

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 748*
Finance Committee Substitute Adopted 9/19/01
Third Edition Engrossed 9/25/01

Short Title: Bill Lee Act Changes-AB.

(Public)

Sponsors:

Referred to:

April 2, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS
3 EXPANSION ACT AND TO EXEMPT SALES OF CERTAIN ELECTRICITY
4 FROM SALES TAX.

5 The General Assembly of North Carolina enacts:

6 SECTION 1.(a) G.S. 105-129.2 reads as rewritten:

7 "§ 105-129.2. Definitions.

8 The following definitions apply in this Article:

- 9 (1) Air courier services. – A ~~person-taxpayer~~ is engaged in the air courier
10 services business if the ~~person's-taxpayer's~~ primary business is
11 furnishing air delivery of individually addressed letters and packages
12 for compensation, except by the United States Postal Service.
- 13 (2) Central office or aircraft facility. – Any of the following:
- 14 a. A corporate, subsidiary, or regional managing office, as defined
15 by NAICS.
- 16 b. An auxiliary subdivision of an interstate passenger air carrier
17 engaged primarily in centralized training for the carrier at its
18 hub.
- 19 c. An auxiliary subdivision of an interstate passenger air carrier
20 engaged primarily in aircraft maintenance and repair services or
21 aircraft rebuilding as defined by NAICS.
- 22 (3) Cost. – In the case of property owned by the taxpayer, cost is
23 determined pursuant to regulations adopted under section 1012 of the
24 Code. In the case of property the taxpayer leases from another, cost is
25 value as determined pursuant to G.S. 105-130.4(j)(2).
- 26 (3a) Customer service center. – An auxiliary subdivision of a
27 telecommunications or financial services company, as defined by
28 NAICS, that is primarily engaged in providing support services to the

1 company's customers by telephone to support products or services of
2 the company. For the purpose of this definition, a subdivision is
3 primarily engaged in providing support services by telephone if at least
4 sixty percent (60%) of its calls are incoming.

- 5 (4) Data processing. – A taxpayer is engaged in data processing if the
6 taxpayer's primary business is any ~~Any~~ of the following industries, as
7 defined by NAICS:
8 a. Computer systems design and related services.
9 b. Software publishers.
10 c. Software reproducing.
11 d. Data processing services.
12 e. On-line information services.
- 13 (5) Development zone. – An area designated as a development zone
14 pursuant to G.S. 105-129.3A.
- 15 (5a) Electronic mail order house. – A taxpayer is engaged in business as an
16 electronic mail order house if the taxpayer's primary business is an ~~An~~
17 electronic shopping and mail order house, as defined by NAICS.
- 18 (6) Enterprise tier. – The classification assigned to an area pursuant to
19 G.S. 105-129.3.
- 20 (7) Full-time job. – A position that requires at least 1,600 hours of work
21 per year and is intended to be held by one employee during the entire
22 year. A full-time employee is an employee who holds a full-time job.
- 23 (8) Hub. – Defined in G.S. 105-164.3.
- 24 (8a) Interstate passenger air carrier. – Defined in G.S. 105-164.3.
- 25 (9) Large investment. – Defined in G.S. 105-129.4(b1).
- 26 (10) Machinery and equipment. – Engines, machinery, equipment, tools,
27 and implements used or designed to be used in the business for which
28 the credit is claimed. The term does not include real property as
29 defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- 30 (11) Manufacturing. – A taxpayer is engaged in manufacturing if the
31 taxpayer's primary business is an industry ~~Industries~~ in manufacturing
32 sectors 31 through 33, as defined by NAICS, but not including quick
33 printing or retail bakeries.
- 34 (11a) NAICS. – The North American Industry Classification System adopted
35 by the United States Office of Management and Budget.
- 36 (12) Purchase. – Defined in section 179 of the Code.
- 37 (13) Warehousing. – A taxpayer is engaged in warehousing if the taxpayer's
38 primary business is an industry ~~Industries~~ in warehousing and storage
39 subsector 493 as defined by NAICS.
- 40 (14) Wholesale trade. – A taxpayer is engaged in wholesale trade if the
41 taxpayer's primary business is an industry ~~Industries~~ in wholesale trade
42 sector 42 as defined by NAICS."

1 **SECTION 1.(b)** G.S. 105-129.2(4), (5a), and (13), as amended by Section
2 1(a) of this act, read as rewritten:

3 **"§ 105-129.2. Definitions.**

4 The following definitions apply in this Article:

5 ...

6 (4) Data processing. – A taxpayer is engaged in data processing if ~~the~~
7 ~~taxpayer's primary business is any of the following industries, as~~
8 ~~defined by NAICS; the applicable activity described below is provided~~
9 ~~primarily to persons that are not related entities and either of the~~
10 ~~following conditions is met:~~

11 a. The taxpayer's primary business is data processing services, as
12 defined by NAICS.

13 b. The primary business of the taxpayer or the primary activity of
14 an auxiliary subdivision of the taxpayer is in any of the
15 following, as defined by NAICS:

16 ~~a.1.~~ Computer systems design and related services.

17 ~~b.2.~~ Software publishers.

