

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1569*

Finance Committee Substitute Adopted 6/18/98

Finance Committee Substitute #2 Adopted 6/23/98

Short Title: Economic Opportunity Act of 1998.

(Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

1
2 AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT
3 TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX
4 REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A
5 SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX
6 EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR
7 RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX
8 REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A
9 SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED
10 AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT
11 A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND
12 UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE
13 WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO
14 COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL
15 DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE
16 PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO
17 ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF
18 STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD,

1 A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE
2 INVESTMENT TAX CREDIT, AND AN ADDITIONAL JOBS TAX CREDIT
3 WITHIN ZONES, AND TO GIVE ZONES PRIORITY FOR COMMUNITY
4 DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S.
5 LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE
6 CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE
7 THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE
8 INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A
9 TWO-YEAR PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO
10 OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY
11 MILLION DOLLARS, BY EXPANDING THE RESEARCH AND
12 DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING
13 TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY
14 EXTENDING THE CREDIT CARRYFORWARD PERIOD FOR PROJECTS OVER
15 ONE HUNDRED FIFTY MILLION DOLLARS, BY CLARIFYING THAT
16 CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE SOLD ONLY IF
17 THERE IS IMMINENT CLOSURE OR AN EMPLOYEE BUYOUT, BY
18 CLARIFYING THE METHOD OF CALCULATING THE INVESTMENT TAX
19 CREDIT FOR LEASES, AND BY CLARIFYING THE DEFINITIONS OF THE
20 TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

21 The General Assembly of North Carolina enacts:

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24 II. INFRASTRUCTURE FUNDS
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28 **PART I. BILL LEE ACT/DEVELOPMENT ZONES**

29 Section 1. Article 3A of Chapter 105 of the General Statutes reads as
30 rewritten:

31 **"ARTICLE 3A.**

32 **"TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES.**

33 **[REPEALED EFFECTIVE JANUARY 1, 2002]**

34 **"§ 105-129.2. (Repealed effective January 1, 2002 – see note) Definitions.**

35 The following definitions apply in this Article:

- 36 (1) Air courier services. —~~Defined in the Standard Industrial Classification~~
37 ~~Manual issued by the United States Office of Management and Budget.~~
38 A person is engaged in the air courier services business if the person is
39 primarily engaged in furnishing air delivery of individually addressed
40 letters, parcels, and packages, except by the United States Postal
41 Service.

- 42 (1a) Central administrative office. – Defined in the ~~Standard Industrial~~
43 ~~Classification Manual issued~~ North American Industry Classification

- 1 System adopted by the United States Office of Management and
2 Budget.
- 3 (1b) ~~Cost. — Determined~~ In the case of property owned by the taxpayer, cost
4 is determined pursuant to regulations adopted under section 1012 of the
5 Code. In the case of property the taxpayer leases from another, cost is
6 value as determined pursuant to G.S. 105-130.4(j)(2).
- 7 (2) ~~Data processing. — Defined in the Standard Industrial Classification~~
8 ~~Manual issued~~ North American Industry Classification System adopted
9 by the United States Office of Management and Budget.
- 10 (2a) Development zone. — An area designated as a development zone
11 pursuant to G.S. 105-129.3A.
- 12 (3) ~~Enterprise tier. — The classification assigned to an area pursuant to G.S.~~
13 ~~105-129.3.~~
- 14 (4) ~~Full-time job. — A position that requires at least 1,600 hours of work per~~
15 ~~year and is intended to be held by one employee during the entire year.~~
16 ~~A full-time employee is an employee who holds a full-time job.~~
- 17 (4a) ~~Reserved.~~
- 18 (4b) Large investment. — Defined in G.S. 105-129.4(b1).
- 19 (5) ~~Machinery and equipment. — Engines, machinery, tools, and implements~~
20 ~~that are capitalized by the taxpayer for tax purposes under the Code and~~
21 ~~are used or designed to be used in the business for which the credit is~~
22 ~~claimed. The term does not include real property as defined in G.S. 105-~~
23 ~~273 or rolling stock as defined in G.S. 105-333.~~
- 24 (6) ~~Manufacturing and processing~~ Manufacturing. — Defined in the
25 ~~Standard Industrial Classification Manual issued~~ North American
26 Industry Classification System adopted by the United States Office of
27 Management and Budget.
- 28 (7) ~~Purchase. — Defined in section 179 of the Code.~~
- 29 (8) ~~Warehousing and distribution. — Defined in the Standard Industrial~~
30 ~~Classification Manual issued~~ wholesale trade. — Defined in the North
31 American Industry Classification System adopted by the United States
32 Office of Management and Budget.

33 **"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

- 34 (a) ~~Tiers Defined. — An enterprise tier one area is a county whose enterprise factor~~
35 ~~is one of the 10 highest in the State. An enterprise tier two area is a county whose~~
36 ~~enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is~~
37 ~~a county whose enterprise factor is one of the next 25 highest in the State. An enterprise~~
38 ~~tier four area is a county whose enterprise factor is one of the next 25 highest in the State.~~
39 ~~An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.~~
- 40 (b) ~~Annual Designation. — Each year, on or before December 31, the Secretary of~~
41 ~~Commerce shall assign to each county in the State an enterprise factor that is the sum of~~
42 ~~the following:~~

- 1 (1) The county's rank in a ranking of counties by average rate of
2 unemployment from lowest to highest, for the preceding three years.
- 3 (2) The county's rank in a ranking of counties by average per capita income
4 from highest to lowest, for the preceding three years.
- 5 (3) The county's rank in a ranking of counties by percentage growth in
6 population from highest to lowest.

7 The Secretary of Commerce shall then rank all the counties within the State according
8 to their enterprise factor from highest to lowest, identify all the areas of the State by
9 enterprise tier, and provide this information to the Secretary of Revenue. An enterprise
10 tier designation is effective only for the calendar year following the designation.

11 In measuring rates of unemployment and per capita income, the Secretary shall use
12 the latest available data published by a State or federal agency generally recognized as
13 having expertise concerning the data. In measuring population growth, the Secretary shall
14 use the most recent estimates of population certified by the State Planning Officer.

15 (c) Exception for Enterprise Tier One Areas. – Notwithstanding the provisions of
16 this section, an enterprise tier one area may not be redesignated as a higher-numbered
17 enterprise tier area until it has been an enterprise tier one area for at least two consecutive
18 years.

