

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1414
Committee Substitute Favorable 6/7/04
Third Edition Engrossed 6/8/04
Senate Finance Committee Substitute Adopted 6/15/04

Short Title: Create New Jobs/Recruit New Business.

(Public)

Sponsors:

Referred to:

May 12, 2004

A BILL TO BE ENTITLED

1 AN ACT TO CREATE NEW JOBS BY RECRUITING NEW BUSINESSES,
2 GROWING EXISTING BUSINESSES, AND ENCOURAGING
3 ENTREPRENEURS.
4

5 The General Assembly of North Carolina enacts:

6 **PART 1. REDUCE CORPORATE INCOME TAX**

7 **SECTION 1.1.** G.S. 105-130.3 reads as rewritten:

8 **"§ 105-130.3. Corporations.**

9 (a) Tax. – A tax is imposed on the State net income of every C Corporation doing
10 business in this State. An S Corporation is not subject to the tax levied in this section.
11 The tax is a percentage of the taxpayer's State net income computed as follows:

12 **Income Years Beginning Tax**

| | |
|---------------|-------|
| 13 In 1997 | 7.5% |
| 14 In 1998 | 7.25% |
| 15 In 1999 | 7% |
| 16 After 1999 | 6.9%. |

17 (b) Exemption. – Before computing the tax in subsection (a) of this section, a C
18 Corporation may subtract from State net income the applicable exemption amount. If
19 the corporation is not required to apportion income to this State, the applicable
20 exemption amount is the amount provided in the table below based on the corporation's
21 State net income. If the corporation is required to apportion income to this State, the
22 applicable exemption amount is the product of the corporation's apportionment fraction
23 determined under G.S. 105-130.4(i) multiplied by the amount provided in the table
24 below based on the corporation's State net income.

| 25 <u>State Net Income</u> | <u>Exemption Amount</u> |
|--|-------------------------|
| 26 <u>\$100,000 or less</u> | <u>\$25,000</u> |
| 27 <u>Over \$100,000 through \$200,000</u> | <u>\$15,000</u> |

Over \$200,000 -0-

SECTION 1.2. G.S. 115C-546.1(b) reads as rewritten:

"(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to the applicable fraction or percentage provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars (\$2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

| Period | Fraction or Percentage |
|--------------------|--|
| 10/1/97 to 9/30/98 | One-fifteenth (1/15) |
| 10/1/98 to 9/30/99 | Two twenty-ninths (2/29) |
| 10/1/99 to 9/30/00 | One-fourteenth (1/14) |
| 10/1/00 to 9/30/05 | Five sixty-ninths (5/69) |
| After 9/30/05 | Seven and forty-three one-hundredths percent (7.43%) |

SECTION 1.3. G.S. 105-130.8(a)(5) reads as rewritten:

"(5) For purposes of this section, the amount exempted under G.S. 105-130.3(b), any income item deductible in determining State net income under ~~the provisions of G.S. 105-130.5~~ G.S. 105-130.5, and any nonapportionable income not allocable to this State under the provisions of G.S. 105-130.4 ~~shall be~~ are considered as income not taxable under this Part. The amount of the income item considered income not taxable under this Part is determined after subtracting related expenses for which a deduction was allowed under this Part."

SECTION 1.4. Section 1.1 and Section 1.3 of this part become effective for taxable years beginning on or after January 1, 2005. The remainder of this part is effective when it becomes law.

PART 2. RESERVED

PART 3. SALES TAX REFUNDS AND EXEMPTIONS

SECTION 3.1. G.S. 105-164.14(j) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

(1) Refund. – The owner of an eligible facility 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 the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. 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.