18 ~~c.3.~~ Software reproducing.

19 ~~d.~~ Data processing services.

20 ~~e.4.~~ On-line information services.

21 ...

22 (5a) Electronic mail order house. – A taxpayer is engaged in business as an
23 electronic mail order house if the ~~taxpayer's~~ primary business of the
24 taxpayer or the primary activity of an auxiliary subdivision of the
25 taxpayer is an electronic shopping and mail order house, as defined by
26 NAICS.

27 ...

28 (13) Warehousing. – A taxpayer is engaged in warehousing if ~~the~~ any of the
29 following conditions is met:

30 a. The taxpayer's primary business is an industry in warehousing
31 and storage subsector 493 as defined by NAICS.

32 b. The primary business of the taxpayer is another eligible
33 industry under this Article, and the primary activity of an
34 auxiliary subdivision of the taxpayer is in warehousing and
35 storage subsector 493 as defined by NAICS.

36 c. The primary activity of an auxiliary subdivision of the taxpayer
37 is in warehousing and storage subsection 493 as defined by
38 NAICS and the auxiliary subdivision is located in an enterprise
39 tier one, two, or three area, is at a site separate from other
40 subdivisions of the taxpayer, and serves 25 or more
41 establishments of the taxpayer in at least five different counties
42 in one or more states."

1 **SECTION 1.(c)** G.S. 105-129.2, as amended by this section, is amended by
2 adding the following new subdivisions to read:

3 "(6a) Establishment. – Defined by NAICS.

4 (12a) Related entity. – Defined in G.S. 105-130.7A."

5 **SECTION 1.(d)** Subsection (a) of this section is effective when it becomes
6 law. The General Assembly finds that the amendments to G.S. 105-129.2 made by
7 subsection (a) of this section clarify the intent of the existing law and do not represent a
8 change in the law. Subsections (b) and (c) of this section are effective for taxable years
9 beginning on or after January 1, 2001.

10 **SECTION 2.(a)** G.S. 105-129.2A(a) reads as rewritten:

11 "(a) Sunset. – This Article is repealed effective for ~~applications for credits filed~~
12 ~~under G.S. 105-129.6~~ business activities that occur on or after January 1, 2006."

13 **SECTION 2.(b)** This section is effective when it becomes law.

14 **SECTION 3.(a)** G.S. 105-129.3(b) and (e) read as rewritten:

15 "(b) Annual Designation. – Each year, on or before December 31, the Secretary of
16 Commerce shall assign to each county in the State an enterprise factor that is the sum of
17 the following:

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

24 The Secretary of Commerce shall then rank all the counties within the State
25 according to their enterprise factor from highest to lowest, identify all the areas of the
26 State by enterprise tier, and publish this information. ~~provide this information to the~~
27 ~~Secretary of Revenue.~~ An enterprise tier designation is effective only for the calendar
28 year following the designation.

29 ...

30 (e) Exceptions for Certain Small Counties. – The following exceptions to the
31 provisions of this section apply to small counties:

- 32 (1) A county that meets both of the conditions set out below is designated
33 an enterprise tier one area:
 - 34 a. Its population is less than ~~40,000~~ 12,000.
 - 35 b. More than sixteen percent (16%) of its population is below the
36 federal poverty level according to the most recent federal
37 decennial census.
- 38 (2) A county that meets both of the conditions set out below has an
39 enterprise tier designation one level below the designation it would
40 otherwise have under subsection (a) of this section:
 - 41 a. Its population is less than 50,000.

1 b. More than eighteen percent (18%) of its population is below the
2 federal poverty level according to the most recent federal
3 decennial census.

4 (3) A county that has a population of less than ~~25,000~~35,000 and that
5 would otherwise be designated an enterprise tier four or five area
6 under this section must be designated an enterprise tier three area."

7 **SECTION 3.(b)** This section is effective when it becomes law and applies to
8 tier designations made on or after that date.

9 **SECTION 4.(a)** G.S. 105-129.3A(b) reads as rewritten:

10 "(b) Designation. – Upon request of a taxpayer or a local government, the
11 Secretary of Commerce shall designate whether an area is a development zone that
12 meets the conditions of subsection (a) of this section. If the applicant is a taxpayer, it
13 must notify each city in which part of the zone is located. A development zone
14 designation is effective for 24 months following the designation. The Department of
15 Commerce must publish annually a list of all development zones with a description of
16 their boundaries."

17 **SECTION 4.(b)** This section is effective when it becomes law.

18 **SECTION 5.(a)** G.S. 105-129.4(b4) reads as rewritten:

19 "(b4) Safety and Health Programs. – A taxpayer is eligible for a credit allowed
20 under this Article only if the taxpayer certifies that, as of the time the taxpayer applies
21 for the credit, at the business location with respect to which the credit is claimed, the
22 taxpayer has no ~~outstanding~~ citations under the Occupational Safety and Health Act ~~and~~
23 ~~has had no serious violation as defined in G.S. 95-127 within the last three years that~~
24 have become a final order within the past three years for willful serious violations or for
25 failing to abate serious violations. For the purposes of this subsection, 'serious violation'
26 has the same meaning as in G.S. 95-127. The Secretary of Commerce will provide the
27 Department of Labor a list of all taxpayers making this certification. The Department of
28 Labor may conduct random audit checks to verify taxpayers' certifications. The
29 Department of Labor must notify the Department of Revenue of any taxpayer
30 certifications it determines are not accurate."