19 **§ 105-129.3A. Development zone designation.**

20 (a) Development Zone Defined. – A development zone is an area comprised of
21 one or more contiguous census tracts and census block groups in the most recent federal
22 decennial census that meets all of the following conditions:

- 23 (1) It is located in whole or in part in a city with a population of more than
24 5,000 according to the most recent annual population estimates certified
25 by the State Planning Officer.
- 26 (2) It has a population of 1,000 or more according to the most recent annual
27 population estimates certified by the State Planning Officer.
- 28 (3) More than twenty percent (20%) of its population is below the poverty
29 level according to the most recent federal decennial census.

30 (b) Designation. – Upon request of a taxpayer or a local government, the Secretary
31 of Commerce shall designate whether an area is a development zone that meets the
32 conditions of subsection (a) of this section. A development zone designation is effective
33 for 48 months following the designation.

34 (c) Relationship With Enterprise Tiers. – For the purpose of the wage standard
35 requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment
36 allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11,
37 a development zone is considered an enterprise tier one area. For all other purposes, a
38 development zone has the same enterprise tier designation as the county in which it is
39 located.

40 **§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

41 (a) Type of Business. – A taxpayer is eligible for a credit allowed by G.S. 105-
42 129.12 if the real property for which the credit is claimed is used for a central
43 administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other

1 credits allowed by this Article if the taxpayer engages in one of the following types of
2 businesses and the jobs with respect to which a credit is claimed are created in that
3 business, the machinery and equipment with respect to which a credit is claimed are used
4 in that business, and the research and development for which a credit is claimed are
5 carried out as part of that business:

6 (1) Air courier services.

7 (2) Central administrative office that creates at least 40 new jobs.

8 (3) Data processing.

9 (4) ~~Manufacturing or processing.~~ Manufacturing.

10 (5) ~~Warehousing or distribution.~~ wholesale trade.

11 (a1) Central Administrative Office. – A central administrative office creates at least
12 40 new jobs if, during the taxable year the taxpayer first uses the property as a central
13 administrative office, if the taxpayer hires at least 40 additional full-time employees to
14 fill new positions at the office, office either in the year the taxpayer first uses the property
15 as a central administrative office or in the preceding 24 months while using temporary
16 space for the central administrative office functions during completion of the
17 administrative office property. Jobs transferred from one area in the State to another area
18 in the State are not considered new jobs for purposes of this subsection.

19 (b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the
20 credit for worker training if the jobs for which the credit is claimed meet the wage
21 standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the
22 credit for investing in machinery and equipment, the credit for research and development,
23 or the credit for investing in real property for a central administrative office if the jobs at
24 the location with respect to which the credit is claimed meet the wage standard at the time
25 the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average
26 weekly wage that is at least equal to the applicable percentage times the applicable
27 average weekly wage for the county in which the jobs will be located, as computed by the
28 Secretary of Commerce from data compiled by the Employment Security Commission
29 for the most recent period for which data are available. The applicable percentage for
30 jobs located in an enterprise tier one area is one hundred percent (100%). The applicable
31 percentage for all other jobs is one hundred ten percent (110%). The applicable average
32 weekly wage is the lowest of the following: (i) the average wage for all insured private
33 employers in the county, (ii) the average wage for all insured private employers in the
34 State, and (iii) the average wage for all insured private employers in the county
35 multiplied by the county income/wage adjustment factor. The county income/wage
36 adjustment factor is the county income/wage ratio divided by the State income/wage
37 ratio. The county income/wage ratio is average per capita income in the county divided
38 by the annualized average wage for all insured private employers in the county. The State
39 income/wage ratio is the average per capita income in the State divided by the annualized
40 average wage for all insured private employers in the State.

41 (b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit under
42 this Article becomes eligible for the large investment enhancements provided for credits
43 under this Article if the Secretary of Commerce certifies that the taxpayer will purchase

1 or lease, and place in service in connection with the eligible business within a two-year
2 period, at least one hundred fifty million dollars (\$150,000,000) worth of one or more of
3 the following: real property, machinery and equipment, or central administrative office
4 property. If the taxpayer fails to make the level of investment certified within this two-
5 year period, the taxpayer forfeits the large investment enhancements as provided in
6 subsection (d) of this section.

7 (e) ~~Worker Training.~~ — A taxpayer is eligible for the tax credit for worker training
8 only for training workers who occupy jobs for which the taxpayer is eligible to claim an
9 installment of the credit for creating jobs or which are full-time positions at a location
10 with respect to which the taxpayer is eligible to claim an installment of the credit for
11 investing in machinery and equipment for the taxable year.

12 ~~The credit for worker training is allowed only with respect to employees in positions~~
13 ~~not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and~~
14 ~~for expenditures for training that would be eligible for expenditure or reimbursement~~
15 ~~under the Department of Community Colleges' New and Expanding Industry Program, as~~
16 ~~determined by guidelines adopted by the State Board of Community Colleges. The credit~~
17 ~~is not allowed for expenditures that are paid or reimbursed by the New and Expanding~~
18 ~~Industry Program. To establish eligibility, the taxpayer must obtain as part of the~~
19 ~~application process under G.S. 105-129.6 the certification of the Department of~~
20 ~~Community Colleges that the taxpayer's planned worker training would satisfy the~~
21 ~~requirements of this paragraph. A taxpayer shall apply to the Department of Community~~
22 ~~Colleges for this certification. The application must be on a form provided by the~~
23 ~~Department of Community Colleges, must provide a detailed plan of the worker training~~
24 ~~to be provided, and must contain any information required by the Department of~~
25 ~~Community Colleges to determine whether the requirements of this paragraph will be~~
26 ~~satisfied. If the Department of Community Colleges determines that the planned worker~~
27 ~~training meets the requirements of this paragraph, the Department of Community~~
28 ~~Colleges shall issue a certificate describing the location with respect to which the credit is~~
29 ~~claimed and stating that the planned worker training meets the requirements of this~~
30 ~~paragraph. The State Board of Community Colleges may adopt rules in accordance with~~
31 ~~Chapter 150B of the General Statutes that are needed to carry out its responsibilities~~
32 ~~under this paragraph.~~

33 (d) ~~Forfeiture.~~ — A taxpayer forfeits a credit allowed under this Article if the
34 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In
35 addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer
36 fails to make the level of investment certified by the Secretary of Commerce under
37 subsection (b1) of this section within the required two-year period. A taxpayer that
38 forfeits a credit under this Article is liable for all past taxes avoided as a result of the
39 credit plus interest at the rate established under G.S. 105-241.1(i), computed from the
40 date the taxes would have been due if the credit had not been allowed. The past taxes and
41 interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay
42 the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-
43 236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in

1 machinery and equipment, the taxpayer also forfeits any credit for worker training
2 claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the
3 location with respect to which the credit for investing in machinery and equipment was
4 claimed.

