

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH30131-LYf-57C (1/22)

Short Title: Business Growth and Investment Act of 2005. (Public)

Sponsors: Representatives Owens, Gibson, and Daughtridge (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT; AND TO EXTEND THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

PART I. REPLACE BILL LEE ACT

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3H.

"Tax Credits for Growing Businesses.

"§ 105-129.70. Legislative findings.

The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's

1 industrial base and that inhibit the State's ability to sustain or attract
2 new and expanding businesses.

3 (3) The economic condition of the State is not static and recent changes in
4 the State's economic condition have created economic distress that
5 requires a reevaluation of certain existing State programs and the
6 enactment of a new program as provided in this Article that is
7 designed to stimulate new economic activity and to create new jobs
8 within the State.

9 (4) The enactment of this Article is necessary to stimulate the economy
10 and create new jobs in North Carolina; and this Article will promote
11 the general welfare and confer, as its primary purpose and effect,
12 benefits on citizens throughout the State through the creation of new
13 jobs, an enlargement of the overall tax base, an expansion and
14 diversification of the State's industrial base, and an increase in revenue
15 to the State and its political subdivisions.

16 (5) The purpose of this Article is to stimulate economic activity and to
17 create new jobs within the State.

18 (6) The State is in need of a focused tax credit program that encourages
19 and facilitates economic growth and development within the State.

20 (7) The resources of the State are not evenly distributed throughout the
21 State and different communities have different abilities and needs in
22 attracting and maintaining new and expanding business and industry.

23 **§ 105-129.71. Definitions.**

24 The following definitions apply in this Article:

25 (1) Aircraft maintenance and repair. – The provision of specialized
26 maintenance or repair services for commercial aircraft or the
27 rebuilding of commercial aircraft.

28 (2) Air courier services. – The furnishing of air delivery of individually
29 addressed letters and packages for compensation, in interstate
30 commerce, except by the United States Postal Service.

31 (3) Business property. – Tangible personal property used in a business that
32 is capitalized under the Code.

33 (4) Cost. – In the case of property owned by the taxpayer, cost is
34 determined pursuant to regulations adopted under section 1012 of the
35 Code. In the case of property the taxpayer leases from another, cost is
36 value as determined pursuant to G.S. 105-130.4(j)(2).

37 (5) Customer service call center. – The provision of support service by a
38 business to its customers by telephone to support products or services
39 of the business.

40 (6) Development tier. –The classification assigned to an area pursuant to
41 G.S. 105-129.73.

42 (7) Electronic shopping and mail order houses. – An industry in electronic
43 shopping and mail order houses industry group 4541 as defined by
44 NAICS.

- 1 (8) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on
2 January 1, 2002.
- 3 (9) Full-time job. – A position that requires at least 1,600 hours of work
4 per year and is intended to be held by one employee during the entire
5 year. A full-time employee is an employee who holds a full-time job.
- 6 (10) Information technology and services. – An industry in one of the
7 following:
- 8 a. Internet service providers, web search portals, and data
9 processing subsector 518 as defined by NAICS.
- 10 b. Software publishers industry group 5112 as defined by NAICS.
- 11 c. Computer systems design and related services industry group
12 5415 as defined by NAICS.
- 13 (11) Manufacturing. – An industry in manufacturing sectors 31 through 33,
14 as defined by NAICS, but not including quick printing or retail
15 bakeries.
- 16 (12) Motorsports racing team. – A professional or semiprofessional racing
17 team primarily engaged in the research and development, design,
18 manufacture, repair, maintenance, and operation of motor vehicles
19 used in live motorsports racing events before a paying audience.
- 20 (13) NAICS. – The North American Industry Classification System adopted
21 by the United States Office of Management and Budget as of
22 December 31, 2002.
- 23 (14) New job. – A full-time job that represents a net increase in the number
24 of the taxpayer's employees statewide. A new employee is an
25 employee who holds a new job. The term does not include a job
26 currently located in this State that is transferred to the business from a
27 related member of the business.
- 28 (15) Overdue tax debt. – Defined in G.S. 105-243.1.
- 29 (16) Purchase. – Defined in section 179 of the Code.
- 30 (17) Related entity. – Defined in G.S. 105-130.7A.
- 31 (18) Research and development. – An industry in scientific research and
32 development services industry group 5417 as defined by NAICS.
- 33 (19) Warehousing. – An industry in warehousing and storage subsector 493
34 as defined by NAICS.
- 35 (20) Wholesale trade. – An industry in wholesale trade sector 42 as defined
36 by NAICS.

