

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

S

1

SENATE BILL 961*

Short Title: Information Technology R&D Credit. (Public)

Sponsors: Senators Reeves, Ballantine; Garrou, Hoyle, and Rand.

Referred to: Finance.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX CREDITS FOR RESEARCH AND DEVELOPMENT
3 BY INFORMATION TECHNOLOGY BUSINESSES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 105 of the General Statutes is amended by adding a
6 new Article to read:

"Article 3F.

"Information Technology Research and Development.

9 **"§ 105-129.50. Definitions.**

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

- 12 (1) Information technology business. – A taxpayer whose primary
13 business is information technology as defined in G.S. 105-129.51.
- 14 (2) Midsize business. – A business whose annual receipts for the
15 applicable period of measurement were one million dollars
16 (\$1,000,000) or more but did not exceed twenty-five million dollars
17 (\$25,000,000).
- 18 (3) NAICS. – Defined in G.S. 105-129.2.
- 19 (4) North Carolina research university. – An institution of higher
20 education that is located in North Carolina and is classified as a
21 Research I university or a Research II university in the most recent
22 edition of 'A Classification of Institutions of Higher Education', the
23 official report of The Carnegie Foundation for the Advancement of
24 Teaching.
- 25 (5) Period of measurement. – Defined in the Small Business Size
26 Regulations of the federal Small Business Administration.
- 27 (6) Qualified North Carolina research expenses. – Qualified research
28 expenses, as defined in section 41 of the Code, for research performed
29 in this State.

- 1 (7) Receipts. – Defined in the Small Business Size Regulations of the
2 federal Small Business Administration.
3 (8) Small business. – A business whose annual receipts for the applicable
4 period of measurement did not exceed one million dollars
5 (\$1,000,000).

6 **"§ 105-129.51. Administration.**

7 (a) A taxpayer is eligible for the credits allowed in this Article if it is an
8 information technology business. The three credits allowed in this Article are exclusive.
9 A taxpayer may elect to take only one of the credits with respect to its research activities
10 in a taxable year. In addition, if a taxpayer claims a credit under this Article for
11 activities in a taxable year, it may not also claim a credit under G.S. 105-129.10 for
12 activities in the same taxable year. The taxpayer may elect a different credit for
13 activities in a subsequent taxable year.

14 (b) For the purpose of this Article, information technology is any of the
15 following industries as defined by NAICS:

- 16 (1) 325411 Medicinal and Botanical Manufacturing.
17 (2) 325412 Pharmaceutical Preparation Manufacturing.
18 (3) 325414 Biological Product Manufacturing.
19 (4) 333295 Semiconductor Machinery Manufacturing.
20 (5) 333313 Office Machinery Manufacturing.
21 (6) 333314 Optical Instrument and Lens Manufacturing.
22 (7) 333315 Photographic and Photocopying Equipment Manufacturing.
23 (8) 334111 Electronic Computer Manufacturing.
24 (9) 334112 Computer Storage Device Manufacturing.
25 (10) 334113 Computer Terminal Manufacturing.
26 (11) 334119 Other Computer Peripheral Equipment Manufacturing.
27 (12) 334210 Telephone Apparatus Manufacturing.
28 (13) 334220 Radio and Television Broadcasting and Wireless
29 Communications Equipment Manufacturing.
30 (14) 334290 Other Communications Equipment Manufacturing.
31 (15) 334310 Audio and Video Equipment Manufacturing.
32 (16) 334411 Electron Tube Manufacturing.
33 (17) 334412 Bare Printed Circuit Board Manufacturing.
34 (18) 334413 Semiconductor and Related Device Manufacturing.
35 (19) 334414 Electronic Capacitor Manufacturing.
36 (20) 334415 Electronic Resistor Manufacturing.
37 (21) 334416 Electronic Coil, Transformer, and Other Inductor
38 Manufacturing.
39 (22) 334417 Electronic Connector Manufacturing.
40 (23) 334418 Printed Circuit Assembly (Electronic Assembly)
41 Manufacturing.
42 (24) 334419 Other Electronic Component Manufacturing.
43 (25) 334510 Electromedical and Electrotherapeutic Apparatus
44 Manufacturing.

