

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS75217-LC-39C (02/14)

Short Title: Luther Jordan Business Development Act.

(Public)

Sponsors: Senator Ballantine.

Referred to:

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** This act is the Senator Luther Jordan Business Development
6 Act.

"§ 143B-437.07. Enterprise zones.

(a) Enterprise Zone Defined. – An enterprise zone is a census block group in the most recent federal decennial census that meets both of the following conditions:

12 (1) It is located in a city with a population of 50,000 or more according to
13 the most recent annual population estimates certified by the State
14 Planning Officer.

15 (2) More than thirty percent (30%) of its population is below the poverty
16 level according to the most recent federal decennial census.

17 (b) Annual Certification. – On or before December 31 of each year, the Secretary
18 of Commerce must identify all enterprise zones that meet the conditions of subsection
19 (a) of this section. The Secretary of Commerce must publish a list identifying these
20 enterprise zones on its web site and provide a certified copy of the list to any person
21 who requests it.

(c) Incentives Available for Zones. – The following incentives are available to encourage business development within enterprise zones:

(1) Refundable income or franchise tax credit for job development in an enterprise zone, as provided in G.S. 105-129.51.

1 (2) Income or franchise tax credit for part of property tax increase due to
2 improvement of enterprise zone property, as provided in G.S.
3 105-129.52.

4 (3) State sales tax refund for part of zone businesses' purchases, as
5 provided in G.S. 105-164.14."

6 **SECTION 3.** G.S. 105-228.90(b) is amended by adding a new subdivision to
7 read:

8 "(b) Definitions. – The following definitions apply in this Article:

9 ...

10 (3a) (3a) Enterprise zone. – Defined in G.S. 143B-437.07."

11 **SECTION 4.** G.S. 105-164.14 is amended by adding a new subsection to
12 read:

13 "(j) Enterprise Zone Businesses. – A business located in an enterprise zone is
14 allowed an annual refund of twenty-five percent (25%) of the sales and use taxes it paid
15 under this Article on direct purchases of tangible personal property and services for use
16 in the business location in the zone, other than electricity and telecommunications
17 service. Sales and use tax liability indirectly incurred by a business on building
18 materials, supplies, fixtures, and equipment that become a part of or annexed to any
19 building or structure that is within a zone and is owned or leased by the business is
20 considered a sales or use tax liability incurred on direct purchases by the business. The
21 refund allowed by this subsection is subject to a lifetime cap that allows each taxpayer
22 to claim the refund for 10 consecutive taxable years.

23 The annual refund period is the fiscal year of the State. A request for a refund must
24 be in writing and must include any information and documentation required by the
25 Secretary. A request for a refund is due January 1 following the end of the fiscal year
26 for which the refund is claimed. Refunds applied for after the due date are barred."

27 **SECTION 5.** Subchapter I of Chapter 105 of the General Statutes is
28 amended by adding a new Article to read:

29 "Article 3F.

30 "Enterprise Zone Incentives.

31 **"§ 105-129.50. Definitions.**

32 The following definitions apply in this Article:

33 (1) Base year. – The year preceding the first withholdings and first
34 property tax increase for which a taxpayer claims a credit under this
35 Article. Because the withholdings and property tax increase may first
36 occur in different years, a taxpayer's base year for one credit may be
37 different from the taxpayer's base year for another credit.

38 (2) Full-time employee. – A person who is employed for consideration for
39 at least 35 hours a week in a position intended to be held by one
40 employee during the entire year and whose wages are subject to
41 withholding under Article 4A of this Chapter. The term does not
42 include any person who works as an independent contractor or on a
43 consulting basis for the business.

- 1 (3) New enterprise zone employee. – A full-time employee in a position
2 located in an enterprise zone who represents a net increase as
3 compared to the base year in both the number of the business's
4 employees statewide and the number of the business's employees in
5 enterprise zones. A position is located in an enterprise zone if more
6 than half of the employee's duties are performed in the zone.
7 (4) Property taxes. – The principal amount of taxes levied and assessed by
8 a taxing unit under Subchapter II of this Chapter. The term does not
9 include costs, penalties, interest, or other charges that may be added to
10 the principal amount.
11 (5) Taxing unit. – Defined in G.S. 105-273.

