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HOUSE BILL 474*
Committee Substitute Favorable 8/23/05
Senate Finance Committee Substitute Adopted 6/15/06
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Short Title: Mill Rehabilitation Tax Credit.

(Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC
MILL FACILITIES AND TO PROVIDE AN ENHANCED HISTORIC
REHABILITATION CREDIT FOR REHABILITATION EXPENSES WITH
RESPECT TO A FACILITY THAT WAS ONCE A STATE-OWNED TRAINING
SCHOOL FOR JUVENILE OFFENDERS.

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 3H.

"Mill Rehabilitation Tax Credit.

"§ 105-129.70. 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 an eligible site.
- (4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.
- (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.

- 1 b. It is a certified historic structure or a State-certified historic
2 structure.
- 3 c. It has been at least eighty percent (80%) vacant for a period of
4 at least two years immediately preceding the date the eligibility
5 certification is made.
- 6 d. The cost certification documents that the qualified rehabilitation
7 expenditures for a site for which a taxpayer is allowed a credit
8 under section 47 of the Code or the rehabilitation expenses for a
9 site for which the taxpayer is not allowed a credit under section
10 47 of the Code exceed three million dollars (\$3,000,000) for the
11 site as a whole.
- 12 (6) Enterprise tier area. – Defined in G.S. 105-129.3.
- 13 (7) Pass-through entity. – Defined in G.S. 105-228.90.
- 14 (8) Qualified rehabilitation expenditures. – Defined in section 47 of the
15 Code.
- 16 (9) Rehabilitation expenses. – Defined in G.S. 105-129.36.
- 17 (10) State-certified historic structure. – Defined in G.S. 105-129.36.
- 18 (11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

19 **§ 105-129.71. Credit for income-producing rehabilitated mill property.**

20 (a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for
21 making qualified rehabilitation expenditures with respect to an eligible site is allowed a
22 credit equal to a percentage of the expenditures that qualify for the federal credit. The
23 credit may be claimed in the year in which the eligible site is placed into service. When
24 the eligible site is placed into service in two or more phases in different years, the
25 amount of credit that may be claimed in a year is the amount based on the qualified
26 rehabilitation expenditures associated with the phase placed into service during that
27 year. In order to be eligible for a credit allowed by this Article, the taxpayer must
28 provide to the Secretary a copy of the eligibility certification and the cost certification.
29 The amount of the credit is as follows:

- 30 (1) For an eligible site located in an enterprise tier one, two, or three area,
31 determined as of the date of certification, the amount of the credit is
32 equal to forty percent (40%) of the qualified rehabilitation
33 expenditures.
- 34 (2) For an eligible site located in an enterprise tier four or five area,
35 determined as of the date of certification, the amount of the credit is
36 equal to thirty percent (30%) of the qualified rehabilitation
37 expenditures.

38 (b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and
39 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this
40 section may allocate the credit among any of its owners in its discretion as long as an
41 owner's adjusted basis in the pass-through entity, as determined under the Code, at the
42 end of the taxable year in which the eligible site is placed in service, is at least forty
43 percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit
44 is allocated are allowed the credit as if they had qualified for the credit directly. A

1 pass-through entity and its owners must include with their tax returns for every taxable
2 year in which an allocated credit is claimed a statement of the allocation made by the
3 pass-through entity and the allocation that would have been required under
4 G.S. 105-131.8 or G.S. 105-269.15.

5 (c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity
6 that has qualified for the credit allowed under this section disposes of all or a portion of
7 the owner's interest in the pass-through entity within five years from the date the
8 eligible site is placed in service and the owner's interest in the pass-through entity is
9 reduced to less than two-thirds of the owner's interest in the pass-through entity at the
10 time the eligible site was placed in service, the owner forfeits a portion of the credit.
11 The amount forfeited is determined by multiplying the amount of credit by the
12 percentage reduction in ownership and then multiplying that product by the forfeiture
13 percentage. The forfeiture percentage equals the recapture percentage found in the table
14 in section 50(a)(1)(B) of the Code.

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

17 (1) The death of the owner.

18 (2) A merger, consolidation, or similar transaction requiring approval by
19 the shareholders, partners, or members of the taxpayer under
20 applicable State law, to the extent the taxpayer does not receive cash or
21 tangible property in the merger, consolidation, or other similar
22 transaction.

23 (e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity
24 that forfeits a credit under this section is liable for all past taxes avoided as a result of
25 the credit plus interest at the rate established under G.S. 105-241.1(i), computed from
26 the date the taxes would have been due if the credit had not been allowed. The past
27 taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or
28 owner of a pass-through entity that fails to pay the taxes and interest by the due date is
29 subject to the penalties provided in G.S. 105-236.

30 **§ 105-129.72. Credit for nonincome-producing rehabilitated mill property.**

31 (a) Credit. – A taxpayer who is not allowed a federal income tax credit under
32 section 47 of the Code and who makes rehabilitation expenses with respect to an
33 eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The
34 entire credit may not be taken for the taxable year in which the property is placed in
35 service, but must be taken in five equal installments beginning with the taxable year in
36 which the property is placed in service. When the eligible site is placed into service in
37 two or more phases in different years, the amount of credit that may be claimed in a
38 year is the amount based on the rehabilitation expenses associated with the phase placed
39 into service during that year. In order to be eligible for a credit allowed by this Article,
40 the taxpayer must provide to the Secretary a copy of the eligibility certification and the
41 cost certification. For an eligible site located in an enterprise tier one, two, or three area,
42 determined as of the date of certification, the amount of the credit is equal to forty
43 percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in an
44 enterprise tier four or five area.

