

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1997**

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SENATE BILL 1569\*

Finance Committee Substitute Adopted 6/18/98  
Finance Committee Substitute #2 Adopted 6/23/98  
House Committee Substitute Favorable 7/2/98

Short Title: Economic Opportunity Act of 1998.

(Public)

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Sponsors:

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Referred to:

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June 1, 1998

A BILL TO BE ENTITLED

1 AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT  
2 TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX  
3 REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A  
4 SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX  
5 EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR  
6 RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX  
7 REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A  
8 SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED  
9 AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT  
10 A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND  
11 UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE  
12 WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO  
13 COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL  
14 DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE  
15 PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO  
16 ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF  
17

1 STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD,  
2 A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE  
3 INVESTMENT TAX CREDIT, AND AN ADDITIONAL JOBS TAX CREDIT  
4 WITHIN ZONES, AND TO GIVE ZONES PRIORITY FOR COMMUNITY  
5 DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S.  
6 LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE  
7 CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE  
8 THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE  
9 INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A  
10 TWO-YEAR PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO  
11 OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY  
12 MILLION DOLLARS, BY EXPANDING THE RESEARCH AND  
13 DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING  
14 TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY  
15 EXTENDING THE CREDIT CARRYFORWARD PERIOD FOR PROJECTS OVER  
16 ONE HUNDRED FIFTY MILLION DOLLARS, BY PROVIDING FOR A SINGLE  
17 TIER DESIGNATION FOR TWO-COUNTY INDUSTRIAL PARKS, BY  
18 CLARIFYING THAT CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE  
19 SOLD ONLY IF THERE IS IMMINENT CLOSURE OR AN EMPLOYEE  
20 BUYOUT, BY CLARIFYING THE METHOD OF CALCULATING THE  
21 INVESTMENT TAX CREDIT FOR LEASES, AND BY CLARIFYING THE  
22 DEFINITIONS OF THE TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

23 The General Assembly of North Carolina enacts:

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30 **PART I. BILL LEE ACT/DEVELOPMENT ZONES**

31 Section 1. Article 3A of Chapter 105 of the General Statutes reads as  
32 rewritten:

33 **"ARTICLE 3A.**

34 **"TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES.**

35 **[REPEALED EFFECTIVE JANUARY 1, 2002]**

36 **"§ 105-129.2. (Repealed effective January 1, 2002 – see note) Definitions.**

37 The following definitions apply in this Article:

- 38 (1) Air courier services. —~~Defined in the Standard Industrial Classification~~  
39 ~~Manual issued by the United States Office of Management and Budget.~~  
40 A person is engaged in the air courier services business if the person's  
41 primary business is furnishing air delivery of individually addressed  
42 letters and packages for compensation, except by the United States  
43 Postal Service.

- 1           (2)    Central administrative office. – Defined in the North American Industry  
2           Classification System adopted by the United States Office of  
3           Management and Budget.
- 4           (3)    Cost. – In the case of property owned by the taxpayer, cost is  
5           determined pursuant to regulations adopted under section 1012 of the  
6           Code. In the case of property the taxpayer leases from another, cost is  
7           value as determined pursuant to G.S. 105-130.4(j)(2).
- 8           (4)    Data processing. – Defined in the North American Industry  
9           Classification System adopted by the United States Office of  
10          Management and Budget.
- 11          (5)    Development zone. – An area designated as a development zone  
12          pursuant to G.S. 105-129.3A.
- 13          (6)    Enterprise tier. – The classification assigned to an area pursuant to G.S.  
14          105-129.3.
- 15          (7)    Full-time job. – A position that requires at least 1,600 hours of work per  
16          year and is intended to be held by one employee during the entire year.  
17          A full-time employee is an employee who holds a full-time job.
- 18          (8)    Reserved.
- 19          (9)    Large investment. – Defined in G.S. 105-129.4(b1).
- 20          (10)   Machinery and equipment. – Engines, machinery, tools, and implements  
21          used or designed to be used in the business for which the credit is  
22          claimed. The term does not include real property as defined in G.S. 105-  
23          273 or rolling stock as defined in G.S. 105-333.
- 24          (11)   Manufacturing. – Defined in the North American Industry Classification  
25          System adopted by the United States Office of Management and  
26          Budget.
- 27          (12)   Purchase. – Defined in section 179 of the Code.
- 28          (13)   Warehousing and wholesale trade. – Defined in the North American  
29          Industry Classification System adopted by the United States Office of  
30          Management and Budget.
- 31          ~~(1a)    Central administrative office. – Defined in the Standard Industrial~~  
32          ~~Classification Manual issued by the United States Office of~~  
33          ~~Management and Budget.~~
- 34          ~~(1b)    Cost. – Determined pursuant to regulations adopted under section 1012~~  
35          ~~of the Code.~~
- 36          ~~(2)    Data processing. – Defined in the Standard Industrial Classification~~  
37          ~~Manual issued by the United States Office of Management and Budget.~~
- 38          ~~(3)    Enterprise tier. – The classification assigned to an area pursuant to G.S.~~  
39          ~~105-129.3.~~
- 40          ~~(4)    Full-time job. – A position that requires at least 1,600 hours of work per~~  
41          ~~year and is intended to be held by one employee during the entire year.~~  
42          ~~A full-time employee is an employee who holds a full-time job.~~
- 43          ~~(4a)    Reserved.~~

- 1           (5)   Machinery and equipment.—Engines, machinery, tools, and implements  
2           that are capitalized by the taxpayer for tax purposes under the Code and  
3           are used or designed to be used in the business for which the credit is  
4           claimed. The term does not include real property as defined in G.S. 105-  
5           273 or rolling stock as defined in G.S. 105-333.  
6           (6)   Manufacturing and processing.—Defined in the Standard Industrial  
7           Classification Manual issued by the United States Office of  
8           Management and Budget.  
9           (7)   Purchase.—Defined in section 179 of the Code.  
10          (8)   Warehousing and distribution.—Defined in the Standard Industrial  
11          Classification Manual issued by the United States Office of  
12          Management and Budget.

13 **"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

14          (a)   Tiers Defined. – An enterprise tier one area is a county whose enterprise factor  
15          is one of the 10 highest in the State. An enterprise tier two area is a county whose  
16          enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is  
17          a county whose enterprise factor is one of the next 25 highest in the State. An enterprise  
18          tier four area is a county whose enterprise factor is one of the next 25 highest in the State.  
19          An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

20          (b)   Annual Designation. – Each year, on or before December 31, the Secretary of  
21          Commerce shall assign to each county in the State an enterprise factor that is the sum of  
22          the following:

- 23                  (1)   The county's rank in a ranking of counties by average rate of  
24                  unemployment from lowest to highest, for the preceding three years.  
25                  (2)   The county's rank in a ranking of counties by average per capita income  
26                  from highest to lowest, for the preceding three years.  
27                  (3)   The county's rank in a ranking of counties by percentage growth in  
28                  population from highest to lowest.

