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GENERAL ASSEMBLY OF NORTH CAROLINA
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S **D**

SENATE BILL DRS15194-MCf-97

Short Title:	Agricultural Manufacturing Tax Incentive.	(Public)
Sponsors:	Senator Burgin (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO INCENTIVIZE AGRICULTURAL MANUFACTURING IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3J of Chapter 105 of the General Statutes, with the exception of G.S. 105-129.80, 105-129.82, 105-129.87, 105-129.88, and 105-129.89, is reenacted as it existed immediately before its repeal and reads as rewritten:

"Article 3J.

"Tax Credits for ~~Growing Businesses.~~Agrimanufacturing.

"**§ 105-129.81. Definitions.**

The following definitions apply in this Article:

~~(1) Agrarian growth zone. – Defined in G.S. 143B-437.010.~~

(1a) Agrimanufacturing. – The subset of manufacturing that processes raw materials and intermediate products derived from the agricultural sector to make it usable as food, feed, fiber, fuel, or industrial raw material.

~~(2) Air courier services. – Defined in G.S. 143B-437.01.~~

~~(3) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.~~

(4) Business property. – Tangible personal property that is used in a business and capitalized by the taxpayer for tax purposes under the Code.

~~(5) Company headquarters. – Defined in G.S. 143B-437.01.~~

(6) 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).

~~(7) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.~~

(8) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

~~(9) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.~~

(9a) Environmental disqualifying event. – Any of the following occurrences:

a. During the tax year in which the activity occurred for which a credit is being claimed, a civil penalty was assessed against the taxpayer by the Department of Environmental Quality for failure to comply with an order issued by an agency of the Department to abate or remediate a violation of any program administered by the agency.

b. During the tax year in which the activity occurred for which a credit is being claimed or in the prior two tax years, any of the following:

1. A finding was made by the Department of Environmental Quality that the taxpayer knowingly and willfully, as defined in G.S. 143-215.6B, including all limitations thereto, committed a violation of any program implemented by an agency of the Department.

2. An assessment for damages to fish or wildlife pursuant to G.S. 143-215.3(a)(7) was made against the taxpayer.

3. A judicial order for injunctive relief was issued against the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environmental Quality.

c. During the tax year in which the activity occurred for which the credit is being claimed or in the prior four tax years, a criminal penalty was imposed on the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environmental Quality.

~~(10) Establishment. – Defined in 29 C.F.R. § 1904.46, as it existed on January 1, 2002.~~

(11) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

~~(12) Hub. – Defined in G.S. 105-164.3.~~

~~(13) Information technology and services. – Defined in G.S. 143B-437.01.~~

(14) Long-term unemployed worker. – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Division of Employment Security (DES) of the Department of Commerce.

(15) Manufacturing. – Defined in G.S. 143B-437.01.

~~(16) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.~~

~~(17) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.~~

(18) NAICS. – Defined in G.S. 105-228.90.

(19) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.

(20) Overdue tax debt. – Defined in G.S. 105-243.1.

~~(20a) Port enhancement zone. – Defined in G.S. 143B-437.013.~~

(21) Purchase. – Defined in section 179 of the Code.

(21a) Qualifying agrimanufacturer. – A taxpayer primarily engaged in agrimanufacturing at one or more locations for which the Secretary of Commerce has made a written determination of the amount of private funds that has been invested by the taxpayer on or after January 1, 2023, and that amount is in excess of one million five hundred thousand dollars ($1,500,000). Investments in real or business property made prior to January 1, 2023, may not be included in the investment required by this subdivision.

(22) Related member. – Defined in G.S. 105-130.7A.

~~(23) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.~~

~~(24) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.~~

~~(25) Warehousing. – Defined in G.S. 143B-437.01.~~

~~(26) Wholesale trade. – Defined in G.S. 143B-437.01.~~

"**§ 105-129.83. Eligibility; forfeiture.**

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is ~~listed in this subsection.~~ agrimanufacturing. The primary activity of an establishment is determined based on the establishment's principal product or group of products produced or distributed, or services rendered.

~~(1) Air courier services hub.~~

~~(2) Aircraft maintenance and repair.~~

~~(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.~~

~~(4) Customer service call centers.~~

~~(5) Electronic shopping and mail order houses.~~

~~(6) Information technology and services.~~

~~(7) Manufacturing.~~

~~(8) Motorsports facility.~~

~~(9) Motorsports racing team.~~

~~(10) Research and development.~~

~~(11) Warehousing.~~

~~(12) Wholesale trade.~~

~~(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.~~

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two ~~or three~~ area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs ~~that are located within an urban progress zone, a port enhancement zone, or an agrarian growth zone but not~~ in a development tier ~~one~~ two area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum ~~provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.~~requirements for small group health benefit plans under State or federal law.

Each year that a taxpayer claims a credit ~~or carryforward of a credit~~ allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit ~~expires, and the taxpayer may not take any remaining installment or carryforward of the credit.~~expires.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, there has not been a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event. For the purposes of this section, a "final determination unfavorable to the taxpayer" occurs when there is no further opportunity for the taxpayer to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn. No later than January 31 of each year, the Secretary of Environmental Quality shall provide an annual report to the Department listing all environmental disqualifying events for which a final determination unfavorable to the taxpayer was made in the prior calendar year and shall provide the name of the taxpayer involved and the date that the disqualifying event occurred.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

(g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the ~~credit or an installment or carryforward of the~~ credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved.