- 1 (26) 334511 Search, Detection, Navigation, Guidance, Aeronautical, and
2 Nautical System and Instrument Manufacturing.
- 3 (27) 334512 Automatic Environmental Control Manufacturing for
4 Residential, Commercial, and Appliance Use.
- 5 (28) 334513 Instruments and Related Products Manufacturing for
6 Measuring, Displaying, and Controlling Industrial Process Variables.
- 7 (29) 334514 Totalizing Fluid Meter and Counting Device Manufacturing.
- 8 (30) 334515 Instrument Manufacturing for Measuring and Testing
9 Electricity and Electrical Signals.
- 10 (31) 334516 Analytical Laboratory Instrument Manufacturing.
- 11 (32) 334517 Irradiation Apparatus Manufacturing.
- 12 (33) 334519 Other Measuring and Controlling Device Manufacturing.
- 13 (34) 334611 Software Reproducing.
- 14 (35) 334613 Magnetic and Optical Recording Media Manufacturing.
- 15 (36) 335311 Power, Distribution, and Specialty Transformer
16 Manufacturing.
- 17 (37) 335313 Switchgear and Switchboard Apparatus Manufacturing.
- 18 (38) 335314 Relay and Industrial Control Manufacturing.
- 19 (39) 335911 Storage Battery Manufacturing.
- 20 (40) 335912 Primary Battery Manufacturing.
- 21 (41) 335921 Fiber Optic Cable Manufacturing.
- 22 (42) 335929 Other Communication and Energy Wire Manufacturing.
- 23 (43) 335931 Current-Carrying Wiring Device Manufacturing.
- 24 (44) 335932 Noncurrent-Carrying Wiring Device Manufacturing.
- 25 (45) 335991 Carbon and Graphite Product Manufacturing.
- 26 (46) 335999 All Other Miscellaneous Electrical Equipment and Component
27 Manufacturing.
- 28 (47) 336413 Other Aircraft Parts and Auxiliary Equipment Manufacturing.
- 29 (48) 336414 Guided Missile and Space Vehicle Manufacturing.
- 30 (49) 336415 Guided Missile and Space Vehicle Propulsion Unit and
31 Propulsion Unit Parts Manufacturing.
- 32 (50) 336419 Other Guided Missile and Space Vehicle Parts and Auxiliary
33 Equipment Manufacturing.
- 34 (51) 423420 Office Equipment Merchant Wholesalers.
- 35 (52) 423430 Computer and Computer Peripheral Equipment and Software
36 Merchant Wholesalers.
- 37 (53) 423440 Other Commercial Equipment Merchant Wholesalers.
- 38 (54) 423490 Other Professional Equipment and Supplies Merchant
39 Wholesalers.
- 40 (55) 423610 Electrical Apparatus and Equipment, Wiring Supplies, and
41 Related Equipment Merchant Wholesalers.
- 42 (56) 423620 Electrical and Electronic Appliance, Television, and Radio Set
43 Merchant Wholesalers.
- 44 (57) 423690 Other Electronic Parts and Equipment Merchant Wholesalers.

- 1 (58) 423710 Hardware Merchant Wholesalers.
2 (59) 425110 Business to Business Electronic Markets.
3 (60) 443120 Computer and Software Stores.
4 (61) 454111 Electronic Shopping.
5 (62) 454112 Electronic Auctions.
6 (63) 511210 Software Publishers.
7 (64) 515120 Television Broadcasting.
8 (65) 515210 Cable and Other Subscription Programming.
9 (66) 516110 Internet Publishing and Broadcasting.
10 (67) 517110 Wired Telecommunications Carriers.
11 (68) 517211 Paging.
12 (69) 517212 Cellular and Other Wireless Telecommunications.
13 (70) 517310 Telecommunications Resellers.
14 (71) 517410 Satellite Telecommunications.
15 (72) 517510 Cable and Other Program Distribution.
16 (73) 517910 Other Telecommunications.
17 (74) 518111 Internet Service Providers.
18 (75) 518112 Web Search Portals.
19 (76) 518210 Data Processing, Hosting, and Related Services.
20 (77) 519110 News Syndicates.
21 (78) 532420 Office Machinery and Equipment Rental and Leasing.
22 (79) 541330 Engineering Services.
23 (80) 541380 Testing Laboratories.
24 (81) 541511 Custom Computer Programming Services.
25 (82) 541512 Computer Systems Design Services.
26 (83) 541513 Computer Facilities Management Services.
27 (84) 541519 Other Computer Related Services.
28 (85) 541690 Other Scientific and Technical Consulting Services.
29 (86) 541710 Research and Development in the Physical, Engineering, and
30 Life Sciences.
31 (87) 541990 All Other Professional, Scientific, and Technical Services.
32 (88) 611420 Computer Training.
33 (89) 811211 Consumer Electronics Repair and Maintenance.
34 (90) 811212 Computer and Office Machine Repair and Maintenance.
35 (91) 811213 Communication Equipment Repair and Maintenance.
36 (92) 811219 Other Electronic and Precision Equipment Repair and
37 Maintenance.

