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SENATE BILL 748*
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Short Title: Bill Lee Act Changes-AB.

(Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS
EXPANSION ACT; TO MODIFY THE SALES TAX ON ELECTRICITY; AND
TO AMEND THE SALES TAX HOLIDAY.

The General Assembly of North Carolina enacts:

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

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

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

- 1 NAICS, that is primarily engaged in providing support services to the
2 company's customers by telephone to support products or services of
3 the company. For the purpose of this definition, a subdivision is
4 primarily engaged in providing support services by telephone if at least
5 sixty percent (60%) of its calls are incoming.
- 6 (4) Data processing. – A taxpayer is engaged in data processing if the
7 taxpayer's primary business is any ~~Any~~ of the following industries, as
8 defined by NAICS:
- 9 a. Computer systems design and related services.
10 b. Software publishers.
11 c. Software reproducing.
12 d. Data processing services.
13 e. On-line information services.
- 14 (5) Development zone. – An area designated as a development zone
15 pursuant to G.S. 105-129.3A.
- 16 (5a) Electronic mail order house. – A taxpayer is engaged in business as an
17 electronic mail order house if the taxpayer's primary business is an ~~An~~
18 electronic shopping and mail order house, as defined by NAICS.
- 19 (6) Enterprise tier. – The classification assigned to an area pursuant to
20 G.S. 105-129.3.
- 21 (7) Full-time job. – A position that requires at least 1,600 hours of work
22 per year and is intended to be held by one employee during the entire
23 year. A full-time employee is an employee who holds a full-time job.
- 24 (8) Hub. – Defined in G.S. 105-164.3.
- 25 (8a) Interstate passenger air carrier. – Defined in G.S. 105-164.3.
- 26 (9) Large investment. – Defined in G.S. 105-129.4(b1).
- 27 (10) Machinery and equipment. – Engines, machinery, equipment, tools,
28 and implements used or designed to be used in the business for which
29 the credit is claimed. The term does not include real property as
30 defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- 31 (11) Manufacturing. – A taxpayer is engaged in manufacturing if the
32 taxpayer's primary business is an industry ~~Industries~~ in manufacturing
33 sectors 31 through 33, as defined by NAICS, but not including quick
34 printing or retail bakeries.
- 35 (11a) NAICS. – The North American Industry Classification System adopted
36 by the United States Office of Management and Budget.
- 37 (12) Purchase. – Defined in section 179 of the Code.
- 38 (13) Warehousing. – A taxpayer is engaged in warehousing if the taxpayer's
39 primary business is an industry ~~Industries~~ in warehousing and storage
40 subsector 493 as defined by NAICS.

1 (14) Wholesale trade. – A taxpayer is engaged in wholesale trade if the
2 taxpayer's primary business is an industry ~~Industries~~ in wholesale trade
3 sector 42 as defined by NAICS."

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

6 "**§ 105-129.2. Definitions.**

7 The following definitions apply in this Article:

- 8 (1) Air courier services. – ~~A taxpayer is engaged in the air courier services~~
9 ~~business if the taxpayer's primary business is~~ The furnishing of air
10 delivery of individually addressed letters and packages for
11 compensation, except by the United States Postal Service.
- 12 (2) Central office or aircraft facility. – Any of the following:
13 a. A corporate, subsidiary, or regional managing office, as defined
14 by NAICS.
15 b. An auxiliary subdivision of an interstate passenger air carrier
16 engaged primarily in centralized training for the carrier at its
17 hub.
18 c. An auxiliary subdivision of an interstate passenger air carrier
19 engaged primarily in aircraft maintenance and repair services or
20 aircraft rebuilding as defined by NAICS.
- 21 (3) Cost. – In the case of property owned by the taxpayer, cost is
22 determined pursuant to regulations adopted under section 1012 of the
23 Code. In the case of property the taxpayer leases from another, cost is
24 value as determined pursuant to G.S. 105-130.4(j)(2).
- 25 (4) Computer services. – Any of the following industries or industry
26 groups, as defined by NAICS, if the taxpayer provides the services
27 primarily to persons who are not related entities with respect to the
28 taxpayer:
29 a. Computer systems design and related services.
30 b. Software publishing.
31 c. Software reproducing.
32 d. On-line information services.
- 33 ~~(3a)~~(5) Customer service center. – ~~An auxiliary subdivision~~ establishment of a
34 telecommunications or financial services company, as defined by
35 NAICS, that is primarily engaged in providing support services to the
36 company's customers by telephone to support products or services of
37 the company. For the purpose of this definition, ~~a subdivision~~ an
38 establishment is primarily engaged in providing support services by
39 telephone if at least sixty percent (60%) of its calls are incoming.
- 40 (4) ~~Data processing. – A taxpayer is engaged in data processing if the~~
41 ~~taxpayer's primary business is any of the following industries, as~~
42 ~~defined by NAICS:~~

- 1 a. ~~Computer systems design and related services.~~
2 b. ~~Software publishers.~~
3 e. ~~Software reproducing.~~
4 d. ~~Data processing services.~~
5 e. ~~On-line information services.~~
6 (6) Data processing. – Any combination of the services listed in this
7 subdivision, if the taxpayer provides the services primarily to persons
8 who are not related entities with respect to the taxpayer. The term does
9 not include payroll services, text processing, desktop publishing, or
10 financial transaction processing.
11 a. Data entry and preparation.
12 b. Database creation, conversion, and management, including
13 warehousing, retrieval, and utilization of data in databases.
14 c. Data capture and imaging, including optical scanning and
15 microfilm recording and imaging.
16 d. Computer processing time rental.
17 e. Data storage media conversion.
18 f. Data file format conversion.
19 ~~(5)(7)~~ Development zone. – An area designated as a development zone
20 pursuant to G.S. 105-129.3A.
21 ~~(5a)(8)~~ Electronic mail order house. – ~~A taxpayer is engaged in business as an~~
22 ~~electronic mail order house if the taxpayer's primary business is an~~ An
23 electronic shopping and mail order house, as defined by NAICS.
24 ~~(6)(9)~~ Enterprise tier. – The classification assigned to an area pursuant to
25 G.S. 105-129.3.
26 (10) Establishment. – Defined by NAICS.
27 ~~(7)(11)~~ Full-time job. – A position that requires at least 1,600 hours of work
28 per year and is intended to be held by one employee during the entire
29 year. A full-time employee is an employee who holds a full-time job.
30 ~~(8)(12)~~ Hub. – Defined in G.S. 105-164.3.
31 ~~(8a)(13)~~ Interstate passenger air carrier. – Defined in G.S. 105-164.3.
32 ~~(9)(14)~~ Large investment. – Defined in G.S. 105-129.4(b1).
33 ~~(10)(15)~~ Machinery and equipment. – Engines, machinery, equipment, tools,
34 and implements used or designed to be used in the business for which
35 the credit is claimed. The term does not include real property as
36 defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
37 ~~(11)(16)~~ Manufacturing. – ~~A taxpayer is engaged in manufacturing if the~~
38 ~~taxpayer's primary business is an~~ An industry in manufacturing sectors
39 31 through 33, as defined by NAICS, but not including quick printing
40 or retail bakeries.

