

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 947
Committee Substitute Favorable 5/2/05

Short Title: Business Growth and Investment Act of 2005.

(Public)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT; AND TO EXTEND THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

PART I. REPLACE BILL LEE ACT

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

"Article 3H.

"Tax Credits for Growing Businesses.

"§ 105-129.70. Legislative findings.

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

- 1 (3) The economic condition of the State is not static and recent changes in
2 the State's economic condition have created economic distress that
3 requires a reevaluation of certain existing State programs and the
4 enactment of a new program as provided in this Article that is
5 designed to stimulate new economic activity and to create new jobs
6 within the State.
- 7 (4) The enactment of this Article is necessary to stimulate the economy
8 and create new jobs in North Carolina; and this Article will promote
9 the general welfare and confer, as its primary purpose and effect,
10 benefits on citizens throughout the State through the creation of new
11 jobs, an enlargement of the overall tax base, an expansion and
12 diversification of the State's industrial base, and an increase in revenue
13 to the State and its political subdivisions.
- 14 (5) The purpose of this Article is to stimulate economic activity and to
15 create new jobs within the State.
- 16 (6) The State is in need of a focused tax credit program that encourages
17 and facilitates economic growth and development within the State.
- 18 (7) The resources of the State are not evenly distributed throughout the
19 State and different communities have different abilities and needs in
20 attracting and maintaining new and expanding business and industry.

21 **§ 105-129.71. Definitions.**

22 The following definitions apply in this Article:

- 23 (1) Aircraft maintenance and repair. – The provision of specialized
24 maintenance or repair services for commercial aircraft or the
25 rebuilding of commercial aircraft.
- 26 (2) Air courier services. – The furnishing of air delivery of individually
27 addressed letters and packages for compensation, in interstate
28 commerce, except by the United States Postal Service.
- 29 (3) Business property. – Tangible personal property used in a business that
30 is capitalized under the Code.
- 31 (4) Cost. – In the case of property owned by the taxpayer, cost is
32 determined pursuant to regulations adopted under section 1012 of the
33 Code. In the case of property the taxpayer leases from another, cost is
34 value as determined pursuant to G.S. 105-130.4(j)(2).
- 35 (5) Customer service call center. – The provision of support service by a
36 business to its customers by telephone to support products or services
37 of the business.
- 38 (6) Development tier. – The classification assigned to an area pursuant to
39 G.S. 105-129.73.
- 40 (7) Electronic shopping and mail order houses. – An industry in electronic
41 shopping and mail order houses industry group 4541 as defined by
42 NAICS.
- 43 (8) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on
44 January 1, 2002.

- 1 (9) Full-time job. – A position that requires at least 1,600 hours of work
2 per year and is intended to be held by one employee during the entire
3 year. A full-time employee is an employee who holds a full-time job.
4 (10) Information technology and services. – An industry in one of the
5 following:
6 a. Internet service providers, Web search portals, and data
7 processing subsector 518 as defined by NAICS.
8 b. Software publishers industry group 5112 as defined by NAICS.
9 c. Computer systems design and related services industry group
10 5415 as defined by NAICS.
11 (11) Manufacturing. – An industry in manufacturing sectors 31 through 33,
12 as defined by NAICS, but not including quick printing or retail
13 bakeries.
14 (12) Motorsports racing team. – A professional or semiprofessional racing
15 team primarily engaged in the research and development, design,
16 manufacture, repair, maintenance, and operation of motor vehicles
17 used in live motorsports racing events before a paying audience.
18 (13) NAICS. – The North American Industry Classification System adopted
19 by the United States Office of Management and Budget as of
20 December 31, 2002.
21 (14) New job. – A full-time job that represents a net increase in the number
22 of the taxpayer's employees statewide. A new employee is an
23 employee who holds a new job. The term does not include a job
24 currently located in this State that is transferred to the business from a
25 related member of the business.
26 (15) Overdue tax debt. – Defined in G.S. 105-243.1.
27 (16) Purchase. – Defined in section 179 of the Code.
28 (17) Related entity. – Defined in G.S. 105-130.7A.
29 (18) Research and development. – An industry in scientific research and
30 development services industry group 5417 as defined by NAICS.
31 (19) Warehousing. – An industry in warehousing and storage subsector 493
32 as defined by NAICS.
33 (20) Wholesale trade. – An industry in wholesale trade sector 42 as defined
34 by NAICS.

