

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1296\*

Short Title: Tech. Commercialization Credit.

(Public)

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Sponsors: Representatives Nye; Bonner, Church, Cox, Hill, Hurley, Kinney, McAllister, McComas, Morris, Redwine, Sutton, Warner, Warwick, and Yongue.

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Referred to: Finance.

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April 19, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE AN INCENTIVE FOR BUSINESSES TO FIND  
2 COMMERCIAL USES FOR TECHNOLOGY DEVELOPED BY CONSTITUENT  
3 INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-129.9 reads as rewritten:

7 "**§ 105-129.9. Credit for investing in machinery and equipment.**

8 (a) ~~Credit.~~ General Credit. – If a taxpayer that has purchased or leased eligible  
9 machinery and equipment places it in service in this State during the taxable year, the  
10 taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible  
11 investment amount over the applicable threshold. Machinery and equipment is eligible if  
12 it is capitalized by the taxpayer for tax purposes under the Code and is not leased to  
13 another party. In addition, in the case of a large investment, machinery and equipment  
14 that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another  
15 party. The credit may not be taken for the taxable year in which the equipment is placed  
16 in service but shall be taken in equal installments over the seven years following the  
17 taxable year in which the equipment is placed in service.

18 (a1) Technology Commercialization Credit. – A taxpayer that is eligible for the  
19 credit allowed in this section and qualifies for one of the credits allowed in G.S. 105-

1 129.9A may choose to take one of those credits instead of the credit allowed in this  
2 section. A taxpayer may take the credit allowed in this section or one of the credits  
3 allowed in G.S. 105-129.9A during a taxable year, but not more than one of these credits.

4 (b) Eligible Investment Amount. – The eligible investment amount is the lesser of  
5 (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost  
6 of all of the taxpayer's eligible machinery and equipment that is in service in this State on  
7 the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery  
8 and equipment that was in service in this State on the last day of the base year. The base  
9 year is that year, of the three immediately preceding taxable years, in which the taxpayer  
10 had the most eligible machinery and equipment in service in this State.

11 (c) Threshold. – The applicable threshold is the appropriate amount set out in the  
12 following table based on the enterprise tier of the area where the eligible machinery and  
13 equipment are placed in service during the taxable year. If the taxpayer places eligible  
14 machinery and equipment in service in more than one area during the taxable year, the  
15 threshold applies separately to the eligible machinery and equipment placed in service in  
16 each area. If the taxpayer places eligible machinery and equipment in service in an area  
17 over the course of a two-year period, the applicable threshold for the second taxable year  
18 is reduced by the eligible investment amount for the previous taxable year.

19 Area Enterprise Tier	Threshold
20 Tier One \$ -0-	
21 Tier Two 100,000	
22 Tier Three	200,000
23 Tier Four 500,000	
24 Tier Five 1,000,000	

25 (d) Expiration. – If, in one of the seven years in which the installment of a credit  
26 accrues, the machinery and equipment with respect to which the credit was claimed are  
27 disposed of, taken out of service, or moved out of State, the credit expires and the  
28 taxpayer may not take any remaining installment of the credit. The taxpayer may,  
29 however, take the portion of an installment that accrued in a previous year and was  
30 carried forward to the extent permitted under G.S. 105-129.5.

31 If, in one of the seven years in which the installment of a credit accrues, the  
32 machinery and equipment with respect to which the credit was claimed are moved to an  
33 area in a higher-numbered enterprise tier, or are moved from a development zone to an  
34 area that is not a development zone, the remaining installments of the credit are allowed  
35 only to the extent they would have been allowed if the machinery and equipment had  
36 been placed in service initially in the area to which they were moved.

37 (e) Planned Expansion. – A taxpayer that signs a letter of commitment with the  
38 Department of Commerce to place specific eligible machinery and equipment in service  
39 in an area within two years after the date the letter is signed may, in the year the eligible  
40 machinery and equipment are placed in service in that area, calculate the credit for which  
41 the taxpayer qualifies based on the area's enterprise tier and development zone  
42 designation for the year the letter was signed. All other conditions apply to the credit, but  
43 if the area has been redesignated to a higher-numbered enterprise tier or has lost its

1 development zone designation after the year the letter of commitment was signed, the  
2 credit is allowed based on the area's enterprise tier and development zone designation for  
3 the year the letter was signed. If the taxpayer does not place part or all of the specified  
4 eligible machinery and equipment in service within the two-year period, the taxpayer  
5 does not qualify for the benefit of this subsection with respect to the machinery and  
6 equipment not placed in service within the two-year period. However, if the taxpayer  
7 qualifies for a credit in the year the eligible machinery and equipment are placed in  
8 service, the taxpayer may take the credit for that year as if no letter of commitment had  
9 been signed pursuant to this subsection."

10 Section 2. Article 3A of Chapter 105 of the General Statutes is amended by  
11 adding a new section to read:

12 **"§ 105-129.9A. Technology commercialization credit.**

13 (a) Credit. – A taxpayer that is eligible for the credit allowed under G.S. 105-129.9  
14 and qualifies for the twenty percent (20%) or fifteen percent (15%) credit under this  
15 section may choose instead of the credit allowed under G.S. 105-129.9 to take one of the  
16 credits under this section for which the taxpayer qualifies. The twenty percent (20%)  
17 credit is a credit equal to twenty percent (20%) of the excess of the eligible investment  
18 amount over the applicable threshold for the taxable year. The fifteen percent (15%)  
19 credit is a credit equal to fifteen percent (15%) of the excess of the eligible investment  
20 amount over the applicable threshold for the taxable year. Except as provided in this  
21 section, the provisions of G.S. 105-129.9 apply to the credits allowed under this section.  
22 A credit allowed under this section must be taken for the taxable year in which the  
23 machinery and equipment are placed in service. A taxpayer may take the twenty percent  
24 (20%) credit allowed under this section, the fifteen percent (15%) credit allowed under  
25 this section, or the credit allowed in G.S. 105-129.9 during a taxable year, but not more  
26 than one of these credits.