- 1 (2) Eligibility. – A facility is eligible under this subsection if it meets both
2 of the following conditions:
- 3 a. It is primarily engaged in one of the industries listed in this
4 subsection.
- 5 b. The Secretary of Commerce has certified that the owner of the
6 facility will invest at least ~~one hundred million dollars~~
7 ~~(\$100,000,000)~~the required amount of private funds to acquire,
8 ~~construct, and equip~~construct the facility in this State. For the
9 purpose of this subsection, costs of construction may include
10 costs of acquiring and improving land for the facility and costs
11 of equipment for the facility. If the facility is located in an
12 enterprise tier one, two, or three area as defined in
13 G.S. 105-129.3, the required amount is fifty million dollars
14 (\$50,000,000). For all other facilities, the required amount is
15 one hundred million dollars (\$100,000,000).
- 16 (3) Industries. – This subsection applies to the following industries:
- 17 a. Aircraft manufacturing. Aircraft manufacturing means
18 manufacturing or assembling complete aircraft.
- 19 a.b. Bioprocessing. Bioprocessing means biomanufacturing or
20 processing that includes the culture of cells to make commercial
21 products, the purification of biomolecules from cells, or the use
22 of these molecules in manufacturing.
- 23 c. Motor vehicle manufacturing. Motor vehicle manufacturing
24 means any of the following:
- 25 1. Manufacturing complete automobiles and light-duty
26 motor vehicles.
- 27 2. Manufacturing heavy-duty truck chassis and assembling
28 complete heavy-duty trucks, buses, heavy-duty motor
29 homes, and other special purpose heavy-duty motor
30 vehicles for highway use.
- 31 3. Manufacturing complete military armored vehicles,
32 nonarmored military universal carriers, combat tanks,
33 and specialized components for combat tanks.
- 34 b.d. Pharmaceutical and medicine manufacturing and distribution of
35 pharmaceuticals and medicines. Pharmaceutical and medicine
36 manufacturing means any of the following:
- 37 1. Manufacturing biological and medicinal products. For
38 the purpose of this sub-subdivision, a biological product
39 is a preparation that is synthesized from living organisms
40 or their products and used medically as a diagnostic,
41 preventive, or therapeutic agent. For the purpose of this
42 sub-subdivision, bacteria, viruses, and their parts are
43 considered living organisms.

- 2. Processing botanical drugs and herbs by grading, grinding, and milling.
- 3. Isolating active medicinal principals from botanical drugs and herbs.
- 4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

e. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.

(4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this subsection. Upon forfeiture, the owner 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 person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

SECTION 3.2. G.S. 105-164.13 reads as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at ~~retail, retail and the use, storage-storage,~~ or consumption in this State of the following tangible personal property and services ~~is~~ are specifically exempted from the tax imposed by this Article:

...

(1) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds sold to a farmer for agricultural purposes.

...

(45) ~~Sales of the following items to an interstate air business, or to a person that leases commercial aircraft to an interstate air business, of tangible personal property that becomes a component part of or is dispensed as a lubricant into commercial aircraft during its maintenance, repair, or overhaul. For the purpose of this subdivision, commercial aircraft includes only aircraft that has a certified maximum take-off weight of more than 12,500 pounds and is regularly used to carry for compensation passengers, commercial freight, or individually addressed letters and packages. passenger air carrier or an interstate air courier for use at its hub; aircraft lubricants, aircraft repair parts, and aircraft accessories.~~

...

1 (49a) Delivery charges for delivery of direct mail if the charges are
2 separately stated on an invoice or similar billing document given to the
3 purchaser.

4 ...

5 (53) Sales to a professional land surveyor of tangible personal property on
6 which custom aerial survey data is stored in digital form or is depicted
7 in graphic form. Data is custom if it was created to the specifications
8 of the professional land surveyor purchasing the property. A
9 professional land surveyor is a person licensed as a surveyor under
10 Chapter 89C of the General Statutes."

11 **SECTION 3.3.** G.S. 105-164.3 is amended by adding two new subdivisions
12 to read:

13 "(14c) Interstate air business. – An interstate air courier, an interstate freight
14 air carrier, or an interstate passenger air carrier.

15 ...

16 (15b) Interstate freight air carrier. – A person whose primary business is
17 scheduled freight air transportation, as defined in the North American
18 Industry Classification System adopted by the United States Office of
19 Management and Budget, in interstate commerce."

20 **SECTION 3.4.** The amendment to G.S. 105-164.14(j)(2) made by this part
21 is effective on and after January 1, 2004, and applies to sales made on or after that date.
22 Sections 3.2, 3.3, and 3.4 of this part become effective October 1, 2004, and apply to
23 sales made on or after that date. The remainder of this part becomes effective July 1,
24 2004, and applies to sales made on or after that date.

25 **PART 4. QUALIFIED BUSINESS INVESTMENT CREDIT**

26 **SECTION 4.1.** G.S. 105-163.012(b) reads as rewritten:

27 "(b) The total amount of all tax credits allowed to taxpayers under
28 G.S. 105-163.011 for investments made in a calendar year may not exceed ~~six million~~
29 ~~dollars (\$6,000,000)~~ nine million dollars (\$9,000,000). The Secretary of Revenue shall
30 calculate the total amount of tax credits claimed from the applications filed pursuant to
31 G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in
32 a calendar year exceeds ~~six million dollars (\$6,000,000)~~, this maximum amount, the
33 Secretary shall allow a portion of the credits claimed by allocating ~~a total of six million~~
34 ~~dollars (\$6,000,000)~~ the maximum amount in tax credits in proportion to the size of the
35 credit claimed by each taxpayer."