35 **"§ 105-129.72. Sunset; studies.**

36 (a) Sunset. – This Article is repealed effective for business activities that occur
37 on or after January 1, 2010.

38 (b) Equity Study. – The Department of Commerce shall study the effect of the
39 tax incentives provided in this Article on tax equity. This study shall include the
40 following:

- 41 (1) Reexamining the formula in G.S. 105-129.73(b) used to define
42 development tiers, to include consideration of alternative measures for
43 more equitable treatment of counties in similar economic
44 circumstances.

- 1 (2) Considering whether the assignment of tiers and the applicable
2 thresholds are equitable for smaller counties, for example those under
3 50,000 in population.
- 4 (3) Compiling any available data on whether expanding North Carolina
5 businesses receive fewer benefits than out-of-State businesses that
6 locate to North Carolina.
- 7 (c) Impact Study. – The Department of Commerce shall study the effectiveness
8 of the tax incentives provided in this Article. This study shall include:
- 9 (1) Studying the distribution of tax incentives across new and expanding
10 businesses and industries.
- 11 (2) Examining data on economic recruitment for the period from 2004
12 through the most recent year for which data are available by county, by
13 industry type, by size of investment, and by number of jobs, and other
14 relevant information to determine the pattern of business locations and
15 expansions before and after the enactment of this Article.
- 16 (3) Measuring the direct costs and benefits of the tax incentives.
- 17 (4) Compiling available information on the current use of incentives by
18 other states and whether that use is increasing or declining.
- 19 (d) Report. – The Department of Commerce shall report the results of these
20 studies and its recommendations to the General Assembly biennially with the first report
21 due by April 1, 2007.

22 **"§ 105-129.73. Development tier designation.**

- 23 (a) Tiers Defined. – A development tier one area is a county whose annual
24 ranking is one of the 40 highest in the State. A development tier two area is a county
25 whose annual ranking is one of the next 40 highest in the State. A development tier
26 three area is a county that is not in a lower-numbered development tier.
- 27 (b) Development Factor. – Each year, on or before November 30, the Secretary
28 of Commerce shall assign to each county in the State a development factor that is the
29 sum of the following:
- 30 (1) The county's rank in a ranking of counties by average rate of
31 unemployment from lowest to highest, for the preceding 12 months.
- 32 (2) The county's rank in a ranking of counties by median household
33 income from highest to lowest, for the preceding 12 months.
- 34 (3) The county's rank in a ranking of counties by percentage growth in
35 population from highest to lowest, for the preceding 36 months.
- 36 (4) The county's rank in a ranking of counties by assessed property value
37 per capita, from highest to lowest, for the most recent taxable year.
- 38 (c) Annual Ranking. – After computing the development factor as provided in
39 subsection (b) of this section, the Secretary of Commerce shall rank all the counties
40 within the State according to their development factor from highest to lowest.
41 Regardless of the actual development factor, any county that has a population of less
42 than 12,000 shall automatically be ranked one of the 40 highest counties, and any
43 county that has a population of less than 50,000 shall automatically be ranked one of the
44 80 highest counties. The Secretary shall then identify all the areas of the State by

1 development tier and publish this information. A development tier designation is
2 effective only for the calendar year following the designation.

3 (d) Data. – In measuring rates of unemployment and median household income,
4 the Secretary shall use the latest available data published by a State or federal agency
5 generally recognized as having expertise concerning the data. In measuring population
6 and population growth, the Secretary shall use the most recent estimates of population
7 certified by the State Budget Officer. In measuring assessed property value, the
8 Secretary shall use the tax records prepared in each county.

9 (e) Exception for Development Tier One Areas. – Notwithstanding the
10 provisions of this section, a county designated as a development tier one area may not
11 be redesignated as a higher-numbered development tier area until it has been in its
12 development tier area for at least two consecutive years.