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the ~~types of business~~ businesses described in subsection (a) of this section at the establishment for which the credit was claimed, the credit expires. ~~If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible company headquarters falls below the minimum number required under subsection (b) of this section, any credit associated with that company headquarters expires.~~ When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer forfeits a credit previously allowed under this Article if a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event is made that is applicable to the year in which the activity occurred for which the credit was claimed. In addition, a taxpayer forfeits a credit ~~for investment in real property under G.S. 105-129.89~~ if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of ~~investment under G.S. 105-129.89(b).~~ <u>investment.</u> A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) 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.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(*l*) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation ~~and urban progress zone, port enhancement zone, or agrarian growth zone designation~~ in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier ~~and urban progress zone, port enhancement zone, or agrarian growth zone designations~~ <u>designation</u> in effect at that time.

~~(m) Qualified Capital Intensive Corporations. – A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for any credit under this Article with respect to the facility that satisfies the condition of subdivision (2) of that subsection.~~

"**§ 105-129.84. Tax ~~election;~~ <u>liability eligibility;</u> cap; ~~carryforwards;~~ limitations.**

(a) Tax ~~Election.~~ <u>Liability Eligibility.</u> – The credits provided in this Article are allowed against the ~~franchise tax levied in Article 3 of this Chapter, the~~ income taxes levied in Article 4 of this ~~Chapter, and the gross premiums tax levied in Article 8B of this~~ Chapter. ~~The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.~~

(b) Cap. – The credits allowed under this Article may not exceed ~~fifty percent (50%) of~~ the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of ~~credit, including carryforwards,~~ <u>credit</u> claimed by the taxpayer under this Article for the taxable year.

~~(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the standard carryforward period rather than the 20-year carryforward period.~~

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

(e) Credit Treated as Tax Payment. – The owner of a pass-through entity that claims a credit under this Article may treat some or all of the credit claimed as a tax payment made by or on behalf of the taxpayer. A credit claimed that is treated as a tax payment is subject to all provisions of this section. A credit claimed that is treated as a tax payment does not accrue interest under G.S. 105-241.21 if the payment is determined to be an overpayment. A taxpayer that elects to have a credit claimed under this Article treated as a tax payment must make this election when the return is filed.

"**§ 105-129.85. Fees and reports.**

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for ~~each type of~~ <u>the</u> credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

(b) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by credit and by taxpayer:

(1) The number and amount of credits generated and taken for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.

(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken.

"**§ 105-129.86. Substantiation.**

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

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit ~~and any carryforwards~~ and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.

(2) The ~~type of business with respect to which the credit is claimed and the~~ average weekly wage at the establishment with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article.

"**§ 105-129.90. Credit for agrimanufacturing.**

(a) Credit. – A qualifying agrimanufacturer that (i) meets the eligibility requirements set out in G.S. 105-129.83 and (ii) satisfies in a development tier one or two area in this State the threshold requirements for new job creation and investment under this subsection during the taxable year is allowed a credit for agrimanufacturing. The amount of the credit is equal to the qualifying agrimanufacturer's cumulative amount of income taxes for the taxable year for a number of years, as follows:

Job Threshold	**Investment Threshold**	**Years of Credit**
25	$1,500,000	3
50	$2,500,000	5
100	$5,000,000	10

(b) Job Calculation Provisions. – The following provisions apply to the job threshold provided in subsection (a) of this section:

(1) If the taxpayer creates new jobs at more than one eligible establishment in the State during the taxable year, the threshold applies to the aggregate number of

new jobs created at all eligible establishments within the eligible counties during that year.

(2) A job is located in a county if more than fifty percent (50%) of the employee's duties are performed in the county. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(3) Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If the job with respect to which the credit was claimed is moved to a development tier three area, the remaining installments of the credit are not allowed.

(4) For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(c) Investment Provisions. – The following provisions apply to the investment threshold provided in subsection (a) of this section:

(1) The investment threshold with private funds invested in the form of (i) purchasing or leasing business property and placing it in service in this State during the taxable year or (ii) purchasing or leasing real property in this State and beginning to use the property during the taxable year.

(2) Business property is eligible if it is not leased to another party. The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State. If the taxpayer places eligible business property in service at establishments in different counties and some of the establishments are in development tier three areas, the investment calculation will be reduced proportionately. If the taxpayer places eligible business property in service at an establishment over the course of more than one year, the applicable threshold for each subsequent taxable year is reduced by the eligible investment amount for the previous taxable years.

(3) Real property is located in the development tier area applicable to the county at the time the taxpayer made a written application for the determination required under this Article. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is considered to be the taxpayer's lease payments for the years for which the

credit is given, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. When part of the property is first used in one year and part is first used in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable. If the taxpayer uses only part of the property in agrimanufacturing, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in agrimanufacturing and the denominator of which is the total square footage of the property.

(4) If, in one of the years in which the credit remains, the property with respect to which the credit was claimed is no longer used in agrimanufacturing, the credit expires and the taxpayer is not allowed the credit in any years remaining. If, in one of the years in which the credit remains, a part of the property with respect to which the credit was claimed is no longer used in agrimanufacturing and that amount reduces the number of years calculated for the credit, only remaining years for the lower calculation may be claimed."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2023.