

§ 105-153.11. (For effective date and expiration, see note) Credit for certain real property donations.

(a) Credit. – Subject to the limitations in this section, an individual or pass-through entity that makes a qualified donation of real property located in North Carolina during the taxable year that is useful (i) for forestland or farmland preservation, (ii) for fish and wildlife conservation, (iii) as a buffer to limit land use activities that would restrict, impede, or interfere with military training, testing, or operations on a military installation or training area or otherwise be incompatible with the mission of the installation, (iv) for floodplain protection in a county that, in the five years preceding the donation, was the subject of a Type II or Type III gubernatorial disaster declaration, as provided in G.S. 166A-19.21, as a result of a natural disaster, (v) for historic landscape conservation, or (vi) for public trails or access to public trails is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property. The credit may not be taken for the year in which the donation is made but may be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b) Qualified Donation. – A qualified donation of real property is a donation that meets all of the following conditions:

- (1) The property is donated in perpetuity for one of the qualifying uses listed in subsection (a) of this section and is accepted in perpetuity for the qualifying use for which the property is donated.
- (2) The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

(c) Application. – To claim a credit allowed under this section, an individual or a pass-through entity must file an application with the Secretary for the credit. The application must be filed on or before April 15 of the year following the calendar year in which the donation was made. An application is effective for the year in which it is timely filed. The Secretary may not accept late applications under this subsection. The application must be on a form prescribed by the Secretary and include any information required by the Secretary demonstrating that the donation has met the conditions for qualifying for the credit, including the following items:

- (1) A copy of the certification by the Department of Natural and Cultural Resources that identifies which of the valid public benefits listed in subsection (a) of this section for which the donated property is suitable. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.
- (2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the donated property. For fee simple absolute donations of real property, an individual or pass-through entity may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(d) Substantiation. – An individual or pass-through entity claiming a credit under this section must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit

rests upon the individual or pass-through entity, and no credit may be allowed to an individual or pass-through entity that fails to maintain adequate records or to make them available for inspection.

(e) **Individuals.** – The aggregate amount of credit allowed to an individual in a taxable year under this section for one or more qualified donations made during the taxable year, whether made directly or indirectly as owner of a pass-through entity, may not exceed two hundred fifty thousand dollars (\$250,000). In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. The aggregate amount of credit allowed to a married couple filing a joint tax return may not exceed five hundred thousand dollars (\$500,000). If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(f) **Pass-Through Entity.** – The aggregate amount of credit allowed to a pass-through entity in a taxable year under this section for one or more qualified donations made during the taxable year, whether made directly or indirectly as owner of another pass-through entity, may not exceed five hundred thousand dollars (\$500,000). Each individual who is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed two hundred fifty thousand dollars (\$250,000). Each corporation that is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed five hundred thousand dollars (\$500,000). If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(g) **Taxed Pass-Through Entity.** – A taxed pass-through entity that engages in an activity that makes it eligible for a credit under this section as an entity may not take the credit at the entity level but must pass through to each of its owners the owner's distributive share of the credit for which the taxed pass-through entity qualifies. Maximum dollar limits and other limitations that apply in determining the amount of credit available to an owner of a pass-through entity apply to the same extent in determining the amount of a credit for which the taxed pass-through entity qualifies. For purposes of this subsection, the term "taxed pass-through entity" is as defined in G.S. 105-153.3.

(h) **Limitation.** – The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(i) **Carryforward.** – Any unused portion of this credit may be carried forward for the next succeeding five years.

(j) **No Double Benefit.** – That portion of a qualifying donation that is the basis for a credit allowed under this section is not eligible for deduction as a charitable contribution under G.S. 105-153.5(a)(2)a.

(k) **Ceiling; Use Allocation.** – The total aggregate amount of all tax credits allowed to taxpayers under this section and G.S. 105-130.4 for donations made in a taxable year may not exceed five million dollars (\$5,000,000), of which three million two hundred fifty thousand dollars (\$3,250,000) is reserved for credits to taxpayers that have made a qualified donation of real property for forestland or farmland conservation. If funds reserved for credits for qualified donations of real property for forestland or farmland conservation remain after disposition of all timely filed applications for that type of credit, the Secretary shall allocate any funds remaining to credits for other types of qualified donations under this section. The Secretary shall, first, fully fund any prorated credits in accordance with subsection (f) [subsection *l*] of this section and, second, if funds remain after fully funding prorated credits, reopen the application period for

credits under this section for which funds have become available. If the Secretary reopens the application period and notwithstanding the application deadline in subsection (c) of this section, the additional applications must be filed with the Secretary on or before October 15 of the year following the calendar year in which the donation was made. The Secretary may not accept late additional applications permitted under this subsection. The Secretary's determinations based on additional applications timely filed in accordance with this subsection are final.

(l) Reduction. – The Secretary of Revenue shall calculate the total amount of credits claimed from applications timely filed under subsection (c) of this section. If the total amount of credits claimed for donations made in a calendar year exceeds this maximum amount, the Secretary shall allow a portion of the credits claimed by allocating the maximum amount in tax credits in proportion to the size of the credit claimed by each individual or pass-through entity. If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the individuals or pass-through entities of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the donation was made. The Secretary's allocations based on applications filed under subsection (c) of this section are final and shall not be adjusted to account for credits applied for but not claimed.

(m) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information:

- (1) The number of individuals and pass-through entities that took the credit allowed under this section.
- (2) The total amount of credits claimed by conservation purpose.
- (3) The total amount of credits carried forward.
- (4) The total cost to the General Fund of the credits taken. (1983, c. 793, s. 3; 1985, c. 278, s. 2; 1989, c. 716, s. 2; c. 727, s. 218(43); c. 728, s. 1.17; 1989 (Reg. Sess., 1990), c. 869, s. 3; 1991, c. 45, s. 10; c. 453, ss. 2, 4; 1991 (Reg. Sess., 1992), c. 930, s. 21; 1993 (Reg. Sess., 1994), c. 717, s. 4; 1997-226, s. 2; 1997-443, s. 11A.119(a); 1998-98, s. 69; 1998-179, s. 2; 1998-212, s. 29A.13(b), (d); 2001-335, s. 2; 2002-72, s. 15(b); 2004-134, s. 1; 2006-66, s. 24.15(a); 2007-309, s. 2; 2009-445, s. 9(d); 2010-167, s. 5(b); repealed by 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014; 2024-32, s. 15(b).)