

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-476
SENATE BILL 748**

AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT; TO APPLY A GRADUATED TAX RATE TO SALES OF ELECTRICITY TO MANUFACTURERS BASED ON ANNUAL VOLUME OF ELECTRICITY USED; TO APPLY DEFINITIONS FROM THE STREAMLINED SALES TAX PROJECT TO THE SALES TAX HOLIDAY; AND TO PROVIDE A FOUR-YEAR EXTENSION ON THE EXEMPTION FROM BIDDING LAW REQUIREMENTS FOR THE PIEDMONT TRIAD INTERNATIONAL AIRPORT AUTHORITY.

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 NAICS, that is primarily engaged in providing support services to the company's customers by telephone to support products or services of the company. For the purpose of this definition, a subdivision is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.
- (4) Data processing. – A taxpayer is engaged in data processing if the taxpayer's primary business is any ~~Any~~ of the following industries, as defined by NAICS:
 - a. Computer systems design and related services.
 - b. Software publishers.
 - c. Software reproducing.
 - d. Data processing services.
 - e. On-line information services.

- (5) Development zone. – An area designated as a development zone pursuant to G.S. 105-129.3A.
- (5a) Electronic mail order house. – A taxpayer is engaged in business as an electronic mail order house if the taxpayer's primary business is an An electronic shopping and mail order house, as defined by NAICS.
- (6) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.
- (7) 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.
- (8) Hub. – Defined in G.S. 105-164.3.
- (8a) Interstate passenger air carrier. – Defined in G.S. 105-164.3.
- (9) Large investment. – Defined in G.S. 105-129.4(b1).
- (10) Machinery and equipment. – Engines, machinery, equipment, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (11) Manufacturing. – A taxpayer is engaged in manufacturing if the taxpayer's primary business is an industry Industries in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.
- (11a) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget.
- (12) Purchase. – Defined in section 179 of the Code.
- (13) Warehousing. – A taxpayer is engaged in warehousing if the taxpayer's primary business is an industry Industries in warehousing and storage subsector 493 as defined by NAICS.
- (14) Wholesale trade. – A taxpayer is engaged in wholesale trade if the taxpayer's primary business is an industry Industries in wholesale trade sector 42 as defined by NAICS."

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

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

- (1) ~~Air courier services. – A taxpayer is engaged in the air courier services business if the taxpayer's primary business is~~ The furnishing of 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).
- (4) Computer services. – Any of the following industries or industry groups, as defined by NAICS, if the taxpayer provides the services primarily to persons who are not related entities with respect to the taxpayer:

- a. Computer systems design and related services.
 - b. Software publishing.
 - c. Software reproducing.
 - d. On-line information services.
- (3a)(5) ~~Customer service center. – An auxiliary subdivision establishment of a telecommunications or financial services company, as defined by NAICS, that is primarily engaged in providing support services to the company's customers by telephone to support products or services of the company. For the purpose of this definition, a subdivision an establishment is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.~~
- (4) ~~Data processing. – A taxpayer is engaged in data processing if the taxpayer's primary business is any of the following industries, as defined by NAICS:~~
- a. ~~Computer systems design and related services.~~
 - b. ~~Software publishers.~~
 - c. ~~Software reproducing.~~
 - d. ~~Data processing services.~~
 - e. ~~On-line information services.~~
- (6) Data processing. – Any combination of the services listed in this subdivision, if the taxpayer provides the services primarily to persons who are not related entities with respect to the taxpayer. The term does not include payroll services, text processing, desktop publishing, or financial transaction processing.
- a. Data entry and preparation.
 - b. Database creation, conversion, and management, including warehousing, retrieval, and utilization of data in databases.
 - c. Data capture and imaging, including optical scanning and microfilm recording and imaging.
 - d. Computer processing time rental.
 - e. Data storage media conversion.
 - f. Data file format conversion.
- (5)(7) ~~Development zone. – An area designated as a development zone pursuant to G.S. 105-129.3A.~~
- (5a)(8) ~~Electronic mail order house. – A taxpayer is engaged in business as an electronic mail order house if the taxpayer's primary business is an An electronic shopping and mail order house, as defined by NAICS.~~
- (6)(9) ~~Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.~~
- (10) Establishment. – Defined by NAICS.
- (7)(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.~~
- (8)(12) ~~Hub. – Defined in G.S. 105-164.3.~~
- (8a)(13) ~~Interstate passenger air carrier. – Defined in G.S. 105-164.3.~~
- (9)(14) ~~Large investment. – Defined in G.S. 105-129.4(b1).~~
- (10)(15) ~~Machinery and equipment. – Engines, machinery, equipment, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.~~
- (11)(16) ~~Manufacturing. – A taxpayer is engaged in manufacturing if the taxpayer's primary business is an An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.~~