37 **"§ 105-129.72. Sunset; studies.**

38 (a) Sunset. – This Article is repealed effective for business activities that occur
39 on or after January 1, 2010.

40 (b) Equity Study. – The Department of Commerce shall study the effect of the
41 tax incentives provided in this Article on tax equity. This study shall include the
42 following:

- 43 (1) Reexamining the formula in G.S. 105-129.73(b) used to define
44 development tiers, to include consideration of alternative measures for

1 more equitable treatment of counties in similar economic
2 circumstances.

3 (2) Considering whether the assignment of tiers and the applicable
4 thresholds are equitable for smaller counties, for example those under
5 50,000 in population.

6 (3) Compiling any available data on whether expanding North Carolina
7 businesses receive fewer benefits than out-of-State businesses that
8 locate to North Carolina.

9 (c) Impact Study. – The Department of Commerce shall study the effectiveness
10 of the tax incentives provided in this Article. This study shall include:

11 (1) Studying the distribution of tax incentives across new and expanding
12 businesses and industries.

13 (2) Examining data on economic recruitment for the period from 2004
14 through the most recent year for which data are available by county, by
15 industry type, by size of investment, and by number of jobs, and other
16 relevant information to determine the pattern of business locations and
17 expansions before and after the enactment of this Article.

18 (3) Measuring the direct costs and benefits of the tax incentives.

19 (4) Compiling available information on the current use of incentives by
20 other states and whether that use is increasing or declining.

21 (d) Report. – The Department of Commerce shall report the results of these
22 studies and its recommendations to the General Assembly biennially with the first report
23 due by April 1, 2007.

24 **"§ 105-129.73. Development tier designation.**

25 (a) Tiers Defined. – A development tier one area is a county whose development
26 factor is one of the 40 highest in the State. A development tier two area is a county
27 whose development factor is one of the next 40 highest in the State. A development tier
28 three area is a county that is not in a lower-numbered development tier.

29 (b) Annual Designation. – Each year, on or before November 30, the Secretary of
30 Commerce shall assign to each county in the State a development factor that is the sum
31 of the following:

32 (1) The county's rank in a ranking of counties by average rate of
33 unemployment from lowest to highest, for the preceding 12 months.

34 (2) The county's rank in a ranking of counties by median household
35 income from highest to lowest, for the preceding 12 months.

36 (3) The county's rank in a ranking of counties by percentage growth in
37 population from highest to lowest, for the preceding 36 months.

38 (4) The county's rank in a ranking of counties by assessed property value
39 per capita, from highest to lowest, for the most recent taxable year.

40 The Secretary of Commerce shall then rank all the counties within the State
41 according to their development factor from highest to lowest, identify all the areas of
42 the State by development tier, and publish this information. A development tier
43 designation is effective only for the calendar year following the designation.

1 (c) Data. – In measuring rates of unemployment and median household income,
2 the Secretary shall use the latest available data published by a State or federal agency
3 generally recognized as having expertise concerning the data. In measuring population
4 and population growth, the Secretary shall use the most recent estimates of population
5 certified by the State Budget Officer. In measuring assessed property value, the
6 Secretary shall use the tax records prepared in each county.

7 (d) Exception for Development Tier One Areas. – Notwithstanding the
8 provisions of this section, a county designated as a development tier one area may not
9 be redesignated as a higher-numbered development tier area until it has been in its
10 development tier area for at least two consecutive years.

11 **"§ 105-129.74. Eligibility; forfeiture.**

12 (a) Eligible Business. – A taxpayer is eligible for a credit under this Article only
13 with respect to activities occurring at an establishment whose primary activity is listed
14 in this subsection. The primary activity of an establishment is determined based on the
15 establishment's principal product or group of products produced or distributed, or
16 services rendered

17 (1) Aircraft maintenance and repair.