5 (e) Change in Ownership of Business. – The sale, merger, acquisition, or
6 bankruptcy of a business, or any ~~other~~ transaction by which an existing business
7 reformulates itself as another business, does not create new eligibility in a succeeding
8 business with respect to credits for which the predecessor was not eligible under this
9 Article. A successor business may, however, take any installment of or carried-over
10 portion of a credit that its predecessor could have taken if it had a tax liability. The
11 acquisition of a business is a new investment that creates new eligibility in the acquiring
12 taxpayer under this Article if any of the following conditions are met:

13 (1) The business closed before it was acquired.

14 (2) The business was required to file a notice of plant closing or mass layoff
15 under the federal Worker Adjustment and Retraining Notification Act,
16 29 U.S.C. § 2102, before it was acquired.

17 (3) The business was acquired by its employees through an employee stock
18 option transaction or another similar mechanism.

19 **"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.**

20 (a) Tax Election. – The credits provided in this Article are allowed against the
21 franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4
22 of this Chapter. The credit for investing in central administrative office property
23 provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in
24 Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be
25 claimed when filing the return on which the first installment of the credit is claimed. This
26 election is binding. Any carryforwards of the credit must be claimed against the same tax.

27 (b) Cap. – The credits allowed under this Article may not exceed fifty percent
28 (50%) of the tax against which they are claimed for the taxable year, reduced by the sum
29 of all other credits allowed against that tax, except tax payments made by or on behalf of
30 the taxpayer. This limitation applies to the cumulative amount of credit, including
31 carryforwards, claimed by the taxpayer under this Article against each tax for the taxable
32 year. Any unused portion of the a credit with respect to a large investment may be carried
33 forward for the succeeding five years. 20 years. Any unused portion of any other credit
34 may be carried forward for the succeeding five years.

35 **"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.**

36 (a) Application. – To claim the credits allowed by this Article, the taxpayer must
37 provide with the tax return the certification of the Secretary of Commerce that the
38 taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each
39 credit. A taxpayer shall apply to the Secretary of Commerce for certification of
40 eligibility. The application must be on a form provided by the Secretary of Commerce
41 and must contain any information necessary for the Secretary of Commerce to determine
42 whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce
43 determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4

1 with respect to a credit, the Secretary shall issue a certificate describing the location with
 2 respect to which the credit is claimed, outlining the eligibility requirements for the credit,
 3 and stating that the taxpayer meets the eligibility requirements. If the Secretary of
 4 Commerce determines that the taxpayer does not meet all of the eligibility requirements
 5 of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in
 6 writing of the eligibility requirements the taxpayer fails to meet. The Secretary of
 7 Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that
 8 are needed to carry out the Secretary of Commerce's responsibilities under this section.

9 (a1) Fee. – When filing an application for certification under this section, the
 10 taxpayer must pay the Department of Commerce a fee of seventy-five dollars (\$75.00).
 11 Fees collected under this subsection are receipts of the Department of Commerce.

12 (b) Reports. – The Department of Commerce shall report to the Department of
 13 Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each
 14 year the following information for the 12-month period ending the preceding April 1:

- 15 (1) The number of applications for each credit allowed in this Article.
- 16 (2) The number and enterprise tier area of new jobs with respect to which
 17 credits were applied for.
- 18 (3) The cost of machinery and equipment with respect to which credits were
 19 applied for.

20 **"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.**

21 To claim a credit allowed by this Article, the taxpayer must provide any information
 22 required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article
 23 shall maintain and make available for inspection by the Secretary of Revenue any records
 24 the Secretary considers necessary to determine and verify the amount of the credit to
 25 which the taxpayer is entitled. The burden of proving eligibility for the credit and the
 26 amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a
 27 taxpayer that fails to maintain adequate records or to make them available for inspection.

28 **"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

29 (a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-
 30 129.4, has five or more employees for at least 40 weeks during the taxable year, and hires
 31 an additional full-time employee during that year to fill a position located in this State is
 32 allowed a credit for creating a new full-time job. The amount of the credit for each new
 33 full-time job created is set out in the table below and is based on the enterprise tier of the
 34 area in which the position is ~~located~~:located. In addition, if the position is located in a
 35 development zone, the amount of the credit is increased by four thousand dollars (\$4,000)
 36 per job.

37 Area Enterprise Tier	Amount of Credit
38 Tier One	\$12,500
39 Tier Two	4,000
40 Tier Three	3,000
41 Tier Four	1,000
42 Tier Five	500

1 A position is located in an area if more than fifty percent (50%) of the employee's
2 duties are performed in the area. The credit may not be taken in the taxable year in which
3 the additional employee is hired. Instead, the credit shall be taken in equal installments
4 over the four years following the taxable year in which the additional employee was hired
5 and shall be conditioned on the continued employment by the taxpayer of the number of
6 full-time employees the taxpayer had upon hiring the employee that caused the taxpayer
7 to qualify for the credit.

8 If, in one of the four years in which the installment of a credit accrues, the number of
9 the taxpayer's full-time employees falls below the number of full-time employees the
10 taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires
11 and the taxpayer may not take any remaining installment of the credit. The taxpayer may,
12 however, take the portion of an installment that accrued in a previous year and was
13 carried forward to the extent permitted under G.S. 105-129.5.

14 Jobs transferred from one area in the State to another area in the State shall not be
15 considered new jobs for purposes of this section. If, in one of the four years in which the
16 installment of a credit accrues, the position filled by the employee is moved to an area in
17 a higher- or lower-numbered enterprise tier, or is moved from a development zone to an
18 area that is not a development zone, the remaining installments of the credit shall be
19 calculated as if the position had been created initially in the area to which it was moved.

20 (b) Repealed by Session Laws 1989, c. 111, s. 1.