31 **SECTION 5.(b)** This section is effective for taxable years beginning on or
32 after January 1, 2000.

33 **SECTION 6.(a)** G.S. 105-129.4, as amended by this act, reads as rewritten:

34 "**§ 105-129.4. Eligibility; forfeiture.**

35 (a) Type of Business. – A taxpayer is eligible for a credit allowed by G.S.
36 105-129.12 if the real property for which the credit is claimed is used for a central office
37 or aircraft facility that creates at least 40 new jobs. A taxpayer is eligible for the other
38 credits allowed by this Article if the taxpayer engages in one of the following types of
39 businesses and the jobs with respect to which a credit is claimed are created in that
40 business, the machinery and equipment with respect to which a credit is claimed are
41 used in that business, and the research and development for which a credit is claimed
42 are carried out as part of that business:

- 1 (1) Air courier services.
- 2 (2) Central office or aircraft facility that creates at least 40 new jobs.
- 3 (2a) Customer service center located in an enterprise tier ~~one or two~~ one,
- 4 two, or three area.
- 5 (3) Data processing.
- 6 (3a) Electronic mail order house that creates at least 250 new jobs and is
- 7 located in an enterprise tier ~~one or two~~ one, two, or three area.
- 8 (4) Manufacturing.
- 9 (5) Warehousing.
- 10 (6) Wholesale trade.

11 (a1) New Jobs Defined. – A central office or aircraft facility creates at least 40
12 new jobs if the taxpayer hires at least 40 additional full-time employees to fill new
13 positions at the office either in the year the taxpayer first uses the property as a central
14 office or aircraft facility or in the preceding 24 months while using temporary space for
15 the central office or aircraft facility functions during completion of the central office or
16 aircraft facility property. Other property creates at least 200 new jobs if the taxpayer
17 hires at least 200 additional full-time employees to fill new positions at the location in a
18 two-year period beginning when the property is first used in an eligible business. An
19 electronic mail order house creates at least 250 new jobs if the taxpayer hires at least
20 250 additional full-time employees to fill new positions at the house in the two-year
21 period ending on the last day of the taxable year the taxpayer first claims a credit under
22 this Article. Jobs transferred from one area in the State to another area in the State are
23 not considered new jobs for purposes of this subsection.

24 (a2) Expiration. – If, during the period that installments of a credit under this
25 Article accrue, the taxpayer is no longer engaged in one of the types of business
26 described in subsection (a) of this section, the credit ~~expires. expires and the taxpayer~~
27 ~~may not take any remaining installments of the credit. The~~ If, during the period that
28 installments of a credit under this Article accrue, the number of jobs of an eligible
29 business falls below the minimum number required under subsection (a) of this section,
30 any credit associated with that business expires. When a credit expires, the taxpayer
31 may not take any remaining installments of the credit. The taxpayer may, however, take
32 the portion of an installment that accrued in a previous year and was carried forward to
33 the extent permitted under G.S. 105-129.5. A change in the enterprise tier designation of
34 the location of an establishment does not result in expiration of a credit under this
35 Article.

36 (b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the
37 credit for worker training ~~if-if,~~ for the calendar year the jobs are created or the worker
38 training is provided, the average wage of the jobs for which the credit is claimed meet
39 meets the wage standard at the time the taxpayer applies for the credit, and the average
40 wage of all jobs at the location with respect to which the credit is claimed meets the
41 wage standard. A taxpayer is eligible for the credit for investing in machinery and
42 equipment, the credit for research and development, ~~or~~ the credit for investing in real

1 property for a central office or aircraft ~~facility if the~~ facility, or the credit for substantial
2 investment in other property if, for the calendar year the taxpayer engages in the activity
3 that qualifies for the credit, the average wage of all jobs at the location with respect to
4 which the credit is claimed ~~meet~~ meets the wage standard. ~~standard at the time the~~
5 taxpayer applies for the credit. Jobs meet the wage standard if they pay an average
6 weekly wage that is at least equal to the applicable percentage times the applicable
7 average weekly wage for the county in which the jobs will be located, as computed by
8 the Secretary of Commerce from data compiled by the Employment Security
9 Commission for the most recent period for which data are available. The applicable
10 percentage for jobs located in an enterprise tier one area is one hundred percent (100%).
11 The applicable percentage for all other jobs is one hundred ten percent (110%). The
12 applicable average weekly wage is the lowest of the following: (i) the average wage for
13 all insured private employers in the county, (ii) the average wage for all insured private
14 employers in the State, and (iii) the average wage for all insured private employers in
15 the county multiplied by the county income/wage adjustment factor. The county
16 income/wage adjustment factor is the county income/wage ratio divided by the State
17 income/wage ratio. The county income/wage ratio is average per capita income in the
18 county divided by the annualized average wage for all insured private employers in the
19 county. The State income/wage ratio is the average per capita income in the State
20 divided by the annualized average wage for all insured private employers in the State.
21 The Department of Commerce must annually publish the applicable average weekly
22 wage for each county and for the State.