1 ~~(11a)~~(17) NAICS. – The North American Industry Classification System adopted
2 by the United States Office of Management and ~~Budget.~~ Budget as of
3 December 31, 1997.

4 ~~(12)~~(18) Purchase. – Defined in section 179 of the Code.

5 (19) Related entity. – Defined in G.S. 105-130.7A.

6 ~~(13)~~(20) Warehousing. – ~~A taxpayer is engaged in warehousing if the taxpayer's~~
7 ~~primary business is an~~ An industry in warehousing and storage
8 subsector 493 as defined by NAICS.

9 ~~(14)~~(21) Wholesale trade. – ~~A taxpayer is engaged in wholesale trade if the~~
10 ~~taxpayer's primary business is an~~ An industry in wholesale trade sector
11 42 as defined by NAICS."

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

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

18 "**§ 105-129.2A. Sunset; studies.**

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

21 (b) Equity Study. – The Department of Commerce shall study the effect of the
22 tax incentives provided in this Article on tax equity. This study shall include the
23 following:

24 (1) Reexamining the formula in G.S. 105-129.3(b) used to define
25 enterprise tiers, to include consideration of alternative measures for
26 more equitable treatment of counties in similar economic
27 circumstances.

28 (2) Considering whether the assignment of tiers and the applicable
29 thresholds are equitable for smaller counties, for example those under
30 50,000 in population.

31 (3) Compiling any available data on whether expanding North Carolina
32 businesses receive fewer benefits than out-of-State businesses that
33 locate to North Carolina.

34 (c) Impact Study. – The Department of Commerce shall study the effectiveness
35 of the tax incentives provided in this Article. This study shall include:

36 (1) Study of the distribution of tax incentives across new and expanding
37 industries.

38 (2) Examination of data on economic recruitment for the period from 1994
39 through 2000 ~~the most recent year for which data are available by~~
40 county, by industry type, by size of investment, and by number of jobs,
41 and other relevant information to determine the pattern of business

1 locations and expansions before and after the enactment of the William
2 S. Lee Act incentives.

3 (3) Measuring the direct costs and benefits of the tax incentives.

4 (4) Compiling available information on the current use of incentives by
5 other states and whether that use is increasing or declining.

6 (d) Report. – The Department of Commerce shall report the results of these
7 studies and its recommendations to the ~~2001~~ General Assembly biennially with the first
8 report due by April 1, 2001."

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

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

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

14 (1) The county's rank in a ranking of counties by average rate of
15 unemployment from lowest to highest, for the preceding three years.

16 (2) The county's rank in a ranking of counties by average per capita
17 income from highest to lowest, for the preceding three years.

18 (3) The county's rank in a ranking of counties by percentage growth in
19 population from highest to lowest.

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

25 ...

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

28 (1) A county that meets both of the conditions set out below is designated
29 an enterprise tier one area:

30 a. Its population is less than ~~10,000.~~ 12,000.

31 b. More than sixteen percent (16%) of its population is below the
32 federal poverty level according to the most recent federal
33 decennial census.

34 (2) A county that meets both of the conditions set out below has an
35 enterprise tier designation one level below the designation it would
36 otherwise have under subsection (a) of this section:

37 a. Its population is less than 50,000.

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

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

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

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

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

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

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

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

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

30 **SECTION 6.(a)** G.S. 105-129.4, as amended by this act and by S.L.
31 2001-414, reads as rewritten:

32 "**§ 105-129.4. Eligibility; forfeiture.**

33 (a) Type of Business. – The following conditions apply in determining a
34 taxpayer's eligibility for the credits in this Article:

- 35 (1) Central office or aircraft facility. – A taxpayer is eligible for a credit
36 allowed by G.S. 105-129.12 the credits allowed by this Article if it
37 operates if the real property for which the credit is claimed is used for
38 a central office or aircraft facility that creates at least 40 new jobs. jobs
39 and the jobs, investment, and activity with respect to which a credit is
40 claimed are used in that office or facility.

- 41 (2) Single business. – A taxpayer is eligible for the other credits allowed
42 by this Article other than by G.S. 105-129.12 if the primary business

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

8 ~~(1)a.~~ Air courier services.

9 ~~(2)~~ Central office or aircraft facility that creates at least 40 new
10 jobs.

11 ~~(2a)~~ Customer service center located in an enterprise tier one or two
12 area.

13 ~~(3)b.~~ Data processing.

14 (3) Multiple business. – A taxpayer is eligible for the credits allowed by
15 this Article other than by G.S. 105-129.12 if the primary business of
16 the taxpayer is one of the following types of businesses and the jobs,
17 investment, and activity with respect to which a credit is claimed are
18 used in any of the following types of businesses:

19 ~~(3a)~~ Electronic mail order house that creates at least 250 new jobs
20 and is located in an enterprise tier one or two area.

21 ~~(4)a.~~ Manufacturing.

22 ~~(5)b.~~ Warehousing.

23 ~~(6)c.~~ Wholesale trade.