21 (b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

22 (d) Planned Expansion. – A taxpayer that signs a letter of commitment with the
23 Department of Commerce to create at least twenty new full-time jobs in a specific area
24 within two years of the date the letter is signed qualifies for the credit in the amount
25 allowed by this section based on the area's enterprise tier and development zone
26 designation for that year even though the employees are not hired that year. The credit
27 shall be available in the taxable year after at least twenty employees have been hired if
28 the hirings are within the two-year commitment period. The conditions outlined in
29 subsection (a) apply to a credit taken under this subsection except that if the area is
30 redesignated to a higher-numbered enterprise tier or loses its development zone
31 designation after the year the letter of commitment was signed, the credit is allowed
32 based on the area's enterprise tier and development zone designation for the year the letter
33 was signed. If the taxpayer does not hire the employees within the two-year period, the
34 taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit
35 under subsection (a) in the year any new employees are hired, the taxpayer may take the
36 credit under that subsection.

37 (e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for
38 taxable years beginning on or after January 1, 1996.

39 **"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery**
40 **and equipment.**

41 (a) Credit. – If a taxpayer that has purchased or leased eligible machinery and
42 equipment places it in service in this State during the taxable year, the taxpayer is
43 allowed a credit equal to seven percent (7%) of the excess of the eligible investment

1 the taxpayer qualifies based on the area's enterprise tier and development zone
2 designation for the year the letter was signed. All other conditions apply to the credit, but
3 if the area has been redesignated to a higher-numbered enterprise tier or has lost its
4 development zone designation after the year the letter of commitment was signed, the
5 credit is allowed based on the area's enterprise tier and development zone designation for
6 the year the letter was signed. If the taxpayer does not place part or all of the specified
7 eligible machinery and equipment in service within the two-year period, the taxpayer
8 does not qualify for the benefit of this subsection with respect to the machinery and
9 equipment not placed in service within the two-year period. However, if the taxpayer
10 qualifies for a credit in the year the eligible machinery and equipment are placed in
11 service, the taxpayer may take the credit for that year as if no letter of commitment had
12 been signed pursuant to this subsection.

13 **"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and**
14 **development.**

15 (a) General Credit. – A taxpayer that claims for the taxable year a federal income
16 tax credit under section 41~~41(a)~~ of the Code for increasing research activities is allowed
17 a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's
18 expenditures for increasing research activities. The State's apportioned share of a
19 taxpayer's expenditures for increasing research activities is the excess of the taxpayer's
20 qualified research expenses for the taxable year over the base amount, as determined
21 under section 41 of the Code, multiplied by a percentage equal to the ratio of the
22 taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's
23 total qualified research expenses for the taxable year.

24 (b) Alternative Credit. – A taxpayer that claims the alternative incremental credit
25 under section 41(c)(4) of the Code for increasing research activities is allowed a credit
26 equal to twenty-five percent (25%) of the State's apportioned share of the federal credit
27 claimed. The State's apportioned share of the federal credit claimed is the amount of the
28 alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for
29 the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified
30 research expenses in this State for the taxable year to the taxpayer's total qualified
31 research expenses for the taxable year. For the purpose of this subsection, the amount of
32 the alternative incremental credit claimed by a taxpayer is determined without regard to
33 any reduction elected under section 280C(c) of the Code.

34 (c) Definitions. – As used in this section, the terms 'qualified research expenses'
35 and 'base amount' have the meaning provided in section 41 of the Code.

36 **"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.**

37 (a) Credit. – A taxpayer that provides worker training for five or more of its
38 eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%)~~
39 ~~of its eligible expenditures for the wages paid to the eligible employees during~~
40 ~~the training. Wages paid to an employee performing his or her job while being trained are not~~
41 ~~eligible for the credit.~~ For positions located in an enterprise tier one area, the credit may
42 not exceed one thousand dollars (\$1,000) per employee trained during the taxable year.
43 For other positions, the credit may not exceed five hundred dollars (\$500.00) per

1 employee trained during the taxable year. A position is located in an area if more than
2 fifty percent (50%) of the employee's duties are performed in the area.

3 (b) Eligibility. — ~~The eligibility of a taxpayer's expenditures and employees is~~
4 ~~determined as provided in G.S. 105-129.4. An employee is eligible if the employee is in a~~
5 ~~full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C.~~
6 ~~§ 213(a)(1) and meets one or more of the following conditions:~~

7 (1) The employee occupies a job for which the taxpayer is eligible to claim
8 an installment of the credit for creating jobs.

9 (2) The employee is being trained to operate machinery and equipment for
10 which the taxpayer is eligible to claim an installment of the credit for
11 investing in machinery and equipment.

12 **"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central**
13 **administrative office property.**

14 (a) Credit. — If a taxpayer that has purchased or leased real property in this State
15 begins to use the property as a central administrative office during the taxable year, the
16 taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment
17 amount. The eligible investment amount is the lesser of (i) the cost of the property and
18 (ii) the amount by which the cost of all of the property the taxpayer is using in this State
19 as central administrative offices on the last day of the taxable year exceeds the cost of all
20 of the property the taxpayer was using in this State as central administrative offices on
21 the last day of the base year. The base year is that year, of the three immediately
22 preceding taxable years, in which the taxpayer was using the most property in this State
23 as central administrative offices. In the case of property that is leased, the cost of the
24 property is not determined as provided in G.S. 105-129.2 but is considered to be the
25 taxpayer's lease payments over a seven-year period, plus any expenditures made by the
26 taxpayer to improve the property before it is used as the taxpayer's central administrative
27 office if the expenditures are not reimbursed or credited by the lessor. The maximum
28 credit allowed a taxpayer under this section for property used as a central administrative
29 office is five hundred thousand dollars (\$500,000). The entire credit may not be taken for
30 the taxable year in which the property is first used as a central administrative office but
31 shall be taken in equal installments over the seven years following the taxable year in
32 which the property is first used as a central administrative office. The basis in any real
33 property for which a credit is allowed under this section shall be reduced by the amount
34 of credit allowable.

35 (b) Mixed Use Property. — If the taxpayer uses only part of the property as the
36 taxpayer's central administrative office, the amount of the credit allowed under this
37 section is reduced by multiplying it by a fraction the numerator of which is the square
38 footage of the property used as the taxpayer's central administrative office and the
39 denominator of which is the total square footage of the property.

