

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 753  
SENATE BILL 740

AN ACT TO AUTHORIZE THE NORTH CAROLINA DEPARTMENT OF REVENUE TO ENTER INTO AGREEMENTS WITH THE EASTERN BAND OF CHEROKEE INDIANS REGARDING REFUNDS OF MOTOR FUELS AND SPECIAL FUELS TAXES, TO INCREASE THE NUMBER OF COUNTIES ELIGIBLE FOR CLASSIFICATION AS A SEVERELY DISTRESSED COUNTY FROM TWENTY TO TWENTY-FIVE, AND TO PROVIDE ELIGIBILITY CRITERIA FOR TAX CREDITS FOR SEVERELY DISTRESSED COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. By virtue of the Act of June 4, 1924, Pub. L. No. 68-191, Ch. 253, 43 Stat. 370, Congress and the United States courts have recognized the Eastern Band of Cherokee Indians as possessing sovereign legal rights over their members and their trust lands.

Sec. 2. The following definitions apply in this act:

- (1) Chief. The Principal Chief of the Eastern Band of the Cherokee Indians.
- (2) Council. The Tribal Council of the Eastern Band of the Cherokee Indians.
- (3) Tribe. The Eastern Band of the Cherokee Indians.

Sec. 3. Notwithstanding any other provision of law concerning refunds of motor fuels and special fuels taxes, the Department of Revenue may enter into a memorandum of understanding or an agreement with the Eastern Band of Cherokee Indians to make refunds of motor fuels and special fuels taxes to the Tribe in its collective capacity on behalf of its members who reside on or engage in otherwise taxable transactions within Cherokee trust lands. The memorandum or agreement shall be approved by the Council and signed by the Chief on behalf of the Tribe and shall be signed by the Secretary of Revenue on behalf of the Department of Revenue. The memorandum or agreement may not affect the right of an individual member of the Tribe to a refund and shall provide for deduction of amounts refunded to individual members of the Tribe from the amounts to be refunded to the Tribe on behalf of all members. The memorandum or agreement may be effective for a definite or indefinite period, as specified in the agreement.

Sec. 4. These refunds shall be drawn from the Highway Fund.

Sec. 4.1. (a) G.S. 105-130.40(c), as amended by Chapter 111 of the 1989 Session Laws, reads as rewritten:

"(c) County Designation. A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the ~~twenty~~twenty-five highest in the State. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation."

(b) G.S. 105-130.40, as amended by Chapter 111 of the 1989 Session Laws, is amended by adding a new subsection to read:

"(b1) Eligibility. - A corporation is eligible for the tax credit allowed by this section only if it obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that it engages in the manufacturing of goods, or that it engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or of finished products."

(c) G.S. 105-151.17(c), as amended by Chapter 111 of the 1989 Session Laws, reads as rewritten:

"(c) County Designation. – A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the ~~twenty~~twenty-five highest in the State. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation."

(d) G.S. 105-151.17, as amended by Chapter 111 of the 1989 Session Laws, is amended by adding a new subsection to read:

"(b1) Eligibility. - A taxpayer is eligible for the tax credit allowed by this section only if the taxpayer obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that the taxpayer engages in the manufacturing of goods, or that he engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or of finished products."

Sec. 4.2. Section 4.1 of this act is effective for taxable years beginning on or after January 1, 1989, and notwithstanding the provisions of G.S. 105-130.40(c) and G.S. 105-151.17(c) requiring designations to be made on or before December 31 of a year to be effective the following year, the Secretary of the Department of Commerce shall make any designations authorized by Section 4.1 of this act before September 1, 1989, and those designations shall be effective for 1989.

Sec. 5. Sections 1 through 4 of this act are effective retroactively to January 1, 1985.

In the General Assembly read three times and ratified this the 10th day of August, 1989.