24 (4) Single establishment. – A taxpayer is eligible for the credits allowed
25 by this Article other than by G.S. 105-129.12 if the primary business
26 of the taxpayer or the primary activity of an establishment of the
27 taxpayer is one of the following types of businesses and the jobs,
28 investment, and activity with respect to which a credit is claimed are
29 used in that business:

30 a. Computer services.

31 b. An electronic mail order house that creates at least 250 new
32 jobs and is located in an enterprise tier one, two, or three area.

33 (5) Customer service center. – A taxpayer is eligible for the credits
34 allowed by this Article other than by G.S. 105-129.12 if all of the
35 following conditions are met:

36 a. The taxpayer's primary business is as a telecommunications or
37 financial services company, as defined by NAICS.

38 b. The primary activity of an establishment of the taxpayer is a
39 customer service center located in an enterprise tier one, two, or
40 three area.

41 c. The jobs, investment, and activity with respect to which a credit
42 is claimed are used in that activity.

1 (6) Warehousing. – A taxpayer is eligible for the credits allowed by this
2 Article other than by G.S. 105-129.12 if all of the following conditions
3 are met:

4 a. The primary activity of an establishment of the taxpayer is in
5 warehousing.

6 b. The warehousing establishment is located in an enterprise tier
7 one, two, or three area and serves 25 or more establishments of
8 the taxpayer in at least five different counties in one or more
9 states.

10 c. The jobs, investment, and activity with respect to which a credit
11 is claimed are used in the warehousing establishment.

12 (a1) New Jobs Defined. – A central office or aircraft facility creates at least 40
13 new jobs if the taxpayer hires at least 40 additional full-time employees to fill new
14 positions at the office either ~~in the year~~(i) within 12 months immediately following the
15 date the taxpayer first uses the property as a central office or aircraft facility or ~~in~~(ii)
16 within a 36-month period that includes the ~~preceding~~–24 months that immediately
17 precede and the 12 months that immediately follow the first use of the property as a
18 central office or aircraft facility property when the taxpayer uses ~~while using~~ temporary
19 space for the central office or aircraft facility functions during completion of the central
20 office or aircraft facility property. Other property creates at least 200 new jobs if the
21 taxpayer hires at least 200 additional full-time employees to fill new positions at the
22 location in a two-year period beginning when the property is first used in an eligible
23 business. An electronic mail order house creates at least 250 new jobs if the taxpayer
24 hires at least 250 additional full-time employees to fill new positions at the house in the
25 two-year period ending on the last day of the taxable year the taxpayer first claims a
26 credit under this Article. Jobs transferred from one area in the State to another area in
27 the State are not considered new jobs for purposes of this subsection.

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

40 (b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the
41 credit for worker training ~~if~~ if, for the calendar year the jobs are created or the worker
42 training is provided, the average wage of the jobs for which the credit is claimed ~~meet~~

1 meets the wage standard at the time the taxpayer applies for the credit, and the average
2 wage of all jobs at the location with respect to which the credit is claimed meets the
3 wage standard. No credit is allowed for jobs not included in the wage calculation. A
4 taxpayer is eligible for the credit for investing in machinery and equipment, the credit
5 for research and development, ~~or the credit for investing in real property for a central~~
6 ~~office or aircraft facility if the facility, or the credit for substantial investment in other~~
7 property if, for the calendar year the taxpayer engages in the activity that qualifies for
8 the credit, the average wage of all jobs at the location with respect to which the credit is
9 claimed meet-meets the wage standard. ~~standard at the time the taxpayer applies for the~~
10 ~~credit.~~ In making the wage calculation, the taxpayer must include any positions that
11 were filled for at least 1,600 hours during the ~~immediately preceding taxable~~
12 year ~~calendar year the taxpayer engages in the activity that qualifies for the credit even if~~
13 they those positions are not filled at the time the taxpayer ~~applies for claims~~ the credit.

14 Jobs meet the wage standard if they pay an average weekly wage that is at least
15 equal to the applicable percentage times the applicable average weekly wage for the
16 county in which the jobs will be located, as computed by the Secretary of Commerce
17 from data compiled by the Employment Security Commission for the most recent period
18 for which data are available. The applicable percentage for jobs located in an enterprise
19 tier one area is one hundred percent (100%). The applicable percentage for all other jobs
20 is one hundred ten percent (110%).

21 The applicable average weekly wage is the lowest of the following: (i) the average
22 wage for all insured private employers in the county, (ii) the average wage for all
23 insured private employers in the State, and (iii) the average wage for all insured private
24 employers in the county multiplied by the county income/wage adjustment factor. The
25 county income/wage adjustment factor is the county income/wage ratio divided by the
26 State income/wage ratio. The county income/wage ratio is average per capita income in
27 the county divided by the annualized average wage for all insured private employers in
28 the county. The State income/wage ratio is the average per capita income in the State
29 divided by the annualized average wage for all insured private employers in the State.

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

40 (b2) Health Insurance. – A taxpayer is eligible for a credit for creating jobs or for
41 worker training under this Article if the taxpayer provides health insurance for the
42 positions for which the credit is claimed ~~at the time the taxpayer applies for~~ each year it

1 claims an installment or carryforward of the credit. A taxpayer is eligible for the other
2 credits under this Article if the taxpayer provides health insurance for all of the full-time
3 positions at the location with respect to which the credit is claimed ~~at the time the~~
4 ~~taxpayer applies for~~ each year it claims an installment or carryforward of the credit. For
5 the purposes of this subsection, a taxpayer provides health insurance if it pays at least
6 fifty percent (50%) of the premiums for health care coverage that equals or exceeds the
7 minimum provisions of the basic health care plan of coverage recommended by the
8 Small Employer Carrier Committee pursuant to G.S. 58-50-125.

9 Each year that a taxpayer claims an installment or carryforward of a credit allowed
10 under this Article, the taxpayer must provide with the tax return the taxpayer's
11 certification that the taxpayer continues to provide health insurance for the jobs for
12 which the credit was claimed or the full-time jobs at the location with respect to which
13 the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs
14 during a taxable year, the credit expires and the taxpayer may not take any remaining
15 installment or carryforward of the credit.

