GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1115
Finance Committee Substitute Adopted 5/20/99

Short Title: William S. Lee Act/1999. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR WIDELY SHARED PROSPERITY BY AMENDING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, BY PROVIDING ADDITIONAL TAX INCENTIVES FOR VARIOUS BUSINESSES, AND BY MAKING RELATED CHANGES**.**

The General Assembly of North Carolina enacts:

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PART I. BILL LEE ACT CHANGES

Section 1. Section 10.2(3) of Chapter 13 of the 1996 Second Extra Session reads as rewritten:

"(3) Quality jobs and business expansion tax credits. – Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, ~~2002.~~ 2007. Article 3B of Chapter 105 of the General Statutes is repealed effective for business property placed in service on or after January 1, 2002."

Section 2. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES.

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

(1) Air courier services. – A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Central administrative office. – ~~Defined~~ Either of the following:

a. A corporate, subsidiary, or regional managing office, as defined by NAICS. ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

b. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in centralized training for the carrier at its hub. For the purpose of this definition, the terms 'interstate passenger air carrier' and 'hub' have the meanings provided in G.S. 105-164.3.

(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. – Any of the following industries, as defined by NAICS: ~~Defined in the North American Industry Classification~~

~~System adopted by the United States Office of Management and Budget.~~

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.

(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) Reserved.

(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. – ~~Defined~~ Industries in manufacturing sectors 31 through 33, as defined by NAICS, ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~ 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 and wholesale trade. – Defined~~ Warehousing. – Industries in warehousing and storage subsector 493 as defined by NAICS. ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(14) Wholesale trade. – Industries in wholesale trade sector 42 as defined by NAICS.

"§ 105-129.3. Enterprise tier designation.

(a) Tiers Defined. – An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(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 provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

(b1) Data. – In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. – Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

(d) Exception for Two-County Industrial Park. – For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

(1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least one-half of the cost of developing the park.

(e) Exception for Certain Small Counties. – 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:

(1) Its population is less than 50,000.

(2) More than eighteen percent (18%) of its population is below the federal poverty level according to the most recent federal decennial census.

(f) Exception for Small Counties. – A county that has a population of less than 25,000 and that would otherwise be designated an enterprise four or five area under this section must be designated an enterprise tier three area.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. – A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) ~~It~~ Every census tract and census block group in the zone is located in whole or in part ~~in~~ within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce.

(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 ~~48~~ 24 months following the designation.

(c) Relationship With Enterprise Tiers. – For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"**§ 105-129.4. Eligibility; forfeiture.**

(a) Type of Business. – A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in 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 that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) Manufacturing.
(5) ~~Warehousing or wholesale trade.~~ Warehousing.
(6) Wholesale trade.
(7) Customer service center located in an enterprise tier one or two area.

(a1) Central Administrative Office. – A central administrative office 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 the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. 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 administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for 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.

(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 that the taxpayer will 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 administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

<u>(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 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 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.</u>

<u>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.</u>

<u>(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 the credit, the taxpayer has not had and does not reasonably expect to have a materially adverse effect on the environment at the business location with respect to which the credit is claimed. 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 of any taxpayer certifications it determines are not accurate.</u>

<u>(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. 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.</u>

(c) Repealed by Session Laws 1998-55, s. 1.

(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 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 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 credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. – The sale, merger, 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 through an employee stock option transaction or another similar mechanism.

<u>(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.</u>

"§ 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~~ <u>Chapter,</u> 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~~ <u>Chapter, and</u> the gross premiums tax levied in Article 8B of this Chapter. 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 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.

"§ 105-129.6. Application; 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 jobs to be created that are located within a development zone, the number of jobs to be created that are expected to be filled by employees residing within the development zone, and the number of 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 under this section, the taxpayer must pay the Department of Commerce a fee ~~of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.~~ of five hundred dollars ($500.00) for each credit the taxpayer 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. If the taxpayer applies for certification for 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 Secretary of Commerce shall retain one-fourth 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 proceeds of the fee are receipts of the Department to which they are credited.

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

(1) The number of applications 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.

(3) The cost of machinery and equipment with respect to which credits were applied for.

