GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1507*

Short Title: Modify Bill Lee Act. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE WILLIAM S. LEE ACT AND RELATED ECONOMIC DEVELOPMENT LAWS.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 105-129.6(a1) reads as rewritten:

"(a1) Fee. – When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee 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. <u>This fee does not apply to any credit the taxpayer intends to claim with respect to a location that is in a development zone as defined in G.S. 105-129.3A.</u> 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."

Section 1.(b) G.S. 105-129.13(e) reads as rewritten:

"(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. There is no fee for an application under this section."

Section 2. G.S. 105-129.5 reads as rewritten:

"§ 105-129.5. (Repealed effective January 1, 2006) Tax election; ~~cap.~~ cap; carryforwards.

(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, and 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.

(c) Carryforward. – 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 a credit may be carried forward for the succeeding 15 years if the Secretary of Commerce certifies when an application for the credit is first made that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least fifty million dollars ($50,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits this enhanced carryforward period. Any unused portion of any other credit may be carried forward for the succeeding five years."

Section 3.(a) Section 16.2 of S.L. 1999-237 reads as rewritten:

"INDUSTRIAL RECRUITMENT COMPETITIVE FUND

Section 16.2.(a) Funds appropriated in this act to the Department of Commerce for the Industrial Recruitment Competitive Fund shall be used to continue the Fund. The purpose of the Fund is to provide financial assistance to those businesses or industries deemed by the Governor to be vital to a healthy and growing State economy and that are making significant efforts to establish or expand in North Carolina. Monies allocated from the Fund shall be used for the following purposes:

(1) Installation or purchase of equipment;
(2) Structural repairs, improvements, or renovations of existing buildings to be used for expansion; and
(3) Construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines, or equipment for existing buildings.

Monies may also be used for construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines, or equipment to serve new or proposed industrial buildings used for manufacturing and industrial operations. The Governor shall adopt guidelines and procedures for the commitment of monies from the Fund. Monies from the Fund may be allocated only to projects that meet the wage standard set out in G.S. 105-129.4(b).

Section 16.2.(b) The Department of Commerce shall report on or before October 1, 1999, and quarterly thereafter to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on the commitment, allocation, and use of funds allocated from the Industrial Recruitment Competitive Fund."

Section 3.(b) G.S. 143B-437.01(a) is amended by adding a new subdivision to read:

"(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b)."

Section 4. Part 1 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-431.2. Department of Commerce - limitation on grants and loans.**

The Department of Commerce may not make a loan nor award a grant to any individual, organization, or governmental unit if that individual, organization, or governmental unit is currently in default on any loan made by the Department of Commerce."

Section 5.(a) G.S. 105-129.2(2) reads as rewritten:

"(2) Central ~~administrative office.~~office or aircraft facility. ~~Either~~ Any of the following:
a. A corporate, subsidiary, or regional managing office, as defined by NAICS.
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.~~

c. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in aircraft maintenance and repair services or aircraft rebuilding as defined by NAICS."

Section 5.(b) G.S. 105-129.2 is amended by adding two new subdivisions to read:

"(8) Hub. – Defined in G.S. 105-164.3.

(8a) Interstate passenger air carrier. – Defined in G.S. 105-164.3."

Section 5.(c) G.S. 105-129.4(a) through (b1) read as rewritten:

"§ 105-129.4. (Repealed effective January 1, 2006) 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 or aircraft facility 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 or aircraft facility that creates at least 40 new jobs.

(2a) Customer service center located in an enterprise tier one or two area.

(3) Data processing.

(3a) Electronic mail order house that creates at least 250 new jobs and is located in an enterprise tier one or two area.

(4) Manufacturing.

(5) Warehousing.

(6) Wholesale trade.

(a1) New Jobs Defined. – A central ~~administrative~~ office or aircraft facility 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 aircraft facility or in the preceding 24 months while using temporary space for the central ~~administrative~~ office or aircraft facility functions during completion of the ~~administrative~~ central office or aircraft facility property. An electronic mail order house creates at least 250 new jobs if the taxpayer hires at least 250 additional full-time employees to fill new positions at the house in the two-year period ending on the last day of the taxable year the taxpayer first claims a credit under this Article. 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 or aircraft facility 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 or aircraft facility 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.

..."