1 (b) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and
2 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this
3 section may allocate the credit among any of its owners in its discretion as long as an
4 owner's adjusted basis in the pass-through entity, as determined under the Code, at the
5 end of the taxable year in which the eligible site is placed in service, is at least forty
6 percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit
7 is allocated are allowed the credit as if they had qualified for the credit directly. A
8 pass-through entity and its owners must include with their tax returns for every taxable
9 year in which an allocated credit is claimed a statement of the allocation made by the
10 pass-through entity and the allocation that would have been required under
11 G.S. 105-131.8 or G.S. 105-269.15.

12 (c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity
13 that has qualified for the credit allowed under this section disposes of all or a portion of
14 the owner's interest in the pass-through entity within five years from the date the
15 eligible site is placed in service and the owner's interest in the pass-through entity is
16 reduced to less than two-thirds of the owner's interest in the pass-through entity at the
17 time the eligible site was placed in service, the owner forfeits a portion of the credit.
18 The amount forfeited is determined by multiplying the amount of credit by the
19 percentage reduction in ownership and then multiplying that product by the forfeiture
20 percentage. The forfeiture percentage equals the recapture percentage found in the table
21 in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally
22 among the five years in which the credit is claimed.

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

25 (1) The death of the owner.

26 (2) A merger, consolidation, or similar transaction requiring approval by
27 the shareholders, partners, or members of the taxpayer under
28 applicable State law, to the extent the taxpayer does not receive cash or
29 tangible property in the merger, consolidation, or other similar
30 transaction.

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

38 **"§ 105-129.73. Tax credited; cap.**

39 (a) Taxes Credited. – The credits allowed by this Article may be claimed against
40 the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed
41 under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of
42 this Chapter. The taxpayer may take the credits allowed by this Article against only one
43 of the taxes against which it is allowed. The taxpayer must elect the tax against which a

1 credit will be claimed when filing the return on which it is claimed. This election is
2 binding. Any carryforwards of the credit must be claimed against the same tax.

3 (b) Cap. – A credit allowed under this Article may not exceed the amount of the
4 tax against which it is claimed for the taxable year reduced by the sum of all credits
5 allowed, except payment of tax made by or on behalf of the taxpayer. Any unused
6 portion of the credit may be carried forward for the succeeding nine years.

7 **"§ 105-129.74. Coordination with Article 3D of this Chapter.**

8 A taxpayer that claims a credit under this Article may not also claim a credit under
9 Article 3D of this Chapter with respect to the same activity. The rules and fee schedule
10 adopted under G.S. 105-129.36A apply to this Article.

11 **"§ 105-129.75. Sunset.**

12 This Article expires for qualified rehabilitation expenditures and rehabilitation
13 expenses incurred on or after January 1, 2011."

14 **SECTION 2.** G.S. 105-129.35(a) reads as rewritten:

15 "(a) Credit. – A taxpayer who is allowed a federal income tax credit under section
16 47 of the Code for making qualified rehabilitation expenditures for a certified historic
17 structure located in this State is allowed a credit equal to twenty percent (20%) of the
18 expenditures that qualify for the federal credit. If the certified historic structure is a
19 facility that at one time served as a State training school for juvenile offenders, the
20 amount of the credit is equal to forty percent (40%) of the expenditures that qualify for
21 the federal credit. To claim the credit allowed by this subsection, the taxpayer must
22 provide a copy of the certification obtained from the State Historic Preservation Officer
23 verifying that the historic structure has been rehabilitated in accordance with this
24 subsection."

25 **SECTION 3.** G.S. 105-129.36(a) reads as rewritten:

26 "(a) Credit. – A taxpayer who is not allowed a federal income tax credit under
27 section 47 of the Code and who makes rehabilitation expenses for a State-certified
28 historic structure located in this State is allowed a credit equal to thirty percent (30%) of
29 the rehabilitation expenses. If the certified historic structure is a facility that at one time
30 served as a State training school for juvenile offenders, the amount of the credit is equal
31 to forty percent (40%) of the expenditures that qualify for the federal credit. To qualify
32 for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand
33 dollars (\$25,000) within a 24-month period. To claim the credit allowed by this
34 subsection, the taxpayer must provide a copy of the certification obtained from the State
35 Historic Preservation Officer verifying that the historic structure has been rehabilitated
36 in accordance with this subsection."

37 **SECTION 4.** G.S. 105-129.36(b)(1) reads as rewritten:

38 "(b) Definitions. – The following definitions apply in this section:

- 39 (1) Certified rehabilitation. – Repairs or alterations consistent with the
40 Secretary of the Interior's Standards for Rehabilitation and certified as
41 such by the State Historic Preservation Officer ~~prior to the~~
42 ~~commencement of the work.~~ Officer."

43 **SECTION 5.** This act is effective for taxable years beginning on or after
44 January 1, 2006, and applies to eligible sites placed into service on or after July 1, 2006.