13 (f) Exception for Two-County Industrial Park. – For the purpose of this Article,
14 an eligible two-county industrial park has the lower development tier designation of the
15 designations of the two counties in which it is located if it meets all of the following
16 conditions:

17 (1) It is located in two contiguous counties, one of which has a lower
18 development tier designation than the other.

19 (2) At least one-third of the park is located in the county with the lower
20 tier designation.

21 (3) It is owned by the two counties or a joint agency of the counties.

22 (4) The county with the lower tier designation contributed at least the
23 lesser of one-half of the cost of developing the park or a proportion of
24 the cost of developing the park equal to the proportion of land in the
25 park located in the county with the lower tier designation.

26 **"§ 105-129.74. Eligibility; forfeiture.**

27 (a) Eligible Business. – A taxpayer is eligible for a credit under this Article only
28 with respect to activities occurring at an establishment whose primary activity is listed
29 in this subsection. The primary activity of an establishment is determined based on the
30 establishment's principal product or group of products produced or distributed, or
31 services rendered.

32 (1) Aircraft maintenance and repair.

33 (2) Air courier services.

34 (3) Customer service call centers, if at least sixty percent (60%) of the
35 center's calls are incoming.

36 (4) Electronic shopping and mail order houses.

37 (5) Information technology and services.

38 (6) Manufacturing.

39 (7) Motorsports racing team.

40 (8) Research and development.

41 (9) Warehousing.

42 (10) Wholesale trade.

43 (b) Wage Standard. – A taxpayer is eligible for a credit under this Article in a
44 development tier two or three area if the taxpayer satisfies a wage standard. Jobs satisfy

1 the wage standard if they pay an average weekly wage that is at least equal to the lesser
2 of one hundred ten percent (110%) of the average wage for all insured private
3 employers in the State and one hundred percent (100%) of the average wage for all
4 insured private employers in the county. The Department of Commerce must annually
5 publish the wage standard for each county.

6 In making the wage calculation, the taxpayer must include any jobs that were filled
7 for at least 1,600 hours during the calendar year the taxpayer engages in the activity that
8 qualifies for the credit even if those jobs are not filled at the time the taxpayer claims
9 the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer
10 must use the wage standard for the calendar year in which the taxable year begins. Only
11 full-time jobs are included when making the wage calculation.

12 (c) Health Insurance. – A taxpayer is eligible for a credit under this Article if the
13 taxpayer provides health insurance for all of the full-time jobs at the establishment with
14 respect to which the credit is claimed when the taxpayer engages in the activity that
15 qualifies for the credit. For the purposes of this subsection, a taxpayer provides health
16 insurance if it pays at least fifty percent (50%) of the premiums for health care coverage
17 that equals or exceeds the minimum provisions of the basic health care plan of coverage
18 recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

19 Each year that a taxpayer claims a credit or carryforward of a credit allowed under
20 this Article, the taxpayer must provide with the tax return the taxpayer's certification
21 that the taxpayer continues to provide health insurance for all the jobs at the
22 establishment with respect to which the credit was claimed. If the taxpayer ceases to
23 provide health insurance for the jobs during a taxable year, the credit expires and the
24 taxpayer may not take any remaining installment or carryforward of the credit.

25 (d) Environmental Impact. – A taxpayer is eligible for a credit allowed under this
26 Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the
27 taxpayer has no pending administrative, civil, or criminal enforcement action based on
28 alleged significant violations of any program implemented by an agency of the
29 Department of Environment and Natural Resources, and has had no final determination
30 of responsibility for any significant administrative, civil, or criminal violation of any
31 program implemented by an agency of the Department of Environment and Natural
32 Resources within the last five years. A significant violation is a violation or alleged
33 violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The
34 Secretary of Environment and Natural Resources must notify the Department of
35 Revenue annually of every person that currently has any of these pending actions and
36 every person that has had any of these final determinations within the last five years.

