

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

FILED SENATE  
Mar 29, 2023  
S.B. 414  
PRINCIPAL CLERK

S

D

SENATE BILL DRS15194-MCf-97

Short Title: Agricultural Manufacturing Tax Incentive. (Public)

Sponsors: Senator Burgin (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCENTIVIZE AGRICULTURAL MANUFACTURING IN NORTH  
3 CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 3J of Chapter 105 of the General Statutes, with the exception  
6 of G.S. 105-129.80, 105-129.82, 105-129.87, 105-129.88, and 105-129.89, is reenacted as it  
7 existed immediately before its repeal and reads as rewritten:

8 "Article 3J.

9 "Tax Credits for ~~Growing Businesses.~~Agrimanufacturing.

10 **"§ 105-129.81. Definitions.**

11 The following definitions apply in this Article:

12 (1) ~~Agrarian growth zone. — Defined in G.S. 143B-437.010.~~

13 (1a) Agrimanufacturing. – The subset of manufacturing that processes raw  
14 materials and intermediate products derived from the agricultural sector to  
15 make it usable as food, feed, fiber, fuel, or industrial raw material.

16 (2) ~~Air courier services. — Defined in G.S. 143B-437.01.~~

17 (3) ~~Aircraft maintenance and repair. — The provision of specialized maintenance~~  
18 ~~or repair services for commercial aircraft or the rebuilding of commercial~~  
19 ~~aircraft.~~

20 (4) Business property. – Tangible personal property that is used in a business and  
21 capitalized by the taxpayer for tax purposes under the Code.

22 (5) ~~Company headquarters. — Defined in G.S. 143B-437.01.~~

23 (6) Cost. – In the case of property owned by the taxpayer, cost is determined  
24 pursuant to regulations adopted under section 1012 of the Code. In the case of  
25 property the taxpayer leases from another, cost is value as determined  
26 pursuant to G.S. 105-130.4(j)(2).

27 (7) ~~Customer service call center. — The provision of support service by a business~~  
28 ~~to its customers by telephone or other electronic means to support products or~~  
29 ~~services of the business. For the purposes of this definition, an establishment~~  
30 ~~is primarily engaged in providing support services by telephone or other~~  
31 ~~electronic means only if at least sixty percent (60%) of its calls are incoming~~  
32 ~~or at least sixty percent (60%) of its other electronic communications are~~  
33 ~~initiated by its customers.~~

34 (8) Development tier. – The classification assigned to an area pursuant to  
35 G.S. 143B-437.08.