29          The Secretary of Commerce shall then rank all the counties within the State according  
30          to their enterprise factor from highest to lowest, identify all the areas of the State by  
31          enterprise tier, and provide this information to the Secretary of Revenue. An enterprise  
32          tier designation is effective only for the calendar year following the designation.

33          In measuring rates of unemployment and per capita income, the Secretary shall use  
34          the latest available data published by a State or federal agency generally recognized as  
35          having expertise concerning the data. In measuring population growth, the Secretary shall  
36          use the most recent estimates of population certified by the State Planning Officer.

37          (c)   Exception for Enterprise Tier One Areas. – Notwithstanding the provisions of  
38          this section, an enterprise tier one area may not be redesignated as a higher-numbered  
39          enterprise tier area until it has been an enterprise tier one area for at least two consecutive  
40          years.

41          (d)   Exception for Two-County Industrial Park. – For the purpose of this Article, an  
42          eligible two-county industrial park that meets all of the following conditions has the

1 lower enterprise tier designation of the designations of the two counties in which it is  
2 located:

- 3 (1) It is located in two contiguous counties, one of which has a lower  
4 enterprise tier designation than the other.
- 5 (2) At least one-third of the park is located in the county with the lower tier  
6 designation.
- 7 (3) It is owned by the two counties or a joint agency of the counties.
- 8 (4) The county with the lower tier designation contributed at least one-half  
9 of the cost of developing the park.

10 **"§ 105-129.3A. Development zone designation.**

11 (a) Development Zone Defined. – A development zone is an area comprised of  
12 one or more contiguous census tracts, census block groups, or both in the most recent  
13 federal decennial census that meets all of the following conditions:

- 14 (1) It is located in whole or in part in a city with a population of more than  
15 5,000 according to the most recent annual population estimates certified  
16 by the State Planning Officer.
- 17 (2) It has a population of 1,000 or more according to the most recent annual  
18 population estimates certified by the State Planning Officer.
- 19 (3) More than twenty percent (20%) of its population is below the poverty  
20 level according to the most recent federal decennial census.

21 (b) Designation. – Upon request of a taxpayer or a local government, the Secretary  
22 of Commerce shall designate whether an area is a development zone that meets the  
23 conditions of subsection (a) of this section. A development zone designation is effective  
24 for 48 months following the designation.

25 (c) Relationship With Enterprise Tiers. – For the purpose of the wage standard  
26 requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment  
27 allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11,  
28 a development zone is considered an enterprise tier one area. For all other purposes, a  
29 development zone has the same enterprise tier designation as the county in which it is  
30 located.

31 **"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

32 (a) Type of Business. – A taxpayer is eligible for a credit allowed by G.S. 105-  
33 129.12 if the real property for which the credit is claimed is used for a central  
34 administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other  
35 credits allowed by this Article if the taxpayer engages in one of the following types of  
36 businesses and the jobs with respect to which a credit is claimed are created in that  
37 business, the machinery and equipment with respect to which a credit is claimed are used  
38 in that business, and the research and development for which a credit is claimed are  
39 carried out as part of that business:

- 40 (1) Air courier services.
- 41 (2) Central administrative office that creates at least 40 new jobs.
- 42 (3) Data processing.
- 43 (4) ~~Manufacturing or processing.~~ Manufacturing.

1           (5) ~~Warehousing or distribution.~~ wholesale trade.

2           (a1) Central Administrative Office. – A central administrative office creates at least  
3 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central~~  
4 ~~administrative office, if the taxpayer hires at least 40 additional full-time employees to~~  
5 ~~fill new positions at the office.~~ office either in the year the taxpayer first uses the property  
6 as a central administrative office or in the preceding 24 months while using temporary  
7 space for the central administrative office functions during completion of the  
8 administrative office property. Jobs transferred from one area in the State to another area  
9 in the State are not considered new jobs for purposes of this subsection.

10           (b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the  
11 credit for worker training if the jobs for which the credit is claimed meet the wage  
12 standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the  
13 credit for investing in machinery and equipment, the credit for research and development,  
14 or the credit for investing in real property for a central administrative office if the jobs at  
15 the location with respect to which the credit is claimed meet the wage standard at the time  
16 the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average  
17 weekly wage that is at least equal to the applicable percentage times the applicable  
18 average weekly wage for the county in which the jobs will be located, as computed by the  
19 Secretary of Commerce from data compiled by the Employment Security Commission  
20 for the most recent period for which data are available. The applicable percentage for  
21 jobs located in an enterprise tier one area is one hundred percent (100%). The applicable  
22 percentage for all other jobs is one hundred ten percent (110%). The applicable average  
23 weekly wage is the lowest of the following: (i) the average wage for all insured private  
24 employers in the county, (ii) the average wage for all insured private employers in the  
25 State, and (iii) the average wage for all insured private employers in the county  
26 multiplied by the county income/wage adjustment factor. The county income/wage  
27 adjustment factor is the county income/wage ratio divided by the State income/wage  
28 ratio. The county income/wage ratio is average per capita income in the county divided  
29 by the annualized average wage for all insured private employers in the county. The State  
30 income/wage ratio is the average per capita income in the State divided by the annualized  
31 average wage for all insured private employers in the State.

32           (b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit under  
33 this Article becomes eligible for the large investment enhancements provided for credits  
34 under this Article if the Secretary of Commerce certifies that the taxpayer will purchase  
35 or lease, and place in service in connection with the eligible business within a two-year  
36 period, at least one hundred fifty million dollars (\$150,000,000) worth of one or more of  
37 the following: real property, machinery and equipment, or central administrative office  
38 property. If the taxpayer fails to make the level of investment certified within this two-  
39 year period, the taxpayer forfeits the large investment enhancements as provided in  
40 subsection (d) of this section.

41           (e) Worker Training. – ~~A taxpayer is eligible for the tax credit for worker training~~  
42 ~~only for training workers who occupy jobs for which the taxpayer is eligible to claim an~~  
43 ~~installment of the credit for creating jobs or which are full-time positions at a location~~

1 with respect to which the taxpayer is eligible to claim an installment of the credit for  
2 investing in machinery and equipment for the taxable year.

3 The credit for worker training is allowed only with respect to employees in positions  
4 not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and  
5 for expenditures for training that would be eligible for expenditure or reimbursement  
6 under the Department of Community Colleges' New and Expanding Industry Program, as  
7 determined by guidelines adopted by the State Board of Community Colleges. The credit  
8 is not allowed for expenditures that are paid or reimbursed by the New and Expanding  
9 Industry Program. To establish eligibility, the taxpayer must obtain as part of the  
10 application process under G.S. 105-129.6 the certification of the Department of  
11 Community Colleges that the taxpayer's planned worker training would satisfy the  
12 requirements of this paragraph. A taxpayer shall apply to the Department of Community  
13 Colleges for this certification. The application must be on a form provided by the  
14 Department of Community Colleges, must provide a detailed plan of the worker training  
15 to be provided, and must contain any information required by the Department of  
16 Community Colleges to determine whether the requirements of this paragraph will be  
17 satisfied. If the Department of Community Colleges determines that the planned worker  
18 training meets the requirements of this paragraph, the Department of Community  
19 Colleges shall issue a certificate describing the location with respect to which the credit is  
20 claimed and stating that the planned worker training meets the requirements of this  
21 paragraph. The State Board of Community Colleges may adopt rules in accordance with  
22 Chapter 150B of the General Statutes that are needed to carry out its responsibilities  
23 under this paragraph.