37 (e) Safety and Health Programs. – A taxpayer is eligible for a credit allowed
38 under this Article only if the taxpayer certifies that, as of the time the taxpayer claims
39 the credit, at the establishment with respect to which the credit is claimed, the taxpayer
40 has no citations under the Occupational Safety and Health Act that have become a final
41 order within the past three years for willful serious violations or for failing to abate
42 serious violations. For the purposes of this subsection, "serious violation" has the same
43 meaning as in G.S. 95-127. The Commissioner of Labor must notify the Department of

1 Revenue annually of all employers who have had these citations become final orders
2 within the past three years.

3 (f) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under
4 this Article if, at the time the taxpayer claims the credit or an installment or
5 carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and
6 that overdue tax debt has not been satisfied or otherwise resolved.

7 (g) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
8 taxpayer was not eligible for the credit for the calendar year in which the taxpayer
9 engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits
10 a credit for investment in real property under G.S. 105-129.80 if the taxpayer fails to
11 timely create the number of required new jobs or to timely make the required level of
12 investment required under G.S. 105-129.80(b). A taxpayer that forfeits a credit under
13 this Article is liable for all past taxes avoided as a result of the credit plus interest at the
14 rate established under G.S. 105-241.1(i), computed from the date the taxes would have
15 been due if the credit had not been allowed. The past taxes and interest are due 30 days
16 after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and
17 interest by the due date is subject to the penalties provided in G.S. 105-236.

18 (h) Change in Ownership of Business. – As used in this subsection, the term
19 'business' means a taxpayer or an establishment. The sale, merger, consolidation,
20 conversion, acquisition, or bankruptcy of a business, or any transaction by which an
21 existing business reformulates itself as another business, does not create new eligibility
22 in a succeeding business with respect to credits for which the predecessor was not
23 eligible under this Article. A successor business may, however, take any credit or
24 carried-over portion of a credit that its predecessor could have taken if it had a tax
25 liability. The acquisition of a business is a new investment that creates new eligibility in
26 the acquiring taxpayer under this Article if either of the following conditions is met:

27 (1) The business closed before it was acquired.

28 (2) The business was required to file a notice of plant closing or mass
29 layoff under the federal Worker Adjustment and Retraining
30 Notification Act, 29 U.S.C. § 2101, before it was acquired.

31 (i) Advisory Ruling. – A taxpayer may request in writing from the Secretary of
32 Revenue specific advice regarding eligibility for a credit under this Article.
33 G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon
34 advice offered by any other State or local government official or employee acting in an
35 official capacity regarding eligibility for a credit under this Article.

36 (j) Planned Expansion. – A taxpayer that signs a letter of commitment with the
37 Department of Commerce, after the Department has calculated the development tier
38 designations for the next year but before the beginning of that taxable year, to undertake
39 specific activities at a specific site within the next taxable year may calculate the credit
40 for which it qualifies based on the location's development tier designation in the year in
41 which the letter of commitment was signed by the taxpayer.

42 **§ 105-129.75. Tax election; cap; carryforwards; limitations.**

43 (a) Tax Election. – The credits provided in this Article are allowed against the
44 franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of

1 this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The
2 taxpayer may divide a credit between the taxes against which it is allowed.
3 Carryforwards of a credit may be divided between the taxes against which it is allowed
4 without regard to the original election.

5 (b) Cap. – The credits allowed under this Article may not exceed fifty percent
6 (50%) of the cumulative amount of taxes against which they are claimed for the taxable
7 year, reduced by the sum of all other credits allowed against those taxes, except tax
8 payments made by or on behalf of the taxpayer. This limitation applies to the
9 cumulative amount of credit, including carryforwards, claimed by the taxpayer under
10 this Article against the taxes for the taxable year. Credits that may eliminate only a
11 portion of the taxpayer's liability must be taken before credits that may eliminate all of a
12 taxpayer's liability, which in turn must be taken before any credits that are refundable.

13 (c) Carryforward. – Any unused portion of a credit under this Article may be
14 carried forward for the succeeding five years.

15 (d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer
16 must claim a credit under this Article within six months after the date set by statute for
17 the filing of the return, including any extensions of that date.