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

32 (b4) Safety and Health Programs. – A taxpayer is eligible for a credit allowed
33 under this Article only if the taxpayer certifies that, as of the time the taxpayer ~~applies~~
34 ~~for~~ first claims the credit, at the business location with respect to which the credit is
35 claimed, the taxpayer has no citations under the Occupational Safety and Health Act
36 that have become a final order within the past three years for willful serious violations
37 or for failing to abate serious violations. For the purposes of this subsection, 'serious
38 violation' has the same meaning as in G.S. 95-127. The Secretary of ~~Commerce will~~
39 ~~provide the Department of Labor a list of all taxpayers making this certification. The~~
40 ~~Department of Labor may conduct random audit checks to verify taxpayers'~~
41 ~~certifications. The Department of Labor must notify the Department of Revenue~~

1 annually of all employers who have had these citations become final orders within the
2 past three years. of any taxpayer certifications it determines are not accurate.

3 (b5) Substantial Investment in Other Property. – A taxpayer is eligible for the
4 credit for substantial investment in other property under G.S. 105-129.12A with respect
5 to a location only if the Secretary of Commerce makes a written determination that the
6 taxpayer is expected to purchase or lease and use in an eligible business at that location
7 within a three-year period at least ten million dollars (\$10,000,000) of real property and
8 that the location that is the subject of the credit will create at least 200 new jobs within
9 two years of the time that the property is first used in an eligible business. If the
10 taxpayer fails to timely make the required level of investment or fails to timely create
11 the required number of new jobs, the taxpayer forfeits the credit as provided in
12 subsection (d) of this section.

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

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

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

1 to which the technology commercialization credit or the credit for investing in
2 machinery and equipment was claimed.

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

- 12 (1) The business closed before it was acquired.
- 13 (2) The business was required to file a notice of plant closing or mass
14 layoff under the federal Worker Adjustment and Retraining
15 Notification Act, 29 U.S.C. § 2102, before it was acquired.
- 16 (3) The business was acquired by its employees directly or indirectly
17 through an acquisition company under an employee stock option
18 transaction or another similar mechanism. For the purpose of this
19 subdivision, "acquired" means that as part of the initial purchase of a
20 business by the employees, the purchase included an agreement for the
21 employees through the employee stock option transaction or another
22 similar mechanism to obtain one of the following:
 - 23 a. Ownership of more than fifty percent (50%) of the business.
 - 24 b. Ownership of not less than forty percent (40%) of the business
25 within seven years if the business has tangible assets with a net
26 book value in excess of one hundred million dollars
27 (\$100,000,000) and has the majority of its operations located in
28 an enterprise tier one, two, or three area.

29 (f) Development Zone Project Credit. – Subsections (a) through (b4) of this
30 section do not apply to the credit for development zone projects provided in G.S.
31 105-129.13.

32 (g) Advisory Ruling. – A taxpayer may request in writing from the Secretary of
33 Revenue specific advice regarding eligibility for a credit under this Article. G.S.
34 105-264 governs the effect of this advice."

35 **SECTION 6.(b)** The amendments to G.S. 105-129.4(a2) in this section and
36 the enactment of G.S. 105-129.4(g) in this section are effective when this act becomes
37 law. The amendments to G.S. 105-129.4(a) in this section are effective for taxable
38 years beginning on or after January 1, 2001. The remainder of this section is effective
39 for taxable years beginning on or after January 1, 2002.

40 **SECTION 7.(a)** The General Assembly finds that the purpose of Article 3A
41 of Chapter 105 of the General Statutes is to encourage the creation of new quality jobs
42 and to encourage new investment in machinery and equipment, research and

1 development, and real property. The General Assembly further finds that allowing
2 taxpayers to file amended returns and retroactively claim credits under that Article does
3 not further this purpose of encouraging job creation and new investment.

4 **SECTION 7.(b)** G.S. 105-129.5 reads as rewritten:

5 "**§ 105-129.5. Tax election; cap; ~~carryforwards~~carryforwards; limitations.**

6 (a) Tax Election. – The credits provided in this Article are allowed against the
7 franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of
8 this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The
9 taxpayer may divide the technology commercialization credit allowed in G.S.
10 105-129.9A between the taxes against which it is allowed. The taxpayer shall elect the
11 percentage of the credit that will be taken against each tax when filing the return on
12 which the credit is first taken. This election is binding. The percentage of the credit
13 elected to be taken against each tax may be carried forward only against the same tax.

14 The taxpayer must take any other credit allowed in this Article against only one of
15 the taxes against which it is allowed. The taxpayer shall elect the tax against which a
16 credit will be claimed when filing the return on which the first installment of the credit
17 is claimed. This election is binding. Any carryforwards of the credit must be claimed
18 against the same tax.

19 (b) Cap. – The credits allowed under this Article may not exceed fifty percent
20 (50%) of the tax against which they are claimed for the taxable year, reduced by the
21 sum of all other credits allowed against that tax, except tax payments made by or on
22 behalf of the taxpayer. This limitation applies to the cumulative amount of credit,
23 including carryforwards, claimed by the taxpayer under this Article against each tax for
24 the taxable year.

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

1 (d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer
2 must claim a credit under this Article within six months after the date set by statute for
3 the filing of the return, including any extensions of that date."

4 **SECTION 7.(c)** The amendments to G.S. 105-129.5(c) in this section are
5 effective for taxable years beginning on or after January 1, 2002, and apply to credits
6 that are first claimed on or after that date. The remainder of this section is effective for
7 taxable years beginning on or after January 1, 2001.