18 (2) Air courier services.

19 (3) Customer service call centers, if at least sixty percent (60%) of the
20 center's calls are incoming.

21 (4) Electronic shopping and mail order houses.

22 (5) Information technology and services.

23 (6) Manufacturing.

24 (7) Motorsports racing team.

25 (8) Research and development.

26 (9) Warehousing

27 (10) Wholesale trade.

28 (b) Wage Standard. – A taxpayer is eligible for a credit under this Article in a
29 development tier two or three area if the taxpayer satisfies a wage standard. Jobs satisfy
30 the wage standard if they pay an average weekly wage that is at least equal to the lesser
31 of one hundred ten percent (110%) of the average wage for all insured private
32 employers in the State and one hundred percent (100%) of the average wage for all
33 insured private employers in the county. The Department of Commerce must annually
34 publish the wage standard for each county.

35 In making the wage calculation, the taxpayer must include any jobs that were filled
36 for at least 1,600 hours during the calendar year the taxpayer engages in the activity that
37 qualifies for the credit even if those jobs are not filled at the time the taxpayer claims
38 the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer
39 must use the wage standard for the calendar year in which the taxable year begins. Only
40 full-time jobs are included when making the wage calculation.

41 (c) Health Insurance. – A taxpayer is eligible for a credit under this Article if the
42 taxpayer provides health insurance for all of the full-time jobs at the location with
43 respect to which the credit is claimed when the taxpayer engages in the activity that
44 qualifies for the credit. For the purposes of this subsection, a taxpayer provides health

1 insurance if it pays at least fifty percent (50%) of the premiums for health care coverage
2 that equals or exceeds the minimum provisions of the basic health care plan of coverage
3 recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

4 Each year that a taxpayer claims a credit or carryforward of a credit allowed under
5 this Article, the taxpayer must provide with the tax return the taxpayer's certification
6 that the taxpayer continues to provide health insurance for all the jobs at the location
7 with respect to which the credit was claimed. If the taxpayer ceases to provide health
8 insurance for the jobs during a taxable year, the credit expires and the taxpayer may not
9 take any remaining installment or carryforward of the credit.

10 (d) Environmental Impact. – A taxpayer is eligible for a credit allowed under this
11 Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the
12 taxpayer has no pending administrative, civil, or criminal enforcement action based on
13 alleged significant violations of any program implemented by an agency of the
14 Department of Environment and Natural Resources, and has had no final determination
15 of responsibility for any significant administrative, civil, or criminal violation of any
16 program implemented by an agency of the Department of Environment and Natural
17 Resources within the last five years. A significant violation is a violation or alleged
18 violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The
19 Secretary of Environment and Natural Resources must notify the Department of
20 Revenue annually of every person that currently has any of these pending actions and
21 every person that has had any of these final determinations within the last five years.

22 (e) Safety and Health Programs. – A taxpayer is eligible for a credit allowed
23 under this Article only if the taxpayer certifies that, as of the time the taxpayer claims
24 the credit, at the business location with respect to which the credit is claimed, the
25 taxpayer has no citations under the Occupational Safety and Health Act that have
26 become a final order within the past three years for willful serious violations or for
27 failing to abate serious violations. For the purposes of this subsection, "serious
28 violation" has the same meaning as in G.S. 95-127. The Commissioner of Labor must
29 notify the Department of Revenue annually of all employers who have had these
30 citations become final orders within the past three years.

31 (f) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under
32 this Article if, at the time the taxpayer claims the credit or an installment or
33 carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and
34 that overdue tax debt has not been satisfied or otherwise resolved.

35 (g) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the
36 taxpayer was not eligible for the credit for the calendar year in which the taxpayer
37 engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits
38 a credit for investment in real property under G.S. 105-129.80 if the taxpayer fails to
39 timely create the number of required new jobs or to timely make the required level of
40 investment required under G.S. 105-129.80(b). A taxpayer that forfeits a credit under
41 this Article is liable for all past taxes avoided as a result of the credit plus interest at the
42 rate established under G.S. 105-241.1(i), computed from the date the taxes would have
43 been due if the credit had not been allowed. The past taxes and interest are due 30 days

1 after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and
2 interest by the due date is subject to the penalties provided in G.S. 105-236.