18 **"§ 105-129.76. Fees and reports.**

19 (a) Fee. – When filing a return for a taxable year in which the taxpayer engaged
20 in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer
21 must pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each
22 credit the taxpayer claims or intends to claim. The fee is due at the time the return is due
23 for the taxable year in which the taxpayer engaged in the activity for which the taxpayer
24 is eligible for a credit. No credit is allowed under this Article for a taxable year until all
25 outstanding fees have been paid. The Secretary of Revenue shall retain three-fourths of
26 the proceeds of the fee imposed in this section for the costs of administering and
27 auditing the credits allowed in this Article. The Secretary of Revenue shall credit the
28 remaining proceeds of the fee imposed in this section to the Department of Commerce
29 for the costs of administering this Article. The proceeds of the fee are receipts of the
30 Department to which they are credited.

31 (b) Reports. – The Department of Revenue shall publish by April 1 of each year
32 the following information itemized by credit and by taxpayer for the 12-month period
33 ending the preceding December 31:

- 34 (1) The number of claims for each credit allowed in this Article.
- 35 (2) The number and development tier area of new jobs with respect to
36 which credits were claimed.
- 37 (3) The cost and development tier area of business property with respect to
38 which credits were claimed.
- 39 (4) The cost and development tier area of real property investment with
40 respect to which credits were claimed.

41 **"§ 105-129.77. Substantiation.**

42 (a) Records. – To claim a credit allowed by this Article, the taxpayer must
43 provide any information required by the Secretary of Revenue. Every taxpayer claiming
44 a credit under this Article shall maintain and make available for inspection by the

Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information must be in the form prescribed by the Secretary 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 a credit and any carryforwards, and includes the following:

- (1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the location.
- (2) The type of business with respect to which the credit is claimed and the average weekly wage at the facility with respect to which the credit is claimed.
- (3) Any other qualifying information related to a specific credit allowed under this Article.

§ 105-129.78. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.74 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating those new jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located.

<u>Area Development Tier</u>	<u>Amount of Credit</u>
<u>Tier One</u>	<u>\$12,500</u>
<u>Tier Two</u>	<u>5,000</u>
<u>Tier Three</u>	<u>500</u>

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>5</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>50</u>

(c) Calculation. – A job is located in a county if more than fifty percent (50%) of the employee's duties are performed in the county. The number of new jobs a taxpayer

1 creates during the taxable year is determined by subtracting the average number of
2 full-time employees the taxpayer had in this State during the 12-month period preceding
3 the beginning of the taxable year from the average number of full-time employees the
4 taxpayer has in this State during the taxable year.

5 (d) Installments. – The credit may not be taken in the taxable year in which the
6 new jobs are created. Instead, the credit must be taken in equal installments over the
7 four years following the taxable year in which the new jobs were created and is
8 conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of
9 the four years in which the installment of a credit accrues, a job is no longer filled, the
10 credit with respect to that job expires and the taxpayer may not take any remaining
11 installment of the credit with respect to that job. If, in one of the years in which the
12 installment of a credit accrues, the number of the taxpayer's full-time employees falls
13 below the sum of the applicable threshold and the number of full-time employees the
14 taxpayer had in the year before the year in which the taxpayer qualified for the credit,
15 the credits with respect to all of the new jobs expire, and the taxpayer may not take any
16 remaining installments of the credits. When a credit expires under this subsection, the
17 taxpayer may, however, take the portion of an installment that accrued in a previous
18 year and was carried forward to the extent permitted under G.S. 105-129.75.

19 (e) Transferred Jobs. – Jobs transferred from one area in the State to another area
20 in the State are not considered new jobs for purposes of this section. Jobs transferred to
21 the taxpayer from a related member of the taxpayer are not considered new jobs for
22 purposes of this section. If, in one of the four years in which the installment of a credit
23 accrues, the jobs with respect to which the credit was claimed are moved to an area in a
24 higher-numbered development tier, the remaining installments of the credit are allowed
25 only to the extent they would have been allowed if the jobs were initially created in the
26 area to which they were moved. If, in one of the years in which the installment of a
27 credit accrues, the jobs are moved to an area in a lower-numbered development tier, the
28 remaining installments of the credit must be calculated as if the jobs had been created
29 initially in the area to which they were moved.

