

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 1425*

Short Title: Technological Development Tax Credit. (Public)

Sponsors: Representatives Allen; M. Crawford, Daughtry, Hill, Jarrell, McMahan, Owens, Russell, Saunders, Tolson, Tucker, Wainwright, and Walend.

Referred to: Finance.

April 30, 2001

A BILL TO BE ENTITLED
AN ACT TO PROMOTE JOB GROWTH AND CAPITAL FORMATION.

Whereas, it is a fundamental interest of the State to promote its citizens' welfare through gainful employment; and

Whereas, a substantial part of the growth in employment comes from the introduction of new technology by small businesses; and

Whereas, the development of new and existing small businesses requires adequate capital; and

Whereas, partnerships between State and local government, financial institutions, business, labor, and research and academic institutions provide an effective means for utilizing technological resources to create new jobs throughout the State; and

Whereas, the State desires to encourage and promote the long-term investment of private capital in small businesses developing technologies by granting, without immediate direct cost to the State, contingent tax credits that may be used if losses are incurred in the future on such investments; and

Whereas, nonprofit organizations with experience in assisting with programs for small businesses developing technology are uniquely qualified to participate in the contingent tax credit program; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 3B of Chapter 105 of the General Statutes is amended by recodifying G.S. 105-129.17, 105-129.18, and 105-129.19 as G.S. 105-129.15B, G.S. 105-129.15C, and G.S. 105-129.15D, respectively.

SECTION 2. G.S. 105-129.15 through G.S.105-129.15D are designated as Part 1 of Article 3B of Chapter 105 of the General Statutes, to be entitled "General Provisions."

1 **SECTION 3.** G.S. 105-129.16 through G.S. 105-129.16C are designated as
2 Part 2 of Article 3B of the Chapter 105 of the General Statutes, to be entitled "Business
3 and Energy Tax Credits."

4 **SECTION 4.** The title of Article 3B of Chapter 105 of the General Statutes
5 reads as rewritten:

6 "Article 3B.

7 ~~Business And~~ Business, Technology Development, and Energy Tax Credits."

8 **SECTION 5.** Article 3B of Chapter 105 of the General Statutes is amended
9 by adding a new part to read:

10 "Part 3. Technology Development Investment Contingent Tax Credits.

11 "§ 105-129.20. Definitions.

12 The following definitions apply in this Part:

- 13 (1) Default amount. – Any required repayment of a qualified investment,
14 including any required payment of interest or other return on the
15 investment, that a technology development fund does not pay by the
16 due date.
- 17 (2) Qualified investment. – An equity or debt cash investment in a
18 technology development fund that meets all of the conditions provided
19 in G.S. 105-129.22 and is reinvested by the technology development
20 fund in one or more of its programs to assist small businesses in
21 developing technology.
- 22 (3) Qualified default amount. – A default amount the obligation to repay
23 has been canceled by a technology development fund's delivery of
24 written certification of inability to pay as provided in G.S. 105-129.22.
- 25 (4) Qualified investment default. – The cancellation of the obligation to
26 repay a default amount by delivery of written certification of inability
27 to pay as provided in G.S. 105-129.22.
- 28 (5) Qualified technology development organization. – A corporation that
29 meets all of the following conditions:
 - 30 a. It is a domestic corporation or a foreign corporation as defined
31 in G.S. 55A-1-40.
 - 32 b. It is tax-exempt pursuant to section 501(a)(3) of the Code.
 - 33 c. A principal purpose of the corporation is to lessen the burdens
34 of government through programs designed to increase the rate
35 at which new jobs are created by stimulating the development
36 of existing and new small businesses.
 - 37 d. In furtherance of the purpose described in sub-subdivision c. of
38 this subdivision, the corporation (i) manages 20 or more
39 nonprofit business incubators that provide laboratory facilities
40 and office space for small businesses developing technology,
41 and (ii) invests, either directly or indirectly through private
42 investment entities, in small businesses engaging in developing
43 technology.

1 e. It has received direct appropriations from state or local
 2 governments in at least three years for use in furtherance of the
 3 purposes described in sub-subdivision c. of this subdivision.

4 (6) Technology development fund. – A limited liability company that
 5 conducts programs to promote job growth and capital formation, is
 6 managed solely by a qualified technology development organization,
 7 and has been certified by the State Treasurer pursuant to G.S.
 8 105-129.22.

9 "**§ 105-129.21. Technology development contingent credit.**

10 (a) Credit. – If a qualified investment default occurs with respect to a qualified
 11 investment, the owner of the qualified investment at the time the qualified investment
 12 default occurs is allowed a credit in an amount equal to the qualified default amount,
 13 adjusted as provided in this section. The credit may not be taken for the taxable year in
 14 which the default occurs but must be taken for the taxable year that begins in the
 15 calendar year in which the application for the credit becomes effective as provided in
 16 subsection (b) of this section.