3 (h) Change in Ownership of Business. – As used in this subsection, the term
4 'business' means a taxpayer or an establishment. The sale, merger, consolidation,
5 conversion, acquisition, or bankruptcy of a business, or any transaction by which an
6 existing business reformulates itself as another business, does not create new eligibility
7 in a succeeding business with respect to credits for which the predecessor was not
8 eligible under this Article. A successor business may, however, take any credit or
9 carried-over portion of a credit that its predecessor could have taken if it had a tax
10 liability. The acquisition of a business is a new investment that creates new eligibility in
11 the acquiring taxpayer under this Article if either of the following conditions is met:

12 (1) The business closed before it was acquired.

13 (2) The business was required to file a notice of plant closing or mass
14 layoff under the federal Worker Adjustment and Retraining
15 Notification Act, 29 U.S.C. § 2101, before it was acquired.

16 (i) Advisory Ruling. – A taxpayer may request in writing from the Secretary of
17 Revenue specific advice regarding eligibility for a credit under this Article.
18 G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon
19 advice offered by any other State or local government official or employee acting in an
20 official capacity regarding eligibility for a credit under this Article.

21 (j) Planned Expansion. – A taxpayer that signs a letter of commitment with the
22 Department of Commerce, after the Department has calculated the development tier
23 designations for the next year but before the beginning of that taxable year, to undertake
24 specific activities at a specific site within the next taxable year may calculate the credit
25 for which it qualifies based on the location's development tier designation in the year in
26 which the letter of commitment was signed by the taxpayer.

27 **"§ 105-129.75. Tax election; cap; carryforwards; limitations.**

28 (a) Tax Election. – The credits provided in this Article are allowed against the
29 franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of
30 this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The
31 taxpayer may divide a credit between the taxes against which it is allowed.
32 Carryforwards of a credit may be divided between the taxes against which it is allowed
33 without regard to the original election.

34 (b) Cap. – The credits allowed under this Article may not exceed fifty percent
35 (50%) of the cumulative amount of taxes against which they are claimed for the taxable
36 year, reduced by the sum of all other credits allowed against those taxes, except tax
37 payments made by or on behalf of the taxpayer. This limitation applies to the
38 cumulative amount of credit, including carryforwards, claimed by the taxpayer under
39 this Article against the taxes for the taxable year. Credits that may eliminate only a
40 portion of the taxpayer's liability must be taken before credits that may eliminate all of a
41 taxpayer's liability, which in turn must be taken before any credits that are refundable.

42 (c) Carryforward. – Any unused portion of a credit under this Article may be
43 carried forward for the succeeding five years.

1 (d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer
2 must claim a credit under this Article within six months after the date set by statute for
3 the filing of the return, including any extensions of that date.

4 **§ 105-129.76. Fees and reports.**

5 (a) Fee. – When filing a return for a taxable year in which the taxpayer engaged
6 in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer
7 must pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each
8 credit the taxpayer claims or intends to claim. The fee is due at the time the return is due
9 for the taxable year in which the taxpayer engaged in the activity for which the taxpayer
10 is eligible for a credit. No credit is allowed under this Article for a taxable year until all
11 outstanding fees have been paid. The Secretary of Revenue shall retain three-fourths of
12 the proceeds of the fee imposed in this section for the costs of administering and
13 auditing the credits allowed in this Article. The Secretary of Revenue shall credit the
14 remaining proceeds of the fee imposed in this section to the Department of Commerce
15 for the costs of administering this Article. The proceeds of the fee are receipts of the
16 Department to which they are credited.

17 (b) Reports. – The Department of Revenue shall publish by April 1 of each year
18 the following information itemized by credit and by taxpayer for the 12-month period
19 ending the preceding December 31:

20 (1) The number of claims for each credit allowed in this Article.

21 (2) The number and development tier area of new jobs with respect to
22 which credits were claimed.

23 (3) The cost and development tier area of business property with respect to
24 which credits were claimed.