\* D R S 1 5 1 9 4 - M C F - 9 7 \*

- 1           ~~(9) Electronic shopping and mail order houses. — An industry in electronic~~  
2           ~~shopping and mail order houses industry group 4541 as defined by NAICS.~~  
3           (9a) Environmental disqualifying event. – Any of the following occurrences:  
4           a.       During the tax year in which the activity occurred for which a credit is  
5           being claimed, a civil penalty was assessed against the taxpayer by the  
6           Department of Environmental Quality for failure to comply with an  
7           order issued by an agency of the Department to abate or remediate a  
8           violation of any program administered by the agency.  
9           b.       During the tax year in which the activity occurred for which a credit is  
10          being claimed or in the prior two tax years, any of the following:  
11          1.       A finding was made by the Department of Environmental  
12          Quality that the taxpayer knowingly and willfully, as defined  
13          in G.S. 143-215.6B, including all limitations thereto,  
14          committed a violation of any program implemented by an  
15          agency of the Department.  
16          2.       An assessment for damages to fish or wildlife pursuant to  
17          G.S. 143-215.3(a)(7) was made against the taxpayer.  
18          3.       A judicial order for injunctive relief was issued against the  
19          taxpayer in connection with a violation of any program  
20          implemented by an agency of the Department of  
21          Environmental Quality.  
22          c.       During the tax year in which the activity occurred for which the credit  
23          is being claimed or in the prior four tax years, a criminal penalty was  
24          imposed on the taxpayer in connection with a violation of any program  
25          implemented by an agency of the Department of Environmental  
26          Quality.  
27          (10) ~~Establishment. — Defined in 29 C.F.R. § 1904.46, as it existed on January 1,~~  
28          ~~2002.~~  
29          (11) Full-time job. – A position that requires at least 1,600 hours of work per year  
30          and is intended to be held by one employee during the entire year. A full-time  
31          employee is an employee who holds a full-time job.  
32          (12) ~~Hub. — Defined in G.S. 105-164.3.~~  
33          (13) ~~Information technology and services. — Defined in G.S. 143B-437.01.~~  
34          (14) Long-term unemployed worker. – An individual that has been totally  
35          unemployed for at least the preceding 26 consecutive weeks as evidenced by  
36          records maintained by the Division of Employment Security (DES) of the  
37          Department of Commerce.  
38          (15) Manufacturing. – Defined in G.S. 143B-437.01.  
39          (16) ~~Motorsports facility. — A motorsports racetrack classified in the United States~~  
40          ~~racetrack national industry 711212, as defined by NAICS.~~  
41          (17) ~~Motorsports racing team. — A professional racing team primarily engaged in~~  
42          ~~the research and development, design, manufacture, repair, maintenance, and~~  
43          ~~operation of motor vehicles used in live motorsports racing events before a~~  
44          ~~paying audience.~~  
45          (18) NAICS. – Defined in G.S. 105-228.90.  
46          (19) New job. – A full-time job that represents a net increase in the number of the  
47          taxpayer's employees statewide. A new employee is an employee who holds  
48          a new job. The term does not include a job currently located in this State that  
49          is transferred to the business from a related member of the business.  
50          (20) Overdue tax debt. – Defined in G.S. 105-243.1.  
51          (20a) ~~Port enhancement zone. — Defined in G.S. 143B-437.013.~~

1 (21) Purchase. – Defined in section 179 of the Code.

2 (21a) Qualifying agrimanufacturer. – A taxpayer primarily engaged in  
 3 agrimanufacturing at one or more locations for which the Secretary of  
 4 Commerce has made a written determination of the amount of private funds  
 5 that has been invested by the taxpayer on or after January 1, 2023, and that  
 6 amount is in excess of one million five hundred thousand dollars (\$1,500,000).  
 7 Investments in real or business property made prior to January 1, 2023, may  
 8 not be included in the investment required by this subdivision.

9 (22) Related member. – Defined in G.S. 105-130.7A.

10 ~~(23) Research and development. — An industry in scientific research and~~  
 11 ~~development services industry group 5417 as defined by NAICS.~~

12 ~~(24) Urban progress zone. — The classification assigned to an area pursuant to~~  
 13 ~~G.S. 143B-437.09.~~

14 ~~(25) Warehousing. — Defined in G.S. 143B-437.01.~~

15 ~~(26) Wholesale trade. — Defined in G.S. 143B-437.01.~~

16 **"§ 105-129.83. Eligibility; forfeiture.**

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

22 ~~(1) Air courier services hub.~~

23 ~~(2) Aircraft maintenance and repair.~~

24 ~~(3) Company headquarters, but only if the additional eligibility requirements of~~  
 25 ~~subsection (b) of this section are satisfied.~~

