

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

**H.B. 1116**  
**May 23, 2012**  
**HOUSE PRINCIPAL CLERK**

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HOUSE DRH11323-MC-269W (05/15)

Short Title: Small Business Jobs Credit.

(Public)

Sponsors: Representative Wray.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT CREATE  
3 JOBS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 3B of Chapter 105 of the General Statutes is amended by  
6 adding a new section to read:

7 "**§ 105-129.16K. Temporary small business job creation tax credit.**

8 (a) Definitions. – The following definitions apply in this section:

9 (1) Eligible business. – A business that has no more than 500 full-time  
10 employees in this State at the beginning of the taxable year and employed  
11 five or more full-time employees on December 31, 2011.

12 (2) Eligible new job. – A new job that pays wages, upon which taxes are  
13 withheld under Article 4A of this Chapter, of at least twenty thousand  
14 dollars (\$20,000) over the first 12-month period.

15 (3) Establishment. – Defined in G.S. 105-129.81.

16 (4) Full-time employee. – Defined in G.S. 105-129.81.

17 (5) Full-time job. – Defined in G.S. 105-129.81.

18 (6) New Job. – A job that represents a net increase in the number of the  
19 taxpayer's full-time jobs statewide. The net increase in full-time jobs is the  
20 difference between the following: (i) the total number of full-time  
21 employees employed by the employer on May 1, 2012, and (ii) the number  
22 of full-time employees employed by the employer on December 31, 2012.  
23 The net increase in full-time jobs cannot exceed the number of qualified  
24 full-time employees hired after May 1, 2012, but before January 1, 2013.  
25 The term does not include a job previously located in this State that is  
26 transferred to the business from a related member of the business as defined  
27 in G.S. 105-130.7A.

28 (7) Qualified employee. – An individual that satisfies at least one of the  
29 following two conditions, subject to the exclusion in sub-subdivision c. of  
30 this subdivision:

31 a. Is unemployed, or employed for less than 40 hours, for the 180-day  
32 period ending the date that employment with the taxpayer began.

33 b. Was in active military service in an area designated by the President  
34 of the United States by executive order as a "combat zone" any time  
35 after September 11, 2001, and who was discharged or released from



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1 active duty at any time during the five-year period ending the date  
2 that employment with the taxpayer began.

3 c. "Qualified employee" excludes the following: (i) any employee who  
4 bears any of the relationships described in subparagraphs (A) through  
5 (G) of section 152(d)(2) of the Internal Revenue Code to the  
6 employer; (ii) if the employer is a corporation, any employee who  
7 owns, directly or indirectly, more than fifty percent (50%) in value of  
8 the outstanding stock of the corporation or, if the employer is an  
9 entity other than a corporation, an employee who owns, directly or  
10 indirectly, more than fifty percent (50%) of the capital and profits in  
11 the entity, as determined with the application of section 267(c) of the  
12 Internal Revenue Code; or (iii) if the employer is an estate or trust,  
13 any employee who is a fiduciary of the estate or trust, or is an  
14 individual who bears any of the relationships described in  
15 subparagraphs (A) through (G) of section 152(d)(2) of the Internal  
16 Revenue Code to a grantor, beneficiary, or fiduciary of the estate or  
17 trust.

18 (b) Credit. – An eligible business is allowed a credit for each eligible new job the  
19 business creates that is filled by a qualified employee. The taxpayer may not claim the credit in  
20 the taxable year in which the job is created, but may claim the credit in the following taxable  
21 year only if the job is maintained for a period of at least 12 months. The amount of the credit is  
22 equal to six and two-tenths percent (6.2%) of the wages, upon which taxes are withheld under  
23 Article 4A of this Chapter, paid to the person that holds the eligible new job for the 12-month  
24 period beginning when the job was first created, regardless of whether that entire period was  
25 within the taxable year. The amount of the credit allowed per eligible new job may not exceed  
26 five thousand dollars (\$5,000), and the taxpayer may not claim more than two hundred  
27 thousand dollars (\$200,000) in total credits under this section.

28 (c) Change in Ownership of Business. – As used in this subsection, the term "business"  
29 means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition,  
30 or bankruptcy of a business, or any transaction by which an existing business reformulates  
31 itself as another business, does not create new eligibility in a succeeding business with respect  
32 to credits for which the predecessor was not eligible under this Article. A successor business  
33 may, however, take any credit or carried-over portion of a credit that its predecessor could have  
34 taken if it had a tax liability. The acquisition of a business is a new investment that creates new  
35 eligibility in the acquiring taxpayer under this Article if any of the following conditions are  
36 met:

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

38 (2) The business was required to file a notice of plant closing or mass layoff  
39 under the Federal Worker Adjustment and Retraining Notification Act, 29  
40 U.S.C. § 2101, before it was acquired.

41 (3) The business was acquired by its employees, directly or indirectly, through  
42 an acquisition company under an employee stock option transaction or  
43 another similar mechanism. For the purpose of this subdivision, "acquired"  
44 means that as part of the initial purchase of a business by the employees, the  
45 purchase included an agreement for the employees, through the employee  
46 stock option transaction or another similar mechanism, to obtain one of the  
47 following:

48 a. Ownership of more than fifty percent (50%) of the business.

49 b. Ownership of not less than forty percent (40%) of the business within  
50 seven years if the business has tangible assets with a net book value

1 in excess of one hundred million dollars (\$100,000,000) and has the  
2 majority of its operations located in a development tier one area.

3 (d) No Double Benefit. – A taxpayer that claims a credit under this section is not  
4 eligible for any other job creation credit allowed under this Chapter with respect to the same  
5 job."

6 **SECTION 2.** G.S. 105-129.17(a) reads as rewritten:

7 "(a) Tax Election. – The ~~credit~~credits allowed in G.S. 105-129.16A ~~is~~and  
8 G.S. 105-129.16K are allowed against the franchise tax levied in Article 3 of this Chapter, the  
9 income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B  
10 of this Chapter. All other credits allowed in this Article are allowed against the franchise tax  
11 levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The  
12 taxpayer must elect the tax against which a credit will be claimed when filing the return on  
13 which the first installment of the credit is claimed. This election is binding. Any carryforwards  
14 of a credit must be claimed against the same tax."

15 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,  
16 2013.