25 (4) The cost and development tier area of real property investment with
26 respect to which credits were claimed.

27 **"§ 105-129.77. Substantiation.**

28 (a) Records. – To claim a credit allowed by this Article, the taxpayer must
29 provide any information required by the Secretary of Revenue. Every taxpayer claiming
30 a credit under this Article shall maintain and make available for inspection by the
31 Secretary of Revenue any records the Secretary considers necessary to determine and
32 verify the amount of the credit to which the taxpayer is entitled. The burden of proving
33 eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no
34 credit shall be allowed to a taxpayer that fails to maintain adequate records or to make
35 them available for inspection.

36 (b) Documentation. – Each taxpayer must provide with the tax return qualifying
37 information for each credit claimed under this Article. The qualifying information must
38 be in the form prescribed by the Secretary and must be signed and affirmed by the
39 individual who signs the taxpayer's tax return. The information required by this
40 subsection is information demonstrating that the taxpayer has met the conditions for
41 qualifying for a credit and any carryforwards, and includes the following:

42 (1) The physical location of the jobs and investment with respect to which
43 the credit is claimed, including the street address and the development
44 tier designation of the location.

(2) The type of business with respect to which the credit is claimed and the average weekly wage at the facility with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article.

§ 105-129.78. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.74 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating those new jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located.

<u>Area Development Tier</u>	<u>Amount of Credit</u>
<u>Tier One</u>	<u>\$12,500</u>
<u>Tier Two</u>	<u>5,000</u>
<u>Tier Three</u>	<u>500</u>

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>5</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>50</u>

(c) Calculation. – A job is located in a county if more than fifty percent (50%) of the employee's duties are performed in the county. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit must be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit,

1 the credits with respect to all of the new jobs expire and the taxpayer may not take any
 2 remaining installments of the credits. When a credit expires under this subsection, the
 3 taxpayer may, however, take the portion of an installment that accrued in a previous
 4 year and was carried forward to the extent permitted under G.S. 105-129.75.

5 (e) Transferred Jobs. – Jobs transferred from one area in the State to another area
 6 in the State are not considered new jobs for purposes of this section. Jobs transferred to
 7 the taxpayer from a related member of the taxpayer are not considered new jobs for
 8 purposes of this section. If, in one of the four years in which the installment of a credit
 9 accrues, the jobs with respect to which the credit was claimed are moved to an area in a
 10 higher-numbered development tier, the remaining installments of the credit are allowed
 11 only to the extent they would have been allowed if the jobs were initially created in the
 12 area to which they were moved. If, in one of the years in which the installment of a
 13 credit accrues, the jobs are moved to an area in a lower-numbered development tier, the
 14 remaining installments of the credit must be calculated as if the jobs had been created
 15 initially in the area to which they were moved.

16 (f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the
 17 wage standard requirement of G.S. 105-129.74 only if the taxpayer satisfies the
 18 requirement with respect to both the new jobs, considered collectively, for which a
 19 credit is claimed and all of the jobs at the establishment, considered collectively, with
 20 respect to which a credit is claimed.

21 (g) No Double Credit. – A taxpayer may not claim a credit under this section
 22 with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

23 **§ 105-129.79. Credit for investing in business property.**

24 (a) General Credit. – A taxpayer that has purchased or leased business property
 25 and placed it in service in this State during the taxable year and that has satisfied the
 26 threshold requirements of subsection (c) of this section is allowed a credit equal to the
 27 applicable percentage of the eligible investment amount. Business property is eligible if
 28 it is not leased to another party. The credit may not be taken for the taxable year in
 29 which the business property is placed in service but shall be taken in equal installments
 30 over the four years following the taxable year in which it is placed in service. The
 31 applicable percentage is as follows:

<u>Area Development Tier</u>	<u>Applicable Percentage</u>
Tier One	7%
Tier Two	5%
Tier Three	4%

36 (b) Eligible Investment Amount. – The eligible investment amount is the lesser
 37 of (i) the cost of the eligible business property and (ii) the amount by which the cost of
 38 all of the taxpayer's eligible business property that is in service in this State on the last
 39 day of the taxable year exceeds the cost of all of the taxpayer's eligible business
 40 property that was in service in this State on the last day of the base year. The base year
 41 is that year, of the three immediately preceding taxable years, in which the taxpayer had
 42 the most eligible business property in service in this State.