(4) The number of new jobs created within development zones, and the percentage of those jobs that were filled by residents of the zones.

"§ 105-129.7. Substantiation.

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.

"§ 105-129.8. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, 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.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses 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 hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

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

(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 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.

(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.

(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.

"§ 105-129.10. Credit for research and development.

(a) General Credit. – A taxpayer that claims for the taxable year a federal income tax credit under section 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. – A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. – As used in this section, the terms "qualified research expenses"and "base amount"have the meaning provided in section 41 of the Code.

"§ 105-129.11. Credit for worker training.

(a) Credit. – A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. – An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. Credit for investing in central administrative office property.

(a) Credit. – If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. 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 property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices 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 property in this State as central administrative offices. 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 as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. 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 as the taxpayer's central administrative office, 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 as the taxpayer's central administrative office 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 as a central administrative office, 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 administrative office, 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 administrative offices 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.

"**§ 105-129.13. Credit for development zone projects.**

(a) Credit. – A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project and agrees in the contract to repay to the taxpayer, with interest, any part of the contribution not used for the project. The credit may not be taken for the year in which the contribution is made but must be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in this section.

(b) Definitions. – The following definitions apply in this section:

(1) Community development corporation. – A nonprofit corporation that meets all of the following conditions:

a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.

b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.

c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.

d. Its primary function is to act as deal maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

(2) Control. – A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(3) Development zone agency. – Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:

a. A community-based development organization qualified under 24 C.F.R. § 570.204 to receive community development block grant funds under the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301, et seq., to carry out a neighborhood revitalization project, a community economic development project, or an energy conservation project.

b. A community action agency that has been officially designated as such pursuant to section 210 of the Economic Opportunity Act of 1964, Public Law 88-452, 78 Stat. 508 and which has not lost its designation as a result of a failure to comply with the provisions of that act.

c. A community development corporation.

d. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. § 4701, et seq.

e. A community housing development organization qualified under the HOME Investment Partnerships Act, 42 U.S.C. §§ 12701, 12704, and 24 C.F.R. § 92.2.

f. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(4) Improvement project. – A project to construct or improve residential, commercial, or public real property located in a development zone. The term includes services provided by a development zone agency directly related to the construction or improvement, and project development fees charged by a developer for the construction or improvement.

(c) Certification. – The Secretary of Commerce shall not certify a development zone agency under this section if the agency, any of the agency's officers or directors, or any partner of the agency has ever used any part of a contribution made under this section for any purpose other than an improvement project.

(d) Limitations. – A taxpayer who claims a credit under this subsection must identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a contribution if the taxpayer is related to the development zone agency as defined in section 1313 of the Code or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the development zone agency. No credit is allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(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.

(f) Ceiling. – The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed four million dollars ($4,000,000). The Secretary of Revenue must calculate the total amount of tax credits claimed from the applications filed under this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds four million dollars ($4,000,000), the Secretary must allow a portion of the credits claimed by allocating a total of four million dollars ($4,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the application was filed. The Secretary's allocations based on applications filed pursuant to this section are final and will not be adjusted to account for credits applied for but not claimed.

(g) Forfeiture. – A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce must file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles and in accordance with Government Audit Standards developed by the Comptroller General of the United States. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department must notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited."

PART II. SALES TAX CHANGES

Section 3.(a) G.S. 105-164.4(a)(1d)a. through k. are recodified as G.S. 105-164.4A.

Section 3.(b) G.S. 105-164.4(a)(1d), as amended by this section, reads as rewritten:

"(1d) The rate of one percent (1%) applies to the sales price of the ~~following articles.~~ articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article."

Section 3.(c) G.S. 105-164.4A, as recodified by this section, reads as rewritten:

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

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

~~a.~~(1) Farm machinery. – Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer"includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under ~~this section.~~ G.S. 105-164.4.

The term "machines and machinery"as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

~~b.~~(2) Manufacturing machinery. – Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term "manufacturing industries and plants"does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

~~c.~~(3) Telephone company property. – Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

~~d.~~(4) Laundry machinery. – Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

~~e.~~(5) Freezer plant machinery. – Sales to freezer locker plants of machinery used in the direct operation of ~~said~~ the freezer locker plant and of parts and accessories thereto.