36 **SECTION 4.2.** G.S. 105-163.015 reads as rewritten:

37 "**§ 105-163.015. Sunset.**

38 This Part is repealed effective for investments made on or after January 1,
39 2007-2009."

40 **SECTION 4.3.** This part becomes effective for investments made on or after
41 January 1, 2004.

42 **PART 5. RESEARCH AND DEVELOPMENT TAX CREDIT**

43 **SECTION 5.1.** G.S. 105-129.10 is amended by adding a new subsection to
44 read:

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

4 **SECTION 5.2.** Chapter 105 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 3F.

7 "Research and Development.

8 **"§ 105-129.50. Definitions.**

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

11 (1) through 3: Reserved.

12 (4) North Carolina university research expenses. – Any amount paid or
13 incurred to a research university for qualified research performed in
14 this State or basic research performed in this State.

15 (5) Period of measurement. – Defined in the Small Business Size
16 Regulations of the federal Small Business Administration.

17 (6) Qualified North Carolina research expenses. – Qualified research
18 expenses for research performed in this State.

19 (7) Receipts. – Defined in the Small Business Size Regulations of the
20 federal Small Business Administration.

21 (8) Related person. – Defined in G.S. 105-163.010.

22 (9) Research university. – An institution of higher education that meets
23 one or both of the following conditions:

24 a. It is classified as one of the following in the most recent edition
25 of 'A Classification of Institutions of Higher Education', the
26 official report of The Carnegie Foundation for the
27 Advancement of Teaching:

28 1. Doctoral/Research Universities, Extensive or Intensive.

29 2. Masters Colleges and Universities, I or II.

30 3. Baccalaureate Colleges, Liberal Arts or General.

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

33 (10) Small business. – A business whose annual receipts, combined with
34 the annual receipts of all related persons, for the applicable period of
35 measurement did not exceed one million dollars (\$1,000,000).

36 **"§ 105-129.51. Administration; sunset.**

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

40 (b) This Article is repealed for taxable years beginning on or after January 1,
41 2014.

42 (c) The credit allowed in this Article and the credits allowed in G.S. 105-129.10
43 are exclusive. A taxpayer may elect to take only one of the three credits with respect to

1 its research activities in a taxable year. It may elect a different credit for different
2 expenses in a subsequent taxable year.

3 **"§ 105-129.52. Tax election; cap.**

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

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

16 **"§ 105-129.53. Substantiation.**

17 To claim a credit allowed by this Article, the taxpayer must provide any information
18 required by the Secretary. Every taxpayer claiming a credit under this Article must
19 maintain and make available for inspection by the Secretary any records the Secretary
20 considers necessary to determine and verify the amount of the credit to which the
21 taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the
22 credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to
23 maintain adequate records or to make them available for inspection.

24 **"§ 105-129.54. Reports.**

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

28 (1) The number of taxpayers that claimed a credit allowed in this Article,
29 itemized by the categories of small business, low-tier, other, and
30 university research.

31 (2) The amount of each credit claimed in each category.

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

33 **"§ 105-129.55. Credit for North Carolina research and development.**

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

40 (1) Small business. – If the taxpayer was a small business as of the last
41 day of the taxable year, the applicable percentage is three percent
42 (3%).

(2) Low-tier research. – For expenses with respect to research performed in an enterprise tier one, two, or three area, the applicable percentage is three percent (3%).

(3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses 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> |

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

SECTION 5.3. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- ...
- (30) To publish the information required under G.S. 105-129.55 and to prove that a business does not meet the definition of 'small business' under Article 3F of this Chapter because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount."

SECTION 5.4. This part becomes effective for taxable years beginning on or after January 1, 2005.

PART 6. ESCHEAT FUND INVESTMENTS

SECTION 6.1. G.S. 147-69.2(b) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

- ...
- (11) With respect to assets of the Escheat Fund, notwithstanding the provisions of Chapter 116B of the General Statutes, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than September 1, 2004. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant

1 to this subdivision, it is the intention of the General Assembly to hold
2 the Escheat Fund harmless from the loss by appropriating to the
3 Escheat Fund funds equivalent to the loss.