26 ~~(4) Customer service call centers.~~

27 ~~(5) Electronic shopping and mail order houses.~~

28 ~~(6) Information technology and services.~~

29 ~~(7) Manufacturing.~~

30 ~~(8) Motorsports facility.~~

31 ~~(9) Motorsports racing team.~~

32 ~~(10) Research and development.~~

33 ~~(11) Warehousing.~~

34 ~~(12) Wholesale trade.~~

35 ~~(b) Company Headquarters Eligibility. — A taxpayer is eligible for a credit under this~~  
 36 ~~Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs~~  
 37 ~~at the company headquarters within a 24-month period. A taxpayer that meets this job creation~~  
 38 ~~requirement is eligible for credits under this Article with respect to the company headquarters for~~  
 39 ~~three taxable years beginning with the year in which the job creation requirement is satisfied. A~~  
 40 ~~taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period~~  
 41 ~~during a three-year eligibility period does not qualify for any extended eligibility period.~~  
 42 ~~However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a~~  
 43 ~~24-month period after the completion of a three-year eligibility period is eligible for credits with~~  
 44 ~~respect to the company headquarters for an additional three taxable years beginning in the year~~  
 45 ~~in which the additional job creation requirement is satisfied.~~

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 is  
 48 not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs  
 49 ~~that are located within an urban progress zone, a port enhancement zone, or an agrarian growth~~  
 50 ~~zone but not in a development tier one-two area satisfy the wage standard if they pay an average~~  
 51 weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for

1 all insured private employers in the State and the average wage for all insured private employers  
2 in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that  
3 is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all  
4 insured private employers in the State and ninety percent (90%) of the average wage for all  
5 insured private employers in the county. The Department of Commerce shall annually publish  
6 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 taxpayer  
10 with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the  
11 calendar year in which the taxable year begins. Only full-time jobs are included when making  
12 the wage calculation.

13 (d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the  
14 taxpayer provides health insurance for all of the full-time jobs at the establishment with respect  
15 to which the credit is claimed when the taxpayer engages in the activity that qualifies for the  
16 credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least  
17 fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum  
18 ~~provisions of the basic health care plan of coverage recommended by the Small Employer Carrier~~  
19 ~~Committee pursuant to G.S. 58-50-125 requirements for small group health benefit plans under~~  
20 State or federal law.

21 Each year that a taxpayer claims a credit ~~or carryforward of a credit~~ allowed under this  
22 Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer  
23 continues to provide health insurance for all the jobs at the establishment with respect to which  
24 the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a  
25 taxable year, the credit ~~expires, and the taxpayer may not take any remaining installment or~~  
26 ~~carryforward of the credit, expires.~~

27 (e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article  
28 only if the taxpayer certifies that, at the time the taxpayer claims the credit, there has not been a  
29 final determination unfavorable to the taxpayer with respect to an environmental disqualifying  
30 event. For the purposes of this section, a "final determination unfavorable to the taxpayer" occurs  
31 when there is no further opportunity for the taxpayer to seek administrative or judicial appeal,  
32 review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying  
33 event has not been reversed or withdrawn. No later than January 31 of each year, the Secretary  
34 of Environmental Quality shall provide an annual report to the Department listing all  
35 environmental disqualifying events for which a final determination unfavorable to the taxpayer  
36 was made in the prior calendar year and shall provide the name of the taxpayer involved and the  
37 date that the disqualifying event occurred.

38 (f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this  
39 Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the  
40 establishment with respect to which the credit is claimed, the taxpayer has no citations under the  
41 Occupational Safety and Health Act that have become a final order within the past three years  
42 for willful serious violations or for failing to abate serious violations. For the purposes of this  
43 subsection, "serious violation" has the same meaning as in G.S. 95-127. The Commissioner of  
44 Labor shall notify the Department of Revenue annually of all employers who have had these  
45 citations become final orders within the past three years.

46 (g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article  
47 if, at the time the taxpayer claims the ~~credit or an installment or carryforward of the credit~~, the  
48 taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been  
49 satisfied or otherwise resolved.

50 (h) Expiration. – If, during the period that installments of a credit under this Article  
51 accrue, the taxpayer is no longer engaged in one of the ~~types of business~~ businesses described in

1 subsection (a) of this section at the establishment for which the credit was claimed, the credit  
2 expires. ~~If, during the period that installments of a credit under this Article accrue, the number~~  
3 ~~of jobs of an eligible company headquarters falls below the minimum number required under~~  
4 ~~subsection (b) of this section, any credit associated with that company headquarters expires.~~  
5 When a credit expires, the taxpayer may not take any remaining installments of the credit. The  
6 taxpayer may, however, take the portion of an installment that accrued in a previous year and  
7 was carried forward to the extent permitted under G.S. 105-129.84. A change in the development  
8 tier designation of the location of an establishment does not result in expiration of a credit under  
9 this Article.