38 **"§ 105-129.52. Tax election; cap.**

- 39 (a) Tax Election. – The credits allowed in this Article are allowed against the
40 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4
41 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed
42 when filing the return on which the first installment of the credit is claimed. This
43 election is binding. Any carryforwards of a credit must be claimed against the same tax.

1 (b) Cap. – If the credit allowed in G.S. 105-129.57 for a small business exceeds
2 the amount of tax against which it is claimed for the taxable year reduced by the sum of
3 all credits allowable, the excess is refundable to the taxpayer at the election of the
4 taxpayer. The refundable excess is governed by the provisions governing a refund of an
5 overpayment by the taxpayer of the tax imposed in this Part. In computing the amount
6 of tax against which multiple credits are allowed, nonrefundable credits are subtracted
7 before refundable credits. Any other credit allowed in this Article may not exceed the
8 amount of tax against which it is claimed for the taxable year, reduced by the sum of all
9 other credits allowed against that tax, except tax payments made by or on behalf of the
10 taxpayer. This limitation applies to the cumulative amount of credit, including
11 carryforwards, claimed by the taxpayer under this Article against each tax for the
12 taxable year. Any unused portion of a credit allowed in this Article may be carried
13 forward for the succeeding 15 years.

14 **"§ 105-129.53. Substantiation.**

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

22 **"§ 105-129.54. Reports.**

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

- 26 (1) The number of taxpayers that claimed each credit allowed in this
27 Article.
28 (2) The amount of each credit claimed.
29 (3) The total cost to the General Fund of the credits claimed.

30 **"§ 105-129.55. General credit for increasing research and development.**

31 A taxpayer that claims for the taxable year a federal income tax credit under section
32 41(a) of the Code for increasing research activities is allowed a credit equal to five
33 percent (5%) of the State's apportioned share of the taxpayer's expenditures for
34 increasing research activities. The State's apportioned share of a taxpayer's expenditures
35 for increasing research activities is the excess of the taxpayer's qualified research
36 expenses for the taxable year over the base amount, as determined under section 41 of
37 the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified North
38 Carolina research expenses for the taxable year to the taxpayer's total qualified research
39 expenses for the taxable year.

40 **"§ 105-129.56. Alternative credit for increasing research and development.**

41 A taxpayer that claims the alternative incremental credit under section 41(c)(4) of
42 the Code for increasing research activities is allowed a credit equal to twenty-five
43 percent (25%) of the State's apportioned share of the federal credit claimed. The State's
44 apportioned share of the federal credit claimed is the amount of the alternative

1 incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the
2 taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified
3 North Carolina research expenses for the taxable year to the taxpayer's total qualified
4 research expenses for the taxable year. For the purpose of this section, the amount of the
5 alternative incremental credit claimed by a taxpayer is determined without regard to any
6 reduction elected under section 280C(c) of the Code.

7 **"§ 105-129.57. Credit for North Carolina research and development.**

8 A taxpayer that has qualified North Carolina research expenses, basic research
9 payments to a North Carolina research university for research in this State, or both for
10 the taxable year is allowed a credit equal to the sum of (i) twenty-five percent (25%) of
11 the basic research payments to a North Carolina research university for research in this
12 State plus (ii) a percentage of the qualified North Carolina research expenses,
13 determined as provided in this section. If part of the taxpayer's qualified North Carolina
14 research expenses qualifies under subdivision (3) of this section and the remainder
15 qualifies under subdivision (4) of this section, the applicable percentages apply
16 separately to each part of the expenses.

- 17 (1) Small business. – If the taxpayer was a small business as of the last
18 day of the taxable year, the applicable percentage is five percent (5%).
19 The credit under this section for a small business is refundable at the
20 election of the taxpayer as provided in G.S. 105-129.52.
- 21 (2) Midsize business. – If the taxpayer was a midsize business as of the
22 last day of the taxable year, the applicable percentage is five percent
23 (5%).
- 24 (3) Low-tier business. – If either of the following conditions are met, the
25 applicable percentage is five percent (5%):
26 a. The qualified North Carolina research was performed in an
27 enterprise tier one, two, or three area.
28 b. The taxpayer has purchased or leased, and placed in service in
29 an enterprise tier one, two, or three area, more than seven
30 million dollars (\$7,000,000) worth of real property, machinery
31 and equipment as defined in G.S. 105-129.2, or both.
- 32 (4) Other research. – To the extent the taxpayer does not qualify under
33 subdivision (1), (2), or (3) of this section, the applicable percentage is
34 one percent (1%)."

35 **SECTION 2.** This act becomes effective for taxable years beginning on or
36 after January 1, 2003.