

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 751
Committee Substitute Favorable 6/14/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H751-PCS11253-RB-76

Short Title: Various Economic Development Incentives.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE APPLICATION OF THE ONE PERCENT, EIGHTY DOLLAR
EXCISE TAX ON CERTAIN MACHINERY AND EQUIPMENT TO SPECIALIZED
EQUIPMENT USED AT A PORT FACILITY AND TO MACHINERY USED AT A
LARGE MANUFACTURING AND DISTRIBUTION FACILITY; TO PROVIDE TIER
ONE TREATMENT FOR PORT ENHANCEMENT ZONES; TO RETAIN AND
ENCOURAGE INVESTMENT IN ECONOMICALLY DISTRESSED TIMES TO
REMAIN ELIGIBLE TO TAKE AN INSTALLMENT OF A CREDIT EARNED UNDER
THE BILL LEE ACT; AND TO AMEND THE AUTHORIZATION TO ISSUE SPECIAL
INDEBTEDNESS FOR AN EDUCATIONAL BUILDING AT APPALACHIAN STATE
UNIVERSITY.

The General Assembly of North Carolina enacts:

PART 1. EXPAND EXCISE TAX ON MILL MACHINERY.

SECTION 1. G.S. 105-187.51B reads as rewritten:

"§ 105-187.51B. Tax imposed on certain recyclers, research and development companies, and industrial machinery refurbishing ~~companies~~ companies, and companies located at ports facilities.

(a) Tax. – A privilege tax is imposed on the following:

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

- a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
- b. Port and dock facilities.
- c. Rail equipment.
- d. Material handling equipment.

(2) A research and development company in the physical, engineering, and life sciences that is included in industry 54171 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:

- a. Is capitalized by the company for tax purposes under the Code.



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- 1 b. Is used by the company in the research and development of tangible
2 personal property.
- 3 c. Would be considered mill machinery or mill machinery parts or
4 accessories under G.S. 105-187.51 if it were purchased by a
5 manufacturing industry or plant and used in the research and
6 development of tangible personal property manufactured by the
7 industry or plant.
- 8 (3) A software publishing company that is included in the industry group 5112
9 of NAICS and that purchases equipment or an attachment or repair part for
10 equipment that meets all of the following requirements:
- 11 a. Is capitalized by the company for tax purposes under the Code.
12 b. Is used by the company in the research and development of tangible
13 personal property.
14 c. Would be considered mill machinery under G.S. 105-187.51 if it
15 were purchased by a manufacturing industry or plant and used in the
16 research and development of tangible personal property
17 manufactured by the industry or plant.
- 18 (4) An industrial machinery refurbishing company that is included in industry
19 group 811310 of NAICS and that purchases equipment or an attachment or
20 repair part for equipment that meets all of the following requirements:
- 21 a. Is capitalized by the company for tax purposes under the Code.
22 b. Is used by the company in repairing or refurbishing tangible personal
23 property.
24 c. Would be considered mill machinery under G.S. 105-187.51 if it
25 were purchased by a manufacturing industry or plant and used by the
26 industry or plant to manufacture tangible personal property.
- 27 (5) A company located at a ports facility for waterborne commerce that
28 purchases specialized equipment to be used at the facility to unload or
29 process bulk cargo to make it suitable for delivery to and use by
30 manufacturing facilities.
- 31 (b) Rate. – The tax is one percent (1%) of the sales price of the equipment or other
32 tangible personal property. The maximum tax is eighty dollars (\$80.00) per article."

33 **SECTION 2.** Article 5F of Chapter 105 of the General Statutes is amended by
34 adding a new section to read:

35 **"§ 105-187.51D. Tax imposed on machinery at large manufacturing and distribution**
36 **facility.**

37 (a) Definition. – For the purposes of this section, a 'large manufacturing and distribution
38 facility' is a facility used primarily for manufacturing or assembling products and distributing
39 finished products for which the Secretary of Commerce makes a certification that an
40 investment of private funds of at least one hundred million dollars (\$100,000,000) has been or
41 will be made in real and tangible personal property for the facility within five years after the
42 date on which the first property investment is made and that the facility will achieve an
43 employment level of at least 1,000 within five years after the date the facility is placed into
44 service and maintain that minimum level of employment throughout its operation.