24 (d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the  
25 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In  
26 addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer  
27 fails to make the level of investment certified by the Secretary of Commerce under  
28 subsection (b1) of this section within the required two-year period. A taxpayer that  
29 forfeits a credit under this Article is liable for all past taxes avoided as a result of the  
30 credit plus interest at the rate established under G.S. 105-241.1(i), computed from the  
31 date the taxes would have been due if the credit had not been allowed. The past taxes and  
32 interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay  
33 the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-  
34 236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in  
35 machinery and equipment, the taxpayer also forfeits any credit for worker training  
36 claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the  
37 location with respect to which the credit for investing in machinery and equipment was  
38 claimed.

39 (e) Change in Ownership of Business. – The sale, merger, acquisition, or  
40 bankruptcy of a business, or any other transaction by which an existing business  
41 reformulates itself as another business, does not create new eligibility in a succeeding  
42 business with respect to credits for which the predecessor was not eligible under this  
43 Article. A successor business may, however, take any installment of or carried-over

1 portion of a credit that its predecessor could have taken if it had a tax liability. The  
2 acquisition of a business is a new investment that creates new eligibility in the acquiring  
3 taxpayer under this Article if any of the following conditions are met:

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

5 (2) The business was required to file a notice of plant closing or mass layoff  
6 under the federal Worker Adjustment and Retraining Notification Act,  
7 29 U.S.C. § 2102, before it was acquired.

8 (3) The business was acquired by its employees through an employee stock  
9 option transaction or another similar mechanism.

10 **"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.**

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

18 (b) Cap. – The credits allowed under this Article may not exceed fifty percent  
19 (50%) of the tax against which they are claimed for the taxable year, reduced by the sum  
20 of all other credits allowed against that tax, except tax payments made by or on behalf of  
21 the taxpayer. This limitation applies to the cumulative amount of credit, including  
22 carryforwards, claimed by the taxpayer under this Article against each tax for the taxable  
23 year. ~~Any unused portion of the a credit with respect to a large investment may be carried~~  
24 ~~forward for the succeeding five years. 20 years. Any unused portion of any other credit~~  
25 ~~may be carried forward for the succeeding five years.~~

26 **"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.**

27 (a) Application. – To claim the credits allowed by this Article, the taxpayer must  
28 provide with the tax return the certification of the Secretary of Commerce that the  
29 taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each  
30 credit. A taxpayer shall apply to the Secretary of Commerce for certification of  
31 eligibility. The application must be on a form provided by the Secretary of Commerce  
32 and must contain any information necessary for the Secretary of Commerce to determine  
33 whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce  
34 determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4  
35 with respect to a credit, the Secretary shall issue a certificate describing the location with  
36 respect to which the credit is claimed, outlining the eligibility requirements for the credit,  
37 and stating that the taxpayer meets the eligibility requirements. If the Secretary of  
38 Commerce determines that the taxpayer does not meet all of the eligibility requirements  
39 of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in  
40 writing of the eligibility requirements the taxpayer fails to meet. The Secretary of  
41 Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that  
42 are needed to carry out the Secretary of Commerce's responsibilities under this section.



1 (a1) Fee. – When filing an application for certification under this section, the  
 2 taxpayer must pay the Department of Commerce a fee of seventy-five dollars (\$75.00).  
 3 Fees collected under this subsection are receipts of the Department of Commerce.

4 (b) Reports. – The Department of Commerce shall report to the Department of  
 5 Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each  
 6 year the following information for the 12-month period ending the preceding April 1:

- 7 (1) The number of applications for each credit allowed in this Article.
- 8 (2) The number and enterprise tier area of new jobs with respect to which  
 9 credits were applied for.
- 10 (3) The cost of machinery and equipment with respect to which credits were  
 11 applied for.

12 **"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.**

13 To claim a credit allowed by this Article, the taxpayer must provide any information  
 14 required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article  
 15 shall maintain and make available for inspection by the Secretary of Revenue any records  
 16 the Secretary considers necessary to determine and verify the amount of the credit to  
 17 which the taxpayer is entitled. The burden of proving eligibility for the credit and the  
 18 amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a  
 19 taxpayer that fails to maintain adequate records or to make them available for inspection.

20 **"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

21 (a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-  
 22 129.4, has five or more employees for at least 40 weeks during the taxable year, and hires  
 23 an additional full-time employee during that year to fill a position located in this State is  
 24 allowed a credit for creating a new full-time job. The amount of the credit for each new  
 25 full-time job created is set out in the table below and is based on the enterprise tier of the  
 26 area in which the position is ~~located~~:located. In addition, if the position is located in a  
 27 development zone, the amount of the credit is increased by four thousand dollars (\$4,000)  
 28 per job.

29 Area Enterprise Tier	Amount of Credit
30 Tier One	\$12,500
31 Tier Two	4,000
32 Tier Three	3,000
33 Tier Four	1,000
34 Tier Five	500

35 A position is located in an area if more than fifty percent (50%) of the employee's  
 36 duties are performed in the area. The credit may not be taken in the taxable year in which  
 37 the additional employee is hired. Instead, the credit shall be taken in equal installments  
 38 over the four years following the taxable year in which the additional employee was hired  
 39 and shall be conditioned on the continued employment by the taxpayer of the number of  
 40 full-time employees the taxpayer had upon hiring the employee that caused the taxpayer  
 41 to qualify for the credit.

42 If, in one of the four years in which the installment of a credit accrues, the number of  
 43 the taxpayer's full-time employees falls below the number of full-time employees the

1 taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires  
2 and the taxpayer may not take any remaining installment of the credit. The taxpayer may,  
3 however, take the portion of an installment that accrued in a previous year and was  
4 carried forward to the extent permitted under G.S. 105-129.5.

5 Jobs transferred from one area in the State to another area in the State shall not be  
6 considered new jobs for purposes of this section. If, in one of the four years in which the  
7 installment of a credit accrues, the position filled by the employee is moved to an area in  
8 a higher- or lower-numbered enterprise tier, or is moved from a development zone to an  
9 area that is not a development zone, the remaining installments of the credit shall be  
10 calculated as if the position had been created initially in the area to which it was moved.

11 (b) Repealed by Session Laws 1989, c. 111, s. 1.