40 (c) Expiration. — If, in one of the seven years in which the installment of a credit
41 accrues, the property with respect to which the credit was claimed is no longer used as a
42 central administrative office, the credit expires and the taxpayer may not take any
43 remaining installment of the credit. If, in one of the seven years in which the installment

1 of a credit accrues, part of the property with respect to which the credit was claimed is no
2 longer used as a central administrative office, the remaining installments of the credit
3 shall be reduced by multiplying it by the fraction described in subsection (b) of this
4 section. If, in one of the seven years in which the installment of a credit accrues, the total
5 number of employees the taxpayer employs at all of its central administrative offices in
6 this State drops by 40 or more, the credit expires and the taxpayer may not take any
7 remaining installment of the credit.

8 In each of these cases, the taxpayer may nonetheless take the portion of an installment
9 that accrued in a previous year and was carried forward to the extent permitted under
10 G.S. 105-129.5."

11 Section 2. G.S. 105-129.15(2) reads as rewritten:

12 "(2) Cost. —~~Determined~~In the case of property owned by the taxpayer, cost
13 is determined pursuant to regulations adopted under section 1012 of the
14 Code, subject to the limitation on cost provided in section 179 of the
15 Code. In the case of property the taxpayer leases from another, cost is
16 value as determined pursuant to G.S. 105-130.4(j)(2)."

17 Section 3. G.S. 143B-437.04 reads as rewritten:

18 "**§ 143B-437.04. Economic-Community development block grants.**

19 (a) The Department of Commerce shall adopt guidelines for the awarding of
20 Community Development Block Grants ~~for economic development that will ensure that~~
21 ~~no~~to ensure that:

22 (1) No local match is required for grants awarded for projects located in
23 enterprise tier one areas as defined in G.S. ~~105-129.3 and, to 105-129.3.~~

24 (2) To the extent practicable, ~~that~~ priority consideration for grants is given
25 to projects located in enterprise tier one areas as defined in G.S. ~~105-~~
26 ~~129.3.~~ 105-129.3 or in development zones that have met the conditions
27 of subsection (b) of this section.

28 (b) In order to qualify for the benefits of this section, after an area is designated a
29 development zone under G.S. 105-129.3A, the governing body of the city in which the
30 zone is located must adopt a strategy to improve the zone and establish a development
31 zone committee to oversee the strategy. The strategy and the committee must conform
32 with requirements established by the Secretary of Commerce."

33 PART II. INFRASTRUCTURE FUNDS

34 Section 4. It is the intent of the General Assembly to appropriate funds from
35 the General Fund to the Department of Commerce for the 1998-99 fiscal year to be
36 allocated to the Utility Account of the Industrial Development Fund for use in accordance
37 with G.S. 143B-437.01(b1).

38 Section 5. It is the intent of the General Assembly to appropriate funds from
39 the General Fund to the Department of Commerce for the 1998-99 fiscal year to be
40 allocated to the Industrial Development Fund for use in accordance with G.S. 143B-
41 437.01(a).

42 Section 6. G.S. 143B-437.01 reads as rewritten:

43 "**§ 143B-437.01. Industrial Development Fund.**

1 (a) Creation and Purpose of Fund. – There is created in the Department of
2 Commerce the Industrial Development Fund to provide funds to assist the local
3 government units of the most economically distressed counties in the State in creating
4 jobs in certain industries. The Department of Commerce shall adopt rules providing for
5 the administration of the program. Those rules shall include the following provisions,
6 which shall apply to each grant from the fund:

- 7 (1) The funds shall be used for (i) installation of or purchases of equipment
8 for ~~manufacturing or processing, eligible industries,~~ (ii) structural
9 repairs, improvements, or renovations of existing buildings to be used
10 for expansion of ~~manufacturing or processing, eligible industries,~~ or (iii)
11 construction of or improvements to new or existing water, sewer, gas, or
12 electrical utility distribution lines or equipment for existing or new or
13 proposed industrial buildings to be used for ~~manufacturing or~~
14 ~~processing operations, eligible industries.~~ To be eligible for funding,
15 the water, sewer, gas, or electrical utility lines or facilities shall be
16 located on the site of the building or, if not located on the site, shall be
17 directly related to the operation of the specific ~~manufacturing or~~
18 ~~processing eligible industrial activity.~~
- 19 (1a) The funds shall be used for projects located in economically distressed
20 counties except that the Secretary of Commerce may use up to one
21 hundred thousand dollars (\$100,000) to provide emergency economic
22 development assistance in any county that is documented to be
23 experiencing a major economic dislocation.
- 24 (2) The funds shall be used by the city and county governments for projects
25 that will directly result in the creation of new jobs. The funds shall be
26 expended at a maximum rate of four thousand dollars (\$4,000) five
27 thousand dollars (\$5,000) per new job created up to a maximum of four
28 hundred thousand dollars (\$400,000) five hundred thousand dollars
29 (\$500,000) per project.
- 30 (3) There shall be no local match requirement if the project is located in an
31 enterprise tier one area as defined in G.S. 105-129.3.
- 32 (4) The Department may authorize a local government that receives funds
33 under this section to use up to two percent (2%) of the funds, if
34 necessary, to verify that the funds are used only in accordance with law
35 and to otherwise administer the grant or loan.
- 36 (a1) Definitions. – The following definitions apply in this section:
- 37 (1) Air courier services. – A person is engaged in the air courier services
38 business if the person is primarily engaged in furnishing air delivery of
39 individually addressed letters, parcels, and packages, except by the
40 United States Postal Service.
- 41 (1a) Central administrative office. – Defined in the North American Industry
42 Classification System adopted by the United States Office of
43 Management and Budget.