45 (b) Tax. – A privilege tax is imposed on a large manufacturing and distribution facility
46 that purchases mill machinery, distribution machinery, or parts or accessories for mill
47 machinery or distribution machinery for storage, use, or consumption in this State. The tax is
48 one percent (1%) of the sales price of the machinery, part, or accessory purchased. The
49 maximum tax is eighty dollars (\$80.00) per article. As used in this section, the term
50 'accessories' does not include electricity.

1 (c) Forfeiture. – If the required level of investment or employment to qualify as large
2 manufacturing and distribution facility is not timely made, achieved, or maintained, then the
3 rate provided under this section is forfeited. If the rate is forfeited due to a failure to timely
4 make the required investment or to timely achieve the minimum required employment level,
5 then the rate provided under this section is forfeited on all purchases. If the rate is forfeited due
6 to a failure to maintain the minimum required employment level once that level has been
7 achieved, then the rate provided under this section is forfeited for those purchases occurring on
8 or after the date the taxpayer fails to maintain the minimum required employment level.

9 A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes
10 avoided as a result of the forfeiture, computed at the applicable State and local rates from the
11 date the taxes would otherwise have been due, plus interest at the rate established under
12 G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have
13 been due. A credit is allowed against the State sales or use tax owed as a result of the forfeiture
14 provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of
15 applying this credit, the fact that payment of the privilege tax occurred in a period outside the
16 statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the
17 amount forfeited, and interest applies only to the reduced amount. The past taxes and interest
18 are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and
19 interest by the due date is subject to the provisions of G.S. 105-236.

20 (d) Sunset. – This section expires for sales occurring on or after July 1, 2018."

21 **SECTION 3.(a)** Definitions. – The following definitions apply in this section:

- 22 (1) Eligible property. – Distribution machinery, or parts or accessories for
23 distribution machinery, for storage, use, or consumption in this State.
- 24 (2) Large manufacturing and distribution facility. – A facility used primarily for
25 manufacturing or assembling products and distributing finished products for
26 which the Secretary of Commerce makes a certification that an investment
27 of private funds of at least one hundred million dollars (\$100,000,000) has
28 been or will be made in real and tangible personal property for the facility
29 within five years after the date on which the first property investment is
30 made and that the facility will achieve an employment level of at least 1,000
31 within five years after the date the facility is placed into service and maintain
32 that minimum level of employment throughout its operation.

33 **SECTION 3.(b)** Refund. – For purchases of eligible property made on or after July
34 1, 2012, but before July 1, 2013, a large manufacturing and distribution facility is allowed a
35 refund of all local sales and use taxes paid and a portion of State sales and use taxes paid on the
36 purchases as provided in this section. The portion of the State sales and use taxes that may be
37 refunded is equal to the excess of the State sales and use taxes paid over the amount that would
38 have been due had the taxpayer been subject to tax on the eligible property if it were mill
39 machinery under Article 5F of Chapter 105 of the General Statutes. A request for a refund
40 under this section must be in writing and must include any information and documentation
41 required by the Secretary. A request for a refund under this section must be made on or after
42 July 1, 2013, and is due before January 1, 2014. Refunds applied for after the due date are
43 barred taxes for which a refund is allowed under this section are not an overpayment of tax and
44 do not accrue interest as provided in G.S. 105-241.21.

45 **SECTION 3.(c)** Forfeiture. – If the required investment or minimum employment
46 level to qualify as a large manufacturing and distribution facility is not timely made or
47 achieved, then the refund provided under this section is forfeited. A taxpayer that forfeits a
48 refund under this section is liable for all sales and use taxes refunded under this section, plus
49 interest at the rate established under G.S. 105-241.21. Interest is computed from the date the
50 refund was made. The forfeited refund and interest are due 30 days after the date of forfeiture.

1 A taxpayer that fails to pay the forfeited refund and interest by the due date is subject to the
2 provisions of G.S. 105-236.

3 **SECTION 4.** Sections 1 and 2 of this act become effective July 1, 2013, and apply
4 to purchases made on or after that date.