12 (b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

13 (d) Planned Expansion. – A taxpayer that signs a letter of commitment with the  
14 Department of Commerce to create at least twenty new full-time jobs in a specific area  
15 within two years of the date the letter is signed qualifies for the credit in the amount  
16 allowed by this section based on the area's enterprise tier and development zone  
17 designation for that year even though the employees are not hired that year. The credit  
18 shall be available in the taxable year after at least twenty employees have been hired if  
19 the hirings are within the two-year commitment period. The conditions outlined in  
20 subsection (a) apply to a credit taken under this subsection except that if the area is  
21 redesignated to a higher-numbered enterprise tier or loses its development zone  
22 designation after the year the letter of commitment was signed, the credit is allowed  
23 based on the area's enterprise tier and development zone designation for the year the letter  
24 was signed. If the taxpayer does not hire the employees within the two-year period, the  
25 taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit  
26 under subsection (a) in the year any new employees are hired, the taxpayer may take the  
27 credit under that subsection.

28 (e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for  
29 taxable years beginning on or after January 1, 1996.

30 **"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery**  
31 **and equipment.**

32 (a) Credit. – If a taxpayer that has purchased or leased eligible machinery and  
33 equipment places it in service in this State during the taxable year, the taxpayer is  
34 allowed a credit equal to seven percent (7%) of the excess of the eligible investment  
35 amount over the applicable threshold. Machinery and equipment is eligible if it is  
36 capitalized by the taxpayer for tax purposes under the Code and is not leased to another  
37 party. In addition, in the case of a large investment, machinery and equipment that is not  
38 capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The  
39 credit may not be taken for the taxable year in which the equipment is placed in service  
40 but shall be taken in equal installments over the seven years following the taxable year in  
41 which the equipment is placed in service.

42 (b) Eligible Investment Amount. – The eligible investment amount is the lesser of  
43 (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost

1 of all of the taxpayer's eligible machinery and equipment that is in service in this State on  
2 the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery  
3 and equipment that was in service in this State on the last day of the base year. The base  
4 year is that year, of the three immediately preceding taxable years, in which the taxpayer  
5 had the most eligible machinery and equipment in service in this State.

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

14 Enterprise Tier Threshold

15 Tier One \$ -0-

16 Tier Two 100,000

17 Tier Three 200,000

18 Tier Four 500,000

19 Tier Five 1,000,000(d) Expiration. – If, in one of the seven years in which the  
20 installment of a credit accrues, the machinery and equipment with respect to which the  
21 credit was claimed are disposed of, taken out of service, or moved out of State, the credit  
22 expires and the taxpayer may not take any remaining installment of the credit. The  
23 taxpayer may, however, take the portion of an installment that accrued in a previous year  
24 and was carried forward to the extent permitted under G.S. 105-129.5.

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

31 (e) Planned Expansion. – A taxpayer that signs a letter of commitment with the  
32 Department of Commerce to place specific eligible machinery and equipment in service  
33 in an area within two years after the date the letter is signed may, in the year the eligible  
34 machinery and equipment are placed in service in that area, calculate the credit for which  
35 the taxpayer qualifies based on the area's enterprise tier and development zone  
36 designation for the year the letter was signed. All other conditions apply to the credit, but  
37 if the area has been redesignated to a higher-numbered enterprise tier or has lost its  
38 development zone designation after the year the letter of commitment was signed, the  
39 credit is allowed based on the area's enterprise tier and development zone designation for  
40 the year the letter was signed. If the taxpayer does not place part or all of the specified  
41 eligible machinery and equipment in service within the two-year period, the taxpayer  
42 does not qualify for the benefit of this subsection with respect to the machinery and  
43 equipment not placed in service within the two-year period. However, if the taxpayer

1 qualifies for a credit in the year the eligible machinery and equipment are placed in  
2 service, the taxpayer may take the credit for that year as if no letter of commitment had  
3 been signed pursuant to this subsection.

4 **"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and**  
5 **development.**

6 (a) General Credit. – A taxpayer that claims for the taxable year a federal income  
7 tax credit under section ~~41~~41(a) of the Code for increasing research activities is allowed  
8 a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's  
9 expenditures for increasing research activities. The State's apportioned share of a  
10 taxpayer's expenditures for increasing research activities is the excess of the taxpayer's  
11 qualified research expenses for the taxable year over the base amount, as determined  
12 under section 41 of the Code, multiplied by a percentage equal to the ratio of the  
13 taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's  
14 total qualified research expenses for the taxable year.

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

25 (c) Definitions. – As used in this section, the terms 'qualified research expenses'  
26 and 'base amount' have the meaning provided in section 41 of the Code.

27 **"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.**

28 (a) Credit. – A taxpayer that provides worker training for five or more of its  
29 eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%)~~  
30 ~~of its eligible expenditures for the wages paid to the eligible employees during the~~  
31 ~~training. Wages paid to an employee performing his or her job while being trained are not~~  
32 ~~eligible for the credit.~~ For positions located in an enterprise tier one area, the credit may  
33 not exceed one thousand dollars (\$1,000) per employee trained during the taxable year.  
34 For other positions, the credit may not exceed five hundred dollars (\$500.00) per  
35 employee trained during the taxable year. A position is located in an area if more than  
36 fifty percent (50%) of the employee's duties are performed in the area.

37 (b) Eligibility. – ~~The eligibility of a taxpayer's expenditures and employees is~~  
38 ~~determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a  
39 full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C.  
40 § 213(a)(1) and meets one or more of the following conditions:

- 41 (1) The employee occupies a job for which the taxpayer is eligible to claim  
42 an installment of the credit for creating jobs.

1           (2)    The employee is being trained to operate machinery and equipment for  
2                   which the taxpayer is eligible to claim an installment of the credit for  
3                   investing in machinery and equipment.

4   **"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central**  
5           **administrative office property.**

6           (a)    Credit. – If a taxpayer that has purchased or leased real property in this State  
7 begins to use the property as a central administrative office during the taxable year, the  
8 taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment  
9 amount. The eligible investment amount is the lesser of (i) the cost of the property and  
10 (ii) the amount by which the cost of all of the property the taxpayer is using in this State  
11 as central administrative offices on the last day of the taxable year exceeds the cost of all  
12 of the property the taxpayer was using in this State as central administrative offices on  
13 the last day of the base year. The base year is that year, of the three immediately  
14 preceding taxable years, in which the taxpayer was using the most property in this State  
15 as central administrative offices. In the case of property that is leased, the cost of the  
16 property is not determined as provided in G.S. 105-129.2 but is considered to be the  
17 taxpayer's lease payments over a seven-year period, plus any expenditures made by the  
18 taxpayer to improve the property before it is used as the taxpayer's central administrative  
19 office if the expenditures are not reimbursed or credited by the lessor. The maximum  
20 credit allowed a taxpayer under this section for property used as a central administrative  
21 office is five hundred thousand dollars (\$500,000). The entire credit may not be taken for  
22 the taxable year in which the property is first used as a central administrative office but  
23 shall be taken in equal installments over the seven years following the taxable year in  
24 which the property is first used as a central administrative office. The basis in any real  
25 property for which a credit is allowed under this section shall be reduced by the amount  
26 of credit allowable.