- ~~(11a)~~(17) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and ~~Budget~~. Budget as of December 31, 1997.
- ~~(12)~~(18) Purchase. – Defined in section 179 of the Code.
- (19) Related entity. – Defined in G.S. 105-130.7A.
- ~~(13)~~(20) Warehousing. – ~~A taxpayer is engaged in warehousing if the taxpayer's primary business is an~~ An industry in warehousing and storage subsector 493 as defined by NAICS.
- ~~(14)~~(21) Wholesale trade. – ~~A taxpayer is engaged in wholesale trade if the taxpayer's primary business is an~~ An industry in wholesale trade sector 42 as defined by NAICS."

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

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

"§ 105-129.2A. Sunset; studies.

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

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

- (1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.
- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

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

- (1) Study of the distribution of tax incentives across new and expanding industries.
- (2) Examination of data on economic recruitment for the period from 1994 through ~~2000~~ the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.
- (3) Measuring the direct costs and benefits of the tax incentives.
- (4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

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

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

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

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

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.
- (2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

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

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

- (1) A county that meets both of the conditions set out below is designated an enterprise tier one area:
 - a. Its population is less than ~~10,000~~ 12,000.
 - b. More than sixteen percent (16%) of its population is below the federal poverty level according to the most recent federal decennial census.
- (2) A county that meets both of the conditions set out below has an enterprise tier designation one level below the designation it would otherwise have under subsection (a) of this section:
 - a. Its population is less than 50,000.
 - b. More than eighteen percent (18%) of its population is below the federal poverty level according to the most recent federal decennial census.
- (3) A county that has a population of less than ~~25,000~~ 35,000 and that would otherwise be designated an enterprise tier four or five area under this section must be designated an enterprise tier three area."

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

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

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

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

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

"(b4) 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 applies for the credit, at the business location with respect to which the credit is claimed, the taxpayer has no ~~outstanding~~ citations under the Occupational Safety and Health Act ~~and has had no serious violation as defined in G.S. 95-127 within the last three years 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 Secretary of Commerce will provide the Department of Labor a list of all taxpayers making this certification. The Department of Labor may conduct random audit checks to verify taxpayers' certifications. The Department of Labor must notify the Department of Revenue of any taxpayer certifications it determines are not accurate."

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

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

"§ 105-129.4. Eligibility; forfeiture.

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

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

(2) Single business. – A taxpayer is eligible for the other credits allowed by this Article other than by G.S. 105-129.12 if the primary business of the taxpayer engages in is one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of jobs, investment, and activity with respect to which a credit is claimed are used in that business:

(1)a. Air courier services.

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

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

(3)b. Data processing.

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

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

(4)a. Manufacturing.

(5)b. Warehousing.

(6)c. Wholesale trade.

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

a. Computer services.

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

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

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

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

- c. The jobs, investment, and activity with respect to which a credit is claimed are used in that activity.
- (6) Warehousing. – A taxpayer is eligible for the credits allowed by this Article other than by G.S. 105-129.12 if all of the following conditions are met:
 - a. The primary activity of an establishment of the taxpayer is in warehousing.
 - b. The warehousing establishment is located in an enterprise tier one, two, or three area and serves 25 or more establishments of the taxpayer in at least five different counties in one or more states.
 - c. The jobs, investment, and activity with respect to which a credit is claimed are used in the warehousing establishment.