5
6 **PART 2. PORT ENHANCEMENT ZONES.**

7
8 **SECTION 5.** Part 2 of Article 10 of Chapter 143B of the General Statutes is
9 amended by adding a new section to read:

10 **"§ 143B-437.012. Port enhancement zone designation.**

11 (a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets
12 all of the following conditions:

- 13 (1) It is comprised of one or more contiguous census tracts, census block
14 groups, or both, in the most recent federal decennial census.
15 (2) All of the area is located within 25 miles of a State port and is capable of
16 being used to enhance port operations.
17 (3) Every census tract and census block group that comprises the area has at
18 least eleven percent (11%) of households with incomes of fifteen thousand
19 dollars (\$15,000) or less.

20 (b) Limitations and Designation. – The area of a county that is included in one or more
21 port enhancement zones shall not exceed five percent (5%) of the total area of the county. Upon
22 application of a county, the Secretary of Commerce shall make a written determination whether
23 an area is a port enhancement zone that satisfies the conditions of subsection (a) of this section.
24 The application shall include all of the information listed in this subsection. A determination
25 under this section is effective until December 31 of the year following the year in which the
26 determination is made. The Department of Commerce shall publish annually a list of all port
27 enhancement zones with a description of their boundaries.

- 28 (1) A map showing the census tracts and block groups that would comprise the
29 zone.
30 (2) A detailed description of the boundaries of the area that would comprise the
31 zone.
32 (3) A certification regarding the size of the proposed zone.
33 (4) Detailed census information on the county and the proposed zone.
34 (5) A resolution of the board of county commissioners requesting the
35 designation of the area as a port enhancement zone.
36 (6) Any other material required by the Secretary of Commerce."

37 **SECTION 6.** G.S. 105-129.81 is amended by adding a new subdivision to read:

38 **"§ 105-129.81. (See notes) Definitions.**

39 The following definitions apply in this Article:

- 40 ...
41 (20a) Port enhancement zone. – Defined in G.S. 143B-437.012.
42"

43 **SECTION 7.** G.S. 105-129.83 reads as rewritten:

44 **"§ 105-129.83. Eligibility; forfeiture.**

45 ...
46 (c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a
47 development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer
48 is not required to satisfy a wage standard if the activity occurs in a development tier one area.
49 Jobs that are located within an urban progress ~~zone~~zone, a port enhancement zone, or an
50 agrarian growth zone but not in a development tier one area satisfy the wage standard if they
51 pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the

1 average wage for all insured private employers in the State and the average wage for all insured
 2 private employers in the county. All other jobs satisfy the wage standard if they pay an average
 3 weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the
 4 average wage for all insured private employers in the State and ninety percent (90%) of the
 5 average wage for all insured private employers in the county. The Department of Commerce
 6 shall annually publish the wage standard for each county.

7 In making the wage calculation, the taxpayer shall include any jobs that were filled for at
 8 least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for
 9 the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a
 10 taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage
 11 standard for the calendar year in which the taxable year begins. Only full-time jobs are included
 12 when making the wage calculation.

13 ...

14 (l) Planned Expansion. – A taxpayer that signs a letter of commitment with the
 15 Department of Commerce, after the Department has calculated the development tier
 16 designations for the next year but before the beginning of that year, to undertake specific
 17 activities at a specific site within the next two years may calculate the credit for which it
 18 qualifies based on the establishment's development tier designation and urban progress ~~zone~~
 19 zone, port enhancement zone, or agrarian growth zone designation in the year in which the
 20 letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the
 21 activities within the two-year period, the taxpayer does not qualify for the credit; however, if
 22 the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the
 23 development tier and urban progress ~~zone-zone, port enhancement zone,~~ or agrarian growth
 24 zone designations in effect at that time.

25"

26 **SECTION 8.** G.S. 105-129.87 reads as rewritten:

27 **"§ 105-129.87. Credit for creating jobs.**

28 (a) Credit. – A taxpayer that meets the eligibility requirements set out in
 29 G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under
 30 subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The
 31 amount of the credit for each new job created is set out in the table below and is based on the
 32 development tier designation of the county in which the job is located. If the job is located in an
 33 urban progress ~~zone-zone, a port enhancement zone,~~ or an agrarian growth zone, the amount of
 34 the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in
 35 an urban progress ~~zone-zone, a port enhancement zone,~~ or an agrarian growth zone is filled by a
 36 resident of that zone or by a long-term unemployed worker, the amount of the credit is
 37 increased by an additional two thousand dollars (\$2,000) per job.

