C. Business & Energy Tax Credits (Article 3B)

1. General Information

(Applies to all credits under this article unless otherwise noted.)

a. Franchise, Income, or Gross Premium Tax Election (G.S. 105-129.17(a))

The credits allowed under this article can be taken against franchise or income tax, but not against insurance gross premium tax unless otherwise noted. 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. All future installments and carryforwards of a credit must be claimed against the same tax.

b. Cap on Credit (G.S. 105-129.17(b))

Total credits, including carryforwards, claimed under this article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits, including carryforwards, against that tax, except tax payments made by or on behalf of the taxpayer.

c. Credit Carryforward (G.S. 105-129.17(b))

Unused portions of the credits may be carried forward for the succeeding five (5) years unless otherwise noted, but must be taken against the same tax as on the return on which the credit was first taken.

d. Substantiation (G.S. 105-125.18)

The burden of proving eligibility for any credit under this article rests upon the taxpayer. Every taxpayer claiming a credit under this article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. No credit may be allowed to any taxpayer that fails to maintain adequate records or to make them available for inspection.

2. Credit for Investing in Business Property (G.S. 105-129.16)

a. Credit

This credit was effective for taxable years beginning January 1, 1996 or later, and applicable to property placed in service on or after August 1, 1996. The credit expired effective for business property placed in service on or after January 1, 2002. However, taxpayers can continue to claim carryforwards of unused installments of the credit.

b. Expiration of Credit

If business property is disposed of, taken out of service, or moved out of North Carolina prior to the end of the five-year period in which the credit is claimed, the credit expires and a taxpayer may not take any remaining installment of the credit except for the portion of an installment that accrued in a previous year and had been carried forward. (G.S. 105-129.16(b))

3. Credit for Investing in Renewable Energy Property (G.S. 105-129.16A)

a. Credit

A taxpayer that has constructed, purchased, or leased renewable energy property and places it in service during the taxable year is allowed a credit equal to thirty-five (35%) of the cost of the property. No credit is allowed to the extent the cost of the renewable energy property was provided by public funds.

If the taxpayer owns the property, the cost is determined in accordance with section 1012 of the Code and is subject to the limitation on cost provided in section 179 of the Code. If the property is leased, the cost is eight (8) times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals. The sub-rentals are not deducted if they are business income for the taxpayer.

If the property serves a single-family dwelling, the credit is taken for the taxable year in which the property is placed in service. For all other property, the credit is taken in five (5) equal installments beginning with the year the property is placed in service.

b. Cap on Credit (G.S. 105-129.16A(c))

The maximum credit allowed for nonresidential property is two million five hundred thousand dollars ($2,500,000) per installation. The credit ceilings for residential property are:

- One thousand four hundred dollars ($1,400) per dwelling unit for solar energy equipment for domestic water heating, including a system that heats a pool.
- Three thousand five hundred dollars ($3,500) per dwelling for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating; and
- Ten thousand five hundred dollars ($10,500) per installation for any other renewable energy property for residential purposes.

c. Eligible Renewal Energy Property (G.S. 105-129.15)

Any of the following machinery and equipment or real property is considered to be eligible renewable energy property:

- Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; commercial thermal or electrical generation. Effective for taxable years beginning on or after January 1, 2006 electrical generation is no longer restricted to using renewable energy crops or wood waste material. Biomass equipment includes any equipment used for converting, conditioning and storing the liquid fuels, gas and electricity produced with biomass equipment.
- Hydroelectric generators located at existing dams or waterways and related devices for water supply and control and converting, conditioning, and storing the electricity generated.

- Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. Solar energy equipment includes any equipment used for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.
- Wind equipment required to capture and convert wind energy into electricity or mechanical power and related devices.

d. Expiration of Credit (G.S. 105-129.16A(b))

If the property is disposed of, taken out of service, or moved out of North Carolina during the five-year installment period, the credit expires and a taxpayer may not take any remaining installment of the credit except for the portion of an installment that accrued in a previous year and has been carried forward. No credit is allowed to the extent the cost of the renewable energy property was provided by public funds.

e. Credit Availability (G.S. 105-129.16A(d))

A taxpayer may not claim a credit for renewable energy property under Article 3B if the taxpayer is claiming any other credit allowed in Chapter 105 with respect to renewable energy property. A taxpayer may not take a credit for property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to the property.

4. Credit for Constructing Renewable Fuel Facilities (G.S. 105-129.16D)

Either a dispensing credit or a production credit is allowed for the construction of renewable fuel facilities. Either credit is subject to the tax election and cap on credit amount provisions of G.S. 105-129.17, the substantiation requirements of G.S. 105-129.18, and the requirement in G.S. 105-129.19 that the Department report the credits claimed to the Revenue Laws Study Committee and to the Fiscal Research Division of the General Assembly.

a. Renewable Fuel Defined (G.S. 105-129.15(8))

Renewable fuel is either:

- Biodiesel as defined in G.S. 105-449.60
- Ethanol either unmixed or in mixtures with gasoline that are seventy percent (70%) or more ethanol by volume.

b. Dispensing Credit (G.S. 105-129.16D(a))

A taxpayer that constructs and installs and places in service in this State a qualified facility for dispensing renewable fuel is allowed a dispensing credit. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and is clearly identified as associated with renewable fuel.

The credit is equal to fifteen percent (15%) of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel.

