

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 740

Finance Committee Substitute Adopted 6/21/89

Third Edition Engrossed 7/10/89

House Committee Substitute Favorable 7/21/89

House Committee Substitute #2 Favorable 7/31/89

Short Title: Cherokee Tax Refund Agreements.

(Public)

Sponsors:

Referred to:

April 3, 1989

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA DEPARTMENT OF REVENUE TO ENTER INTO AGREEMENTS WITH THE EASTERN BAND OF CHEROKEE INDIANS REGARDING REFUNDS OF MOTOR FUELS AND SPECIAL FUELS TAXES, TO INCREASE THE NUMBER OF COUNTIES ELIGIBLE FOR CLASSIFICATION AS A SEVERELY DISTRESSED COUNTY FROM TWENTY TO TWENTY-FIVE, AND TO PROVIDE ELIGIBILITY CRITERIA FOR TAX CREDITS FOR SEVERELY DISTRESSED COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. By virtue of the Act of June 4, 1924, Pub. L. No. 68-191, Ch. 253, 43 Stat. 370, Congress and the United States courts have recognized the Eastern Band of Cherokee Indians as possessing sovereign legal rights over their members and their trust lands.

Sec. 2. The following definitions apply in this act:

- (1) Chief. The Principal Chief of the Eastern Band of the Cherokee Indians.
- (2) Council. The Tribal Council of the Eastern Band of the Cherokee Indians.
- (3) Tribe. The Eastern Band of the Cherokee Indians.

1 Sec. 3. Notwithstanding any other provision of law concerning refunds of
2 motor fuels and special fuels taxes, the Department of Revenue may enter into a
3 memorandum of understanding or an agreement with the Eastern Band of Cherokee
4 Indians to make refunds of motor fuels and special fuels taxes to the Tribe in its
5 collective capacity on behalf of its members who reside on or engage in otherwise
6 taxable transactions within Cherokee trust lands. The memorandum or agreement shall
7 be approved by the Council and signed by the Chief on behalf of the Tribe and shall be
8 signed by the Secretary of Revenue on behalf of the Department of Revenue. The
9 memorandum or agreement may not affect the right of an individual member of the
10 Tribe to a refund and shall provide for deduction of amounts refunded to individual
11 members of the Tribe from the amounts to be refunded to the Tribe on behalf of all
12 members. The memorandum or agreement may be effective for a definite or indefinite
13 period, as specified in the agreement.

14 Sec. 4. These refunds shall be drawn from the Highway Fund.

15 Sec. 4.1. (a) G.S. 105-130.40(c), as amended by Chapter 111 of the 1989
16 Session Laws, reads as rewritten:

17 "(c) County Designation. A severely distressed county is a county designated as
18 such by the Secretary of the Department of Commerce. Each year, on or before
19 December 31, the Secretary of the Department of Commerce shall designate which
20 counties are considered severely distressed, and shall provide that information to the
21 Secretary of Revenue. A county is considered severely distressed if its distress factor is
22 one of the ~~twenty-twenty-five~~ highest in the State. The Secretary shall assign to each
23 county in the State a distress factor which is the sum of (1) the county's rank in a
24 ranking of counties by rate of unemployment from lowest to highest and (2) the county's
25 rank in a ranking of counties by per capita income from highest to lowest. In measuring
26 rates of unemployment and per capita income, the Secretary shall use data from the
27 North Carolina Employment Security Commission and the United States Department of
28 Commerce for the most recent thirty-six month period for which data is available. A
29 designation as a severely distressed county is effective only for the calendar year
30 following the designation."

31 (b) G.S. 105-130.40, as amended by Chapter 111 of the 1989 Session Laws,
32 is amended by adding a new subsection to read:

33 "(b1) Eligibility. - A corporation is eligible for the tax credit allowed by this section
34 only if it obtained a credit under this section for taxable year 1988 or the Department of
35 Commerce determines that it engages in the manufacturing of goods, or that it engages
36 in an industrial activity such as the processing of foods, raw materials, chemicals and
37 process agents, goods in process, or of finished products."

38 (c) G.S. 105-151.17(c), as amended by Chapter 111 of the 1989 Session Laws,
39 reads as rewritten:

40 "(c) County Designation. – A severely distressed county is a county designated as
41 such by the Secretary of the Department of Commerce. Each year, on or before
42 December 31, the Secretary of the Department of Commerce shall designate which
43 counties are considered severely distressed, and shall provide that information to the
44 Secretary of Revenue. A county is considered severely distressed if its distress factor is

1 one of the ~~twenty~~ twenty-five highest in the State. The Secretary shall assign to each
2 county in the State a distress factor which is the sum of (1) the county's rank in a
3 ranking of counties by rate of unemployment from lowest to highest and (2) the county's
4 rank in a ranking of counties by per capita income from highest to lowest. In measuring
5 rates of unemployment and per capita income, the Secretary shall use data from the
6 North Carolina Employment Security Commission and the United States Department of
7 Commerce for the most recent thirty-six month period for which data is available. A
8 designation as a severely distressed county is effective only for the calendar year
9 following the designation."

10 (d) G.S. 105-151.17, as amended by Chapter 111 of the 1989 Session Laws,
11 is amended by adding a new subsection to read:

12 "(b1) Eligibility. - A taxpayer is eligible for the tax credit allowed by this section
13 only if the taxpayer obtained a credit under this section for taxable year 1988 or the
14 Department of Commerce determines that the taxpayer engages in the manufacturing of
15 goods, or that he engages in an industrial activity such as the processing of foods, raw
16 materials, chemicals and process agents, goods in process, or of finished products."

17 Sec. 4.2. Section 4.1 of this act is effective for taxable years beginning on or
18 after January 1, 1989, and notwithstanding the provisions of G.S. 105-130.40(c) and
19 G.S. 105-151.17(c) requiring designations to be made on or before December 31 of a
20 year to be effective the following year, the Secretary of the Department of Commerce
21 shall make any designations authorized by Section 4.1 of this act before September 1,
22 1989, and those designations shall be effective for 1989.

23 Sec. 5. Sections 1 through 4 of this act are effective retroactively to January
24 1, 1985.