

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 944

Short Title: 21st Century Jobs Act. (Public)

Sponsors: Senators Hoyle; Allran, Pittenger, Sloan, Stevens, and Swindell.

Referred to: Finance.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE JOBS FOR THE 21ST CENTURY.
3 The General Assembly of North Carolina enacts:

4 **PART 1. EXTEND QUALIFIED BUSINESS TAX CREDIT**

5 **SECTION 1.** G.S. 105-163.015 reads as rewritten:

6 "**§ 105-163.015. Sunset.**

7 This Part is repealed effective for investments made on or after January 1,
8 ~~2004-2007.~~"

9 **PART 2. EXTEND STATE PORTS TAX CREDIT**

10 **SECTION 2.** G.S. 105-130.41(d) reads as rewritten:

11 "(d) Sunset. – This section is repealed effective for taxable years beginning on or
12 after January 1, ~~2004-2007.~~"

13 **SECTION 3.** G.S. 105-151.22(d) reads as rewritten:

14 "(d) Sunset. – This section is repealed effective for taxable years beginning on or
15 after January 1, ~~2004-2007.~~"

16 **PART 3. RESEARCH AND DEVELOPMENT TAX INCENTIVE**

17 **SECTION 4.** Chapter 105 of the General Statutes is amended by adding a
18 new Article 3F entitled "Research and Development."

19 **SECTION 5.** G.S. 105-129.10(a) is recodified as G.S. 105-129.55, and G.S.
20 105-129.10(b) is recodified as G.S. 105-129.56. G.S. 105-129.10(c) is repealed.

21 **SECTION 6.** Article 3F of Chapter 105 of the General Statutes, as enacted
22 by this Part, reads as rewritten:

23 "Article 3F.

24 "Research and Development.

25 "**§ 105-129.50. Definitions.**

26 The definitions in section 41 of the Code apply in this Article. In addition, the
27 following definitions apply in this Article:

28 (1) through (3) Reserved.

- 1 (4) Midsize business. – A business whose annual receipts, combined with
2 the annual receipts of all related persons, for the applicable period of
3 measurement were one million dollars (\$1,000,000) or more but did
4 not exceed twenty-five million dollars (\$25,000,000).
- 5 (5) NAICS. – Defined in G.S. 105-129.2.
- 6 (6) North Carolina research university. – An institution of higher
7 education that is located in North Carolina and is classified as a
8 Research I university or a Research II university in the most recent
9 edition of 'A Classification of Institutions of Higher Education', the
10 official report of The Carnegie Foundation for the Advancement of
11 Teaching.
- 12 (7) Period of measurement. – Defined in the Small Business Size
13 Regulations of the federal Small Business Administration.
- 14 (8) Qualified North Carolina research expenses. – Qualified research
15 expenses for research performed in this State.
- 16 (9) Receipts. – Defined in the Small Business Size Regulations of the
17 federal Small Business Administration.
- 18 (10) Related person. – Defined in G.S. 105-163.010.
- 19 (11) Small business. – A business whose annual receipts, combined with
20 the annual receipts of all related persons, for the applicable period of
21 measurement did not exceed one million dollars (\$1,000,000).

22 **"§ 105-129.51. Administration.**

23 (a) A taxpayer is eligible for the credits allowed in this Article if it satisfies the
24 requirements of G.S. 105-129.4(b), (b2), (b3), and (b4) relating to wage standard, health
25 insurance, environmental impact, and safety and health programs, respectively. The
26 three credits allowed in this Article are exclusive. A taxpayer may elect to take only one
27 of the three credits with respect to its research activities in a taxable year. It may elect a
28 different credit for expenses in a subsequent taxable year.

29 **"§ 105-129.52. Tax election; cap.**

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

35 (b) Cap. – If the credit allowed in G.S. 105-129.57 for a small business exceeds
36 the amount of tax against which it is claimed for the taxable year reduced by the sum of
37 all credits allowable, the taxpayer may elect instead of carrying it forward to exchange
38 the unused amount of the credit for a cash payment made by the Secretary equal to
39 seventy percent (70%) of the unused amount of the credit.

40 Any other credit allowed in this Article may not exceed fifty percent (50%) of the
41 amount of tax against which it is claimed for the taxable year, reduced by the sum of all
42 other credits allowed against that tax, except tax payments made by or on behalf of the
43 taxpayer. This limitation applies to the cumulative amount of credit, including
44 carryforwards, claimed by the taxpayer under this Article against each tax for the

1 taxable year. Any unused portion of a credit allowed in this Article may be carried
2 forward for the succeeding 15 years.

3 **"§ 105-129.53. Substantiation.**

4 To claim a credit allowed by this Article, the taxpayer must provide any information
5 required by the Secretary. Every taxpayer claiming a credit under this Article must
6 maintain and make available for inspection by the Secretary any records the Secretary
7 considers necessary to determine and verify the amount of the credit to which the
8 taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the
9 credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to
10 maintain adequate records or to make them available for inspection.

11 **"§ 105-129.54. Reports.**

12 The Department of Revenue must report to the Revenue Laws Study Committee and
13 to the Fiscal Research Division of the General Assembly by May 1 of each year the
14 following information for the 12-month period ending the preceding April 1:

- 15 (1) The number of taxpayers that claimed each credit allowed in this
16 Article.
17 (2) The amount of each credit claimed.
18 (3) The total cost to the General Fund of the credits claimed.