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

9 "**§ 105-129.6. Application; Fees and reports.**

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

24 ~~If the Secretary of Commerce determines that the taxpayer meets all of the eligibility~~
25 ~~requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a~~
26 ~~credit, the Secretary shall issue a certificate describing the location with respect to~~
27 ~~which the credit is claimed, outlining the eligibility requirements for the credit, and~~
28 ~~stating that the taxpayer meets the eligibility requirements. If the Secretary of~~
29 ~~Commerce determines that the taxpayer does not meet all of the eligibility requirements~~
30 ~~of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the~~
31 ~~Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer~~
32 ~~fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter~~
33 ~~150B of the General Statutes that are needed to carry out the Secretary of Commerce's~~
34 ~~responsibilities under this section.~~

35 (a1) ~~Fee.~~ – ~~When filing an application for certification a return for a taxable year~~
36 ~~in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit~~
37 ~~under this section, Article, the taxpayer must pay the Department of Commerce~~
38 ~~Revenue a fee of five hundred dollars (\$500.00) for each credit the taxpayer claims or~~
39 ~~intends to claim with respect to a location that is in an enterprise tier three, four, or five~~
40 ~~area, subject to a maximum fee of one thousand five hundred dollars (\$1,500) per~~
41 ~~taxpayer per taxable year. This fee does not apply to any credit the taxpayer claims or~~
42 ~~intends to claim with respect to a location that is in a development zone as defined in~~

1 G.S. 105-129.3A. If the taxpayer ~~applies for certification for~~ claims or intends to claim a
2 credit that relates to locations in more than one enterprise tier area, the fee is based on
3 the highest-numbered enterprise tier area.

4 The fee is due at the time the return is due for the taxable year in which the taxpayer
5 engaged in the activity for which the taxpayer is eligible for a credit. No credit is
6 allowed under this Article for a taxable year until all outstanding fees have been paid.

7 The Secretary of ~~Commerce~~ Revenue shall retain ~~one-fourth~~ three-fourths of the
8 proceeds of the fee imposed in this section for the costs of ~~administering this section.~~
9 ~~The Secretary of Commerce shall credit the remaining proceeds of the fee imposed in~~
10 ~~this section to the Department of Revenue for the costs of administering and auditing~~
11 the credits allowed in this Article. The Secretary of Revenue shall credit the remaining
12 proceeds of the fee imposed in this section to the Department of Commerce for the costs
13 of administering this Article. The proceeds of the fee are receipts of the Department to
14 which they are credited.

15 (b) Reports. – The Department of ~~Commerce~~ Revenue shall ~~report to the~~
16 ~~Department of Revenue and to the Fiscal Research Division of the General Assembly~~
17 publish by May ~~March 1 of each year the following information itemized by credit and
18 by taxpayer for the 12-month period ending the preceding ~~April 1~~ December 31:~~

- 19 (1) The number of ~~applications~~ claims for each credit allowed in this
20 Article.
- 21 (2) The number and enterprise tier area of new jobs with respect to which
22 credits were ~~applied for~~ generated and to which credits were claimed.
- 23 (3) The cost and enterprise tier area of machinery and equipment with
24 respect to which credits were ~~applied for~~ generated and to which
25 credits were claimed.
- 26 (4) The number of new jobs created by businesses located in ~~within~~
27 development zones, and the percentage of those jobs at those locations
28 that were filled by residents of the zones.
- 29 (5) The amount and enterprise tier area of worker training expenditures
30 with respect to which credits were generated and to which credits were
31 claimed.
- 32 (6) The amount and enterprise tier area of new research and development
33 expenditures with respect to which credits were generated and to
34 which credits were claimed.
- 35 (7) The cost and enterprise tier area of real property investment with
36 respect to which credits were generated and to which credits were
37 claimed."

38 **SECTION 8.(b)** G.S. 105-259(b) is amended by adding a new subdivision to
39 read:

40 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
41 who has access to tax information in the course of service to or employment by the State

1 may not disclose the information to any other person unless the disclosure is made for
2 one of the following purposes:

3 ...

4 (27) To publish the information required under G.S. 105-129.6."

5 **SECTION 8.(c)** This section is effective for taxable years beginning on or
6 after January 1, 2002.

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

8 "**§ 105-129.7. Substantiation.**

9 (a) To claim a credit allowed by this Article, the taxpayer must provide any
10 information required by the Secretary of Revenue. Every taxpayer claiming a credit
11 under this Article shall maintain and make available for inspection by the Secretary of
12 Revenue any records the Secretary considers necessary to determine and verify the
13 amount of the credit to which the taxpayer is entitled. The burden of proving eligibility
14 for the credit and the amount of the credit shall rest upon the taxpayer, and no credit
15 shall be allowed to a taxpayer that fails to maintain adequate records or to make them
16 available for inspection.

17 (b) Each taxpayer must provide with the tax return qualifying information for
18 each credit claimed under this Article for the first taxable year the credit is claimed and
19 for every year in which a subsequent installment or a carryforward of that credit is
20 claimed. The qualifying information must be in the form prescribed by the Secretary,
21 must cover each taxable year beginning with the first taxable year the credit is claimed,
22 and must be signed and affirmed by the individual who signs the taxpayer's tax return.
23 The information required by this subsection is information demonstrating that the
24 taxpayer has met the conditions for qualifying for an initial credit and any installments
25 and carryforwards, and includes the following:

26 (1) The physical location of the jobs and investment with respect to which
27 the credit is claimed, including the enterprise tier designation of the
28 location and whether it is in a development zone. In addition, for each
29 individual who fills a job at a location with respect to which a credit is
30 claimed, the place where the individual resided before taking the job,
31 including any enterprise tier ~~or development zone~~ designation of that
32 place. In addition, for jobs that are located in a development zone, the
33 number of those jobs that are filled by residents of the development
34 zone.

35 (2) The type of business with respect to which the credit is claimed, as
36 required by G.S. 105-129.4(a), and wage information described in G.S.
37 105-129.4(b).

38 (3) If the credit is claimed with respect to a large investment ~~certified~~
39 ~~under G.S. 105-129.4(b1) or 105-129.4(b1),~~ is a credit with a
40 carryforward period of 10 years under G.S. 105-129.5(c), or is a credit
41 claimed under G.S. 105-129.12A, the amount of the investment
42 requirement under those subsections that has been met to date.

- 1 (4) Qualifying information required for the credit for creating jobs allowed
2 under G.S. 105-129.8, the credit for investing in machinery and
3 equipment allowed under G.S. 105-129.9, the credit for worker
4 training allowed under G.S. 105-129.11, the credit for investing in
5 central office or aircraft facility property allowed in G.S. 105-129.12,
6 the credit for substantial investment in other property under G.S.
7 105-129.12A, and any other credits allowed under this Article."