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

(a2) 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 described in subsection (a) of this section, the credit expires. ~~expires and the taxpayer may not take any remaining installments of the credit. The~~ If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible business falls below the minimum number required under subsection (a) of this section, any credit associated with that business 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. 105-129.5. A change in the enterprise tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the credit for worker training ~~if-if, for the calendar year the jobs are created or the worker training is provided, the average wage of the jobs for which the credit is claimed meet~~ meets the wage standard at the time the taxpayer applies for the credit, and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, ~~or~~ the credit for investing in real property for a central office or aircraft facility if the facility, or the credit for substantial investment in other property if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed ~~meet~~meets the wage standard. standard at the time the taxpayer applies for the credit. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the ~~immediately preceding taxable~~

~~year~~ calendar year the taxpayer engages in the activity that qualifies for the credit even if ~~they~~ those positions are not filled at the time the taxpayer ~~applies for~~ claims the credit.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county.

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

(b2) Health Insurance. – A taxpayer is eligible for a credit for creating jobs or for worker training under this Article if the taxpayer provides health insurance for the positions for which the credit is claimed ~~at the time the taxpayer applies for~~ each year it claims an installment or carryforward of the credit. A taxpayer is eligible for the other credits under this Article if the taxpayer provides health insurance for all of the full-time positions at the location with respect to which the credit is claimed ~~at the time the taxpayer applies for~~ each year it claims an installment or carryforward of 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.

Each year that a taxpayer claims an installment or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for the jobs for which the credit was claimed or the full-time jobs at the location 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.

(b3) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer ~~applies for~~ first claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or

alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). ~~The Secretary of Commerce will provide the Department of Environment and Natural Resources a list of all taxpayers making this certification. The Department of Environment and Natural Resources may conduct random audit checks to verify taxpayers' certifications. The Department of Environment and Natural Resources must notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within this last five years.~~ of any taxpayer certifications it determines are not accurate.

(b4) 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 ~~applies for first claims~~ the credit, at the business location 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 Secretary of Commerce will provide the Department of Labor a list of all taxpayers making this certification. The Department of Labor may conduct random audit checks to verify taxpayers' certifications. The Department of Labor must notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.~~ of any taxpayer certifications it determines are not accurate.

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

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

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

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. 105-241.1(i), 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. If a taxpayer forfeits the credit for creating jobs, the technology commercialization credit, or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the technology commercialization credit or the credit for investing in machinery and equipment was claimed.

(e) 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 installment of 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. § 2102, 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 an enterprise tier one, two, or three area.

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

(g) 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."

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

SECTION 7.(a) The General Assembly finds that the purpose of Article 3A of Chapter 105 of the General Statutes is to encourage the creation of new quality jobs and to encourage new investment in machinery and equipment, research and development, and real property. The General Assembly further finds that allowing taxpayers to file amended returns and retroactively claim credits under that Article does not further this purpose of encouraging job creation and new investment.

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

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

(a) Tax Election. – 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 the technology commercialization credit allowed in G.S.

105-129.9A between the taxes against which it is allowed. The taxpayer shall elect the percentage of the credit that will be taken against each tax when filing the return on which the credit is first taken. This election is binding. The percentage of the credit elected to be taken against each tax may be carried forward only against the same tax.

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

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

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

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer must 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."

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

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

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

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

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

~~(a1) Fee. – When filing an application for certification a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this section, Article, the taxpayer must pay the Department of Commerce Revenue a fee of five hundred dollars (\$500.00) for each credit the taxpayer claims or intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars (\$1,500) per taxpayer per taxable year. This fee does not apply to any credit the taxpayer claims or intends to claim with respect to a location that is in a development zone as defined in G.S. 105-129.3A. If the taxpayer applies for certification for claims or intends to claim a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.~~

~~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.~~

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

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

- ~~(1) The number of applications-claims for each credit allowed in this Article.~~
- ~~(2) The number and enterprise tier area of new jobs with respect to which credits were applied for, generated and to which credits were claimed.~~
- ~~(3) The cost and enterprise tier area of machinery and equipment with respect to which credits were applied for, generated and to which credits were claimed.~~
- ~~(4) The number of new jobs created by businesses located in within development zones, and the percentage of those jobs at those locations that were filled by residents of the zones.~~
- ~~(5) The amount and enterprise tier area of worker training expenditures with respect to which credits were generated and to which credits were claimed.~~
- ~~(6) The amount and enterprise tier area of new research and development expenditures with respect to which credits were generated and to which credits were claimed.~~

- (7) The cost and enterprise tier area of real property investment with respect to which credits were generated and to which credits were claimed."

