

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 889

Short Title: R&D Tax Credit.

(Public)

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Sponsors: Senator Reeves.

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Referred to: Finance.

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April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE RESEARCH AND DEVELOPMENT TAX CREDIT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-129.10(a) reads as rewritten:

"(a) General Credit. – A taxpayer that claims for the taxable year a federal income tax credit under section 41(a) of the Code for increasing research activities is allowed a credit equal to ~~five percent (5%)~~ fifteen percent (15%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year."

**SECTION 2.** G.S. 105-129.15 reads as rewritten:

**"§ 105-129.15. (See Editor's note for repeal) Definitions.**

The following definitions apply in this Article:

(1) Basic research payments. – Defined in section 41 of the Code. Notwithstanding G.S. 105-228.90(b), as used in this subdivision, "Code" means the Internal Revenue Code as enacted as of January 1, 1999.

~~(1)~~(1a) Business property. – Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(2) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the

1 Code, subject to the limitation on cost provided in section 179 of the  
2 Code. In the case of property the taxpayer leases from another, cost is  
3 value as determined pursuant to G.S. 105-130.4(j)(2).

4 (3) Recodified as § 105-129.15(5).

5 (4) Hydroelectric generator. – A machine that produces electricity by  
6 waterpower or by the friction of water or steam.

7 (5) Purchase. – Defined in section 179 of the Code.

8 (5a) Qualified research expenses. – Defined in section 41 of the Code.  
9 Notwithstanding G.S. 105-228.90(b), as used in this subdivision,  
10 "Code" means the Internal Revenue Code as enacted as of January 1,  
11 1999.

12 (6) Renewable biomass resources. – Organic matter produced by  
13 terrestrial and aquatic plants and animals, such as standing vegetation,  
14 aquatic crops, forestry and agricultural residues, landfill wastes, and  
15 animal wastes.

16 (7) Renewable energy property. – Any of the following machinery and  
17 equipment or real property:

18 a. Biomass equipment that uses renewable biomass resources for  
19 biofuel production of ethanol, methanol, and biodiesel;  
20 anaerobic biogas production of methane utilizing agricultural  
21 and animal waste or garbage; or commercial thermal or  
22 electrical generation from renewable energy crops or wood  
23 waste materials. The term also includes related devices for  
24 converting, conditioning, and storing the liquid fuels, gas, and  
25 electricity produced with biomass equipment.

26 b. Hydroelectric generators located at existing dams or in  
27 free-flowing waterways, and related devices for water supply  
28 and control, and converting, conditioning, and storing the  
29 electricity generated.

30 c. Solar energy equipment that uses solar radiation as a substitute  
31 for traditional energy for water heating, active space heating  
32 and cooling, passive heating, daylighting, generating electricity,  
33 distillation, desalination, detoxification, or the production of  
34 industrial or commercial process heat. The term also includes  
35 related devices necessary for collecting, storing, exchanging,  
36 conditioning, or converting solar energy to other useful forms  
37 of energy.

38 d. Wind equipment required to capture and convert wind energy  
39 into electricity or mechanical power, and related devices for  
40 converting, conditioning, and storing the electricity produced."

41 **SECTION 3.** Article 3B of Chapter 105 of the General Statutes is amended

42 by adding a new section to read:

43 **"§ 105-129.16D. Credit for research and development.**

1       (a) Credit. – A taxpayer that claims for the taxable year a federal income tax  
2 credit under section 41(a) of the Code for increasing research activities is allowed a  
3 credit under this section. The credit is equal to the sum of the following:

4           (1) Fifteen percent (15%) of any increase in qualified research expenses in  
5 this State during the taxable year over the average amount of qualified  
6 research expenses in this State over the preceding three taxable years.

7           (2) Forty percent (40%) of any increase in basic research payments to  
8 constituent institutions of The University of North Carolina during the  
9 taxable year over the average amount of basic research payments to  
10 constituent institutions of The University of North Carolina over the  
11 preceding three years.

12       (b) Transfer of Credit. – In lieu of carrying forward any unused portion of a  
13 credit under this section, the taxpayer may elect to do one of the following:

14           (1) Exchange any unused amount of the credit for a cash payment made  
15 by the Secretary equal to seventy percent (70%) of the value of the  
16 unused credit.

17           (2) Transfer the unused amount of the credit to another taxpayer in  
18 exchange for financial assistance equal to at least eighty percent (80%)  
19 of the value of the unused credit. Both the taxpayer who transfers the  
20 credit and the taxpayer to whom the credit is transferred must include  
21 with their tax returns for the taxable year in which the credit is  
22 transferred a statement describing the transfer transaction. This  
23 statement shall include a listing of the amount of credit that is  
24 transferred and a description of the financial assistance for which the  
25 credit was exchanged.

26       (c) Application. – To claim the credit allowed by this section, the taxpayer must  
27 provide with the tax return the certification of the Secretary of Commerce that the  
28 taxpayer meets the eligibility requirements of subsections (b), (b2), (b3), and (b4) of  
29 G.S. 105-129.4. A taxpayer shall apply to the Secretary of Commerce for certification  
30 of eligibility. The application must be on a form provided by the Secretary of  
31 Commerce and must contain any information necessary for the Secretary of Commerce  
32 to determine whether the taxpayer meets the eligibility requirements.

33       If the Secretary of Commerce determines that the taxpayer meets all of the eligibility  
34 requirements, the Secretary shall issue a certificate describing the location with respect  
35 to which the credit is claimed and stating that the taxpayer meets the eligibility  
36 requirements. If the Secretary of Commerce determines that the taxpayer does not meet  
37 all of the eligibility requirements, the Secretary must advise the taxpayer in writing of  
38 the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may  
39 adopt rules in accordance with Chapter 150B of the General Statutes that are needed to  
40 carry out the Secretary of Commerce's responsibilities under this section.

41       (d) No Double Credit. – A taxpayer may not claim a credit under this section if  
42 the taxpayer claims a credit for research and development under G.S. 105-129.10.

43       (e) Definition. – Notwithstanding G.S. 105-228.90(b), as used in this section,  
44 "Code" means the Internal Revenue Code as enacted as of January 1, 1999."

1           **SECTION 4.** G.S. 105-129.17(b) reads as rewritten:

2           "(b) Cap. – The credits allowed in this Article may not exceed fifty percent (50%)  
3 of the tax against which they are claimed for the taxable year, reduced by the sum of all  
4 other credits allowed against that tax, except tax payments made by or on behalf of the  
5 taxpayer. This limitation applies to the cumulative amount of credit, including  
6 carryforwards, claimed by the taxpayer under this Article against each tax for the  
7 taxable year. Any unused portion of a credit for research and development allowed  
8 under G.S. 105-129.16D may be carried forward for the succeeding 15 years. Any  
9 unused portion of the other credits allowed under this Article may be carried forward for  
10 the succeeding five years."

11           **SECTION 5.** This act is effective for taxable years beginning on or after  
12 January 1, 2002.