- 1 (1b) Data processing. – Defined in the North American Industry
2 Classification System adopted by the United States Office of
3 Management and Budget.
- 4 (1c) Economically distressed county. – A county designated as an enterprise
5 tier one, two, or three area pursuant to G.S. 105-129.3.
- 6 (1d) Eligible industry. – A central administrative office or a person engaged
7 in the business of air courier services, data processing, manufacturing,
8 or warehousing and wholesale trade.
- 9 (2) Major economic dislocation. – The actual or imminent loss of 500 or
10 more manufacturing jobs in the county or of a number of manufacturing
11 jobs equal to at least ten percent (10%) of the existing manufacturing
12 workforce in the county.
- 13 (3) ~~Manufacturing and processing.~~ Manufacturing. – Defined in the
14 ~~Standard Industrial Classification Manual issued by the United States~~
15 ~~Bureau of the Census.~~ North American Industry Classification System
16 adopted by the United States Office of Budget and Management.
- 17 (4) Warehousing and wholesale trade. – Defined in the North American
18 Industry Classification System adopted by the United States Office of
19 Management and Budget.
- 20 (b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.
- 21 (b1) Utility Account. – There is created within the Industrial Development Fund a
22 special account to be known as the Utility Account to provide funds to assist the local
23 government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3,
24 in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data~~
25 ~~processing, as defined in the Standard Industrial Classification Manual issued by the~~
26 ~~United States Bureau of the Census.~~ eligible industries. The Department of Commerce
27 shall adopt rules providing for the administration of the program. Except as otherwise
28 provided in this subsection, those rules shall be consistent with the rules adopted with
29 respect to the Industrial Development Fund. The rules shall provide that the funds in the
30 Utility Account may be used only for construction of or improvements to new or existing
31 water, sewer, gas, or electrical utility distribution lines or equipment for existing or new
32 or proposed industrial buildings to be used for ~~industrial operations in manufacturing or~~
33 ~~processing, warehousing or distribution, or data processing.~~ eligible industrial operations.
34 To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities
35 shall be located on the site of the building or, if not located on the site, shall be directly
36 related to the operation of the specific industrial activity. There shall be no maximum
37 funding amount per new job to be created or per project.
- 38 (c) Reports. – The Department of Commerce shall report annually to the General
39 Assembly concerning the applications made to the fund and the payments made from the
40 fund and the impact of the payments on job creation in the State. The Department of
41 Commerce shall also report quarterly to the Joint Legislative Commission on
42 Governmental Operations and the Fiscal Research Division on the use of the moneys in

1 the fund, including information regarding to whom payments were made, in what
2 amounts, and for what purposes.

3 (c1) In addition to the reporting requirements of subsection ~~(b1)~~-(c) of this section,
4 the Department of Commerce shall report annually to the General Assembly concerning
5 the payments made from the Utility Account and the impact of the payments on job
6 creation in the State. The Department of Commerce shall also report quarterly to the Joint
7 Legislative Commission on Governmental Operations and the Fiscal Research Division
8 on the use of the moneys in the Utility Account including information regarding to whom
9 payments were made, in what amounts, and for what purposes.

10 (d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

11 PART III. AIR COURIER HUBS

12 Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

13 "(6a) Interstate air courier. – A person engaged in the air courier services
14 business, as defined in G.S. 105-129.2, in interstate commerce.

15 (6b) Hub. – The airport in this State (i) to which an air courier has
16 allocated under G.S. 105-388 more than sixty percent (60%) of its
17 aircraft value apportioned to this State and (ii) at which the air
18 courier receives packages from consolidation locations for intrastate
19 and interstate sorting and distribution."

20 Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision
21 to read:

22 "j. Sales of the following items to an interstate air courier for use at
23 its hub: materials handling equipment, racking systems, and
24 related parts and accessories, for the storage or handling and
25 movement of tangible personal property at an airport or in a
26 warehouse or distribution facility."

27 Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

28 "(44) Sales of the following items to an interstate air courier for use at its
29 hub: aircraft lubricants, aircraft repair parts, and aircraft
30 accessories."

31 Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

32 "(24a) Aircraft that is owned or leased by an interstate air courier, is
33 apportioned under G.S. 105-337 to the air courier's hub in this State, and
34 is used in the air courier's operations in this State. For the purpose of
35 this subdivision, the terms 'interstate air courier' and 'hub' have the
36 meanings provided in G.S. 105-164.3."

37 Section 11(a). The Piedmont Triad International Airport Authority may
38 contract for design and construction of an air freight distribution facility on Airport
39 property without being subject to the requirements of Article 8 of Chapter 143 of the
40 General Statutes.

41 Section 11(b). The Piedmont Triad International Airport Authority may
42 contract for supplies, materials, equipment, and contractual services of the Authority

1 related to an air freight distribution facility on Airport property without being subject to
2 the requirements of Article 3 of Chapter 143 of the General Statutes.

3 PART IV. RECYCLING INDUSTRY

4 Section 12. Chapter 105 of the General Statutes is amended by adding a new
5 Article to read:

6 "ARTICLE 3C.

7 "TAX INCENTIVES FOR RECYCLING FACILITIES.

8 "§ 105-129.25. Definitions.

9 The following definitions apply in this Article:

- 10 (1) Reserved.
11 (2) Reserved.
12 (3) Large recycling facility. – A recycling facility that qualifies under G.S.
13 105-129.26(b).
14 (4) Machinery and equipment. – Engines, machinery, tools, and implements
15 used or designed to be used in the business for which the credit is
16 claimed. The term does not include real property as defined in G.S. 105-
17 273 or rolling stock as defined in G.S. 105-333.
18 (5) Major recycling facility. – A recycling facility that qualifies under G.S.
19 105-129.26(a).
20 (6) Owner. – A person who owns or leases a recycling facility.
21 (7) Post-consumer waste material. – Any product that was generated by a
22 business or consumer, has served its intended end use, and has been
23 separated from the solid waste stream for the purpose of recycling. The
24 term includes material acquired by a recycling facility either directly or
25 indirectly, such as through a broker or an agent.
26 (8) Purchase. – Defined in section 179 of the Code.
27 (9) Recycling facility. – A manufacturing plant at least three-fourths of
28 whose products are made of at least fifty percent (50%) post-consumer
29 waste material measured by weight or volume. The term includes real
30 and personal property located at or on land in the same county and
31 reasonably near the plant site and used to perform business functions
32 related to the plant or to transport materials and products to or from the
33 plant. The term also includes utility infrastructure and transportation
34 infrastructure to and from the plant.

35 "§ 105-129.26. Qualification; forfeiture.

36 (a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits
37 provided in this Article and in Article 5 of this Chapter for major recycling facilities if it
38 meets all of the following conditions:

- 39 (1) The facility is located in an area that, at the time the owner began
40 construction of the facility, was an enterprise tier one area pursuant to
41 G.S. 105-129.3.
42 (2) The Secretary of Commerce has certified that the owner will, by the end
43 of the fourth year after the year the owner begins construction of the

1 recycling facility, invest at least three hundred million dollars
2 (\$300,000,000) in the facility and create at least 250 new, full-time jobs
3 at the facility.