27           (b)    Mixed Use Property. – If the taxpayer uses only part of the property as the  
28 taxpayer's central administrative office, the amount of the credit allowed under this  
29 section is reduced by multiplying it by a fraction the numerator of which is the square  
30 footage of the property used as the taxpayer's central administrative office and the  
31 denominator of which is the total square footage of the property.

32           (c)    Expiration. – If, in one of the seven years in which the installment of a credit  
33 accrues, the property with respect to which the credit was claimed is no longer used as a  
34 central administrative office, the credit expires and the taxpayer may not take any  
35 remaining installment of the credit. If, in one of the seven years in which the installment  
36 of a credit accrues, part of the property with respect to which the credit was claimed is no  
37 longer used as a central administrative office, the remaining installments of the credit  
38 shall be reduced by multiplying it by the fraction described in subsection (b) of this  
39 section. If, in one of the seven years in which the installment of a credit accrues, the total  
40 number of employees the taxpayer employs at all of its central administrative offices in  
41 this State drops by 40 or more, the credit expires and the taxpayer may not take any  
42 remaining installment of the credit.

1 In each of these cases, the taxpayer may nonetheless take the portion of an installment  
2 that accrued in a previous year and was carried forward to the extent permitted under  
3 G.S. 105-129.5."

4 Section 2. G.S. 105-129.15(2) reads as rewritten:

5 "(2) Cost. —~~Determined~~In the case of property owned by the taxpayer, cost  
6 is determined pursuant to regulations adopted under section 1012 of the  
7 Code, subject to the limitation on cost provided in section 179 of the  
8 Code. In the case of property the taxpayer leases from another, cost is  
9 value as determined pursuant to G.S. 105-130.4(j)(2)."

10 Section 3. G.S. 143B-437.04 reads as rewritten:

11 "**§ 143B-437.04. Economic-Community development block grants.**

12 (a) The Department of Commerce shall adopt guidelines for the awarding of  
13 Community Development Block Grants ~~for economic development that will ensure that~~  
14 ~~no~~to ensure that:

15 (1) No local match is required for grants awarded for projects located in  
16 enterprise tier one areas as defined in G.S. ~~105-129.3 and, to 105-129.3.~~

17 (2) To the extent practicable, that priority consideration for grants is given  
18 to projects located in enterprise tier one areas as defined in G.S. ~~105-~~  
19 ~~129.3.~~ 105-129.3 or in development zones that have met the conditions  
20 of subsection (b) of this section.

21 (b) In order to qualify for the benefits of this section, after an area is designated a  
22 development zone under G.S. 105-129.3A, the governing body of the city in which the  
23 zone is located must adopt a strategy to improve the zone and establish a development  
24 zone committee to oversee the strategy. The strategy and the committee must conform  
25 with requirements established by the Secretary of Commerce."

26 **PART II. INFRASTRUCTURE FUNDS**

27 Section 4. It is the intent of the General Assembly to appropriate funds from  
28 the General Fund to the Department of Commerce for the 1998-99 fiscal year to be  
29 allocated to the Utility Account of the Industrial Development Fund for use in accordance  
30 with G.S. 143B-437.01(b1).

31 Section 5. It is the intent of the General Assembly to appropriate funds from  
32 the General Fund to the Department of Commerce for the 1998-99 fiscal year to be  
33 allocated to the Industrial Development Fund for use in accordance with G.S. 143B-  
34 437.01(a).

35 Section 6. G.S. 143B-437.01 reads as rewritten:

36 "**§ 143B-437.01. Industrial Development Fund.**

37 (a) Creation and Purpose of Fund. — There is created in the Department of  
38 Commerce the Industrial Development Fund to provide funds to assist the local  
39 government units of the most economically distressed counties in the State in creating  
40 jobs in certain industries. The Department of Commerce shall adopt rules providing for  
41 the administration of the program. Those rules shall include the following provisions,  
42 which shall apply to each grant from the fund:

- 1           (1)    The funds shall be used for (i) installation of or purchases of equipment  
2           for ~~manufacturing or processing, eligible industries,~~ (ii) structural  
3           repairs, improvements, or renovations of existing buildings to be used  
4           for expansion of ~~manufacturing or processing, eligible industries,~~ or (iii)  
5           construction of or improvements to new or existing water, sewer, gas, or  
6           electrical utility distribution lines or equipment for existing or new or  
7           proposed industrial buildings to be used for ~~manufacturing or~~  
8           ~~processing operations, eligible industries.~~ To be eligible for funding,  
9           the water, sewer, gas, or electrical utility lines or facilities shall be  
10          located on the site of the building or, if not located on the site, shall be  
11          directly related to the operation of the specific ~~manufacturing or~~  
12          ~~processing eligible industrial activity.~~
- 13          (1a)   The funds shall be used for projects located in economically distressed  
14          counties except that the Secretary of Commerce may use up to one  
15          hundred thousand dollars (\$100,000) to provide emergency economic  
16          development assistance in any county that is documented to be  
17          experiencing a major economic dislocation.
- 18          (2)    The funds shall be used by the city and county governments for projects  
19          that will directly result in the creation of new jobs. The funds shall be  
20          expended at a maximum rate of four thousand dollars (\$4,000) five  
21          thousand dollars (\$5,000) per new job created up to a maximum of four  
22          hundred thousand dollars (\$400,000) five hundred thousand dollars  
23          (\$500,000) per project.
- 24          (3)    There shall be no local match requirement if the project is located in an  
25          enterprise tier one area as defined in G.S. 105-129.3.
- 26          (4)    The Department may authorize a local government that receives funds  
27          under this section to use up to two percent (2%) of the funds, if  
28          necessary, to verify that the funds are used only in accordance with law  
29          and to otherwise administer the grant or loan.
- 30          (a1)   Definitions. – The following definitions apply in this section:
- 31                  (1)    Air courier services. – A person is engaged in the air courier services  
32                  business if the person's primary business is furnishing air delivery of  
33                  individually addressed letters and packages, except by the United States  
34                  Postal Service.
- 35                  (2)    Central administrative office. – Defined in the North American Industry  
36                  Classification System adopted by the United States Office of  
37                  Management and Budget.
- 38                  (3)    Data processing. – Defined in the North American Industry  
39                  Classification System adopted by the United States Office of  
40                  Management and Budget.
- 41                  (4)    Economically distressed county. – A county designated as an enterprise  
42                  tier one, two, or three area pursuant to G.S. 105-129.3.