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

10 **SECTION 10.(a)** G.S. 105-129.9 reads as rewritten:

11 "**§ 105-129.9. Credit for investing in machinery and equipment.**

12 (a) General Credit. – If a taxpayer that has purchased or leased eligible
13 machinery and equipment places them in service in this State during the taxable year,
14 the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible
15 investment amount over the applicable threshold. Machinery and equipment are eligible
16 if they are capitalized by the taxpayer for tax purposes under the Code and not leased to
17 another party. In addition, in the case of a large investment, machinery and equipment
18 that are not capitalized by the taxpayer are eligible if the taxpayer leases them from
19 another party. The credit may not be taken for the taxable year in which the machinery
20 and equipment are placed in service but shall be taken in equal installments over the
21 seven years following the taxable year in which they are placed in service.

22 (a1) Technology Commercialization Credit. – If a taxpayer is eligible for the
23 credit allowed in this section with respect to eligible machinery and equipment and
24 qualifies for one of the credits allowed in G.S. 105-129.9A with respect to the same
25 machinery and equipment, the taxpayer may choose to take one of those credits instead
26 of the credit allowed in this section. A taxpayer may take the credit allowed in this
27 section or one of the credits allowed in G.S. 105-129.9A during a taxable year with
28 respect to eligible machinery and equipment, but may not take more than one of these
29 credits with respect to the same machinery and equipment.

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

41 (c) Threshold. – The applicable threshold is the appropriate amount set out in the
42 following table based on the enterprise tier ~~of the area~~ where the eligible machinery and

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

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

14 (d) Expiration. – If, in one of the seven years in which the installment of a credit
 15 accrues, the machinery and equipment with respect to which the credit was claimed are
 16 disposed of, taken out of service, or moved out of State, the credit expires and the
 17 taxpayer may not take any remaining installment of the credit for that machinery and
 18 equipment unless the cost of that machinery and equipment is offset in the same taxable
 19 year by the taxpayer's new investment in eligible machinery and equipment placed in
 20 service in the same enterprise tier, as provided in this subsection. If, during the taxable
 21 year the taxpayer disposed of the machinery and equipment for which installments
 22 remain, there has been a net reduction in the cost of all the taxpayer's eligible machinery
 23 and equipment that are in service in the same enterprise tier as the machinery and
 24 equipment that were disposed of, and the amount of this reduction is greater than twenty
 25 percent (20%) of the cost of the machinery and equipment that were disposed of, then
 26 the taxpayer forfeits the remaining installments of the credit for the machinery and
 27 equipment that were disposed of. If the amount of the net reduction is equal to twenty
 28 percent (20%) or less of the cost of the machinery and equipment that were disposed of,
 29 or if there is no net reduction, then the taxpayer does not forfeit the remaining
 30 installments of the expired credit. In determining the amount of any net reduction during
 31 the taxable year, the cost of machinery and equipment the taxpayer placed in service
 32 during the taxable year and for which the taxpayer claims a credit under Article 3B of
 33 this Chapter may not be included in the cost of all the taxpayer's eligible machinery and
 34 equipment that are in service. If in a single taxable year machinery and equipment with
 35 respect to two or more credits in the same tier are disposed of, the net reduction in the
 36 cost of all the taxpayer's eligible machinery and equipment that are in service in the
 37 same tier is compared to the total cost of all the machinery and equipment for which
 38 credits expired in order to determine whether the remaining installments of the credits
 39 are forfeited.

40 The expiration of a credit does not prevent the taxpayer from taking the portion of an
 41 installment that accrued in a previous year and was carried forward to the extent
 42 permitted under G.S. 105-129.5.

1 If, in one of the seven years in which the installment of a credit accrues, the
2 machinery and equipment with respect to which the credit was claimed are moved to an
3 area in a higher-numbered enterprise tier, or are moved from a development zone to an
4 area that is not a development zone, the remaining installments of the credit are allowed
5 only to the extent they would have been allowed if the machinery and equipment had
6 been placed in service initially in the area to which they were moved.

7 (e) Planned Expansion. – A taxpayer that signs a letter of commitment with the
8 Department of Commerce to place specific eligible machinery and equipment in service
9 in an area within two years after the date the letter is signed may, in the year the eligible
10 machinery and equipment are placed in service in that area, calculate the credit for
11 which the taxpayer qualifies based on the area's enterprise tier and development zone
12 designation for the year the letter was signed. All other conditions apply to the credit,
13 but if the area has been redesignated to a higher-numbered enterprise tier or has lost its
14 development zone designation after the year the letter of commitment was signed, the
15 credit is allowed based on the area's enterprise tier and development zone designation
16 for the year the letter was signed. If the taxpayer does not place part or all of the
17 specified eligible machinery and equipment in service within the two-year period, the
18 taxpayer does not qualify for the benefit of this subsection with respect to the machinery
19 and equipment not placed in service within the two-year period. However, if the
20 taxpayer qualifies for a credit in the year the eligible machinery and equipment are
21 placed in service, the taxpayer may take the credit for that year as if no letter of
22 commitment had been signed pursuant to this subsection."

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

26 **SECTION 11.(a)** G.S. 105-129.9A(c), (d), and (e) read as rewritten:

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

33 (d) Twenty Percent Credit. – A taxpayer qualifies for a twenty percent (20%)
34 credit under this section if it meets all of the following conditions:

- 35 (1) The eligible machinery and equipment are directly related to
36 production based on technology developed by and licensed from a
37 research university or are used to produce resources essential to the
38 taxpayer's production based on technology developed by and licensed
39 from a research university.
- 40 (2) The eligible machinery and equipment are placed in service in a tier
41 one, two, or three enterprise area.