12 "**§ 105-129.51. Credit for job development in an enterprise zone.**

13 (a) Credit. – A business that hires one or more new enterprise zone employees is
14 allowed a credit for job development in an enterprise zone. The amount of the credit is
15 twenty-five percent (25%) of the business's withholdings under Article 4A of this
16 Chapter from the wages of new enterprise zone employees during the taxable year. The
17 credit is subject to a lifetime cap that allows each taxpayer to claim the credit for 10
18 consecutive taxable years. Each year the credit is allowed, it applies to the business's
19 withholdings under Article 4A of this Chapter from the wages of new enterprise
20 employees first hired in any of the 10 years following the base year.

21 (b) Job Loss. – The credit allowed by this section is conditioned on the continued
22 employment by the taxpayer of a number of full-time employees that represents a net
23 increase as compared to the base year in both the number of the business's employees
24 statewide to the base year and the number of the business's employees in enterprise
25 zones. No credit is allowed for any tax year in which the number of the business's
26 full-time employees in the State or in enterprise zones falls to or below the respective
27 number for the base year.

28 (c) Credit Refundable. – If the credit allowed by this section exceeds the amount
29 of tax against which it is claimed for the taxable year reduced by the sum of all credits
30 allowable, the Secretary must refund the excess to the taxpayer. The refundable excess
31 is governed by the provisions governing a refund of an overpayment of tax by the
32 taxpayer. In computing the amount of tax against which multiple credits are allowed,
33 nonrefundable credits are subtracted before refundable credits.

34 "**§ 105-129.52. Credit for part of property tax increase due to improvement of**
35 **enterprise zone property.**

36 (a) Credit. – A taxpayer is allowed a credit equal to twenty-five percent (25%) of
37 the increase, as compared to the base year, in the amount of property taxes the taxpayer
38 paid at par during the taxable year attributable to an increase in value of real property
39 located in an enterprise zone due to improvements the taxpayer made to the property.
40 The credit is subject to a lifetime cap that allows each taxpayer to claim the credit for 10
41 consecutive years of property taxes. To claim the credit, the taxpayer must provide with
42 the return a copy of the tax receipt for the property taxes for which credit is claimed and
43 any other documentation required by the Secretary. The tax receipt must indicate that
44 the taxes have been paid and must provide the amount and date of the payment.

1 (b) Adjustment. – If a taxing unit gives a taxpayer a credit or refund for, or a
2 grant measured as a percentage of, any of the property taxes for which the taxpayer
3 claimed a credit under this section, the taxpayer must notify the Secretary within 90
4 days. The Secretary must then recompute the credit allowed under this section to
5 exclude the amount attributable to any credits, refunds, and grants and must make any
6 resulting adjustment of tax for the taxable years for which the credit was claimed.

7 (c) Carryforward. – The credit allowed in this section may not exceed the tax
8 against which it is claimed for the taxable year, reduced by the sum of all other credits
9 allowed against that tax, except tax payments made by or on behalf of the taxpayer. Any
10 unused portion of the credit may be carried forward for the succeeding five years.

11 **"§ 105-129.53. Administration."**

12 (a) Tax Election. – The credits allowed in this Article are allowed against the
13 franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4
14 of this Chapter. The taxpayer must elect the tax against which each credit will be
15 claimed when filing the return on which the credit is claimed. Any carryforwards of a
16 credit must be claimed against the same tax.

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

25 (c) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
26 taxpayer was not eligible for the credit for the calendar year in which the taxpayer
27 engaged in the activity for which the credit was claimed. A taxpayer that forfeits a credit
28 under this Article is liable for all past taxes avoided as a result of the credit plus interest
29 at the rate established under G.S. 105-241.1(i), computed from the date the taxes would
30 have been due if the credit had not been allowed. The past taxes and interest are due 30
31 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and
32 interest by the due date is subject to the penalties provided in G.S. 105-236.

33 (d) Reports. – The Department must report to the Revenue Laws Study
34 Committee and to the Fiscal Research Division of the General Assembly by March 1 of
35 each year the following information itemized by taxpayer and by credit for the
36 preceding calendar year:

- 37 (1) The number of claims for credits under this Article.
- 38 (2) The distribution by county of the credits claimed.
- 39 (3) The portion of each job development credit that was refunded because
40 it exceeded the taxpayer's tax liability.
- 41 (4) The total cost to the General Fund of the credits claimed."

42 **SECTION 6.** This act becomes effective for taxable years beginning on or
43 after January 1, 2004.