4 (3) The jobs at the recycling facility meet the wage standard in effect
5 pursuant to G.S. 105-129.4(b) as of the date the owner begins
6 construction of the facility.

7 (b) Large Recycling Facility. – A recycling facility qualifies for the tax credit
8 provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following
9 conditions:

10 (1) The facility is located in an area that, at the time the owner began
11 construction of the facility, was an enterprise tier one area pursuant to
12 G.S. 105-129.3.

13 (2) The Secretary of Commerce has certified that the owner will, by the end
14 of the second year after the year the owner begins construction of the
15 recycling facility, invest at least one hundred fifty million dollars
16 (\$150,000,000) in the facility and create at least 155 new, full-time jobs
17 at the facility.

18 (3) The jobs at the recycling facility meet the wage standard in effect
19 pursuant to G.S. 105-129.4(b) as of the date the owner begins
20 construction of the facility.

21 (c) Forfeiture. – If the owner of a large or major recycling facility fails to make the
22 required minimum investment or create the required number of new jobs within the
23 period certified by the Secretary of Commerce under this section, the recycling facility no
24 longer qualifies for the applicable recycling facility tax benefits provided in this Article
25 and in Article 5 of this Chapter and forfeits all tax benefits previously received under
26 those Articles. Forfeiture does not occur, however, if the failure was due to events
27 beyond the owner's control. Upon forfeiture of tax benefits previously received, the
28 owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of
29 all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits
30 received plus interest at the rate established in G.S. 105-241.1(i), computed from the date
31 the taxes would have been due if the tax benefits had not been received. The tax and
32 interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax
33 and interest is subject to the penalties provided in G.S. 105-236.

34 (d) Substantiation. – To claim a credit allowed by this Article, the owner must
35 provide any information required by the Secretary of Revenue. Every owner claiming a
36 credit under this Article shall maintain and make available for inspection by the Secretary
37 of Revenue any records the Secretary considers necessary to determine and verify the
38 amount of the credit to which the owner is entitled. The burden of proving eligibility for
39 the credit and the amount of the credit shall rest upon the owner, and no credit shall be
40 allowed to an owner that fails to maintain adequate records or to make them available for
41 inspection.

1 (e) Reports. – The Department of Commerce shall report to the Fiscal Research
2 Division of the General Assembly by May 1 of each year the following information for
3 the 12-month period ending the preceding April 1:

4 (1) The number and location of large and major recycling facilities
5 qualified under this Article.

6 (2) The number of new jobs created by each recycling facility.

7 (3) The amount of investment in each recycling facility.

8 (4) The amount of reinvestment credit refunded to each major recycling
9 facility under G.S. 105-129.28.

10 **"§ 105-129.27. Credit for investing in large or major recycling facility.**

11 (a) Credit. – An owner that purchases or leases machinery and equipment for a
12 major recycling facility in this State during the taxable year is allowed a credit equal to
13 fifty percent (50%) of the amount payable by the owner during the taxable year to
14 purchase or lease the machinery and equipment. An owner that purchases or leases
15 machinery and equipment for a large recycling facility in this State during the taxable
16 year is allowed a credit equal to twenty percent (20%) of the amount payable by the
17 owner during the taxable year to purchase or lease the machinery and equipment.

18 (b) Taxes Credited. – The credit provided in this section is allowed against the
19 franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of
20 Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are
21 subtracted before the credit allowed by this section.

22 (c) Carryforwards. – The credit provided in this section may not exceed the
23 amount of tax against which it is claimed for the taxable year, reduced by the sum of all
24 other credits allowed against that tax, except tax payments made by or on behalf of the
25 owner. Any unused portion of the credit may be carried forward for the succeeding 25
26 years.

27 (d) Change in Ownership of Facility. – The sale, merger, acquisition, or
28 bankruptcy of a recycling facility, or any transaction by which the facility is reformulated
29 as another business, does not create new eligibility in a succeeding owner with respect to
30 a credit for which the predecessor was not eligible under this section. A successor
31 business may, however, take any carried-over portion of a credit that its predecessor
32 could have taken if it had a tax liability.

33 (e) Forfeiture. – If any machinery or equipment for which a credit was allowed
34 under this section is not placed in service within 30 months after the credit was allowed,
35 the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all
36 past taxes avoided as a result of the credit plus interest at the rate established under G.S.
37 105-241.1(i), computed from the date the taxes would have been due if the credit had not
38 been allowed. The past taxes and interest are due 30 days after the date the credit is
39 forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject
40 to the penalties provided in G.S. 105-236.

41 (f) No Double Credit. – A recycling facility that is eligible for the credit allowed
42 in this section is not allowed the credit for investing in machinery and equipment
43 provided in G.S. 105-129.9.

1 "§ 105-129.28. Credit for reinvestment.

2 (a) Credit. – A major recycling facility that is accessible by neither ocean barge
3 nor ship and that transports materials to the facility or products away from the facility is
4 allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its
5 additional transportation and transloading expenses incurred with respect to the materials
6 and products due to its inability to use ocean barges or ships. The additional expenses for
7 which credit is allowed are expenses due to using river barges and expenses due to
8 having to use another mode of transportation because the quantity that is transported by
9 river barge is insufficient to meet the facility's needs. In order to claim the credit allowed
10 by this section, the facility must provide the Secretary of Commerce audited
11 documentation of the amount of its additional transportation and transloading expenses
12 incurred during the taxable year.

13 (b) Cap. – The credit allowed to a major recycling facility under this section for
14 the taxable year may not exceed the applicable annual cap provided in the following
15 table:

<u>Taxable Year</u>	<u>Cap</u>
17 <u>1998</u>	<u>\$ 150,000</u>
18 <u>1999</u>	<u>\$ 640,000</u>
19 <u>2000</u>	<u>\$ 3,860,000</u>
20 <u>2001</u>	<u>\$ 8,050,000</u>
21 <u>2002</u>	<u>\$ 9,550,000</u>
22 <u>2003</u>	<u>\$10,100,000</u>
23 <u>2004-2007</u>	<u>\$10,400,000</u>

24 (c) Reduction. – For the first ten taxable years after the owner begins transporting
25 materials and products to and from the major recycling facility, the credit allowed by this
26 section must be reduced by the amount of credit allowed in previous years that was used
27 for a purpose other than an allowable purpose under subsection (d) of this section, as
28 certified by the Secretary of Commerce.

