GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1116

Short Title:	Small Business Jobs Credit.	(Public)
Sponsors:	Representatives Wray, Wainwright, Lucas, and Tolson (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Commerce and Job Development, if favorable, Finance.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TAX CREDIT FOR SMALL BUSINESSES THAT CREATE JOBS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

b. Was in active military service in an area designated by the President of the United States by executive order as a "combat zone" any time after September 11, 2001, and who was discharged or released from active duty at any time during the five-year period ending the date that employment with the taxpayer began.

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

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

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

(1) The business closed before it was acquired.

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

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

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

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in a development tier one area.

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

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

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

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