

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 904

Short Title: Correct Research & Development Credit.

(Public)

Sponsors: Senator Queen.

Referred to: Finance.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO CORRECT PROBLEMS THAT PREVENT THE RESEARCH AND
3 DEVELOPMENT TAX CREDIT FROM APPLYING CONSISTENTLY TO
4 TAXPAYERS INCREASING THEIR RESEARCH AND DEVELOPMENT IN
5 THIS STATE.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 105-129.10. (See Editor's note for repeal) Credit for research and development.**

9 (a) General Credit. – A taxpayer ~~that claims for the taxable year a federal income~~
10 ~~tax credit under section 41(a) of the Code for increasing research activities~~ is allowed a
11 credit equal to the sum of the following:

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

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

17 ~~five percent (5%) of the State's apportioned share of the taxpayer's expenditures for~~
18 ~~increasing research activities. The State's apportioned share of a taxpayer's expenditures~~
19 ~~for increasing research activities is the excess of the taxpayer's qualified research~~
20 ~~expenses for the taxable year over the base amount, as determined under section 41 of~~
21 ~~the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified~~
22 ~~research expenses in this State for the taxable year to the taxpayer's total qualified~~
23 ~~research expenses for the taxable year.~~

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

26 (1) Sixty-six one-hundredths percent (0.66%) of the amount of the
27 qualified North Carolina research expenses for the taxable year that
28 exceeds one percent (1%) of the North Carolina average gross receipts

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

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

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

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

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

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

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

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

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

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

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

43 ~~As used in this section, the terms "qualified research expenses" and "base amount"~~
44 ~~have the meaning provided in section 41 of the Code. Notwithstanding~~

1 ~~G.S. 105-228.90(b)~~, as used in this section, the term "Code" means the Internal Revenue
2 Code as enacted as of January 1, 1999.

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

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

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

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

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

- 25 a. Air courier services.
26 b. Data processing.

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

- 32 a. Manufacturing.
33 b. Warehousing.
34 c. Wholesale trade.

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

- 41 a. Computer services.
42 b. An electronic mail order house that creates at least 250 new
43 jobs and is located in an enterprise tier one, two, or three area.

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

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