The tax credit is claimed in three equal installments beginning with the taxable year in which the facility is placed in service. If, in one of the years during which an installment of the credit is to be claimed, the portion of a facility that is directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installments of the credit; however, the taxpayer may continue to claim any carryforwards of any prior years' installments.

c. Production Credit (G.S. 105-129.16D(b))

A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel is allowed a production credit. The credit is equal to twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility. The tax credit is claimed in seven equal installments beginning with the taxable year in which the facility is placed in service. If, in one of the years during which an installment of the credit is to be claimed, the facility is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installments of the credit; however, the taxpayer may continue to claim carryforwards of any prior years' installments.

d. Alternative Production Credit (G.S. 105-129.16D(b1))

A taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and invests a total amount of at least four hundred million dollars ($400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost of constructing and equipping the facilities in lieu of the production credit allowed in G.S. 105-129.16D(b). To claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest, within a five-year period, a total amount of at least four hundred million dollars ($400,000,000) in three or more facilities.

The credit is taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in any one of the years in which an installment of the credit is to be claimed, a facility with respect to which the credit is claimed is disposed of or taken out of service and the investment requirements are no longer satisfied, the credit expires and the taxpayer may take any remaining installment of the credit only to the extent allowed under G.S. 105-129.16D(b). The taxpayer may, however, take the portion of an installment of the alternative production credit that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

Notwithstanding the provisions of G.S. 105-129.17(a), a taxpayer may claim the alternative production credit against corporate income tax only.

e. No Double Credit (G.S. 105-129.16D(c))

A taxpayer cannot claim the credits allowed under G.S. 105-129.16D(b) and G.S. 105-129.16D(b1) with respect to the same facility. A taxpayer that claims any other tax credit allowed under Chapter 105 with respect to the costs of constructing and installing a renewable energy facility may not take the credits allowed in this section with respect to the same costs.

f. Sunset (G.S. 105-129.16D(d))

The credits allowed in this section sunset for facilities placed in service on or after January 1, 2011.

5. Credit for Small Business Employee Health Insurance (G.S. 105-129.16E)

A small business that provides health insurance for all its eligible employees is allowed a tax credit. For purposes of this credit, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125 or its employees have qualifying existing coverage.

a. Amount of Credit

The amount of credit per eligible employee is the lesser of two hundred fifty dollars ($250) or the taxpayer's actual cost of providing health benefits for the taxable year. The credit is limited to insurance paid for an eligible employee whose total wages or salary from the business does not exceed forty thousand dollars ($40,000) on an annual basis.

b. Allocation of Credit

Multistate corporations determine the credit by multiplying the calculated credit by the apportionment fraction used to apportion its apportionable income to this State pursuant to G.S. 105-130.4.

c. Definitions

The following definitions apply:

i. Eligible employee

Defined in G.S. 58-50-110.

ii. Qualifying existing coverage

Defined in G.S. 58-50-130(a)(4a).

iii. Small business

A taxpayer that employs no more than twenty-five (25) eligible employees throughout the taxable year.

d. Sunset

The credit allowed in this section sunsets for taxable years beginning on or after January 1, 2010.

6. **Credit for Biodiesel Producers (G.S. 105-129.16F)**
   Effective for taxable years beginning on or after January 1, 2008, biodiesel providers that produce at least one hundred thousand (100,000) gallons of biodiesel during the taxable year are allowed a credit equal to the per gallon excise tax the producer paid under Article 36C of Chapter 105. For purposes of this credit, "biodiesel" is defined as "liquid fuel derived in whole from agricultural products, animal fats, or wastes from agricultural products or animal fats."

   The credit does not apply to tax paid on diesel fuel included in a biodiesel blend. The maximum annual credit is five hundred thousand dollars ($500,000). The credit sunsets for taxable years beginning on or after January 1, 2010.

7. **Work Opportunity Tax Credit (G.S. 105-129.16G)**
   Effective for taxable years beginning on or after January 1, 2008, a taxpayer who is allowed a federal work opportunity tax credit under Part IV, Subpart F of the Code is allowed to take a credit against its North Carolina corporate income or franchise tax equal to six percent (6%) of the credit allowed under the Code for wages paid during the taxable year for positions located in this State. A position is located in this State if more than fifty percent (50%) of the employee's duties are performed in this State. This section expires for taxable years beginning on or after January 1, 2012.

   Note: For taxable years beginning on or after January 1, 2007, a taxpayer was eligible to claim six percent (6%) of its federal credit, regardless of where the jobs were located.

8. **Credit for Donations to a Nonprofit Organization or Unit of State or Local Government for Acquisition of Renewable Energy Property (G.S. 105-129.16H)**
   Effective for taxable years beginning on or after January 1, 2008, a taxpayer who donates money to a tax-exempt nonprofit organization or a unit of State or local government for the purpose of providing funds for the organization or government unit to construct, purchase, or lease renewable energy property is allowed a credit under this section if the donation is used for its intended purpose. The amount of the credit is equal to the taxpayer's proportionate share of the credit the nonprofit organization or government unit could have taken under G.S. 105-129.16A if the nonprofit organization or government unit were subject to tax. The credit must be taken in the taxable year the property is placed in service. The installment requirement for nonresidential property in G.S. 105-129.16A does not apply. The nonprofit organization or government unit must provide each taxpayer who made a donation a statement describing the property, setting out the cost of the property, the amount of the credit the organization or government unit could claim if it were subject to tax, and the taxpayer's share of the credit. A taxpayer claiming a credit under this section may not deduct this donation as a charitable contribution.