17 (b) Application. – To be eligible for the tax credit provided in this section, the
 18 taxpayer must file an application with the Secretary on or before April 15 of the year
 19 following the calendar year in which the qualified investment default occurred. The
 20 Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon
 21 the request of the taxpayer, except that the application may not be filed after September
 22 15 of the year following the calendar year in which the default occurred. An application
 23 is effective for the year in which it is timely filed. The application must be on a form
 24 prescribed by the Secretary and include any supporting documentation the Secretary
 25 requires.

26 (c) Ceiling. – The total amount of all tax credits allowed to all taxpayers under
 27 this section for qualified investment defaults that occur in any calendar year may not
 28 exceed the maturity ceiling for the applicable year. The Secretary must calculate the
 29 total amount of tax credits claimed under this section for each year from applications
 30 filed pursuant to subsection (b) of this section. If the total amount of tax credits claimed
 31 for any calendar year exceeds the maturity ceiling for that year, the Secretary must
 32 allow a portion of the credits claimed by allocating the maturity ceiling for that year
 33 among the taxpayers claiming the credit in proportion to the size of the credit claimed
 34 by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must
 35 notify the taxpayer of the amount of the reduction of the credit on or before December
 36 31 of the year the allocation was made. The Secretary's allocations under this subsection
 37 are final and will not be adjusted for credits applied for but not claimed.

38 The maturity ceiling for a calendar year is the applicable amount provided in the
 39 table below plus the remaining maturity ceiling at the end of the previous calendar year,
 40 if any:

<u>Year</u>	<u>Amount</u>
<u>2006</u>	<u>\$8,250,000</u>
<u>2007</u>	<u>\$16,750,000</u>
<u>2008</u>	<u>\$25,000,000</u>

1 2009 \$25,000,000
2 2010 \$25,000,000
3 Thereafter -0-

4 (d) No Double Benefit. – A taxpayer who claims a credit under this Part with
5 respect to a qualified investment default must make the adjustment provided in G.S.
6 105-130.5(a)(14) or G.S. 105-134.6(c)(8), as applicable.

7 (e) Participation in Business. – No credit is allowed with respect to a qualified
8 investment if any owner of that investment has participated in the operation of any
9 business in which the technology development fund invests. For the purpose of this
10 section, a person participates in the operation of a business if the person, the person's
11 spouse, parent, sibling, or child, or an employee of any of these individuals or of a
12 business controlled by any of these individuals, provides services of any nature to the
13 business for compensation, whether as an employee, a contractor, or otherwise.
14 However, a person who provides services to a business, whether as an officer, a member
15 of the board of directors, or otherwise does not participate in its operation if the person
16 receives as compensation only reasonable reimbursement of expenses incurred in
17 providing the services, participation in a stock option or stock bonus plan, or both.

18 (f) Forfeiture. – A taxpayer who has received a credit under this Part forfeits the
19 credit if the Secretary determines that the technology development fund in which the
20 qualified investment was made either (i) supplied false information to the State
21 Treasurer under G.S. 105-129.22 or (ii) did not reinvest the entire net proceeds of the
22 qualified investment in one or more of its programs to assist small businesses in
23 developing technology. A taxpayer who forfeits a credit under this section is liable for
24 all past taxes avoided as a result of the credit plus interest at the rate established under
25 G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit
26 had not been allowed. The past taxes and interest are due 30 days after the date the
27 credit is forfeited; a taxpayer who fails to pay the past taxes and interest by the due date
28 is subject to the penalties provided in G.S. 105-236.

29 **§ 105-129.22. Procedure.**

30 (a) Certification. – In order to participate in the program provided in this Part, a
31 technology development fund must obtain the certification of the State Treasurer that it
32 and the technology development organization that manages it meet the requirements of
33 this Part. The Treasurer's certification remains in effect until the end of the calendar
34 year following the calendar year in which it was issued.

35 (b) Qualified Investments. – A cash investment in a technology development
36 fund may qualify under this Part if all of the following conditions are met:

- 37 (1) Under the terms of the investment, repayment of the investment by the
38 technology development fund becomes due no earlier than the fifth
39 anniversary of the date the investment was received by the technology
40 development fund and no later than on the tenth anniversary of the
41 date the investment was received by the technology development fund,
42 subject to the option of the technology development fund to make
43 earlier repayment.

1 (2) Under the terms of the investment, the investment must be refunded if
2 the technology development fund does not timely provide a contingent
3 credit reservation as required by this section.

4 (3) Under the terms of the investment, the net proceeds of the investment
5 will be reserved for reinvestment by the technology development fund
6 in one or more of its programs to assist small businesses in developing
7 technology.