- 1 (3) The eligible investment amount is at least ten million dollars
2 (\$10,000,000) for the taxable year.
- 3 (4) The Secretary of Commerce has ~~certified~~ made a written determination
4 that the taxpayer ~~will~~ is expected to invest at least one hundred fifty
5 million dollars (\$150,000,000) in eligible machinery and equipment in
6 a tier one, two, or three enterprise area by the end of the fourth year
7 after the year in which the taxpayer first places eligible machinery and
8 equipment in service in the enterprise area.
- 9 (5) No more than nine years have passed since the first taxable year the
10 taxpayer claimed a credit under this section with respect to the same
11 location.
- 12 (e) Fifteen Percent Credit. – A taxpayer qualifies for a fifteen percent (15%)
13 credit under this section if it meets all of the following conditions:
- 14 (1) The eligible machinery and equipment are directly related to
15 production based on technology developed by and licensed from a
16 research university, or are used to produce resources essential to the
17 taxpayer's production based on technology developed by and licensed
18 from a research university.
- 19 (2) The eligible machinery and equipment are placed in service in a tier
20 one, two, or three enterprise area.
- 21 (3) The eligible investment amount is at least ten million dollars
22 (\$10,000,000) for the taxable year.
- 23 (4) The Secretary of Commerce has ~~certified~~ made a written determination
24 that the taxpayer ~~will~~ is expected to invest at least one hundred million
25 dollars (\$100,000,000) in eligible machinery and equipment in a tier
26 one, two, or three enterprise area by the end of the fourth year after the
27 year in which the taxpayer first places eligible machinery and
28 equipment in service in the enterprise area.
- 29 (5) No more than nine years have passed since the first taxable year the
30 taxpayer claimed a credit under this section with respect to the same
31 location."

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

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

35 "(c) Expiration. – If, in one of the seven years in which the installment of a credit
36 accrues, the property with respect to which the credit was claimed is no longer used as a
37 central office or aircraft facility, the credit expires and the taxpayer may not take any
38 remaining installment of the credit. If, in one of the seven years in which the installment
39 of a credit accrues, part of the property with respect to which the credit was claimed is
40 no longer used as a central office or aircraft facility, the remaining installments of the
41 credit shall be reduced by multiplying it by the fraction described in subsection (b) of
42 this section. ~~If, in one of the seven years in which the installment of a credit accrues, the~~

1 ~~total number of employees the taxpayer employs at all of its central office or aircraft~~
2 ~~facilities in this State drops by 40 or more, the credit expires and the taxpayer may not~~
3 ~~take any remaining installment of the credit.~~

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

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

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

11 "**§ 105-129.12A. Credit for substantial investment in other property.**

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

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

1 (c) Expiration. – If, in one of the seven years in which the installment of a credit
2 accrues, the property with respect to which the credit was claimed is no longer used in
3 an eligible business, the credit expires and the taxpayer may not take any remaining
4 installment of the credit. If, in one of the seven years in which the installment of a credit
5 accrues, part of the property with respect to which the credit was claimed is no longer
6 used in an eligible business, the remaining installments of the credit shall be reduced by
7 multiplying it by the fraction described in subsection (b) of this section. If, in one of the
8 years in which the installment of a credit accrues and by which the taxpayer is required
9 to have created 200 new jobs at the property, the total number of employees the
10 taxpayer employs at the property with respect to which the credit is claimed is less than
11 200, the credit expires and the taxpayer may not take any remaining installment of the
12 credit.

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

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

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

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

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

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

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

38 "Section 22. Section 10 of this act is effective for taxes imposed for taxable years
39 beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1,
40 1999, and expires ~~January 1, 2004.~~ July 1, 2007. The remainder of Part III of this act
41 becomes effective January 1, 2001, and applies to sales made on or after that date."

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

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

3 "(8b) Electricity that is separately metered or measured and is sold to a
 4 manufacturer for use in any of the following:

- 5 a. An arc furnace.
- 6 b. A furnace used to produce glass.
- 7 c. An aluminum smelting process.
- 8 d. To place an electrical charge in a new lead-acid battery
 9 manufactured for sale.
- 10 e. An electrolytic process used to produce chlorine gas or
 11 chemicals manufactured for sale.
- 12 f. A resistance welding process used to produce wire fabric.

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

17 **SECTION 16.(b)** G.S. 105-164.4(a)(1f)b. is repealed.

18 **SECTION 16.(c)** G.S. 105-164.4(a) is amended by adding a new
 19 subdivision to read:

20 "(1g) Electricity Sold to Manufacturers.

- 21 a. General. – Qualified electricity is taxable as provided in this
 22 subdivision. Qualified electricity is electricity that is measured
 23 by a separate meter or another separate measuring device and is
 24 sold to a manufacturing industry or manufacturing plant for use
 25 in connection with the operation of the industry or plant.
- 26 b. Rates. – A single tax rate applies to all of the qualified
 27 electricity received by an industry or a plant in each fiscal year
 28 beginning July 1. That tax rate is determined based on the
 29 megawatt-hour volume of qualified electricity received by the
 30 industry or plant during the previous calendar year, in
 31 accordance with the following table. The rates set based on the
 32 table are subject to adjustment as provided in sub-subdivision f.
 33 of this subdivision.

<u>Previous Year's</u>	<u>Rate</u>
<u>Megawatt-Hours</u>	<u>for Fiscal</u>
<u>Received</u>	<u>Year</u>
<u>36,000 or Less</u>	<u>2.83%</u>
<u>Over 36,000 up to 200,000</u>	<u>2 %</u>
<u>Over 200,000 up to 1,200,000</u>	<u>1 %</u>
<u>Over 1,200,000</u>	<u>0.17%</u>

- 41 c. Multiple Meters. – If the industry or plant receives qualified
 42 electricity that is metered through two or more separate

1 measuring devices, the tax is calculated separately on the
2 volume metered through each device rather than on the total
3 volume metered through all measuring devices, unless the
4 devices are located on the same premises and are part of the
5 same billing account. In that circumstance, the tax is calculated
6 on the total volume metered through the two or more separate
7 measuring devices.

8 d. Procedure. – During the first five months of each calendar year,
9 each retailer of qualified electricity must determine the annual
10 volume of electricity it sold during the previous calendar year to
11 each manufacturing industry and manufacturing plant. Based on
12 this volume, the retailer must determine the tax rate that will
13 apply to each industry and plant. If the applicable rate is
14 different from the rate in effect for the previous fiscal year, the
15 retailer must notify the taxpayer of the new rate on or before
16 June 1 before it goes into effect.

17 e. New Manufacturers. – If a manufacturer begins business using
18 qualified electricity, the retailer must establish a rate at the time
19 the manufacturer first purchases qualified electricity. In this
20 case, and in the case of a manufacturer that was not in business
21 for the entire calendar year preceding the rate determination, the
22 retailer must estimate the expected annual volume of qualified
23 electricity it will sell to the plant or industry during its first
24 twelve months of business and determine the applicable tax rate
25 based on this estimate.