43 (c) Threshold. – The applicable threshold is the appropriate amount set out in the
 44 following table based on the development tier where the eligible business property is

1 placed in service during the taxable year. If the taxpayer places eligible business
 2 property in service at more than one establishment in a county during the taxable year,
 3 the threshold applies to the aggregate amount of eligible business property placed in
 4 service during the taxable year at all establishments in the county. If the taxpayer places
 5 eligible business property in service at establishments in different counties, the
 6 threshold applies separately to the aggregate amount of eligible business property
 7 placed in service in each county.

<u>Area Development Tier</u>	<u>Threshold</u>
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	10,000,000

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 12 (d) Expiration. – As used in this subsection, the term "disposed of" means
 13 disposed of, taken out of service, or moved out of State. If, in one of the four years in
 14 which the installment of a credit accrues, the business property with respect to which
 15 the credit was claimed is disposed of, the credit expires and the taxpayer may not take
 16 any remaining installment of the credit for that business property unless the cost of that
 17 business property is offset in the same taxable year by the taxpayer's new investment in
 18 eligible business property placed in service in the same county, as provided in this
 19 subsection. If, during the taxable year the taxpayer disposed of the business property for
 20 which installments remain, there has been a net reduction in the cost of all the taxpayer's
 21 eligible business property that are in service in the same county as the business property
 22 that was disposed of, and the amount of this reduction is greater than twenty percent
 23 (20%) of the cost of the business property that was disposed of, then the taxpayer
 24 forfeits the remaining installments of the credit for the business property that was
 25 disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less
 26 of the cost of the business property that was disposed of, or if there is no net reduction,
 27 then the taxpayer does not forfeit the remaining installments of the expired credit. In
 28 determining the amount of any net reduction during the taxable year, the cost of
 29 business property the taxpayer placed in service during the taxable year and for which
 30 the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be
 31 included in the cost of all the taxpayer's eligible business property that is in service. If in
 32 a single taxable year business property with respect to two or more credits in the same
 33 county are disposed of, the net reduction in the cost of all the taxpayer's eligible
 34 business property that is in service in the same county is compared to the total cost of all
 35 the business property for which credits expired in order to determine whether the
 36 remaining installments of the credits are forfeited.

37 The expiration of a credit does not prevent the taxpayer from taking the portion of an
 38 installment that accrued in a previous year and was carried forward to the extent
 39 permitted under G.S. 105-129.75.

40 If, in one of the four years in which the installment of a credit accrues, the business
 41 property with respect to which the credit was claimed is moved to a county in a
 42 higher-numbered development tier, the remaining installments of the credit are allowed
 43 only to the extent they would have been allowed if the business property had been
 44 placed in service initially in the county to which it was moved. If, in one of the four

1 years in which the installment of a credit accrues, the business property with respect to
2 which a credit was claimed is moved to a county in a lower-numbered development tier,
3 the remaining installments of the credit must be calculated as if the business property
4 had been placed in service initially in the county to which it was moved.

5 (e) Wage Standard. – For the purposes of this section, a taxpayer satisfies the
6 wage standard requirement of G.S. 105-129.74 only if the taxpayer satisfies the
7 requirement with respect to all of the jobs at the establishment, considered collectively,
8 with respect to which a credit is claimed.

9 (f) No Double Credit. – A taxpayer may not claim a credit under this section
10 with respect to business property for which the taxpayer claims a credit under
11 G.S. 105-129.9 or G.S. 105-129.9A.