- 1           (5)    Eligible industry. – A central administrative office or a person engaged  
2           in the business of air courier services, data processing, manufacturing,  
3           or warehousing and wholesale trade.
- 4           (6)    Reserved.
- 5           (7)    Major economic dislocation. – The actual or imminent loss of 500 or  
6           more manufacturing jobs in the county or of a number of manufacturing  
7           jobs equal to at least ten percent (10%) of the existing manufacturing  
8           workforce in the county.
- 9           (8)    Manufacturing. – Defined in the North American Industry Classification  
10           System adopted by the United States Office of Budget and  
11           Management.
- 12           (9)    Reserved.
- 13           (10)   Warehousing and wholesale trade. – Defined in the North American  
14           Industry Classification System adopted by the United States Office of  
15           Management and Budget.
- 16           (1)    ~~Economically distressed county.~~—A county designated as an enterprise  
17           ~~tier one, two, or three area pursuant to G.S. 105-129.3.~~
- 18           (2)    ~~Major economic dislocation.~~—The actual or imminent loss of 500 or  
19           ~~more manufacturing jobs in the county or of a number of manufacturing~~  
20           ~~jobs equal to at least ten percent (10%) of the existing manufacturing~~  
21           ~~workforce in the county.~~
- 22           (3)    ~~Manufacturing and processing.~~ Defined in the Standard Industrial  
23           ~~Classification Manual issued by the United States Bureau of the Census.~~
- 24           (b)    Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.
- 25           (b1)   Utility Account. – There is created within the Industrial Development Fund a  
26           special account to be known as the Utility Account to provide funds to assist the local  
27           government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3,  
28           in creating jobs in manufacturing and processing, warehousing and distribution, and data  
29           ~~processing, as defined in the Standard Industrial Classification Manual issued by the~~  
30           ~~United States Bureau of the Census.~~ eligible industries. The Department of Commerce  
31           shall adopt rules providing for the administration of the program. Except as otherwise  
32           provided in this subsection, those rules shall be consistent with the rules adopted with  
33           respect to the Industrial Development Fund. The rules shall provide that the funds in the  
34           Utility Account may be used only for construction of or improvements to new or existing  
35           water, sewer, gas, or electrical utility distribution lines or equipment for existing or new  
36           or proposed industrial buildings to be used for ~~industrial operations in manufacturing or~~  
37           ~~processing, warehousing or distribution, or data processing.~~ eligible industrial operations.  
38           To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities  
39           shall be located on the site of the building or, if not located on the site, shall be directly  
40           related to the operation of the specific industrial activity. There shall be no maximum  
41           funding amount per new job to be created or per project.
- 42           (c)    Reports. – The Department of Commerce shall report annually to the General  
43           Assembly concerning the applications made to the fund and the payments made from the



1 fund and the impact of the payments on job creation in the State. The Department of  
2 Commerce shall also report quarterly to the Joint Legislative Commission on  
3 Governmental Operations and the Fiscal Research Division on the use of the moneys in  
4 the fund, including information regarding to whom payments were made, in what  
5 amounts, and for what purposes.

6 (c1) In addition to the reporting requirements of subsection ~~(b1)~~(c) of this section,  
7 the Department of Commerce shall report annually to the General Assembly concerning  
8 the payments made from the Utility Account and the impact of the payments on job  
9 creation in the State. The Department of Commerce shall also report quarterly to the Joint  
10 Legislative Commission on Governmental Operations and the Fiscal Research Division  
11 on the use of the moneys in the Utility Account including information regarding to whom  
12 payments were made, in what amounts, and for what purposes.

13 (d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

### 14 PART III. AIR COURIER HUBS

15 Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

16 "(6a) Interstate air courier. – A person engaged in the air courier services  
17 business, as defined in G.S. 105-129.2, in interstate commerce.

18 (6b) Hub. – An interstate air courier's airport in this State that meets all of  
19 the following conditions:

20 a. The air courier has allocated to the airport under G.S. 105-388  
21 more than sixty percent (60%) of its aircraft value apportioned to  
22 this State.

23 b. The air courier's primary function at the airport is to sort and  
24 distribute letters and packages received from multiple  
25 consolidation locations.

26 c. The air courier's primary function at the airport is not to  
27 consolidate letters and packages and deliver them to another  
28 airport for sorting and distribution."

29 Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision  
30 to read:

31 "k. Sales of the following items to an interstate air courier for use at  
32 its hub: materials handling equipment, racking systems, and  
33 related parts and accessories, for the storage or handling and  
34 movement of tangible personal property at an airport or in a  
35 warehouse or distribution facility."

36 Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

37 "(44) Sales of the following items to an interstate air courier for use at its  
38 hub: aircraft lubricants, aircraft repair parts, and aircraft  
39 accessories."

40 Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

41 "(24a) Aircraft that is owned or leased by an interstate air courier, is  
42 apportioned under G.S. 105-337 to the air courier's hub in this State, and  
43 is used in the air courier's operations in this State. For the purpose of

1           this subdivision, the terms 'interstate air courier' and 'hub' have the  
2           meanings provided in G.S. 105-164.3."

3           Section 11(a). The Piedmont Triad International Airport Authority may  
4 contract for design and construction of an air freight distribution facility on Airport  
5 property without being subject to the requirements of Article 8 of Chapter 143 of the  
6 General Statutes.

7           Section 11(b). The Piedmont Triad International Airport Authority may  
8 contract for supplies, materials, equipment, and contractual services of the Authority  
9 related to an air freight distribution facility on Airport property without being subject to  
10 the requirements of Article 3 of Chapter 143 of the General Statutes.

#### 11           **PART IV. RECYCLING INDUSTRY**

12           Section 12. Chapter 105 of the General Statutes is amended by adding a new  
13 Article to read:

#### 14                           **"ARTICLE 3C.**

#### 15                           **"TAX INCENTIVES FOR RECYCLING FACILITIES.**

#### 16           **"§ 105-129.25. Definitions.**

17           The following definitions apply in this Article:

- 18           (1) Reserved.
- 19           (2) Reserved.
- 20           (3) Large recycling facility. – A recycling facility that qualifies under G.S.  
21           105-129.26(b).
- 22           (4) Machinery and equipment. – Engines, machinery, tools, and implements  
23           used or designed to be used in the business for which the credit is  
24           claimed. The term does not include real property as defined in G.S. 105-  
25           273 or rolling stock as defined in G.S. 105-333.
- 26           (5) Major recycling facility. – A recycling facility that qualifies under G.S.  
27           105-129.26(a).
- 28           (6) Owner. – A person who owns or leases a recycling facility.
- 29           (7) Post-consumer waste material. – Any product that was generated by a  
30           business or consumer, has served its intended end use, and has been  
31           separated from the solid waste stream for the purpose of recycling. The  
32           term includes material acquired by a recycling facility either directly or  
33           indirectly, such as through a broker or an agent.
- 34           (8) Purchase. – Defined in section 179 of the Code.
- 35           (9) Recycling facility. – A manufacturing plant at least three-fourths of  
36           whose products are made of at least fifty percent (50%) post-consumer  
37           waste material measured by weight or volume. The term includes real  
38           and personal property located at or on land in the same county and  
39           reasonably near the plant site and used to perform business functions  
40           related to the plant or to transport materials and products to or from the  
41           plant. The term also includes utility infrastructure and transportation  
42           infrastructure to and from the plant.

