GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1110
Finance Committee Substitute Adopted 6/15/99
House Committee Substitute Favorable 7/8/99

Short Title: Tech. Commercialization Credit. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN INCENTIVE FOR BUSINESSES TO FIND COMMERCIAL USES FOR TECHNOLOGY DEVELOPED BY RESEARCH UNIVERSITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.9 reads as rewritten:

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

(a) ~~Credit.~~General Credit. – If a taxpayer that has purchased or leased eligible machinery and equipment places it 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 is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is 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 is 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 was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible 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 more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area 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. 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.

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

"**§ 105-129.9A. Technology commercialization credit.**

(a) Credit. – If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer may qualify for a credit as provided in this section. If the taxpayer is also eligible for the credit allowed under G.S. 105-129.9 with respect to the eligible machinery and equipment, the taxpayer may choose instead of the credit allowed under G.S. 105-129.9 with respect to the machinery and equipment to take one of the credits under this section for which the taxpayer qualifies. The twenty percent (20%) credit is a credit equal to twenty percent (20%) of the excess of the eligible investment amount over the applicable threshold for the taxable year. The fifteen percent (15%) credit is a credit equal to fifteen percent (15%) of the excess of the eligible investment amount over the applicable threshold for the taxable year.

Except as provided in this section, the provisions of G.S. 105-129.9 apply to the credits allowed under this section. As used in this section, the term 'research university' means an institution of higher education classified as a Research I university or a Research II university in the most recent edition of 'A Classification of Institutions of Higher Education,' the official report of The Carnegie Foundation for the Advancement of Teaching.

A credit allowed under this section must be taken for the taxable year in which the machinery and equipment are placed in service. A taxpayer may take the twenty percent (20%) credit allowed under this section, the fifteen percent (15%) credit allowed under this section, or the credit allowed in G.S. 105-129.9 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. – In calculating the eligible investment amount under this section, for the purpose of determining the taxpayer's machinery and equipment in service in this State during the taxable year and the three immediately preceding taxable years, the following exceptions apply:

(1) Machinery and equipment that were transferred to another taxpayer during the three-year period are considered the taxpayer's machinery and equipment if they are still in service in this State during the taxable year, and the taxpayer to whom they were transferred is ineligible under G.S. 105-129.4(e) to claim a new credit for the investment under this Article.

(2) Machinery and equipment that were taken out of service during the three-year period are considered the taxpayer's machinery and equipment in service if all of the following conditions are met:

a. The machinery and equipment were taken out of service by the taxpayer or by the person to whom the taxpayer transferred them.

b. The machinery and equipment were taken out of service at a location separate from any location with respect to which the taxpayer claims a credit under this section.

c. The machinery and equipment were used in a business that was not and is not competitive with any business with respect to which the taxpayer claimed a credit under this section. For the purpose of this subdivision, two businesses are not competitive if both of the following conditions are met:

1. Their products and services lack reasonable interchangeability of use by the customer, based on use but without regard to quality, price, condition, or availability.

2. Their products and services lack reasonable interchangeability of production in that the businesses could not readily switch production capabilities from one product or service to the other.

(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).

(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 that the taxpayer will 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 that the taxpayer will 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 3. G.S. 105-129.4(d) reads as rewritten:

"(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. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the 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 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~~ 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."

Section 4. G.S. 105-129.5 reads as rewritten:

"§ 105-129.5. Tax election; cap.

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against 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. Any unused portion of a credit with respect to a large investment or with respect to the technology commercialization credit allowed in G.S. 105-129.9A may be carried forward for the succeeding 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years."

Section 5. This act is effective for taxable years beginning on or after January 1, 2000.