29 (d) Use of Credited Amount. – For the first ten taxable years after the owner
30 begins construction of the major recycling facility, the owner must use the amount of
31 credit allowed under this section to pay for (i) investment in rail or roads associated with
32 the facility, (ii) investment in water system infrastructure designed to reduce the expense
33 of transporting materials and products to and from the recycling facility, and (iii)
34 investment in land and infrastructure for other industrial sites located in the same county
35 as the recycling facility. If the owner determines that there are no reasonable economic
36 opportunities in a given year to use the total amount of credit for the expenditures
37 described above, the owner may use the excess for investment at or in connection with
38 the recycling facility above the initial required investment of three hundred million
39 dollars (\$300,000,000).

40 Expenses incurred for the purposes allowed in this subsection during a taxable year in
41 the ten-year period may be counted toward a credit allowed in a later taxable year in the
42 ten-year period. If the owner is not able to use the full amount of the credit during a

1 taxable year for any of the purposes allowed by this subsection, the excess may be used
2 for these purposes in subsequent taxable years.

3 The owner must provide the Secretary of Commerce with annual audited
4 documentation demonstrating that the amount of credit received under this section during
5 the previous twelve-month period has not been used for a purpose inconsistent with this
6 subsection. If the Secretary of Commerce determines that the owner has used any of the
7 credit for a purpose that is inconsistent with the requirements of this subsection, the
8 Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and
9 the credit allowed the owner under this section for the following taxable year shall be
10 reduced by that amount in accordance with subsection (c) of this section.

11 After the end of the ten-year period, the amount of any credit allowed under this
12 section that has not yet been used may be used for investment at or in connection with the
13 recycling facility above the initial required investment of three hundred million dollars
14 (\$300,000,000).

15 (e) Credit Refundable. – If the credit allowed by this section exceeds the amount
16 of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the
17 sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The
18 refundable excess is governed by the provisions governing a refund of an overpayment
19 by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing
20 the amount of tax against which multiple credits are allowed, nonrefundable credits are
21 subtracted before refundable credits."

22 Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b)
23 and adding a new subdivision to read:

24 "(8) Major recycling facility. – Defined in G.S. 105-129.25."

25 Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-
26 subdivision to read:

27 "j. Sales to a major recycling facility of the following tangible
28 personal property for use in connection with the facility: cranes,
29 structural steel crane support systems, foundations related to the
30 cranes and support systems, port and dock facilities, rail
31 equipment, and material handling equipment."

32 Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to
33 read:

34 "(10a) Sales to a major recycling facility of (i) lubricants and other
35 additives for motor vehicles or machinery and equipment used at
36 the facility and (ii) materials, supplies, parts, and accessories, other
37 than machinery and equipment, that are not capitalized by the
38 taxpayer and are used or consumed in the manufacturing and
39 material handling processes at the facility.

40 (10b) Sales to a major recycling facility of electricity used at the facility."

41 Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

42 "(g) Major Recycling Facilities. – The owner of a major recycling facility is
43 allowed an annual refund of sales and use taxes paid by it under this Article on building

1 materials, building supplies, fixtures, and equipment that become a part of the real
2 property of the recycling facility. Liability incurred indirectly by the owner for sales and
3 use taxes on these items is considered tax paid by the owner. A request for a refund must
4 be in writing and must include any information and documentation required by the
5 Secretary. A request for a refund is due within six months after the end of the major
6 recycling facility's fiscal year. Refunds applied for after the due date are barred."

7 Section 17. G.S. 105-164.14(f) reads as rewritten:

8 "(f) Information to Counties. – Upon written request of a county, the Secretary
9 shall, within 30 days after the request, provide the designated county official a list of each
10 claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (e)~~
11 (b), (c), or (g) of this section of at least one thousand dollars (\$1,000) of tax paid to the
12 county. The list shall include the name and address of each claimant and the amount of
13 the refund it has received from that county. Upon written request of a county, a claimant
14 that has received a refund under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section shall
15 provide the designated county official a copy of the request for the refund and any
16 supporting documentation requested by the county to verify the request. For the purpose
17 of this subsection, the designated county official is the chair of the board of county
18 commissioners or a county official designated in a resolution adopted by the board.
19 Information provided to a county under this subsection is not a public record and may not
20 be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a
21 refund it has received under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section is
22 incorrect, it shall file an amended request for the refund."

23 Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to
24 read:

25 "d. Real or personal property that is used or, if under
26 construction, is to be used by a major recycling facility
27 as defined in G.S. 105-129.25 predominantly for
28 recycling or resource recovering of or from solid waste,
29 if the Department of Environment and Natural
30 Resources furnishes a certificate to the tax supervisor of
31 the county in which the property is situated stating the
32 Department of Environment and Natural Resources has
33 found that the described property has been or will be
34 constructed or installed for use by a major recycling
35 facility, complies or will comply with the rules of the
36 Department of Environment and Natural Resources, and
37 has, or will have as a purpose recycling or resource
38 recovering of or from solid waste."

39 Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed
40 effective for taxable years beginning on or after January 1, 2008. This section does not
41 affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S.
42 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund

1 or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its
2 repeal.

3 The sole purpose of this ten-year sunset provision is to allow a determination
4 to be made whether any major recycling facility continues to experience additional
5 transportation and transloading expenses due to its inability to use ocean barges or ships
6 to transport materials and products to and from the facility. It is the expectation and
7 intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is
8 determined that, based on audited documentation submitted by a major recycling facility
9 and verified by the Secretary of Commerce, that any major recycling facility continues to
10 experience these additional transportation and transloading expenses as of 2008.

11 **PART V. EFFECTIVE DATES**

12 Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes
13 effective January 1, 1999, and applies to applications filed on or after that date. The
14 amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable
15 years beginning on or after January 1, 1998. Section 3 of this act becomes effective
16 January 1, 1999. The remainder of Part I of this act is effective for taxable years
17 beginning on or after January 1, 1999.

18 Section 21. Part II of this act becomes effective July 1, 1998.

19 Section 22. Section 10 of this act is effective for taxes imposed for taxable
20 years beginning on or after July 1, 2001. Section 11 of this act becomes effective January
21 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes
22 effective January 1, 2001, and applies to sales made on or after that date.

23 Section 23. Section 12 of this act is effective for taxable years beginning on or
24 after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998,
25 and apply to sales made on or after that date. Section 18 of this act is effective for taxes
26 imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV
27 of this act is effective when it becomes law.