Section 5.(d) G.S. 105-129.7(b) reads as rewritten:

"(b) Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article for the first taxable year the credit is claimed and for every year in which a subsequent installment or a carryforward of that credit is claimed. The qualifying information must be in the form prescribed by the Secretary, must cover each taxable year beginning with the first taxable year the credit is claimed, and must be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for an initial credit and any installments and carryforwards, and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job,

including any enterprise tier or development zone designation of that place.

(2) The type of business with respect to which the credit is claimed, as required by G.S. 105-129.4(a), and wage information described in G.S. 105-129.4(b).

(3) If the credit is claimed with respect to a large investment certified under G.S. ~~105-129.4(b1),~~ 105-129.4(b1) or is a credit with a carryforward period of 15 years under G.S. 105-129.5(c), the amount of the investment requirement under ~~that subsection~~ those subsections that has been met to date.

(4) Qualifying information required for the credit for creating jobs allowed under G.S. 105-129.8, the credit for investing in machinery and equipment allowed under G.S. 105-129.9, the credit for worker training allowed under G.S. 105-129.11, the credit for investing in central ~~administrative~~ office or aircraft facility property allowed in G.S. 105-129.12, and any other credits allowed under this Article."

Section 5.(e) G.S. 105-129.12 reads as rewritten:

"§ 105-129.12. (Repealed effective January 1, 2006) Credit for investing in central ~~administrative~~ office or aircraft facility 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 or aircraft facility 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~~ office or aircraft facilities 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~~ office or aircraft facilities 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.~~ office or aircraft facilities. 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 or aircraft facility 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 or aircraft facility 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 or aircraft facility 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.~~ office or aircraft facility. 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,~~ office or aircraft facility, 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 or aircraft facility 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,~~ office or aircraft facility, 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,~~ office or aircraft facility, 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~~ office or aircraft facilities 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."

Section 6. G.S. 105-129.4(e) reads as rewritten:

"(e) Change in Ownership of Business. – The sale, merger, consolidation, conversion, 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~~ directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, "acquired"means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars

($100,000,000) and has the majority of its operations located in an enterprise tier one, two, or three area."

Section 7. G.S. 105-129.16B(a), (c), and (d) read as rewritten:

"(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 a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) or (c)(1a) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

...

(c) 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 was allocated a federal credit under section 42(h)(1) of the Code, was not allowed a federal credit under section 42(h)(4) of the Code, and 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.

(1a) It is located in a county that, at the time the federal credit is allocated to the building, has been designated as having sustained severe or moderate damage from a hurricane or a hurricane-related disaster, according to the Federal Emergency Management Agency impact map, revised on September 25, 1999. Those counties are Bertie, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin, Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt, Washington, Wayne, and Wilson Counties.

(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.

(d) 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. <u>If, in one of the five years in which an installment of the credit under this section accrues, the building no longer qualifies as a low-income building under subdivision (2) or (3) of subsection (c) of this section because less than forty percent (40%) of its residential units are both rent-restricted and occupied by individuals who meet the income requirements, then the credit under this section expires and the taxpayer may not take any remaining installments of the credit.</u> 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."

Section 8. G.S. 105-164.14(i) reads as rewritten:

"(i) **(Effective for taxes paid on or after May 1, 1999 until January 1, 2008)** Nonprofit Insurance Companies. – Eligible nonprofit insurance companies are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) **(Effective until January 1, 2004)** Refunds. – An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of its real property, and on computer systems hardware and software it capitalizes for tax purposes under the Code. 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.

(1) **(Effective January 1, 2004 until January 1, 2008)** Refunds. – An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article 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 (i) organizations exempt from federal income tax under section 501(c)(3) of the ~~Code,~~ Code and their employees or (ii) public educational institutions and their employees.

c. The Secretary of Commerce has certified that the insurance company will invest at least twenty million dollars ($20,000,000) 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 each refund was issued. 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 9. Section 8 of this act becomes effective May 1, 1999, and applies to taxes paid on or after that date. Section 8 is repealed for taxes paid on or after January 1, 2008. Section 6 of this act is effective May 1, 1999, and applies to acquisitions made on or after that date. Section 2 is effective for taxable years beginning on or after January 1, 2000. Sections 3 and 4 become effective July 1, 2000, and apply to funds appropriated, grants awarded, or loans made on or after that date. Section 1 becomes effective January 1, 2001, and applies to applications made on or after that. Section 5 is effective for taxable years beginning on or after January 1, 2001. G.S. 105-129.16B(d) as amended by Section 7 of this act is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, 2001, and expires January 1, 2005. The remainder of this act is effective when it becomes law.