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HOUSE BILL 1415*
Committee Substitute Favorable 6/22/04
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Short Title: Alternative R&D Tax Credit.

(Public)

Sponsors:

Referred to:

May 12, 2004

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

4 The General Assembly of North Carolina enacts:

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

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

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

12 "Article 3F.

13 "Research and Development.

14 "§ 105-129.50. Definitions.

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

17 (1) through (3): Reserved.

18 (4) North Carolina university research expenses. – Any amount the
19 taxpayer paid or incurred to a research university for qualified research
20 performed in this State or basic research performed in this State.

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

23 (6) Qualified North Carolina research expenses. – Qualified research
24 expenses, other than North Carolina university research expenses, for
25 research performed in this State.

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

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

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

3 a. It is classified as one of the following in the most recent edition
4 of 'A Classification of Institutions of Higher Education', the
5 official report of The Carnegie Foundation for the
6 Advancement of Teaching:

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

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

9 3. Baccalaureate Colleges, Liberal Arts or General.

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

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

15 **"§ 105-129.51. Administration; sunset.**

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

19 (b) This Article is repealed for taxable years beginning on or after January 1,
20 2009.

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

25 **"§ 105-129.52. Tax election; cap.**

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

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

38 **"§ 105-129.53. Substantiation.**

39 To claim a credit allowed by this Article, the taxpayer must provide any information
40 required by the Secretary. Every taxpayer claiming a credit under this Article must
41 maintain and make available for inspection by the Secretary any records the Secretary
42 considers necessary to determine and verify the amount of the credit to which the
43 taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the

1 credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to
 2 maintain adequate records or to make them available for inspection.

3 **"§ 105-129.54. Reports.**

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

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

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

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

12 **"§ 105-129.55. Credit for North Carolina research and development.**

13 (a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified
 14 North Carolina research expenses for the taxable year is allowed a credit equal to a
 15 percentage of the expenses, determined as provided in this subsection. Only one credit
 16 is allowed under this subsection with respect to the same expenses. If more than one
 17 subdivision of this subsection applies to the same expenses, then the credit is equal to
 18 the higher percentage, not both percentages combined. If part of the taxpayer's qualified
 19 North Carolina research expenses qualifies under subdivision (2) of this subsection and
 20 the remainder qualifies under subdivision (3) of this subsection, the applicable
 21 percentages apply separately to each part of the expenses.

22 (1) Small business. – If the taxpayer was a small business as of the last
 23 day of the taxable year, the applicable percentage is three percent
 24 (3%).

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

28 (3) Other research. – For expenses not covered under subdivision (1) or
 29 (2) of this subsection, the percentages provided in the table below
 30 apply to the taxpayer's qualified North Carolina research expenses
 31 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>

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

39 **SECTION 3.** G.S. 105-259(b) is amended by adding a new subdivision to
 40 read:

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

1 ...

2 (30) To publish the information required under G.S. 105-129.54 and to
3 prove that a business does not meet the definition of 'small business'
4 under Article 3F of this Chapter because the annual receipts of the
5 business, combined with the annual receipts of all related persons,
6 exceeds the applicable amount."

7 **SECTION 4.** G.S. 105-129.10 and G.S. 105-129.51(c) are repealed.

8 **SECTION 5.** Section 4 of this act becomes effective for taxable years
9 beginning on or after January 1, 2006. The remainder of this act becomes effective for
10 business activities occurring on or after July 1, 2005.