

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1115*

Short Title: Alternative R&D Tax Credit. (Public)

Sponsors: Senators Kerr, Hartsell, Albertson, Apodaca, Bingham, Dalton, Dannelly,
Garrou, Jenkins, Queen, Sloan, Stevens, and Weinstein.

Referred to: Finance.

May 17, 2004

A BILL TO BE ENTITLED
AN ACT TO CREATE AN ALTERNATIVE RESEARCH AND DEVELOPMENT
TAX CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.10 is amended by adding a new subsection to read:

"(d) The credits allowed in this section and the credit allowed in Article 3F of this Chapter are exclusive. A taxpayer may elect to take only one of the three credits with respect to its research activities in a taxable year."

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

"Article 3F.

"Research and Development.

§ 105-129.50. Definitions.

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

(1) through (4) Reserved.

(5) North Carolina research university. – An institution of higher education that meets one or both of the following conditions:

a. It is located in North Carolina and is classified as one of the following 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:

1. Doctoral/Research Universities, Extensive or Intensive.

2. Masters Colleges and Universities, I or II.

3. Baccalaureate Colleges, Liberal Arts or General.

b. It is a constituent institution of The University of North Carolina.

- 1 (6) North Carolina university research expenses. – Any amount paid or
2 incurred to a North Carolina research university for qualified research
3 performed in this State or basic research performed in this State.
4 (7) Period of measurement. – Defined in the Small Business Size
5 Regulations of the federal Small Business Administration.
6 (8) Qualified North Carolina research expenses. – Qualified research
7 expenses for research performed in this State.
8 (9) Receipts. – Defined in the Small Business Size Regulations of the
9 federal Small Business Administration.
10 (10) Related person. – Defined in G.S. 105-163.010.
11 (11) Small business. – A business whose annual receipts, combined with
12 the annual receipts of all related persons, for the applicable period of
13 measurement did not exceed one million dollars (\$1,000,000).

14 **"§ 105-129.51. Administration; sunset.**

15 (a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the
16 requirements of G.S. 105-129.4(b), (b2), (b3), and (b4) relating to wage standard, health
17 insurance, environmental impact, and safety and health programs, respectively.

18 (b) This Article is repealed for taxable years beginning on or after January 1,
19 2009.

20 (c) The credit allowed in this Article and the credits allowed in G.S. 105-129.10
21 are exclusive. A taxpayer may elect to take only one of the three credits with respect to
22 its research activities in a taxable year. It may elect a different credit for different
23 expenses in a subsequent taxable year.

24 **"§ 105-129.52. Tax election; cap.**

25 (a) Tax Election. – The credit allowed in this Article is allowed against the
26 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4
27 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed
28 when filing the return on which the first installment of the credit is claimed. This
29 election is binding. Any carryforwards of a credit must be claimed against the same tax.

30 (b) Cap. – A credit allowed in this Article may not exceed fifty percent (50%) of
31 the amount of tax against which it is claimed for the taxable year, reduced by the sum of
32 all other credits allowed against that tax, except tax payments made by or on behalf of
33 the taxpayer. This limitation applies to the cumulative amount of credit, including
34 carryforwards, claimed by the taxpayer under this Article against each tax for the
35 taxable year. Any unused portion of a credit allowed in this Article may be carried
36 forward for the succeeding 15 years.

37 **"§ 105-129.53. Substantiation.**

38 To claim a credit allowed by this Article, the taxpayer must provide any information
39 required by the Secretary. Every taxpayer claiming a credit under this Article must
40 maintain and make available for inspection by the Secretary any records the Secretary
41 considers necessary to determine and verify the amount of the credit to which the
42 taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the
43 credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to
44 maintain adequate records or to make them available for inspection.

1 **"§ 105-129.54. Reports.**

2 The Department of Revenue must report to the Revenue Laws Study Committee and
 3 to the Fiscal Research Division of the General Assembly by May 1 of each year the
 4 following information for the 12-month period ending the preceding December 31:

- 5 (1) The number of taxpayers that claimed each credit allowed in this
 6 Article.
- 7 (2) The amount of each credit claimed.
- 8 (3) The total cost to the General Fund of the credits claimed.

9 **"§ 105-129.55. Credit for North Carolina research and development.**

10 (a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified
 11 North Carolina research expenses for the taxable year is allowed a credit equal to a
 12 percentage of the expenses, determined as provided in this subsection. If part of the
 13 taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of
 14 this subsection and the remainder qualifies under subdivision (3) of this subsection, the
 15 applicable percentages apply separately to each part of the expenses.

- 16 (1) Small business. – If the taxpayer was a small business as of the last
 17 day of the taxable year, the applicable percentage is three percent
 18 (3%).
- 19 (2) Low-tier research. – For expenses with respect to research performed
 20 in an enterprise tier one, two, or three area, the applicable percentage is
 21 three percent (3%).
- 22 (3) Other research. – For expenses not covered under subdivision (1) or
 23 (2) of this subsection, the percentages provided in the table below
 24 apply to the taxpayer's qualified North Carolina research expenses
 25 during the taxable year at the following levels:

| <u>Expenses Over</u> | <u>Up To</u> | <u>Rate</u> |
|----------------------|----------------------|-------------|
| <u>-0-</u> | <u>\$50 million</u> | <u>1%</u> |
| <u>\$50 million</u> | <u>\$200 million</u> | <u>2%</u> |
| <u>\$200 million</u> | <u>—</u> | <u>3%</u> |

30 (b) North Carolina University Research Expenses. – A taxpayer that has North
 31 Carolina university research expenses for the taxable year is allowed a credit equal to
 32 fifteen percent (15%) of the expenses."

33 **SECTION 3.** G.S. 105-129.10 and G.S. 105-129.51(c) are repealed.

34 **SECTION 4.** Section 3 of this act becomes effective for taxable years
 35 beginning on or after January 1, 2006. The remainder of this act becomes effective for
 36 taxable years beginning on or after January 1, 2005.