

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS75215-LCx-94A (03/26)

Short Title: Correct Research & Development Credit.

(Public)

Sponsors: Senator Queen.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CORRECT PROBLEMS THAT PREVENT THE RESEARCH AND DEVELOPMENT TAX CREDIT FROM APPLYING CONSISTENTLY TO TAXPAYERS INCREASING THEIR RESEARCH AND DEVELOPMENT IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.10 reads as rewritten:

"§ 105-129.10. (See Editor's note for repeal) **Credit for research and development.**

(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 the sum of the following:

(1) Five percent (5%) of the excess, if any, of the taxpayer's qualified North Carolina research expenses for the taxable year over the North Carolina base amount.

(2) Five percent (5%) of the taxpayer's North Carolina excess basic research payments.

~~five percent (5%) 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.~~

(b) Alternative Credit. – A taxpayer may elect as an alternative to the credit allowed in subsection (a) of this section a credit equal to the sum of the following:

(1) Sixty-six one-hundredths percent (0.66%) of the amount of the qualified North Carolina research expenses for the taxable year that

1 exceeds one percent (1%) of the North Carolina average gross receipts
2 but does not exceed one and one-half percent (1 1/2%) of the North
3 Carolina average gross receipts.

4 (2) Eight-tenths percent (0.8%) of the amount of the qualified North
5 Carolina research expenses for the taxable year that exceeds one and
6 one-half percent (1 1/2%) of the North Carolina average gross receipts
7 but does not exceed two percent (2%) of the North Carolina average
8 gross receipts.

9 (3) Ninety-four one-hundredths percent (0.94%) of the amount of the
10 qualified North Carolina research expenses for the taxable year that
11 exceeds two percent (2%) of the North Carolina average gross receipts.

12 ~~that claims the alternative incremental credit under section 41(e)(4) of the Code for~~
13 ~~increasing research activities is allowed a credit equal to twenty five percent (25%) of~~
14 ~~the State's apportioned share of the federal credit claimed. The State's apportioned share~~
15 ~~of the federal credit claimed is the amount of the alternative incremental credit the~~
16 ~~taxpayer claimed under section 41(e)(4) of the Code for the taxable year multiplied by a~~
17 ~~percentage equal to the ratio of the taxpayer's qualified research expenses in this State~~
18 ~~for the taxable year to the taxpayer's total qualified research expenses for the taxable~~
19 ~~year. For the purpose of this subsection, the amount of the alternative incremental credit~~
20 ~~claimed by a taxpayer is determined without regard to any reduction elected under~~
21 ~~section 280C(e) of the Code.~~

22 (c) Definitions. – The definitions in section 41 of the Code apply in this section.
23 In addition, the following definitions apply in this section:

24 (1) North Carolina average gross receipts. – The average annual North
25 Carolina gross receipts of the taxpayer for the four taxable years
26 preceding the taxable year for which the credit is being determined.

27 (2) North Carolina base amount. – A hypothetical base amount computed
28 under section 41(c) of the Code using North Carolina gross receipts in
29 place of gross receipts and qualified North Carolina research expenses
30 in place of qualified research expenses.

31 (3) North Carolina excess basic research payments. – The excess of the
32 taxpayer's basic research payments for basic research performed in this
33 State over the qualified organization North Carolina base period
34 amount.

35 (4) North Carolina gross receipts. – The taxpayer's gross receipts as
36 determined under section 41 of the Code allocated and apportioned to
37 this State pursuant to G.S. 105-130.4.

38 (5) Qualified North Carolina research expenses. – Qualified research
39 expenses for research performed in this State.

40 (6) Qualified organization North Carolina base period amount. – A
41 hypothetical qualified organization base period amount calculated
42 under section 41(e)(3) of the Code taking into account only research
43 performed in this State.

1 As used in this section, the terms "qualified research expenses" and "base amount"
2 have the meaning provided in section 41 of the Code. Notwithstanding
3 G.S. 105-228.90(b), as used in this section, the term "Code" means the Internal Revenue
4 Code as enacted as of January 1, 1999.

5 (d) Administration. – To the extent practicable consistent with the definitions
6 provided in this section, this section shall be administered and interpreted in accordance
7 with section 41 of the Code. Unless in direct conflict with the provisions of this Article,
8 the provisions of section 41 of the Code apply to this section except that only North
9 Carolina research is taken into account consistent with the definitions in this section. An
10 election to take the alternative credit instead of the general credit applies to all
11 subsequent taxable years unless revoked with the consent of the Secretary."

12 **SECTION 2.** G.S. 105-129.4(a) reads as rewritten:

13 "(a) Type of Business. – This subsection does not apply to the credit for research
14 and development in G.S. 105-129.10 or the credit for development zone projects in
15 G.S. 105-129.12. The following conditions apply in determining a taxpayer's eligibility
16 for the remaining credits in this Article:

17 (1) Central office or aircraft facility. – A taxpayer is eligible for the credits
18 allowed by this Article if it operates a central office or aircraft facility
19 that creates at least 40 new jobs and the jobs, investment, and activity
20 with respect to which a credit is claimed are used in that office or
21 facility.

22 (2) Single business. – A taxpayer is eligible for the credits allowed by this
23 Article ~~other than by G.S. 105-129.12~~ if the primary business of the
24 taxpayer is one of the following types of businesses and the jobs,
25 investment, and activity with respect to which a credit is claimed are
26 used in that business:

- 27 a. Air courier services.
28 b. Data processing.

29 (3) Multiple business. – A taxpayer is eligible for the credits allowed by
30 this Article ~~other than by G.S. 105-129.12~~ if the primary business of the
31 taxpayer is one of the following types of businesses and the jobs,
32 investment, and activity with respect to which a credit is claimed are
33 used in any of the following types of businesses:

- 34 a. Manufacturing.
35 b. Warehousing.
36 c. Wholesale trade.

37 (4) Single establishment. – A taxpayer is eligible for the credits allowed
38 by this Article ~~other than by G.S. 105-129.12~~ if the primary business
39 of the taxpayer or the primary activity of an establishment of the
40 taxpayer is one of the following types of businesses and the jobs,
41 investment, and activity with respect to which a credit is claimed are
42 used in that business:

- 43 a. Computer services.

- 1 b. An electronic mail order house that creates at least 250 new
2 jobs and is located in an enterprise tier one, two, or three area.
- 3 (5) Customer service center. – A taxpayer is eligible for the credits
4 allowed by this Article ~~other than by G.S. 105-129.12~~ if all of the
5 following conditions are met:
- 6 a. The taxpayer's primary business is as a telecommunications or
7 financial services company, as defined by NAICS.
- 8 b. The primary activity of an establishment of the taxpayer is a
9 customer service center located in an enterprise tier one, two, or
10 three area.
- 11 c. The jobs, investment, and activity with respect to which a credit
12 is claimed are used in that activity.
- 13 (6) Warehousing. – A taxpayer is eligible for the credits allowed by this
14 Article ~~other than by G.S. 105-129.12~~ if all of the following conditions
15 are met:
- 16 a. The primary activity of an establishment of the taxpayer is in
17 warehousing.
- 18 b. The warehousing establishment is located in an enterprise tier
19 one, two, or three area and serves 25 or more establishments of
20 the taxpayer in at least five different counties in one or more
21 states.
- 22 c. The jobs, investment, and activity with respect to which a credit
23 is claimed are used in the warehousing establishment."

24 **SECTION 3.** This act becomes effective for taxable years beginning on or
25 after January 1, 2004.