27 (b) Twenty Percent Credit. – A taxpayer qualifies for a twenty percent (20%)  
28 credit under this section if it meets all of the following conditions:

- 29 (1) The eligible machinery and equipment are directly related to production  
30 based on technology developed by and licensed from a constituent  
31 institution of The University of North Carolina, or are used to produce  
32 resources essential to the taxpayer's production based on technology  
33 developed by and licensed from a constituent institution of The  
34 University of North Carolina.
- 35 (2) The eligible machinery and equipment are placed in service in a tier  
36 one, two, or three enterprise area.
- 37 (3) The eligible investment amount is at least ten million dollars  
38 (\$10,000,000) for the taxable year.
- 39 (4) The Secretary of Commerce has certified that the taxpayer will invest at  
40 least one hundred fifty million dollars (\$150,000,000) in eligible  
41 machinery and equipment in a tier one, two, or three enterprise area by  
42 the end of the fourth year after the year in which the taxpayer first

1 places eligible machinery and equipment in service in the enterprise  
2 area.

3 (5) No more than nine years have passed since the first taxable year the  
4 taxpayer claimed a credit under this subsection or subsection (c) of this  
5 section with respect to the same location.

6 (c) Fifteen Percent Credit. – A taxpayer qualifies for a fifteen percent (15%) credit  
7 under this section if it meets all of the following conditions:

8 (1) The eligible machinery and equipment are directly related to production  
9 based on technology developed by and licensed from a constituent  
10 institution of The University of North Carolina, or are used to produce  
11 resources essential to the taxpayer's production based on technology  
12 developed by and licensed from a constituent institution of The  
13 University of North Carolina.

14 (2) The eligible machinery and equipment are placed in service in a tier  
15 one, two, or three enterprise area.

16 (3) The eligible investment amount is at least ten million dollars  
17 (\$10,000,000) for the taxable year.

18 (4) The Secretary of Commerce has certified that the taxpayer will invest at  
19 least one hundred million dollars (\$100,000,000) in eligible machinery  
20 and equipment in a tier one, two, or three enterprise area by the end of  
21 the fourth year after the year in which the taxpayer first places eligible  
22 machinery and equipment in service in the enterprise area.

23 (5) No more than nine years have passed since the first taxable year the  
24 taxpayer claimed a credit under this subsection or subsection (c) of this  
25 section with respect to the same location."

26 Section 3. G.S. 105-129.4(d) reads as rewritten:

27 "(d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the  
28 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In  
29 addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer  
30 fails to make the level of investment certified by the Secretary of Commerce under  
31 subsection (b1) of this section within the required two-year period. A taxpayer forfeits the  
32 technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer fails  
33 to make the level of investment required by subsection (c) of that section within the  
34 required period or if the taxpayer fails to meet the terms of its licensing agreement with a  
35 constituent institution of The University of North Carolina or terminates the agreement.  
36 If a taxpayer claimed a twenty percent (20%) technology commercialization credit under  
37 G.S. 105-129.9A(b) and fails to make the level of investment required under that  
38 subsection within the required period, but does make the level of investment required  
39 under subsection (c) of that section within the required period, the taxpayer forfeits one-  
40 fourth of the twenty percent (20%) credit.

41 A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as  
42 a result of the credit plus interest at the rate established under G.S. 105-241.1(i),  
43 computed from the date the taxes would have been due if the credit had not been allowed.

1 The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer  
2 that fails to pay the past taxes and interest by the due date is subject to the penalties  
3 provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit  
4 for investing in machinery and equipment, the taxpayer also forfeits any credit for worker  
5 training claimed for the jobs for which the credit for creating jobs was claimed or the jobs  
6 at the location with respect to which the credit for investing in machinery and equipment  
7 was claimed."

8 Section 4. G.S. 105-129.5 reads as rewritten:

9 **"§ 105-129.5. Tax election; cap.**

10 (a) Tax Election. – The credits provided in this Article are allowed against the  
11 franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4  
12 of this Chapter. The credit for investing in central administrative office property  
13 provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in  
14 Article 8B of this Chapter. The taxpayer may divide the technology commercialization  
15 credit allowed in G.S. 105-129.9A between the taxes against which it is allowed. The  
16 taxpayer must take all other credits allowed in this Article against only one of the taxes  
17 against which they are allowed. The taxpayer shall elect the tax against which a credit  
18 will be claimed when filing the return on which the first installment of the credit is  
19 claimed. This election is binding. Any carryforwards of the credit must be claimed  
20 against the same tax.

21 (b) Cap. – The credits allowed under this Article may not exceed fifty percent  
22 (50%) of the tax against which they are claimed for the taxable year, reduced by the sum  
23 of all other credits allowed against that tax, except tax payments made by or on behalf of  
24 the taxpayer. This limitation applies to the cumulative amount of credit, including  
25 carryforwards, claimed by the taxpayer under this Article against each tax for the taxable  
26 year. Any unused portion of a credit with respect to a large investment or with respect to  
27 the technology commercialization credit allowed in G.S. 105-129.9A may be carried  
28 forward for the succeeding 20 years. Any unused portion of any other credit may be  
29 carried forward for the succeeding five years."

30 Section 5. This act is effective for taxable years beginning on or after January  
31 1, 2000.