8 (4) The terms of the investment cancel the technology development fund's
9 obligations to repay a default amount if the following conditions are
10 met with respect to the default amount:

11 a. The technology development fund defaults on paying the
12 default amount.

13 b. The technology development fund delivers to the record holder
14 of the investment a written certification that the technology
15 development fund cannot repay the default amount.

16 (5) The technology development fund has issued a contingent credit
17 reservation for the investment as provided in this section.

18 (c) Registration. – Before issuing a contingent credit reservation for a qualified
19 investment as provided in this section, the technology development fund must register
20 the investment with the State Treasurer. The registration must include the investment
21 amount, the date invested, the date due, the name, address, and taxpayer identification
22 number of the investor, and any other information required by the State Treasurer. By
23 February 15 of each year, the State Treasurer must provide the Secretary of Revenue a
24 compilation of this information for the previous calendar year, in the form required by
25 the Secretary.

26 (d) Contingent Credit Reservation. – Within 90 days after receiving a qualified
27 investment, the technology development fund must provide the investor a contingent
28 credit reservation, which is written certification by the technology development fund of
29 the amount of the investment that constitutes a qualified investment for purposes of this
30 Part.

31 (e) Default. – If a technology development fund cannot repay a default amount it
32 may cancel its obligation to repay the default amount by delivering to the record owner
33 of the investment a written certification of the amount, of its inability to repay that
34 amount, and of the fact that the investment was reinvested by the technology
35 development fund in one or more of its programs to assist small businesses in
36 developing technology. The certification must be in the form required by the Secretary
37 of Revenue and must include the name and address of the technology development
38 fund, the name, address, and taxpayer identification number of the owner of the
39 investment, and any other information prescribed by the Secretary."

40 **SECTION 6.** Part 1 of Article 3B of Chapter 105 of the General Statutes, as
41 designated by this act, reads as rewritten:

42 "Part 1. General Provisions.

43 "**§ 105-129.15A. Sunset.**

1 G.S. 105-129.16 is repealed effective for business property placed in service on or
2 after January 1, 2002. The remainder of Part 2 of this Article is repealed effective
3 January 1, 2006. The repeal of G.S. 105-129.16A applies to renewable energy property
4 placed in service on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to
5 buildings to which federal credits are allocated on or after January 1, 2006. Part 3 of this
6 Article is repealed effective for taxable years beginning on or after January 2011.

7 **"§ 105-129.15B. Tax election; cap.**

8 (a) Tax Election. – The credits allowed in this Article are allowed against the
9 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4
10 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed
11 when filing the return on which the first installment of the credit is claimed. This
12 election is binding. Any carryforwards of a credit must be claimed against the same tax.

13 (b) Cap. – The credits allowed in this Article may not exceed fifty percent (50%)
14 of the tax against which they are claimed for the taxable year, reduced by the sum of all
15 other credits allowed against that tax, except tax payments made by or on behalf of the
16 taxpayer. This limitation applies to the cumulative amount of credit, including
17 carryforwards, claimed by the taxpayer under this Article against each tax for the
18 taxable year. Any unused portion of the credits allowed under Part 2 of this Article may
19 be carried forward for the succeeding five ~~years.~~ years and any unused portion of the
20 credit allowed under Part 3 of this Article may be carried forward for the succeeding 20
21 years.

22 **"§ 105-129.15C. Substantiation.**

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

31 **"§ 105-129.15D. Reports.**

32 The Department of Revenue shall report to the Legislative Research Commission
33 and to the Fiscal Research Division of the General Assembly by May 1 of each year the
34 following information for the 12-month period ending the preceding April 1:

- 35 (1) The number of taxpayers that claimed the credits allowed in this
36 Article.
37 (2) The cost of business property and renewable energy property with
38 respect to which credits were claimed.
39 (2a) The location of each qualified North Carolina low-income building
40 with respect to which a low-income housing credit was claimed.
41 (3) The total cost to the General Fund of the credits ~~claimed~~ claimed,
42 itemized by type of credit."

43 **SECTION 7.** G.S. 105-130.5(a) is amended by adding a new subdivision to
44 read:

1 "(14) The amount of any loss or deduction allowed under the Code with
2 respect to the sale, exchange, abandonment, or worthlessness of a
3 qualified investment or with respect to the cancellation of the
4 obligation to repay a qualified investment as defined in G.S.
5 105-129.20."

6 **SECTION 8.** G.S. 105-134.6(c) is amended by adding the following new
7 subdivision to read:

8 "(8) The amount of any loss or deduction allowed under the Code with
9 respect to the sale, exchange, abandonment, or worthlessness of a
10 qualified investment or with respect to the cancellation of the
11 obligation to repay a qualified investment as defined in G.S.
12 105-129.20."

13 **SECTION 9.** This act is effective when it becomes law.