30 (f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the
31 wage standard requirement of G.S. 105-129.74 only if the taxpayer satisfies the
32 requirement with respect to both the new jobs, considered collectively, for which a
33 credit is claimed and all of the jobs at the establishment, considered collectively, with
34 respect to which a credit is claimed.

35 (g) No Double Credit. – A taxpayer may not claim a credit under this section
36 with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

37 **"§ 105-129.79. Credit for investing in business property.**

38 (a) General Credit. – A taxpayer that has purchased or leased business property
39 and placed it in service in this State during the taxable year and that has satisfied the
40 threshold requirements of subsection (c) of this section is allowed a credit equal to the
41 applicable percentage of the eligible investment amount. Business property is eligible if
42 it is not leased to another party. The credit may not be taken for the taxable year in
43 which the business property is placed in service but shall be taken in equal installments

over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

<u>Area Development Tier</u>	<u>Applicable Percentage</u>
<u>Tier One</u>	<u>7%</u>
<u>Tier Two</u>	<u>5%</u>
<u>Tier Three</u>	<u>4%</u>

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State 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 had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	\$ <u>-0-</u>
<u>Tier Two</u>	<u>1,000,000</u>
<u>Tier Three</u>	<u>10,000,000</u>

(d) Expiration. – As used in this subsection, the term "disposed of" means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the taxpayer forfeits the remaining installments of the credit for the business property that was disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for

1 which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may
2 not be included in the cost of all the taxpayer's eligible business property that is in
3 service. If in a single taxable year business property with respect to two or more credits
4 in the same county are disposed of, the net reduction in the cost of all the taxpayer's
5 eligible business property that is in service in the same county is compared to the total
6 cost of all the business property for which credits expired in order to determine whether
7 the remaining installments of the credits are forfeited.

8 The expiration of a credit does not prevent the taxpayer from taking the portion of an
9 installment that accrued in a previous year and was carried forward to the extent
10 permitted under G.S. 105-129.75.

11 If, in one of the four years in which the installment of a credit accrues, the business
12 property with respect to which the credit was claimed is moved to a county in a
13 higher-numbered development tier, the remaining installments of the credit are allowed
14 only to the extent they would have been allowed if the business property had been
15 placed in service initially in the county to which it was moved. If, in one of the four
16 years in which the installment of a credit accrues, the business property with respect to
17 which a credit was claimed is moved to a county in a lower-numbered development tier,
18 the remaining installments of the credit must be calculated as if the business property
19 had been placed in service initially in the county to which it was moved.

20 (e) Wage Standard. – For the purposes of this section, a taxpayer satisfies the
21 wage standard requirement of G.S. 105-129.74 only if the taxpayer satisfies the
22 requirement with respect to all of the jobs at the establishment, considered collectively,
23 with respect to which a credit is claimed.

24 (f) No Double Credit. – A taxpayer may not claim a credit under this section
25 with respect to business property for which the taxpayer claims a credit under
26 G.S. 105-129.9 or G.S. 105-129.9A.

27 **§ 105-129.80. Credit for investment in real property.**

28 (a) Credit. – If a taxpayer that has purchased or leased real property in a
29 development tier one area begins to use the property in an eligible business during the
30 taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible
31 investment amount if all of the eligibility requirements of G.S. 105-129.74 and of
32 subsection (b) of this section are met. For the purposes of this section, property is
33 located in a development tier one area if the area the property is located in was a
34 development tier one area at the time the taxpayer made a written application for the
35 determination required under subsection (b) of this section. The eligible investment
36 amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost
37 of all of the real property the taxpayer is using in this State in an eligible business on the
38 last day of the taxable year exceeds the cost of all of the real property the taxpayer was
39 using in this State in an eligible business on the last day of the base year. The base year
40 is that year, of the three immediately preceding taxable years, in which the taxpayer was
41 using the most real property in this State in an eligible business. In the case of property
42 that is leased, the cost of the property is not determined as provided in G.S. 105-129.71
43 but is considered to be the taxpayer's lease payments over a seven-year period, plus any
44 expenditures made by the taxpayer to improve the property before it is used by the

1 taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire
2 credit may not be taken for the taxable year in which the property is first used in an
3 eligible business but shall be taken in equal installments over the seven years following
4 the taxable year in which the property is first used in an eligible business. When part of
5 the property is first used in an eligible business in one year and part is first used in an
6 eligible business in a later year, separate credits may be claimed for the amount of
7 property first used in an eligible business in each year. The basis in any real property for
8 which a credit is allowed under this section shall be reduced by the amount of credit
9 allowable.