Area Development Tier	Amount of Credit
Tier One	\$12,500
Tier Two	5,000
Tier Three	750

42 (b) Threshold. – The applicable threshold is the appropriate amount set out in the
 43 following table based on the development tier designation of the county where the new jobs are
 44 created during the taxable year. If the taxpayer creates new jobs at more than one eligible
 45 establishment in a county during the taxable year, the threshold applies to the aggregate number
 46 of new jobs created at all eligible establishments within the county during that year. If the
 47 taxpayer creates new jobs at eligible establishments in different counties during the taxable
 48 year, the threshold applies separately to the aggregate number of new jobs created at eligible
 49 establishments in each county. If the taxpayer creates new jobs in an urban progress ~~zone-zone,~~
 50 a port enhancement zone, or an agrarian growth zone, the applicable threshold is the one for a
 51 development tier one area. New jobs created in an urban progress ~~zone-zone, a port~~

1 enhancement zone, or an agrarian growth zone are not aggregated with jobs created at any other
 2 eligible establishments regardless of county.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

7 (c) Calculation. – A job is located in a county, an urban progress zone, a port
 8 enhancement zone, or an agrarian growth zone if more than fifty percent (50%) of the
 9 employee's duties are performed in the county or the zone. The number of new jobs a taxpayer
 10 creates during the taxable year is determined by subtracting the average number of full-time
 11 employees the taxpayer had in this State during the 12-month period preceding the beginning of
 12 the taxable year from the average number of full-time employees the taxpayer has in this State
 13 during the taxable year.

14 ...
 15 (e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the
 16 State are not considered new jobs for purposes of this section. Jobs that were located in this
 17 State and that are transferred to the taxpayer from a related member of the taxpayer are not
 18 considered new jobs for purposes of this section. If, in one of the four years in which the
 19 installment of a credit accrues, the job with respect to which the credit was claimed is moved to
 20 an area in a higher-numbered development tier or out of an urban progress ~~zone~~zone, a port
 21 enhancement zone, or an agrarian growth zone, the remaining installments of the credit are
 22 allowed only to the extent they would have been allowed if the job was initially created in the
 23 area to which it was moved. If, in one of the years in which the installment of a credit accrues,
 24 the job with respect to which the credit was claimed is moved to an area in a lower-numbered
 25 development tier or an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian
 26 growth zone, the remaining installments of the credit shall be calculated as if the job had been
 27 created initially in the area to which it was moved.

28"

29 **SECTION 9.** G.S. 105-129.88 reads as rewritten:

30 "**§ 105-129.88. (See notes) Credit for investing in business property.**

31 (a) General Credit. – A taxpayer that meets the eligibility requirements set out in
 32 G.S. 105-129.83 and that has purchased or leased business property and placed it in service in
 33 this State during the taxable year and that has satisfied the threshold requirements of subsection
 34 (c) of this section is allowed a credit equal to the applicable percentage of the excess of the
 35 eligible investment amount over the applicable threshold. If the taxpayer places business
 36 property in service in an urban progress ~~zone~~zone, a port enhancement zone, or an agrarian
 37 growth zone, the applicable percentage is the one for a development tier one area. Business
 38 property is eligible if it is not leased to another party. The credit may not be taken for the
 39 taxable year in which the business property is placed in service but shall be taken in equal
 40 installments over the four years following the taxable year in which it is placed in service. The
 41 applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

46 ...
 47 (c) Threshold. – The applicable threshold is the appropriate amount set out in the
 48 following table based on the development tier where the eligible business property is placed in
 49 service during the taxable year. If the taxpayer places business property in service in an urban
 50 progress ~~zone~~zone, a port enhancement zone, or an agrarian growth zone, the applicable
 51 threshold is the one for a development tier one area. Business property placed in service in an

1 urban progress ~~zone~~-zone, a port enhancement zone, or an agrarian growth zone is not
 2 aggregated with business property placed in service at any other eligible establishments
 3 regardless of county. If the taxpayer places eligible business property in service at more than
 4 one establishment in a county during the taxable year, the threshold applies to the aggregate
 5 amount of eligible business property placed in service during the taxable year at all
 6 establishments in the county. If the taxpayer places eligible business property in service at
 7 establishments in different counties, the threshold applies separately to the aggregate amount of
 8 eligible business property placed in service in each county. If the taxpayer places eligible
 9 business property in service at an establishment over the course of a two-year period, the
 10 applicable threshold for the second taxable year is reduced by the eligible investment amount
 11 for the previous taxable year.