23 (b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit
24 under this Article becomes eligible for the large investment enhancements provided for
25 credits under this Article if the Secretary of Commerce certifies that the taxpayer will
26 purchase or lease, and place in service in connection with the eligible business within a
27 two-year period, at least one hundred fifty million dollars (\$150,000,000) worth of one
28 or more of the following: real property, machinery and equipment, or central office or
29 aircraft facility property. If the taxpayer fails to make the level of investment certified
30 within this two-year period, the taxpayer forfeits the large investment enhancements as
31 provided in subsection (d) of this section.

32 (b2) Health Insurance. – A taxpayer is eligible for a credit for creating jobs or for
33 worker training under this Article if the taxpayer provides health insurance for the
34 positions for which the credit is claimed ~~at the time the taxpayer applies for~~ each year it
35 claims an installment or carryforward of the credit. A taxpayer is eligible for the other
36 credits under this Article if the taxpayer provides health insurance for all of the full-time
37 positions at the location with respect to which the credit is claimed ~~at the time the~~
38 ~~taxpayer applies for~~ each year it claims an installment or carryforward of the credit. For
39 the purposes of this subsection, a taxpayer provides health insurance if it pays at least
40 fifty percent (50%) of the premiums for health care coverage that equals or exceeds the
41 minimum provisions of the basic health care plan of coverage recommended by the
42 Small Employer Carrier Committee pursuant to G.S. 58-50-125.

1 Each year that a taxpayer claims an installment or carryforward of a credit allowed
2 under this Article, the taxpayer must provide with the tax return the taxpayer's
3 certification that the taxpayer continues to provide health insurance for the jobs for
4 which the credit was claimed or the full-time jobs at the location with respect to which
5 the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs
6 during a taxable year, the credit expires and the taxpayer may not take any remaining
7 installment or carryforward of the credit.

8 (b3) Environmental Impact. – A taxpayer is eligible for a credit allowed under this
9 Article only if the taxpayer certifies that, at the time the taxpayer ~~applies for~~first claims
10 the credit, the taxpayer has no pending administrative, civil, or criminal enforcement
11 action based on alleged significant violations of any program implemented by an agency
12 of the Department of Environment and Natural Resources, and has had no final
13 determination of responsibility for any significant administrative, civil, or criminal
14 violation of any program implemented by an agency of the Department of Environment
15 and Natural Resources within the last five years. A significant violation is a violation or
16 alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The
17 Secretary of ~~Commerce will provide the Department of Environment and Natural~~
18 ~~Resources a list of all taxpayers making this certification. The Department of~~
19 ~~Environment and Natural Resources may conduct random audit checks to verify~~
20 ~~taxpayers' certifications. The Department of Environment and Natural Resources must~~
21 notify the Department of Revenue annually of every person that currently has any of
22 these pending actions and every person that has had any of these final determinations
23 within this last five years. ~~of any taxpayer certifications it determines are not accurate.~~

24 (b4) Safety and Health Programs. – A taxpayer is eligible for a credit allowed
25 under this Article only if the taxpayer certifies that, as of the time the taxpayer ~~applies~~
26 ~~for~~ first claims the credit, at the business location with respect to which the credit is
27 claimed, the taxpayer has no citations under the Occupational Safety and Health Act
28 that have become a final order within the past three years for willful serious violations
29 or for failing to abate serious violations. For the purposes of this subsection, 'serious
30 violation' has the same meaning as in G.S. 95-127. The Secretary of ~~Commerce will~~
31 ~~provide the Department of Labor a list of all taxpayers making this certification. The~~
32 ~~Department of Labor may conduct random audit checks to verify taxpayers'~~
33 ~~certifications. The Department of Labor must notify the Department of Revenue~~
34 annually of all employers who have had these citations become final orders within the
35 past three years. ~~of any taxpayer certifications it determines are not accurate.~~

36 (b5) Substantial Investment in Other Property. – A taxpayer is eligible for the
37 credit for substantial investment in other property under G.S. 105-129.12A with respect
38 to a location only if the Secretary of Commerce certifies that the taxpayer will purchase
39 or lease and use in an eligible business at that location within a three-year period at least
40 ten million dollars (\$10,000,000) of real property and that the location that is the subject
41 of the credit will create at least 200 new jobs within two years of the time that the
42 property is first used in an eligible business. If the taxpayer fails to make the required

1 level of investment certified within this three-year period or fails to create the required
2 number of new jobs, the taxpayer forfeits the credit as provided in subsection (d) of this
3 section.

4 (c) Repealed by Session Laws 1998-55, s. 1, effective for taxable years
5 beginning on or after January 1, 1999.