10 (i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was  
11 not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for  
12 which the credit was claimed. A taxpayer forfeits a credit previously allowed under this Article  
13 if a final determination unfavorable to the taxpayer with respect to an environmental  
14 disqualifying event is made that is applicable to the year in which the activity occurred for which  
15 the credit was claimed. In addition, a taxpayer forfeits a credit ~~for investment in real property~~  
16 ~~under G.S. 105-129.89~~ if the taxpayer fails to timely create the number of required new jobs or  
17 to timely make the required level of ~~investment under G.S. 105-129.89(b)~~ investment. A  
18 taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of  
19 the credit plus interest at the rate established under G.S. 105-241.21, computed from the date the  
20 taxes would have been due if the credit had not been allowed. The past taxes and interest are due  
21 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest  
22 by the due date is subject to the penalties provided in G.S. 105-236.

23 (j) Change in Ownership of Business. – As used in this subsection, the term "business"  
24 means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition,  
25 or bankruptcy of a business, or any transaction by which an existing business reformulates itself  
26 as another business, does not create new eligibility in a succeeding business with respect to  
27 credits for which the predecessor was not eligible under this Article. A successor business may,  
28 however, take any credit or carried-over portion of a credit that its predecessor could have taken  
29 if it had a tax liability. The acquisition of a business is a new investment that creates new  
30 eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

- 31 (1) The business closed before it was acquired.
- 32 (2) The business was required to file a notice of plant closing or mass layoff under  
33 the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. §  
34 2101, before it was acquired.
- 35 (3) The business was acquired by its employees directly or indirectly through an  
36 acquisition company under an employee stock option transaction or another  
37 similar mechanism. For the purpose of this subdivision, "acquired" means that  
38 as part of the initial purchase of a business by the employees, the purchase  
39 included an agreement for the employees through the employee stock option  
40 transaction or another similar mechanism to obtain one of the following:
  - 41 a. Ownership of more than fifty percent (50%) of the business.
  - 42 b. Ownership of not less than forty percent (40%) of the business within  
43 seven years if the business has tangible assets with a net book value in  
44 excess of one hundred million dollars (\$100,000,000) and has the  
45 majority of its operations located in a development tier one area.

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

1 (l) Planned Expansion. – A taxpayer that signs a letter of commitment with the  
2 Department of Commerce, after the Department has calculated the development tier designations  
3 for the next year but before the beginning of that year, to undertake specific activities at a specific  
4 site within the next two years may calculate the credit for which it qualifies based on the  
5 establishment's development tier designation ~~and urban progress zone, port enhancement zone,~~  
6 ~~or agrarian growth zone designation~~ in the year in which the letter of commitment was signed by  
7 the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the  
8 taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities,  
9 the taxpayer qualifies for the credit based on the development tier ~~and urban progress zone, port~~  
10 ~~enhancement zone, or agrarian growth zone designations~~ designation in effect at that time.

11 (m) ~~Qualified Capital Intensive Corporations.~~ – ~~A corporation that is a qualified capital~~  
12 ~~intensive corporation under G.S. 105-130.4(s1) is not eligible for any credit under this Article~~  
13 ~~with respect to the facility that satisfies the condition of subdivision (2) of that subsection.~~

14 **"§ 105-129.84. Tax election; liability eligibility; cap; carryforwards; limitations.**

15 (a) ~~Tax Election.~~ Liability Eligibility. – The credits provided in this Article are allowed  
16 against the ~~franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4~~  
17 ~~of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter.~~ The taxpayer  
18 may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may  
19 be divided between the taxes against which it is allowed without regard to the original election  
20 regarding the division of the credit.