#### 43           **"§ 105-129.26. Qualification; forfeiture.**

1       (a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits  
2 provided in this Article and in Article 5 of this Chapter for major recycling facilities if it  
3 meets all of the following conditions:

4           (1) The facility is located in an area that, at the time the owner began  
5 construction of the facility, was an enterprise tier one area pursuant to  
6 G.S. 105-129.3.

7           (2) The Secretary of Commerce has certified that the owner will, by the end  
8 of the fourth year after the year the owner begins construction of the  
9 recycling facility, invest at least three hundred million dollars  
10 (\$300,000,000) in the facility and create at least 250 new, full-time jobs  
11 at the facility.

12           (3) The jobs at the recycling facility meet the wage standard in effect  
13 pursuant to G.S. 105-129.4(b) as of the date the owner begins  
14 construction of the facility.

15       (b) Large Recycling Facility. – A recycling facility qualifies for the tax credit  
16 provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following  
17 conditions:

18           (1) The facility is located in an area that, at the time the owner began  
19 construction of the facility, was an enterprise tier one area pursuant to  
20 G.S. 105-129.3.

21           (2) The Secretary of Commerce has certified that the owner will, by the end  
22 of the second year after the year the owner begins construction of the  
23 recycling facility, invest at least one hundred fifty million dollars  
24 (\$150,000,000) in the facility and create at least 155 new, full-time jobs  
25 at the facility.

26           (3) The jobs at the recycling facility meet the wage standard in effect  
27 pursuant to G.S. 105-129.4(b) as of the date the owner begins  
28 construction of the facility.

29       (c) Forfeiture. – If the owner of a large or major recycling facility fails to make the  
30 required minimum investment or create the required number of new jobs within the  
31 period certified by the Secretary of Commerce under this section, the recycling facility no  
32 longer qualifies for the applicable recycling facility tax benefits provided in this Article  
33 and in Article 5 of this Chapter and forfeits all tax benefits previously received under  
34 those Articles. Forfeiture does not occur, however, if the failure was due to events  
35 beyond the owner's control. Upon forfeiture of tax benefits previously received, the  
36 owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of  
37 all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits  
38 received plus interest at the rate established in G.S. 105-241.1(i), computed from the date  
39 the taxes would have been due if the tax benefits had not been received. The tax and  
40 interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax  
41 and interest is subject to the penalties provided in G.S. 105-236.

42       (d) Substantiation. – To claim a credit allowed by this Article, the owner must  
43 provide any information required by the Secretary of Revenue. Every owner claiming a

1 credit under this Article shall maintain and make available for inspection by the Secretary  
2 of Revenue any records the Secretary considers necessary to determine and verify the  
3 amount of the credit to which the owner is entitled. The burden of proving eligibility for  
4 the credit and the amount of the credit shall rest upon the owner, and no credit shall be  
5 allowed to an owner that fails to maintain adequate records or to make them available for  
6 inspection.

7 (e) Reports. – The Department of Commerce shall report to the Fiscal Research  
8 Division of the General Assembly by May 1 of each year the following information for  
9 the 12-month period ending the preceding April 1:

10 (1) The number and location of large and major recycling facilities  
11 qualified under this Article.

12 (2) The number of new jobs created by each recycling facility.

13 (3) The amount of investment in each recycling facility.

14 (4) The amount of reinvestment credit refunded to each major recycling  
15 facility under G.S. 105-129.28.

16 **"§ 105-129.27. Credit for investing in large or major recycling facility.**

17 (a) Credit. – An owner that purchases or leases machinery and equipment for a  
18 major recycling facility in this State during the taxable year is allowed a credit equal to  
19 fifty percent (50%) of the amount payable by the owner during the taxable year to  
20 purchase or lease the machinery and equipment. An owner that purchases or leases  
21 machinery and equipment for a large recycling facility in this State during the taxable  
22 year is allowed a credit equal to twenty percent (20%) of the amount payable by the  
23 owner during the taxable year to purchase or lease the machinery and equipment.

24 (b) Taxes Credited. – The credit provided in this section is allowed against the  
25 franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of  
26 Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are  
27 subtracted before the credit allowed by this section.

28 (c) Carryforwards. – The credit provided in this section may not exceed the  
29 amount of tax against which it is claimed for the taxable year, reduced by the sum of all  
30 other credits allowed against that tax, except tax payments made by or on behalf of the  
31 owner. Any unused portion of the credit may be carried forward for the succeeding 25  
32 years.

33 (d) Change in Ownership of Facility. – The sale, merger, acquisition, or  
34 bankruptcy of a recycling facility, or any transaction by which the facility is reformulated  
35 as another business, does not create new eligibility in a succeeding owner with respect to  
36 a credit for which the predecessor was not eligible under this section. A successor  
37 business may, however, take any carried-over portion of a credit that its predecessor  
38 could have taken if it had a tax liability.

39 (e) Forfeiture. – If any machinery or equipment for which a credit was allowed  
40 under this section is not placed in service within 30 months after the credit was allowed,  
41 the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all  
42 past taxes avoided as a result of the credit plus interest at the rate established under G.S.  
43 105-241.1(i), computed from the date the taxes would have been due if the credit had not

1 been allowed. The past taxes and interest are due 30 days after the date the credit is  
2 forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject  
3 to the penalties provided in G.S. 105-236.

4 (f) No Double Credit. – A recycling facility that is eligible for the credit allowed  
5 in this section is not allowed the credit for investing in machinery and equipment  
6 provided in G.S. 105-129.9.

7 **"§ 105-129.28. Credit for reinvestment.**

8 (a) Credit. – A major recycling facility that is accessible by neither ocean barge  
9 nor ship and that transports materials to the facility or products away from the facility is  
10 allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its  
11 additional transportation and transloading expenses incurred with respect to the materials  
12 and products due to its inability to use ocean barges or ships. The additional expenses for  
13 which credit is allowed are expenses due to using river barges and expenses due to  
14 having to use another mode of transportation because the quantity that is transported by  
15 river barge is insufficient to meet the facility's needs. In order to claim the credit allowed  
16 by this section, the facility must provide the Secretary of Commerce audited  
17 documentation of the amount of its additional transportation and transloading expenses  
18 incurred during the taxable year.

19 (b) Cap. – The credit allowed to a major recycling facility under this section for  
20 the taxable year may not exceed the applicable annual cap provided in the following  
21 table:

<u>Taxable Year</u>	<u>Cap</u>
1998	\$ 150,000
1999	\$ 640,000
2000	\$ 3,860,000
2001	\$ 8,050,000
2002	\$ 9,550,000
2003	\$10,100,000
2004-2007	\$10,400,000

30 (c) Reduction. – For the first ten taxable years after the owner begins transporting  
31 materials and products to and from the major recycling facility, the credit allowed by this  
32 section must be reduced by the amount of credit allowed in previous years that was used  
33 for a purpose other than an allowable purpose under subsection (d) of this section, as  
34 certified by the Secretary of Commerce.