19 **"§ 105-129.55. General ~~credit~~-credit for increasing research and development.**

20 A taxpayer that claims for the taxable year a federal income tax credit under section
21 41(a) of the Code for increasing research activities is allowed a credit equal to five
22 percent (5%) of the State's apportioned share of the taxpayer's expenditures for
23 increasing research activities. The State's apportioned share of a taxpayer's expenditures
24 for increasing research activities is the excess of the taxpayer's qualified research
25 expenses for the taxable year over the base amount, as determined under section 41 of
26 the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified North
27 Carolina research expenses ~~in this State~~ for the taxable year to the taxpayer's total
28 qualified research expenses for the taxable year.

29 **"§ 105-129.56. Alternative ~~credit~~-credit for increasing research and development.**

30 A taxpayer that claims the alternative incremental credit under section 41(c)(4) of
31 the Code for increasing research activities is allowed a credit equal to twenty-five
32 percent (25%) of the State's apportioned share of the federal credit claimed. The State's
33 apportioned share of the federal credit claimed is the amount of the alternative
34 incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the
35 taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified
36 North Carolina research expenses ~~in this State~~ for the taxable year to the taxpayer's total
37 qualified research expenses for the taxable year. For the purpose of this section, the
38 amount of the alternative incremental credit claimed by a taxpayer is determined
39 without regard to any reduction elected under section 280C(c) of the Code.

40 **"§ 105-129.57. Credit for North Carolina research and development.**

41 A taxpayer that has qualified North Carolina research expenses, basic research
42 payments to a North Carolina research university for research in this State, or both for
43 the taxable year is allowed a credit equal to the sum of (i) twenty-five percent (25%) of
44 the basic research payments to a North Carolina research university for research in this

1 State plus (ii) a percentage of the qualified North Carolina research expenses,
2 determined as provided in this section. If part of the taxpayer's qualified North Carolina
3 research expenses qualifies under subdivision (3) of this section and the remainder
4 qualifies under subdivision (4) of this section, the applicable percentages apply
5 separately to each part of the expenses.

6 (1) Small business. – If the taxpayer was a small business as of the last
7 day of the taxable year, the applicable percentage is five percent (5%).
8 The credit under this section for a small business is partially
9 refundable at the election of the taxpayer as provided in G.S.
10 105-129.52.

11 (2) Midsize business. – If the taxpayer was a midsize business as of the
12 last day of the taxable year, the applicable percentage is five percent
13 (5%).

14 (3) Low-tier research. – If the qualified North Carolina research was
15 performed in an enterprise tier one, two, or three area, the applicable
16 percentage is five percent (5%).

17 (4) Other research. – To the extent the taxpayer's qualified North Carolina
18 research is not covered under subdivision (1), (2), or (3) of this section,
19 the applicable percentage is one percent (1%)."

20 **PART 4. REDUCE SALES TAX ON RESEARCH AND DEVELOPMENT**
21 **EQUIPMENT**

22 **SECTION 7.** G.S. 105-164.4A is amended by adding a new subdivision to
23 read:

24 **"§ 105-164.4A. Articles taxed at one percent (1%), eighty dollars (\$80.00).**

25 The following articles are taxable under G.S. 105-164.4(a)(1d):

26 ...
27 (13) Research and development equipment. – Sales of machinery and
28 equipment for use in this State to conduct qualified research as defined
29 in section 41(d) of the Code."

30 **PART 5. SALES TAX REFUND FOR BIOPROCESSING PLANT**
31 **CONSTRUCTION MATERIALS.**

32 **SECTION 8.** G.S. 105-164.14 is amended by adding a new subsection to
33 read:

34 "(j) Bioprocessing Facilities. – The owner of a facility primarily engaged in
35 bioprocessing is allowed an annual refund of sales and use taxes paid by it under this
36 Article on building materials, building supplies, fixtures, and equipment that become a
37 part of the real property of the bioprocessing facility. Liability incurred indirectly by the
38 owner for sales and use taxes on these items is considered tax paid by the owner. A
39 request for a refund must be in writing and must include any information and
40 documentation required by the Secretary. A request for a refund is due within six
41 months after the end of the bioprocessing facility's fiscal year. Refunds applied for after
42 the due date are barred."

43 **SECTION 9.(a)** G.S. 105-164.3 is amended by adding a new subdivision to
44 read:

1 **"§ 105-164.3. Definitions.**

2 The following definitions apply in this Article:

3 (1) Bioprocessing. – Manufacturing or processing that includes genetic
4 manipulation as part of transforming raw materials to finished
5 products."

6 **SECTION 9.(b)** The Revisor of Statutes is authorized to renumber the
7 definitions in G.S. 105-164.3 to maintain alphabetical order.

8 **PART 6. GENERAL PROVISIONS**

9 **SECTION 10.** Part 3 of this act is effective for taxable years beginning on or
10 after January 1, 2004. Parts 4 and 5 of this act become effective January 1, 2004, and
11 apply to sales made on or after that date. The remainder of this act is effective when it
12 becomes law.