12 **"§ 105-129.80. Credit for investment in real property.**

13 (a) Credit. – If a taxpayer that has purchased or leased real property in a
14 development tier one area begins to use the property in an eligible business during the
15 taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible
16 investment amount if all of the eligibility requirements of G.S. 105-129.74 and of
17 subsection (b) of this section are met. For the purposes of this section, property is
18 located in a development tier one area if the area the property is located in was a
19 development tier one area at the time the taxpayer made a written application for the
20 determination required under subsection (b) of this section. The eligible investment
21 amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost
22 of all of the real property the taxpayer is using in this State in an eligible business on the
23 last day of the taxable year exceeds the cost of all of the real property the taxpayer was
24 using in this State in an eligible business on the last day of the base year. The base year
25 is that year, of the three immediately preceding taxable years, in which the taxpayer was
26 using the most real property in this State in an eligible business. In the case of property
27 that is leased, the cost of the property is not determined as provided in G.S. 105-129.71
28 but is considered to be the taxpayer's lease payments over a seven-year period, plus any
29 expenditures made by the taxpayer to improve the property before it is used by the
30 taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire
31 credit may not be taken for the taxable year in which the property is first used in an
32 eligible business but shall be taken in equal installments over the seven years following
33 the taxable year in which the property is first used in an eligible business. When part of
34 the property is first used in an eligible business in one year and part is first used in an
35 eligible business in a later year, separate credits may be claimed for the amount of
36 property first used in an eligible business in each year. The basis in any real property for
37 which a credit is allowed under this section shall be reduced by the amount of credit
38 allowable.

39 (b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the
40 credit allowed under this section with respect to a location only if the Secretary of
41 Commerce makes a written determination that the taxpayer is expected to purchase or
42 lease and use in an eligible business at that location within a three-year period at least
43 ten million dollars (\$10,000,000) of real property and that the location that is the subject
44 of the credit will create at least 200 new jobs within two years of the time that the

1 property is first used in an eligible business. If the taxpayer fails to timely make the
2 required level of investment or fails to timely create the required number of new jobs,
3 the taxpayer forfeits the credit as provided in G.S. 105-129.74.

4 (c) Mixed Use Property. – If the taxpayer uses only part of the property in an
5 eligible business, the amount of the credit allowed under this section is reduced by
6 multiplying it by a fraction, the numerator of which is the square footage of the property
7 used in an eligible business and the denominator of which is the total square footage of
8 the property.

9 (d) Expiration. – If, in one of the seven years in which the installment of a credit
10 accrues, the property with respect to which the credit was claimed is no longer used in
11 an eligible business, the credit expires and the taxpayer may not take any remaining
12 installment of the credit. If, in one of the seven years in which the installment of a credit
13 accrues, part of the property with respect to which the credit was claimed is no longer
14 used in an eligible business, the remaining installments of the credit shall be reduced by
15 multiplying it by the fraction described in subsection (c) of this section. If, in one of the
16 years in which the installment of a credit accrues and by which the taxpayer is required
17 to have created 200 new jobs at the property, the total number of employees the
18 taxpayer employs at the property with respect to which the credit is claimed is less than
19 200, the credit expires and the taxpayer may not take any remaining installment of the
20 credit.

21 In each of these cases, the taxpayer may nonetheless take the portion of an
22 installment that accrued in a previous year and was carried forward to the extent
23 permitted under G.S. 105-129.75.

24 (e) Wage Standard. – For the purposes of this section, a taxpayer satisfies the
25 wage standard requirement of G.S. 105-129.74 only if the taxpayer satisfies the
26 requirement with respect to all of the jobs at the establishment, considered collectively,
27 with respect to which a credit is claimed.

28 (f) No Double Credit. – A taxpayer may not claim a credit under this section
29 with respect to real property for which a credit is claimed under G.S. 105-129.12 or
30 G.S. 105-129.12A."

31 **SECTION 1.2.** This part is effective for taxable years beginning on or after
32 January 1, 2006, and applies to business activities occurring on or after that date.
33

34 **PART II. EXTEND JDIG**

35 **SECTION 2.1.** G.S. 143B-437.62 reads as rewritten:

36 "**§ 143B-437.62. Expiration.**

37 The authority of the Committee to enter into new agreements expires January 1,
38 ~~2006-2008.~~"

39 **SECTION 2.2.** This part is effective when it becomes law.
40

41 **PART III. EFFECTIVE DATE**

42 **SECTION 3.** Except as otherwise provided, this act is effective when it
43 becomes law.