b) ~~"Substantial understatement" means the~~ Substantial understatement. – The
43 omission of a material portion of the value, quantity, or other

1 measurement of taxable property. The determination of materiality in
2 each case shall be made by the assessor, subject to the taxpayer's right to
3 review of the determination by the county board of equalization and
4 review or board of commissioners and appeal to the Property Tax
5 Commission.

6 (14) ~~"Tangible personal property" means all-Tangible personal property. – All~~
7 ~~personal property that is not intangible and that is not permanently~~
8 ~~affixed to real property.~~

9 (15) ~~"Tax" and "taxes" include the Tax. – The principal amount of any tax,~~
10 ~~costs, penalties, and interest imposed upon property tax or dog license~~
11 ~~tax.~~

12 (15a) Tax collector. – A person charged with the duty of collecting taxes for a
13 county or municipality.

14 (16) ~~"Taxing unit" means a Taxing unit. – A county or municipality authorized~~
15 ~~to levy ad valorem property taxes.~~

16 (17) ~~"Taxpayer" means any Taxpayer. – A person whose property is subject to~~
17 ~~ad valorem property taxation by any county or municipality and any or~~
18 ~~person who, under the terms of this Subchapter, has a duty to list~~
19 ~~property for taxation.~~

20 (18) ~~"Valuation" means appraisal-Valuation. – Appraisal and assessment.~~

21 (19) ~~"Wholesale Merchant" means a Wholesale merchant. – A taxpayer who is~~
22 ~~regularly engaged in the sale of tangible personal property, acquired by~~
23 ~~a means other than manufacture, processing, or producing by the~~
24 ~~merchant, to other retail or wholesale merchants for resale or to~~
25 ~~manufacturers for use as ingredient or component parts of articles being~~
26 ~~manufactured for sale."~~

27 Section 3. G.S. 105-275(16) reads as rewritten:

28 "(16) ~~Non-business Property. – As used in this subdivision, the term "non-~~
29 ~~business property" means personal property that is used by the owner of~~
30 ~~the property for a purpose other than the production of income and is~~
31 ~~not used in connection with a business. The term includes household~~
32 ~~furnishings, clothing, pets, lawn tools, and lawn equipment. The term~~
33 ~~does not include property other than motor vehicles, mobile homes,~~
34 ~~aircraft, watercraft, or engines for watercraft."~~

35 Section 4. Section 1 of this act is effective for taxable years beginning on or
36 after January 1, 1999. The remainder of this act is effective when it becomes law.