6 (d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
7 taxpayer was not eligible for the credit for the period for which the credit was claimed.
8 ~~credit at the time the taxpayer applied for the credit.~~ In addition, a taxpayer forfeits a
9 large investment enhancement of a tax credit if the taxpayer fails to make the level of
10 investment certified by the Secretary of Commerce under subsection (b1) of this section
11 within the required two-year period. A taxpayer forfeits the credit for substantial
12 investment in other property allowed under G.S. 105-129.12A if the taxpayer fails to
13 create the number of required new jobs or to timely make the required level of
14 investment certified by the Secretary of Commerce under subsection (b5) of this
15 section. A taxpayer forfeits the technology commercialization credit allowed under G.S.
16 105-129.9A if the taxpayer fails to make the level of investment required by subsection
17 (e) of that section within the required period or if the taxpayer fails to meet the terms of
18 its licensing agreement with a research university. If a taxpayer claimed a twenty
19 percent (20%) technology commercialization credit under G.S. 105-129.9A(d) and fails
20 to make the level of investment required under that subsection within the required
21 period, but does make the level of investment required under subsection (e) of that
22 section within the required period, the taxpayer forfeits one-fourth of the twenty percent
23 (20%) credit.

24 A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided
25 as a result of the credit plus interest at the rate established under G.S. 105-241.1(i),
26 computed from the date the taxes would have been due if the credit had not been
27 allowed. The past taxes and interest are due 30 days after the date the credit is forfeited;
28 a taxpayer that fails to pay the past taxes and interest by the due date is subject to the
29 penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs, the
30 technology commercialization credit, or the credit for investing in machinery and
31 equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs
32 for which the credit for creating jobs was claimed or the jobs at the location with respect
33 to which the technology commercialization credit or the credit for investing in
34 machinery and equipment was claimed.

35 (e) Change in Ownership of Business. – The sale, merger, consolidation,
36 conversion, acquisition, or bankruptcy of a business, or any transaction by which an
37 existing business reformulates itself as another business, does not create new eligibility
38 in a succeeding business with respect to credits for which the predecessor was not
39 eligible under this Article. A successor business may, however, take any installment of
40 or carried-over portion of a credit that its predecessor could have taken if it had a tax
41 liability. The acquisition of a business is a new investment that creates new eligibility in
42 the acquiring taxpayer under this Article if any of the following conditions are met:

- 1 (1) The business closed before it was acquired.
- 2 (2) The business was required to file a notice of plant closing or mass
3 layoff under the federal Worker Adjustment and Retraining
4 Notification Act, 29 U.S.C. § 2102, before it was acquired.
- 5 (3) The business was acquired by its employees directly or indirectly
6 through an acquisition company under an employee stock option
7 transaction or another similar mechanism. For the purpose of this
8 subdivision, "acquired" means that as part of the initial purchase of a
9 business by the employees, the purchase included an agreement for the
10 employees through the employee stock option transaction or another
11 similar mechanism to obtain one of the following:
 - 12 a. Ownership of more than fifty percent (50%) of the business.
 - 13 b. Ownership of not less than forty percent (40%) of the business
14 within seven years if the business has tangible assets with a net
15 book value in excess of one hundred million dollars
16 (\$100,000,000) and has the majority of its operations located in
17 an enterprise tier one, two, or three area.

18 (f) Development Zone Project Credit. – Subsections (a) through (b4) of this
19 section do not apply to the credit for development zone projects provided in G.S.
20 105-129.13.

21 (g) Advisory Ruling. – A taxpayer may request in writing from the Secretary of
22 Revenue specific advice regarding eligibility for a credit under this Article. G.S.
23 105-264 governs the effect of this advice."

24 **SECTION 6.(b)** The amendments to G.S. 105-129.4(a2) in this section and
25 the enactment of G.S. 105-129.4(g) in this section are effective when this act becomes
26 law. The remainder of this section is effective for taxable years beginning on or after
27 January 1, 2002.

28 **SECTION 7.(a)** G.S. 105-129.5(c) reads as rewritten:

29 "(c) Carryforward. – Any unused portion of a credit with respect to a large
30 ~~investment or investment~~, with respect to the technology commercialization credit
31 allowed in G.S. ~~105-129.9A~~ 105-129.9A, or with respect to substantial investment in
32 other property under G.S. 105-129.12A may be carried forward for the succeeding 20
33 years. Any unused portion of a credit with respect to research and development
34 activities under G.S. 105-129.10 may be carried forward for the succeeding 15 years.
35 Any unused portion of a credit may be carried forward for the succeeding 10 years ~~if-if,~~
36 before the taxpayer claims the credit, the Secretary of Commerce certifies when an
37 application for the credit is first made that the taxpayer will purchase or lease, and place
38 in service in connection with the eligible business within a two-year period, at least fifty
39 million dollars (\$50,000,000) worth of one or more of the following: real property,
40 machinery and equipment, or central office or aircraft facility property. If the taxpayer
41 fails to make the level of investment certified within this two-year period, the taxpayer

1 forfeits this enhanced carryforward period. Any unused portion of any other credit may
2 be carried forward for the succeeding five years."

3 **SECTION 7.(b)** This section is effective for taxable years beginning on or
4 after January 1, 2002, and applies to credits that are first claimed on or after that date.