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

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

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

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

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

"§ 105-129.7. Substantiation.

(a) To claim a credit allowed by this Article, the taxpayer must 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) Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article for the first taxable year the credit is claimed and for every year in which a subsequent installment or a carryforward of that credit is claimed. The qualifying information must be in the form prescribed by the Secretary, must cover each taxable year beginning with the first taxable year the credit is claimed, and must 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 an initial credit and any installments and carryforwards, and includes the following:

- (1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job, including any enterprise tier ~~or development zone~~ designation of that place. In addition, for jobs that are located in a development zone, the number of those jobs that are filled by residents of the development zone.
- (2) The type of business with respect to which the credit is claimed, as required by G.S. 105-129.4(a), and wage information described in G.S. 105-129.4(b).
- (3) If the credit is claimed with respect to a large investment ~~certified~~ under G.S. ~~105-129.4(b1) or 105-129.4(b1)~~, is a credit with a carryforward period of 10 years under G.S. 105-129.5(c), or is a credit claimed under G.S. 105-129.12A, the amount of the investment requirement under those subsections that has been met to date.
- (4) Qualifying information required for the credit for creating jobs allowed under G.S. 105-129.8, the credit for investing in machinery and equipment allowed under G.S. 105-129.9, the credit for worker training allowed under G.S. 105-129.11, the credit for investing in central office or aircraft facility property allowed in G.S. 105-129.12,

the credit for substantial investment in other property under G.S. 105-129.12A, and any other credits allowed under this Article."

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

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

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

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

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

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that are in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that were 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 machinery and equipment in service in this State. ~~A taxpayer that claims a credit under this section must include with the application for certification required under G.S. 105-129.6(a) specific documentation supporting the taxpayer's calculation of the eligible investment amount under this subsection.~~

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier ~~of the area~~ where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service ~~in~~ at more than one ~~area~~ establishment in an enterprise tier during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service ~~in~~ at each ~~area~~ establishment. If the taxpayer places eligible machinery and equipment in service ~~in an area~~ at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit for that machinery and equipment unless the cost of that machinery and equipment is offset in the same taxable

year by the taxpayer's new investment in eligible machinery and equipment placed in service in the same enterprise tier, as provided in this subsection. If, during the taxable year the taxpayer disposed of the machinery and equipment for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same enterprise tier as the machinery and equipment that were disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the machinery and equipment that were disposed of, then the taxpayer forfeits the remaining installments of the credit for the machinery and equipment that were disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the machinery and equipment that were disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of machinery and equipment the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible machinery and equipment that are in service. If in a single taxable year machinery and equipment with respect to two or more credits in the same tier are disposed of, the net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same tier is compared to the total cost of all the machinery and equipment for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

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

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

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

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

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

"(c) **Documentation.** – If the taxpayer claims the exception provided in subdivision (b)(2) of this section, ~~the Secretary of Commerce must obtain an opinion of the Attorney General that the taxpayer meets all of the conditions of subdivision (b)(2) before the Secretary certifies the application under G.S. 105-129.6(a).~~ the taxpayer must

first request a ruling by the Department of Revenue as to whether the taxpayer meets all of the conditions of subdivision (b)(2) of this section.

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

- (1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a research university or are used to produce resources essential to the taxpayer's production based on technology developed by and licensed from a research university.
- (2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.
- (3) The eligible investment amount is at least ten million dollars (\$10,000,000) for the taxable year.
- (4) The Secretary of Commerce has ~~certified~~ made a written determination that the taxpayer ~~will~~ is expected to invest at least one hundred fifty million dollars (\$150,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.
- (5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this section with respect to the same location.

(e) Fifteen Percent Credit. – A taxpayer qualifies for a fifteen percent (15%) credit under this section if it meets all of the following conditions:

- (1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a research university, or are used to produce resources essential to the taxpayer's production based on technology developed by and licensed from a research university.
- (2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.
- (3) The eligible investment amount is at least ten million dollars (\$10,000,000) for the taxable year.
- (4) The Secretary of Commerce has ~~certified~~ made a written determination that the taxpayer ~~will~~ is expected to invest at least one hundred million dollars (\$100,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.
- (5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this section with respect to the same location."