Area Development Tier	Threshold
Tier One	\$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

12 ...
 13
 14
 15
 16
 17 (e) Transferred Property. – If, in one of the four years in which the installment of a
 18 credit accrues, the business property with respect to which the credit was claimed is moved to a
 19 county in a higher-numbered development tier or out of an urban progress ~~zone~~-zone, a port
 20 enhancement zone, or an agrarian growth zone, the remaining installments of the credit are
 21 allowed only to the extent they would have been allowed if the business property had been
 22 placed in service initially in the area to which it was moved. If, in one of the four years in
 23 which the installment of a credit accrues, the business property with respect to which a credit
 24 was claimed is moved to a county in a lower-numbered development tier or an urban progress
 25 ~~zone~~-zone, a port enhancement zone, or an agrarian growth zone, the remaining installments of
 26 the credit shall be calculated as if the business property had been placed in service initially in
 27 the area to which it was moved.

28"

29 **SECTION 10.** Sections 5 through 10 of this act are effective for taxes imposed for
 30 taxable years beginning on or after July 1, 2013.

31
 32 **PART 3. ENCOURAGE INVESTMENT TO RETAIN ARTICLE 3A INSTALLMENT.**

33
 34 **SECTION 11.** G.S. 105-129.12A(c) reads as rewritten:

35 "(c) Expiration. – If, in one of the seven years in which the installment of a credit
 36 accrues, the property with respect to which the credit was claimed is no longer used in an
 37 eligible business, the credit expires and the taxpayer may not take any remaining installment of
 38 the credit. If, in one of the seven years in which the installment of a credit accrues, part of the
 39 property with respect to which the credit was claimed is no longer used in an eligible business,
 40 the remaining installments of the credit shall be reduced by multiplying it by the fraction
 41 described in subsection (b) of this section. ~~If, in~~In one of the years in which the installment of a
 42 credit accrues and by which the taxpayer is required to have created 200 new jobs at the
 43 property, if (i) the total number of employees the taxpayer employs at the property with respect
 44 to which the credit is claimed is less than 200,200 and (ii) the taxpayer has failed, within two
 45 years of the date the employment fell below 200, to invest at the property at least twice the
 46 value of the remaining installments of the credit, the credit expires and the taxpayer may not
 47 take any remaining installment of the credit.

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

1 **SECTION 12.** Section 11 of this act is effective for taxable years beginning on or
2 after January 1, 2009.

3
4 **PART 4. EDUCATIONAL BUILDING AT APPALACHIAN STATE UNIVERSITY**

5
6 **SECTION 13.** Subdivision (a)(1) of Section 29.13 of S.L. 2007-323, as amended
7 by Section 27.12A of S.L. 2009-451, reads as rewritten:

8 **"SECTION 29.13.(a)** The State, with the prior approval of the State Treasurer and the
9 Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized
10 to issue or incur special indebtedness in order to provide funds to the State to be used, together
11 with other available funds, to pay the capital facility costs of the projects described in this
12 subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or
13 incurrence of special indebtedness:

- 14 (1) In the maximum aggregate principal amount of thirty-four million dollars
15 (\$34,000,000) to finance the capital facility costs of completing a new
16 educational building at Appalachian State University and acquiring and
17 improving adjacent real property related to the project. No more than a
18 maximum aggregate amount of three million dollars (\$3,000,000) of special
19 indebtedness may be issued or incurred under this subdivision prior to July
20 1, 2008."

21
22 **PART 5. EFFECTIVE DATES**

23
24 **SECTION 14.** Except as otherwise provided, this act is effective when it becomes
25 law.