5 **SECTION 8.(a)** G.S. 105-129.6 reads as rewritten:

6 "**§ 105-129.6. Application; Fees and reports.**

7 (a) ~~Application. To claim the credits allowed by this Article, the taxpayer must~~
8 ~~provide with the tax return the certification of the Secretary of Commerce that the~~
9 ~~taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13,~~
10 ~~as applicable, with respect to each credit. A taxpayer shall apply to the Secretary of~~
11 ~~Commerce for certification of eligibility. The application must be on a form provided by~~
12 ~~the Secretary of Commerce and must contain any information necessary for the~~
13 ~~Secretary of Commerce to determine whether the taxpayer meets the eligibility~~
14 ~~requirements. In addition, the application must state the number of full time jobs to be~~
15 ~~created that are located within a development zone, the number of full time jobs to be~~
16 ~~created that are expected to be filled by employees residing within the development~~
17 ~~zone, and the number of full time jobs to be created that are expected to be filled by~~
18 ~~employees residing within a census tract or census block group that has more than~~
19 ~~twenty percent (20%) of its population below the poverty level according to the most~~
20 ~~recent federal decennial census.~~

21 ~~If the Secretary of Commerce determines that the taxpayer meets all of the eligibility~~
22 ~~requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a~~
23 ~~credit, the Secretary shall issue a certificate describing the location with respect to~~
24 ~~which the credit is claimed, outlining the eligibility requirements for the credit, and~~
25 ~~stating that the taxpayer meets the eligibility requirements. If the Secretary of~~
26 ~~Commerce determines that the taxpayer does not meet all of the eligibility requirements~~
27 ~~of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the~~
28 ~~Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer~~
29 ~~fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter~~
30 ~~150B of the General Statutes that are needed to carry out the Secretary of Commerce's~~
31 ~~responsibilities under this section.~~

32 ~~(a1) Fee. - When filing an application for certification a return on which the~~
33 ~~taxpayer first claims a credit under this section, Article, the taxpayer must pay the~~
34 ~~Department of Commerce-Revenue a fee of five hundred dollars (\$500.00) for each~~
35 ~~credit the taxpayer intends to claim claims with respect to a location that is in an~~
36 ~~enterprise tier three, four, or five area, subject to a maximum fee of one thousand five~~
37 ~~hundred dollars (\$1,500) per taxpayer per taxable year. This fee does not apply to any~~
38 ~~credit the taxpayer intends to claim claims with respect to a location that is in a~~
39 ~~development zone as defined in G.S. 105-129.3A. If the taxpayer applies for~~
40 ~~certification for claims a credit that relates to locations in more than one enterprise tier~~
41 ~~area, the fee is based on the highest-numbered enterprise tier area.~~

1 The Secretary of ~~Commerce~~ Revenue shall retain ~~one-fourth~~ three-fourths of the
2 proceeds of the fee imposed in this section for the costs of ~~administering this section.~~
3 ~~The Secretary of Commerce shall credit the remaining proceeds of the fee imposed in~~
4 ~~this section to the Department of Revenue for the costs of administering and auditing~~
5 ~~the credits allowed in this Article. The Secretary of Revenue shall credit the remaining~~
6 ~~proceeds of the fee imposed in this section to the Department of Commerce for the costs~~
7 ~~of administering this Article.~~ The proceeds of the fee are receipts of the Department to
8 which they are credited.

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

- 13 (1) The number of ~~applications~~ claims for each credit allowed in this
14 Article.
- 15 (2) The number and enterprise tier area of new jobs with respect to which
16 credits were ~~applied for~~ claimed.
- 17 (3) The cost of machinery and equipment with respect to which credits
18 were ~~applied for~~ claimed.
- 19 (4) The number of new jobs created by businesses located in within
20 development zones, and the percentage of ~~those jobs~~ at those locations
21 that were filled by residents of the zones."

22 **SECTION 8.(b)** This section is effective for taxable years beginning on or
23 after January 1, 2002.

24 **SECTION 9.(a)** G.S. 105-129.7 reads as rewritten:

25 "**§ 105-129.7. Substantiation.**

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

34 (b) Each taxpayer must provide with the tax return qualifying information for
35 each credit claimed under this Article for the first taxable year the credit is claimed and
36 for every year in which a subsequent installment or a carryforward of that credit is
37 claimed. The qualifying information must be in the form prescribed by the Secretary,
38 must cover each taxable year beginning with the first taxable year the credit is claimed,
39 and must be signed and affirmed by the individual who signs the taxpayer's tax return.
40 The information required by this subsection is information demonstrating that the
41 taxpayer has met the conditions for qualifying for an initial credit and any installments
42 and carryforwards, and includes the following:

- 1 (1) The physical location of the jobs and investment with respect to which
2 the credit is claimed, including the enterprise tier designation of the
3 location and whether it is in a development zone. In addition, for each
4 individual who fills a job at a location with respect to which a credit is
5 claimed, the place where the individual resided before taking the job,
6 including any enterprise tier ~~or development zone~~ designation of that
7 place. In addition, for jobs that are located in a development zone, the
8 number of those jobs that are filled by residents of the development
9 zone.
- 10 (2) The type of business with respect to which the credit is claimed, as
11 required by G.S. 105-129.4(a), and wage information described in G.S.
12 105-129.4(b).
- 13 (3) If the credit is claimed with respect to a large investment certified
14 under G.S. ~~105-129.4(b1)~~ or 105-129.4(b1), is a credit with a
15 carryforward period of 10 years under G.S. 105-129.5(c), or is a credit
16 claimed under G.S. 105-129.12A, the amount of the investment
17 requirement under those subsections that has been met to date.
- 18 (4) Qualifying information required for the credit for creating jobs allowed
19 under G.S. 105-129.8, the credit for investing in machinery and
20 equipment allowed under G.S. 105-129.9, the credit for worker
21 training allowed under G.S. 105-129.11, the credit for investing in
22 central office or aircraft facility property allowed in G.S. 105-129.12,
23 the credit for substantial investment in other property under G.S.
24 105-129.12A, and any other credits allowed under this Article."

25 **SECTION 9.(b)** This section is effective for taxable years beginning on or
26 after January 1, 2002.

27 **SECTION 10.(a)** G.S. 105-129.9(b) and (c) read as rewritten:

28 "(b) Eligible Investment Amount. – The eligible investment amount is the lesser
29 of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the
30 cost of all of the taxpayer's eligible machinery and equipment that are in service in this
31 State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible
32 machinery and equipment that were in service in this State on the last day of the base
33 year. The base year is that year, of the three immediately preceding taxable years, in
34 which the taxpayer had the most eligible machinery and equipment in service in this
35 State. ~~A taxpayer that claims a credit under this section must include with the~~
36 ~~application for certification required under G.S. 105-129.6(a) specific documentation~~
37 ~~supporting the taxpayer's calculation of the eligible investment amount under this~~
38 ~~subsection.~~

39 (c) Threshold. – The applicable threshold is the appropriate amount set out in the
40 following table based on the enterprise tier ~~of the area~~ where the eligible machinery and
41 equipment are placed in service during the taxable year. If the taxpayer places eligible
42 machinery and equipment in service ~~in~~ at more than one area ~~establishment in an~~

1 enterprise tier during the taxable year, the threshold applies separately to the eligible
 2 machinery and equipment placed in service ~~in at each area establishment~~. If the taxpayer
 3 places eligible machinery and equipment in service ~~in an area~~ at an establishment over
 4 the course of a two-year period, the applicable threshold for the second taxable year is
 5 reduced by the eligible investment amount for the previous taxable year.

6	Area Enterprise Tier	Threshold
7	Tier One	\$ -0-
8	Tier Two	100,000
9	Tier Three	200,000
10	Tier Four	500,000
11	Tier Five	1,000,000"

12 **SECTION 10.(b)** This section is effective for taxable years beginning on or
 13 after January 1, 2002, and applies to machinery and equipment first placed into service
 14 after that date.

15 **SECTION 11.(a)** G.S. 105-129.9A(c) reads as rewritten:

16 "(c) Documentation. – If the taxpayer claims the exception provided in
 17 subdivision (b)(2) of this section, ~~the Secretary of Commerce must obtain an opinion of~~
 18 ~~the Attorney General that the taxpayer meets all of the conditions of subdivision (b)(2)~~
 19 ~~before the Secretary certifies the application under G.S. 105-129.6(a).~~ the taxpayer must
 20 first request a ruling by the Department of Revenue as to whether the taxpayer meets all
 21 of the conditions of subdivision (b)(2) of this section."

22 **SECTION 11.(b)** This section is effective for taxable years beginning on or
 23 after January 1, 2002.

24 **SECTION 12.(a)** G.S. 105-129.12(c) reads as rewritten:

25 "(c) Expiration. – If, in one of the seven years in which the installment of a credit
 26 accrues, the property with respect to which the credit was claimed is no longer used as a
 27 central office or aircraft facility, the credit expires and the taxpayer may not take any
 28 remaining installment of the credit. If, in one of the seven years in which the installment
 29 of a credit accrues, part of the property with respect to which the credit was claimed is
 30 no longer used as a central office or aircraft facility, the remaining installments of the
 31 credit shall be reduced by multiplying it by the fraction described in subsection (b) of
 32 this section. ~~If, in one of the seven years in which the installment of a credit accrues, the~~
 33 ~~total number of employees the taxpayer employs at all of its central office or aircraft~~
 34 ~~facilities in this State drops by 40 or more, the credit expires and the taxpayer may not~~
 35 ~~take any remaining installment of the credit.~~

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

39 **SECTION 12.(b)** This section is effective for taxable years beginning on or
 40 after January 1, 2001.