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

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

"(c) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central office or aircraft facility, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central office or aircraft facility, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. ~~If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central office or aircraft~~

~~facilities in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.~~

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

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

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

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

(a) Credit. – If a taxpayer that has purchased or leased real property in an enterprise tier one or two area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.4 are met. For the purposes of this section, property is located in an enterprise tier one or two area if the area the property is located in was an enterprise tier one or two area at the time the taxpayer applied for the certification required under G.S. 105-129.4(b5). 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 not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, 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. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business 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.

(b) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, 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 an eligible business and the denominator of which is the total square footage of the property.

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

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

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

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

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

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

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

SECTION 15.(a) As part of its ongoing review of business tax incentives, including those under Article 3A of Chapter 105 of the General Statutes, the Revenue Laws Study Committee shall study the tax rate structure relating to sales of electricity to manufacturers. This study shall include a thorough review of the legal and fiscal effects of exempting all electricity sold to manufacturers from the sales and use tax, of exempting electricity used by a manufacturer in certain processes or furnaces from the sales and use tax, and of creating a graduated tax rate structure for sales of electricity to manufacturers. The Revenue Laws Study Committee shall make an interim report of its findings and recommendations to the 2002 Regular Session of the 2001 General Assembly and shall make a final report of its findings and recommendations to the 2003 General Assembly.

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

SECTION 15.(c) As part of its ongoing review of business tax incentives, including those under Article 3A of Chapter 105 of the General Statutes, the Revenue Laws Study Committee shall study the tax rate structure relating to sales of piped natural gas to manufacturers. This study shall include a thorough review of the legal and fiscal effects of exempting all piped natural gas received by a manufacturer from the piped natural gas excise tax, and of exempting piped natural gas that is used by a manufacturer in certain processes or furnaces from the piped natural gas excise tax. The Revenue Laws Study Committee shall make an interim report of its findings and recommendations to the 2002 Regular Session of the 2001 General Assembly and shall make a final report of its findings and recommendations to the 2003 General Assembly.

SECTION 16.(a) Section 22 of S.L. 1998-55 reads as rewritten:

"Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, ~~2004, 2008.~~ The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date."

SECTION 16.(b) This section is effective when it becomes law.

SECTION 17.(a) Reserved.

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

SECTION 17.(c) G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(1g) Electricity Sold to Manufacturers.

- a. General. – Qualified electricity is taxable as provided in this subdivision. Qualified electricity is electricity that is measured by a separate meter or another separate measuring device and is sold to a manufacturing industry or manufacturing plant for use in connection with the operation of the industry or plant.
- b. Rates. – A single tax rate applies to all of the qualified electricity received by an industry or a plant in each fiscal year beginning July 1. That tax rate is determined based on the megawatt-hour volume of qualified electricity received by the industry or plant during the previous calendar year, in accordance with the following table. The rates set based on the table are subject to adjustment as provided in sub-subdivision f. of this subdivision.
- | <u>Previous Year's
Megawatt-Hours
Received</u> | <u>Rate
for Fiscal
Year</u> |
|--|-------------------------------------|
| <u>1,200,000 or Less</u> | <u>2.83%</u> |
| <u>Over 1,200,000</u> | <u>0.17%</u> |
- c. Multiple Meters. – If the industry or plant receives qualified electricity that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.
- d. Procedure. – During the first five months of each calendar year, each retailer of qualified electricity must determine the annual volume of electricity it sold during the previous calendar year to each manufacturing industry and manufacturing plant. Based on this volume, the retailer must determine the tax rate that will apply to each industry and plant. If the applicable rate is different from the rate in effect for the previous fiscal year, the retailer must notify the taxpayer of the new rate on or before June 1 before it goes into effect.
- e. New Manufacturers. – If a manufacturer begins business using qualified electricity, the retailer must establish a rate at the time the manufacturer first purchases qualified electricity. In this case, and in the case of a manufacturer that was not in business for the entire calendar year preceding the rate determination, the retailer must estimate the expected annual volume of qualified electricity it will sell to the plant or industry during its first twelve months of business and determine the applicable tax rate based on this estimate.
- f. Adjustment. – If the actual volume of qualified electricity received by an industry or a plant during a fiscal year dictates a different tax rate from the rate charged for that fiscal year, the manufacturer is eligible for a refund of any excess or is liable for payment of any deficiency. A manufacturer who is eligible for a refund may apply to the Department and a manufacturer who is liable for a deficiency must report the liability to the Department."