4 (12) With respect to assets of the Escheat Fund and the Escheat Account,
5 notwithstanding the provisions of Chapter 116B of the General
6 Statutes, the following investments, not to exceed the greater of one
7 hundred million dollars (\$100,000,000) or twenty percent (20%) of the
8 total combined value of the Escheat Fund and the Escheat Account at
9 the time the investment is made:

10 a. Limited partnership interests in a partnership, interests in a
11 limited liability company, or stock in a corporation, if the
12 primary purpose of the partnership, limited liability company,
13 or corporation is to invest in public or private debt, public or
14 private equity, or corporate buyout transactions within or
15 outside the United States.

16 b. Obligations guaranteed in whole or in part by the Small
17 Business Administration to businesses in North Carolina.
18 Investment in the obligations of a single business and its
19 affiliates under this sub-subdivision is limited to two hundred
20 fifty thousand dollars (\$250,000) in the aggregate.

21 c. Issuing letters of credit to provide credit enhancements for loans
22 made by banks to businesses in North Carolina, not to exceed in
23 the aggregate the greater of twenty-five million dollars
24 (\$25,000,000) or five percent (5%) of the total combined value
25 of the Escheat Fund and the Escheat Account at the time the
26 letter is issued.

27 In exercising fiduciary duty to evaluate possible investments under this
28 subdivision, the State Treasurer may consider, without diminishing the
29 obligation to invest funds for the benefit of worthy and needy students,
30 the potential economic benefits to the State of such an investment. The
31 State Treasurer shall report to the General Assembly annually
32 regarding the investments made under this subdivision."

33 **SECTION 6.2.** This part is effective when it becomes law.

34 **PART 7. INSURABLE INTEREST OF CHARITABLE ORGANIZATIONS**

35 **SECTION 7.1.** G.S. 58-58-86 reads as rewritten:

36 "**§ 58-58-86. Insurable interest of charitable organizations.**

37 (a) If an organization described in section 501(c)(3) of the Internal Revenue
38 ~~Code~~ Code, or an entity, purchases or receives by assignment, before, on, or after the
39 effective date of this section, life insurance on an insured who consents in writing to the
40 purchase or assignment, the organization or entity is deemed to have an insurable
41 interest in the insured person's life.

42 (b) For the purposes of this section, an "entity" is any trust, business trust,
43 partnership, corporation, limited liability company, or similar entity approved in writing

1 by the insured as the beneficiary in, and owner of, a life insurance policy and annuity
2 contract on the life of the insured subject to each of the following requirements:

- 3 (1) The entity is formed for the purpose, in part, of generating funds for
4 the benefit of one or more charitable organizations described in section
5 501(c)(3) of the Internal Revenue Code that are, prior to the time of
6 the purchase, designated in writing by the consenting insured.
- 7 (2) The payments to the entity under the annuity contracts must be
8 reasonably anticipated to fund the premiums on the life insurance
9 policies for the second and succeeding years.
- 10 (3) Either (i) each benefited charitable organization described in section
11 501(c)(3) of the Internal Revenue Code that is designated in writing by
12 the consenting insured provides an affidavit to the entity stating that
13 the organization has been in existence for at least three years and has
14 assets of at least five million dollars (\$5,000,000) or (ii) the consenting
15 insured provides an affidavit to the entity stating that the insured is an
16 accredited investor as defined in Rule 501 of Regulation D under the
17 Securities Act of 1933, as amended.
- 18 (4) The consenting insured provides an affidavit to the entity stating that
19 neither the consenting insured, any relative, as that term is defined in
20 G.S. 39-23.1(11), of the consenting insured, nor any entity controlled
21 by the consenting insured or any relative of the consenting insured
22 other than a charitable organization described in section 501(c)(3) of
23 the Internal Revenue Code, received any monetary remuneration or
24 other consideration whatsoever in connection with the consenting
25 insured's consent to purchase the combination of a life insurance
26 policy and annuity contract.
- 27 (5) Prior to the ownership or purchase of the combination of a life
28 insurance policy and annuity contract on the consenting insured, each
29 consenting insured and benefited organization described in section
30 501(c)(3) of the Internal Revenue Code is provided a written
31 description of the minimum percentage or amount of the life insurance
32 proceeds that is reasonably anticipated to be paid to the benefited
33 charitable organization."

34 **SECTION 7.2.** This part is effective when it becomes law.

35 **PART 8. EFFECTIVE DATE**

36 **SECTION 8.** Except as otherwise provided in this act, this act is effective
37 when it becomes law.