~~f.~~(6) Broadcasting machinery. – Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

~~g.~~(7) Tobacco equipment. – Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

~~h.~~(8) Farm storage facilities. – Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

~~i.~~(9) Farm containers. – Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

~~j.~~(10) Recycling facility equipment. – Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment.

~~k.~~(11) (Effective January 1, 2001) Air courier equipment. – Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 4. G.S. 105-164.14 is amended by adding a new subsection to read:

"(h) Low Enterprise Tier Businesses. –

(1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3.

(3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery,

equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.4(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places it in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3, capitalizes it for tax purposes under the Code, and does not lease it to another party."

Section 5. G.S. 105-164.14 is amended by adding a new subsection to read:

"(i) Nonprofit Insurance Companies. –

(1) Refunds. – An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article before January 1, 2005, on building materials, building supplies, fixtures, and equipment that become a part of its real property. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – An insurance company is eligible for the refund provided in this subsection if it meets all of the following conditions:

a. It is a nonprofit corporation.

b. It is operated for the exclusive purpose of providing insurance and annuity contracts to or for the benefit of organizations exempt from federal income tax under section 501(c)(3) of the Code, and their employees.

c. The Secretary of Commerce has certified that the insurance company will invest at least ten million dollars ($10,000,000) in constructing a facility in this State for the conduct of its operations.

(3) Forfeiture. – If an eligible insurance company does not make the required minimum investment within five years after its first refund under this subsection, it loses its eligibility and forfeits all refunds already received under this subsection. Upon forfeiture, the company is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax refunds had not been received. The tax and interest are due 30 days after the date of the forfeiture. A company that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

Section 6.(a) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(6e) Interstate passenger air carrier. – A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce."

Section 6.(b) G.S. 105-164.3(6b), as enacted by S.L. 1998-55, becomes effective May 1, 1999.

Section 6.(c) G.S. 105-164.3(6b) reads as rewritten:

"(6b) Hub. ~~An interstate air courier's~~ Either of the following:

a. An interstate air courier's hub is the airport in this State that meets all of the following conditions:

~~a.~~1. The air courier has allocated to the airport under G.S. ~~105-388~~ 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

~~b.~~2. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.

~~c.~~3. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution.

b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:

1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport."

Section 7.(a) Section 9 of S.L. 1998-55 is repealed.

Section 7.(b) G.S. 105-164.13 is amended by adding a new subdivision to read:

"(45) Sales of the following items to an interstate passenger air carrier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 7.(c) Effective January 1, 2001, G.S. 105-164.13(45), as enacted by this act, reads as rewritten:

"(45) Sales of the following items to an interstate passenger air carrier or an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 8. G.S. 105-164.4A, as recodified by this act, is amended by adding a new subdivision to read:

"(13) Flight crew training equipment. – Sales to an interstate passenger air carrier or an interstate air courier of aircraft simulators for flight crew training for use at the air carrier or air courier's hub."

Section 9. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on <u>fuel,</u> lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the <u>fuel,</u> lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

PART III. AFFORDABLE HOUSING TAX CREDIT

Section 10. The title of Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"BUSINESS TAX ~~CREDIT.~~ <u>CREDITS.</u>"

Section 11. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"<u>§ 105-129.16A. Credit for low-income housing.</u>

<u>(a) Credit. – A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to</u>

twenty-five percent (25%) of the total federal credit allowed during the 10-year federal credit period with respect to that building. The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building.

(b) Definitions. – The definitions in section 42 of the Code apply in this section. In addition, as used in this section the term 'qualified North Carolina low-income building' means a qualified low-income building that meets any of the following conditions:

(1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3, or is a development zone, as defined in G.S. 105-129.3A.

(2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

(3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(c) Expiration. – If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section 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. 105-129.17.

(d) Forfeiture. – If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. A taxpayer that forfeits a credit under this section 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."

Section 12. Reserved.

Section 13. G.S. 105-129.17 reads as rewritten:

"§ 105-129.17. Tax election; cap.