SECTION 17.(d) G.S. 105-164.4(a)(1d) reads as rewritten:

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

SECTION 17.(e) G.S. 105-164.13(8) reads as rewritten:

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

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

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

SECTION 17.(f) G.S. 105-164.4(a)(1g)b., as enacted by subsection (c) of this section, reads as rewritten:

"b. Rates. – A single tax rate applies to all of the qualified electricity received by an industry or a plant in each fiscal year beginning July 1. That tax rate is determined based on the megawatt hour volume of qualified electricity received by the industry or plant during the previous calendar year, in accordance with the following table. The rates set based on the table are subject to adjustment as provided in sub-subdivision f. of this subdivision.

Previous Year's Megawatt Hours Received	Rate for Fiscal Year
<u>1,200,000-5,000</u> or Less	2.83%
<u>Over 5,000 up to 250,000</u>	<u>2.25%</u>
<u>Over 250,000 up to 1,200,000</u>	<u>2%</u>
<u>Over 1,200,000</u>	0.17% "

SECTION 17.(g) Subsections (b) and (c) of this section become effective July 1, 2002, and apply to sales made on or after that date. Subsection (f) of this section becomes effective July 1, 2005, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law.

SECTION 18.(a) G.S. 105-164.3, as amended by S.L. 2001-347, S.L. 2001-414, S.L. 2001-424, and S.L. 2001-420, is amended by adding the following new subdivisions in the correct alphabetical order:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

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

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

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

(16e) Sport or recreational equipment. – Items designed for human use and worn in conjunction with an athletic or recreational activity that are not

suitable for general use including ballet shoes, cleated athletic shoes, shin guards, and ski boots."

SECTION 18.(b) G.S. 105-164.13C, as enacted by S.L. 2001-424, reads as rewritten:

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

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

- (1) Clothing with a sales price of one hundred dollars (\$100.00) or less per item.
- ~~(2) Clothing accessories, such as hats, scarves, hosiery, and handbags, with a sales price of one hundred dollars (\$100.00) or less per item.~~
- ~~(3) Footwear with a sales price of one hundred dollars (\$100.00) or less per item.~~
- ~~(4)~~(2) School supplies, such as pens, pencils, paper, binders, notebooks, textbooks, reference books, book bags, lunchboxes, and calculators, with a sales price of one hundred dollars (\$100.00) or less per item.
- ~~(5)~~(3) Computers, printers and printer supplies, and educational computer software, with a sales price of three thousand five hundred dollars (\$3,500) or less per item.
- (4) Sport or recreational equipment with a sales price of fifty dollars (\$50.00) or less per item.

(b) The exemption allowed by this section does not apply to the following:

- ~~(1) Sales of jewelry, cosmetics, eyewear, wallets, or watches.~~Sales of clothing accessories or equipment.
- ~~(2)~~(3) Sales of protective equipment.
- ~~(2)~~(3) Sales of furniture.
- ~~(3)~~(4) Sales involving a layaway contract or a similar deferred payment and delivery plan.
- ~~(4)~~(5) Sales of an item for use in a trade or business.
- ~~(5)~~(6) Rentals.

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

SECTION 18.(c) This section becomes effective January 1, 2002, and applies to sales made on or after that date. The Codifier is authorized to modify G.S. 105-164.3 to change the format of the existing definitions to match the format of the new definitions enacted during 2001, but not to change the format of the new definitions enacted in 2001 to match the format of the existing definitions. The Codifier is authorized to renumber these definitions as necessary to maintain their alphabetical order.

SECTION 19.(a) Section 9 of S.L. 1999-389 reads as rewritten:

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

SECTION 19.(b) This section is effective when it becomes law.

SECTION 20. Except as otherwise provided in this act, this act is effective when it becomes law.
In the General Assembly read three times and ratified this the 20th day of November, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:06 p.m. this 29th day of November, 2001