10 (b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the
11 credit allowed under this section with respect to a location only if the Secretary of
12 Commerce makes a written determination that the taxpayer is expected to purchase or
13 lease and use in an eligible business at that location within a three-year period at least
14 ten million dollars (\$10,000,000) of real property and that the location that is the subject
15 of the credit will create at least 200 new jobs within two years of the time that the
16 property is first used in an eligible business. If the taxpayer fails to timely make the
17 required level of investment or fails to timely create the required number of new jobs,
18 the taxpayer forfeits the credit as provided in G.S. 105-129.74.

19 (c) Mixed Use Property. – If the taxpayer uses only part of the property in an
20 eligible business, the amount of the credit allowed under this section is reduced by
21 multiplying it by a fraction, the numerator of which is the square footage of the property
22 used in an eligible business and the denominator of which is the total square footage of
23 the property.

24 (d) Expiration. – If, in one of the seven years in which the installment of a credit
25 accrues, the property with respect to which the credit was claimed is no longer used in
26 an eligible business, the credit expires, and the taxpayer may not take any remaining
27 installment of the credit. If, in one of the seven years in which the installment of a credit
28 accrues, part of the property with respect to which the credit was claimed is no longer
29 used in an eligible business, the remaining installments of the credit shall be reduced by
30 multiplying it by the fraction described in subsection (c) of this section. If, in one of the
31 years in which the installment of a credit accrues and by which the taxpayer is required
32 to have created 200 new jobs at the property, the total number of employees the
33 taxpayer employs at the property with respect to which the credit is claimed is less than
34 200, the credit expires, and the taxpayer may not take any remaining installment of the
35 credit.

36 In each of these cases, the taxpayer may nonetheless take the portion of an
37 installment that accrued in a previous year and was carried forward to the extent
38 permitted under G.S. 105-129.75.

39 (e) No Double Credit. – A taxpayer may not claim a credit under this section
40 with respect to real property for which a credit is claimed under G.S. 105-129.12 or
41 G.S. 105-129.12A."

42 **SECTION 1.2.** This part is effective for taxable years beginning on or after
43 January 1, 2006, and applies to business activities occurring on or after that date.
44

1 **PART II. EXTEND JDIG**

2 **SECTION 2.1.** G.S. 143B-437.62 reads as rewritten:

3 "**§ 143B-437.62. Expiration.**

4 The authority of the Committee to enter into new agreements expires January 1,
5 ~~2006~~2008."

6 **SECTION 2.2.** This part is effective when it becomes law.

7 **PART III. BILL LEE AMENDMENT**

8 **SECTION 3.** G.S. 105-129.2(8a) reads as rewritten:

9 "(8a) Eligible major industry. – A taxpayer is an eligible major industry for
10 the purposes of this Article if the taxpayer satisfies one of the
11 following conditions:

12 a. It is primarily engaged in one of the industries listed in
13 G.S. 105-164.14(j)(3) and the Secretary of Commerce has
14 certified that the owner of the facility will invest at least one
15 hundred million dollars (\$100,000,000) of private funds to
16 acquire, construct, and equip a facility in this State to engage in
17 one or more of those industries.

18 b. The primary activity of the establishment is in soft drink and
19 ice manufacturing industry 31211 as defined by NAICS and the
20 Secretary of Commerce has certified that the owner of the
21 facility will invest at least one hundred million dollars
22 (\$100,000,000) of private funds to acquire, construct, and equip
23 a facility in an enterprise tier one area in this State and will
24 create at least 200 new jobs within 36 months of beginning
25 operations at the facility."

26 **PART IV. EFFECTIVE DATE**

27 **SECTION 4.** Except as otherwise provided, this act is effective when it
28 becomes law.