(a) Tax Election. – The ~~credit~~ credits allowed in this Article ~~is~~ are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which ~~the~~ 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~~ a credit must be claimed against the same tax.

(b) Cap. – The ~~credit~~ total credits allowed in this Article may not exceed fifty percent (50%) of the tax against which ~~it is~~ 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 the ~~credit~~ credits may be carried forward for the succeeding five years."

Section 14. G.S. 105-129.18 reads as rewritten:

"§ 105-129.18. Substantiation.

To claim the ~~credit~~ credits allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must 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 rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection."

Section 15. G.S. 105-129.19 reads as rewritten:

"§ 105-129.19. Reports.

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

(1) The number of taxpayers that claimed the ~~credit~~ credits allowed in this Article.

(2) The cost of business property with respect to which business property credits were claimed.

(2a) The location of each qualified North Carolina low-income building with respect to which a low-income housing credit was claimed.

(3) The total cost to the General Fund of the credits claimed."

Section 16. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the

Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. ~~If~~

<u>If</u> a taxpayer forfeits a tax credit ~~pursuant to G.S. 105-163.014 or Article 3A of~~ <u>or tax benefit pursuant to forfeiture provisions of</u> this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

PART IV. INDUSTRIAL DEVELOPMENT FUND CHANGES

Section 17. G.S. 143B-437.01(a) reads as rewritten:

"(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project shall be funded unless the Secretary of Commerce finds that the proposed project will not have a materially adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project will not have a materially adverse effect on the environment."

PART V. EFFECTIVE DATES

Section 18. NAICS Code and Customer Service Center Changes. – G.S. 105-129.2(2)b., as enacted by Section 2 of this act, is effective retroactively as of January 1, 1999. G.S. 105-129.2(3a), as enacted by Section 2 of this act, becomes effective for taxable years beginning on or after January 1, 2000. The remaining amendments to G.S. 105-129.2 made by Section 2 of this act are effective when this act becomes law. G.S. 105-129.4(a)(6), as enacted by Section 2 of this act, becomes effective for taxable years beginning on or after January 1, 2000.

Section 19. Small County Enhancements. – G.S. 105-129.3(e) and (f), as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 2000.

Section 20. Development Zone Definitions. – The amendments to G.S. 105-129.3A made by Section 2 of this act become effective July 1, 1999, and apply to applications filed on or after that date. Notwithstanding the provisions of G.S. 105-129.3A(b), a development zone designation made in 1998 or 1999 is effective until January 1, 2001.

Section 21. Quality Jobs Assurance. – G.S. 105-129.4(b2), (b3), and (b4), as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 2000, and apply to credits for which applications are filed on or after that date.

Section 22. All Credits Against Gross Premiums Tax. – The amendment to G.S. 105-129.5(a) made by Section 2 of this act is effective for taxable years beginning on or after January 1, 1999.

Section 23. Application Fees and Information. – The amendments to G.S. 105-129.6(a) and (a1) made by Section 2 of this act are effective 30 days after this act becomes law, and apply to applications filed on or after that date.

Section 24. Development Zone Projects Credit. – G.S. 105-129.13, as enacted by Section 2 of this act, is effective for taxable years beginning on or after January 1, 2000.

Section 25. Sales Tax Technical Change. – Section 3 of this act is effective when it becomes law.

Section 26. Sales Tax Refund for Tiers One and Two Equipment. – Section 4 of this act becomes effective January 1, 2000, and applies to taxes paid on or after that date.

Section 27. Temporary Sales Tax Refund for Nonprofit Insurance Companies. – Section 5 of this act becomes effective January 1, 2000, and applies to taxes paid on or after that date. Section 5 of this act expires January 1, 2005.

Section 28. Sales Tax Preferences for Interstate Air Carriers. – Sections 6 through 8 of this act are effective retroactively as of May 1, 1999, and apply to sales made on or after that date.

Section 29. Affordable Housing Credit. – Part III of this act is effective for taxable years beginning on or after January 1, 2000, and applies to buildings to which federal credits are allocated on or after January 1, 2000.

Section 30. Industrial Development Fund Changes. – Part IV of this act becomes effective July 1, 1999.

Section 31. Remainder. – The remainder of this act is effective when it becomes law.