41 **SECTION 13.(a)** Article 3A of Chapter 105 of the General Statutes is
 42 amended by adding a new section to read:

1 **"§ 105-129.12A. Credit for substantial investment in other property.**

2 (a) Credit. – If a taxpayer that has purchased or leased real property in an
3 enterprise tier one or two area begins to use the property in an eligible business during
4 the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the
5 eligible investment amount if all of the eligibility requirements of G.S. 105-129.4 are
6 met. For the purposes of this section, property is located in an enterprise tier one or two
7 area if the area the property is located in was an enterprise tier one or two area at the
8 time the taxpayer applied for the certification required under G.S. 105-129.4(b5). The
9 eligible investment amount is the lesser of (i) the cost of the property and (ii) the
10 amount by which the cost of all of the real property the taxpayer is using in this State in
11 an eligible business on the last day of the taxable year exceeds the cost of all of the real
12 property the taxpayer was using in this State in an eligible business on the last day of
13 the base year. The base year is that year, of the three immediately preceding taxable
14 years, in which the taxpayer was using the most real property in this State in an eligible
15 business. In the case of property that is leased, the cost of the property is not determined
16 as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over
17 a seven-year period, plus any expenditures made by the taxpayer to improve the
18 property before it is used by the taxpayer if the expenditures are not reimbursed or
19 credited by the lessor. The entire credit may not be taken for the taxable year in which
20 the property is first used in an eligible business but shall be taken in equal installments
21 over the seven years following the taxable year in which the property is first used in an
22 eligible business. When part of the property is first used in an eligible business in one
23 year and part is first used in an eligible business in a later year, separate credits may be
24 claimed for the amount of property first used in an eligible business in each year. The
25 basis in any real property for which a credit is allowed under this section shall be
26 reduced by the amount of credit allowable.

27 (b) Mixed Use Property. – If the taxpayer uses only part of the property in an
28 eligible business, the amount of the credit allowed under this section is reduced by
29 multiplying it by a fraction the numerator of which is the square footage of the property
30 used in an eligible business and the denominator of which is the total square footage of
31 the property.

32 (c) Expiration. – If, in one of the seven years in which the installment of a credit
33 accrues, the property with respect to which the credit was claimed is no longer used in
34 an eligible business, the credit expires and the taxpayer may not take any remaining
35 installment of the credit. If, in one of the seven years in which the installment of a credit
36 accrues, part of the property with respect to which the credit was claimed is no longer
37 used in an eligible business, the remaining installments of the credit shall be reduced by
38 multiplying it by the fraction described in subsection (b) of this section. If, in one of the
39 years in which the installment of a credit accrues and by which the taxpayer is required
40 to have created 200 new jobs at the property, the total number of employees the
41 taxpayer employs at the property with respect to which the credit is claimed is less than

1 200, the credit expires and the taxpayer may not take any remaining installment of the
2 credit.

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

6 (d) No Double Credit. – A taxpayer may not claim a credit under this section
7 with respect to real property for which a credit is claimed under G.S. 105-129.12."

8 **SECTION 13.(b)** This section is effective for taxable years beginning on or
9 after January 1, 2002, and applies to property that is first used in an eligible business on
10 or after that date.

11 **SECTION 14.(a)** G.S. 105-129.13(e) reads as rewritten:

12 "(e) Application. – To be eligible for the tax credit provided in this section, ~~in~~
13 ~~addition to the application required under G.S. 105-129.6,~~ the taxpayer must file an
14 application for the credit with the Secretary of Revenue on or before April 15 of the
15 year following the calendar year in which the contribution was made. The Secretary
16 may grant extensions of this deadline, as the Secretary finds appropriate, upon the
17 request of the taxpayer, except that the application may not be filed after September 15
18 of the year following the calendar year in which the contribution was made. An
19 application is effective for the year in which it is timely filed. The application must be
20 on a form prescribed by the Secretary and must include any supporting documentation
21 that the Secretary may require. If a contribution for which a credit is applied for was of
22 property rather than cash, the taxpayer must include with the application a certified
23 appraisal of the value of the property contributed. There is no fee for an application
24 under this section."

25 **SECTION 14.(b)** This section is effective for taxable years beginning on or
26 after January 1, 2002.

27 **SECTION 15.(a)** Section 22 of S.L. 1998-55 reads as rewritten:

28 "Section 22. Section 10 of this act is effective for taxes imposed for taxable years
29 beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1,
30 1999, and expires ~~January 1, 2004.~~ July 1, 2007. The remainder of Part III of this act
31 becomes effective January 1, 2001, and applies to sales made on or after that date."

32 **SECTION 15.(b)** This section is effective when it becomes law.

33 **SECTION 16.(a)** G.S. 105-164.13 is amended by adding a new subdivision
34 to read:

35 "(8b) Electricity that is separately metered or measured and is sold to a
36 manufacturer for use in any of the following:

37 a. An arc furnace.

38 b. A furnace used to produce glass.

39 c. An aluminum smelting process.

40 d. To place an electrical charge in a new lead-acid battery
41 manufactured for sale.

1 e. An electrolytic process used to produce chlorine gas or
2 chemicals manufactured for sale.

3 f. A resistance welding process used to produce wire fabric.

4 It is the intent of the General Assembly that the exemptions added by this
5 subdivision (8b) shall not be expanded. If any sub-subdivision of this
6 subdivision, or any provision of any sub-subdivision of this subdivision, or its
7 application, is finally held invalid, the entire sub-subdivision is repealed."

8 **SECTION 16.(b)** This section becomes effective November 1, 2001, and
9 applies to sales made on or after that date.

10 **SECTION 17.** Except as otherwise provided in this act, this act is effective
11 when it becomes law.