26 f. Adjustment. – If the actual volume of qualified electricity
27 received by an industry or a plant during a fiscal year dictates a
28 different tax rate from the rate charged for that fiscal year, the
29 manufacturer is eligible for a refund of any excess or is liable
30 for payment of any deficiency. A manufacturer who is eligible
31 for a refund may apply to the Department and a manufacturer
32 who is liable for a deficiency must report the liability to the
33 Department."

34 **SECTION 16.(d)** G.S. 105-164.4(a)(1d) reads as rewritten:

35 "(1d) The rate of one percent (1%) applies to the sales price of the articles
36 listed in G.S. 105-164.4A. The maximum tax is eighty dollars (\$80.00)
37 per article. As used in G.S. 105-164.4A and G.S. 105-187.51, the term
38 'accessories' does not include electricity."

39 **SECTION 16.(e)** G.S. 105-164.13(8) reads as rewritten:

40 **"§ 105-164.13. Retail sales and use tax.**

41 The sale at retail, the use, storage or consumption in this State of the following
42 tangible personal property is specifically exempted from the tax imposed by this Article:

1 ...
2 (8) Sales to a manufacturer of tangible personal property ~~to a~~
3 ~~manufacturer which that~~ enters into or becomes an ingredient or
4 component part of tangible personal property ~~which that~~ is
5 manufactured. This exemption does not apply to sales of electricity."

6 **SECTION 16.(f)** Subsection (a) of this section becomes effective November
7 1, 2001, and applies to sales made on or after that date. Subsection (a) of this section is
8 repealed effective for sales made on or after July 1, 2002. Subsections (b) and (c) of this
9 section become effective July 1, 2002, and apply to sales made on or after that date. The
10 remainder of this section is effective when it becomes law.

11 **SECTION 17.(a)** G.S. 105-164.3, as amended by S.L. 2001-347, S.L.
12 2001-414, S.L. 2001-424, and ratified House Bill 571, 2001 General Assembly, is
13 amended by adding the following new subdivisions in the correct alphabetical order:

14 "**§ 105-164.3. Definitions.**

15 The following definitions apply in this Article:

16 ...
17 (2b) Clothing. – All human wearing apparel suitable for general use
18 including coats, jackets, hats, hosiery, scarves, and shoes.

19 (2c) Clothing accessories or equipment. – Incidental items worn on the
20 person or in conjunction with clothing including jewelry, cosmetics,
21 eyewear, wallets, and watches.

22 ...
23 (11d) Protective equipment. – Items for human wear and designed as
24 protection of the wearer against injury or disease or as protection
25 against damage or injury of other persons or property but not suitable
26 for general use including breathing masks, face shields, hard hats, and
27 tool belts.

28 ...
29 (16e) Sport or recreational equipment. – Items designed for human use and
30 worn in conjunction with an athletic or recreational activity that are not
31 suitable for general use including ballet shoes, cleated athletic shoes,
32 shin guards, and ski boots."

33 **SECTION 17.(b)** G.S. 105-164.13C, as enacted by S.L. 2001-424, reads as
34 rewritten:

35 "**§ 105-164.13C. Sales and use tax holiday.**

36 (a) The taxes imposed by this Article do not apply to the following items of
37 tangible personal property if sold between 12:01A.M. on the first Friday of August and
38 11:59 P.M. the following Sunday:

39 (1) Clothing with a sales price of one hundred dollars (\$100.00) or less per
40 item.

41 (2) ~~Clothing accessories, such as hats, scarves, hosiery, and handbags,~~
42 ~~with a sales price of one hundred dollars (\$100.00) or less per item.~~

- 1 (3) ~~Footwear with a sales price of one hundred dollars (\$100.00) or less~~
2 ~~per item.~~
3 (4)(2) School supplies, such as pens, pencils, paper, binders, notebooks,
4 textbooks, reference books, book bags, lunchboxes, and calculators,
5 with a sales price of one hundred dollars (\$100.00) or less per item.
6 (5)(3) Computers, printers and printer supplies, and educational computer
7 software, with a sales price of three thousand five hundred dollars
8 (\$3,500) or less per item.
9 (4) Sport or recreational equipment with a sales price of fifty dollars
10 (\$50.00) or less per item.
11 (b) The exemption allowed by this section does not apply to the following:
12 (1) ~~Sales of jewelry, cosmetics, eyewear, wallets, or watches.~~Sales of
13 clothing accessories or equipment.
14 (2) Sales of protective equipment.
15 (2)(3) Sales of furniture.
16 (3)(4) Sales involving a layaway contract or a similar deferred payment and
17 delivery plan.
18 (4)(5) Sales of an item for use in a trade or business.
19 (5)(6) Rentals.

20 (c) For the purpose of this section, "computer" means a central processing unit
21 for personal use and any peripherals sold with it and any computer software installed at
22 the time of purchase."

23 **SECTION 17.(c)** This section becomes effective January 1, 2002, and
24 applies to sales made on or after that date. The Codifier is authorized to modify G.S.
25 105-164.3 to change the format of the existing definitions to match the format of the
26 new definitions enacted during 2001, but not to change the format of the new definitions
27 enacted in 2001 to match the format of the existing definitions. The Codifier is
28 authorized to renumber these definitions as necessary to maintain their alphabetical
29 order.

30 **SECTION 18.(a)** Section 9 of S.L. 1998-98 reads as rewritten:

31 "Section 9. Sections 1 through 6 of this act are effective for taxable years beginning
32 on or after January 1, 1999. G.S. 105-129.35(b), as amended by this act, is repealed
33 effective January 1, ~~2002,~~ 2004, for property placed in service on or after that date.
34 Sections 7 and 8 of this act become effective for taxable years beginning on or after
35 January 1, 2000. The remainder of this act is effective when it becomes law."

36 **SECTION 18.(b)** This section is effective when it becomes law.

37 **SECTION 19.** Except as otherwise provided in this act, this act is effective
38 when it becomes law.