35 (d) Use of Credited Amount. – For the first ten taxable years after the owner  
36 begins construction of the major recycling facility, the owner must use the amount of  
37 credit allowed under this section to pay for (i) investment in rail or roads associated with  
38 the facility, (ii) investment in water system infrastructure designed to reduce the expense  
39 of transporting materials and products to and from the recycling facility, and (iii)  
40 investment in land and infrastructure for other industrial sites located in the same county  
41 as the recycling facility. If the owner determines that there are no reasonable economic  
42 opportunities in a given year to use the total amount of credit for the expenditures  
43 described above, the owner may use the excess for investment at or in connection with

1 the recycling facility above the initial required investment of three hundred million  
2 dollars (\$300,000,000).

3 Expenses incurred for the purposes allowed in this subsection during a taxable year in  
4 the ten-year period may be counted toward a credit allowed in a later taxable year in the  
5 ten-year period. If the owner is not able to use the full amount of the credit during a  
6 taxable year for any of the purposes allowed by this subsection, the excess may be used  
7 for these purposes in subsequent taxable years.

8 The owner must provide the Secretary of Commerce with annual audited  
9 documentation demonstrating that the amount of credit received under this section during  
10 the previous twelve-month period has not been used for a purpose inconsistent with this  
11 subsection. If the Secretary of Commerce determines that the owner has used any of the  
12 credit for a purpose that is inconsistent with the requirements of this subsection, the  
13 Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and  
14 the credit allowed the owner under this section for the following taxable year shall be  
15 reduced by that amount in accordance with subsection (c) of this section.

16 After the end of the ten-year period, the amount of any credit allowed under this  
17 section that has not yet been used may be used for investment at or in connection with the  
18 recycling facility above the initial required investment of three hundred million dollars  
19 (\$300,000,000).

20 (e) Credit Refundable. – If the credit allowed by this section exceeds the amount  
21 of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the  
22 sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The  
23 refundable excess is governed by the provisions governing a refund of an overpayment  
24 by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing  
25 the amount of tax against which multiple credits are allowed, nonrefundable credits are  
26 subtracted before refundable credits."

27 Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b)  
28 and adding a new subdivision to read:

29 "(8) Major recycling facility. – Defined in G.S. 105-129.25."

30 Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-  
31 subdivision to read:

32 "j. Sales to a major recycling facility of the following tangible  
33 personal property for use in connection with the facility: cranes,  
34 structural steel crane support systems, foundations related to the  
35 cranes and support systems, port and dock facilities, rail  
36 equipment, and material handling equipment."

37 Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to  
38 read:

39 "(10a) Sales to a major recycling facility of (i) lubricants and other  
40 additives for motor vehicles or machinery and equipment used at  
41 the facility and (ii) materials, supplies, parts, and accessories, other  
42 than machinery and equipment, that are not capitalized by the

1 taxpayer and are used or consumed in the manufacturing and  
2 material handling processes at the facility.

3 (10b) Sales to a major recycling facility of electricity used at the facility."

4 Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

5 "(g) Major Recycling Facilities. – The owner of a major recycling facility is  
6 allowed an annual refund of sales and use taxes paid by it under this Article on building  
7 materials, building supplies, fixtures, and equipment that become a part of the real  
8 property of the recycling facility. Liability incurred indirectly by the owner for sales and  
9 use taxes on these items is considered tax paid by the owner. A request for a refund must  
10 be in writing and must include any information and documentation required by the  
11 Secretary. A request for a refund is due within six months after the end of the major  
12 recycling facility's fiscal year. Refunds applied for after the due date are barred."

13 Section 17. G.S. 105-164.14(f) reads as rewritten:

14 "(f) Information to Counties. – Upon written request of a county, the Secretary  
15 shall, within 30 days after the request, provide the designated county official a list of each  
16 claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (e)~~  
17 (b), (c), or (g) of this section of at least one thousand dollars (\$1,000) of tax paid to the  
18 county. The list shall include the name and address of each claimant and the amount of  
19 the refund it has received from that county. Upon written request of a county, a claimant  
20 that has received a refund under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section shall  
21 provide the designated county official a copy of the request for the refund and any  
22 supporting documentation requested by the county to verify the request. For the purpose  
23 of this subsection, the designated county official is the chair of the board of county  
24 commissioners or a county official designated in a resolution adopted by the board.  
25 Information provided to a county under this subsection is not a public record and may not  
26 be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a  
27 refund it has received under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section is  
28 incorrect, it shall file an amended request for the refund."

29 Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to  
30 read:

31 "d. Real or personal property that is used or, if under  
32 construction, is to be used by a major recycling facility  
33 as defined in G.S. 105-129.25 predominantly for  
34 recycling or resource recovering of or from solid waste,  
35 if the Department of Environment and Natural  
36 Resources furnishes a certificate to the tax supervisor of  
37 the county in which the property is situated stating the  
38 Department of Environment and Natural Resources has  
39 found that the described property has been or will be  
40 constructed or installed for use by a major recycling  
41 facility, complies or will comply with the rules of the  
42 Department of Environment and Natural Resources, and

1                                    has, or will have as a purpose recycling or resource  
2                                    recovering of or from solid waste."

3                    Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed  
4 effective for taxable years beginning on or after January 1, 2008. This section does not  
5 affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S.  
6 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund  
7 or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its  
8 repeal.

9                    The sole purpose of this ten-year sunset provision is to allow a determination  
10 to be made whether any major recycling facility continues to experience additional  
11 transportation and transloading expenses due to its inability to use ocean barges or ships  
12 to transport materials and products to and from the facility. It is the expectation and  
13 intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is  
14 determined that, based on audited documentation submitted by a major recycling facility  
15 and verified by the Secretary of Commerce, that any major recycling facility continues to  
16 experience these additional transportation and transloading expenses as of 2008.

#### 17                                    **PART V. EFFECTIVE DATES**

18                    Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes  
19 effective January 1, 1999, and applies to applications filed on or after that date. The  
20 amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable  
21 years beginning on or after January 1, 1998. Section 3 of this act becomes effective  
22 January 1, 1999. The remainder of Part I of this act is effective for taxable years  
23 beginning on or after January 1, 1999.

24                    Section 21. Part II of this act becomes effective July 1, 1998.

25                    Section 22. Section 10 of this act is effective for taxes imposed for taxable  
26 years beginning on or after July 1, 2001. Section 11 of this act becomes effective January  
27 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes  
28 effective January 1, 2001, and applies to sales made on or after that date.

29                    Section 23. Section 12 of this act is effective for taxable years beginning on or  
30 after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998,  
31 and apply to sales made on or after that date. Section 18 of this act is effective for taxes  
32 imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV  
33 of this act is effective when it becomes law.