21 (b) Cap. – The credits allowed under this Article may not exceed ~~fifty percent (50%)~~ of  
22 the cumulative amount of taxes against which they may be claimed for the taxable year, reduced  
23 by the sum of all other credits allowed against those taxes, except tax payments made by or on  
24 behalf of the taxpayer. This limitation applies to the cumulative amount of ~~credit, including~~  
25 ~~carryforwards, credit~~ claimed by the taxpayer under this Article for the taxable year.

26 (c) ~~Carryforward.~~ – ~~Unless a longer carryforward period applies, any unused portion of~~  
27 ~~a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the~~  
28 ~~succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be~~  
29 ~~carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written~~  
30 ~~determination that the taxpayer is expected to purchase or lease, and place in service in~~  
31 ~~connection with an eligible business within a two year period, at least one hundred fifty million~~  
32 ~~dollars (\$150,000,000) worth of business and real property, any unused portion of a credit under~~  
33 ~~this Article with respect to the establishment that satisfies that condition may be carried forward~~  
34 ~~for the succeeding 20 years. If the taxpayer does not make the required level of investment, the~~  
35 ~~taxpayer shall apply the standard carryforward period rather than the 20 year carryforward~~  
36 ~~period.~~

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

40 (e) Credit Treated as Tax Payment. – The owner of a pass-through entity that claims a  
41 credit under this Article may treat some or all of the credit claimed as a tax payment made by or  
42 on behalf of the taxpayer. A credit claimed that is treated as a tax payment is subject to all  
43 provisions of this section. A credit claimed that is treated as a tax payment does not accrue interest  
44 under G.S. 105-241.21 if the payment is determined to be an overpayment. A taxpayer that elects  
45 to have a credit claimed under this Article treated as a tax payment must make this election when  
46 the return is filed.

47 **"§ 105-129.85. Fees and reports.**

48 (a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity  
49 for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the  
50 Department of Revenue a fee of five hundred dollars (\$500.00) for ~~each type of the credit the~~  
51 taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time

1 the return is due for the taxable year in which the taxpayer engaged in the activity for which the  
 2 taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all  
 3 outstanding fees have been paid. Fees collected under this section shall be credited to the General  
 4 Fund.

5 (b) Report. – The Department must include in the economic incentives report required by  
 6 G.S. 105-256 the following information itemized by credit and by taxpayer:

- 7 (1) The number and amount of credits generated and taken for each credit allowed  
 8 in this Article.
- 9 (2) The number and development tier area of new jobs with respect to which  
 10 credits were generated and to which credits were taken.
- 11 (3) The cost and development tier area of business property with respect to which  
 12 credits were generated and to which credits were taken.
- 13 (4) The cost and development tier area of real property investment with respect  
 14 to which credits were generated and to which credits were taken.

15 **"§ 105-129.86. Substantiation.**

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

23 (b) Documentation. – Each taxpayer shall provide with the tax return qualifying  
 24 information for each credit claimed under this Article. The qualifying information shall be in the  
 25 form prescribed by the Secretary and shall be signed and affirmed by the individual who signs  
 26 the taxpayer's tax return. The information required by this subsection is information  
 27 demonstrating that the taxpayer has met the conditions for qualifying for a credit ~~and any~~  
 28 ~~carry forwards~~ and includes the following:

- 29 (1) The physical location of the jobs and investment with respect to which the  
 30 credit is claimed, including the street address and the development tier  
 31 designation of the establishment.
- 32 (2) ~~The type of business with respect to which the credit is claimed and the~~  
 33 ~~average weekly wage at the establishment with respect to which the credit is~~  
 34 ~~claimed.~~
- 35 (3) Any other qualifying information related to a specific credit allowed under  
 36 this Article.

37 **"§ 105-129.90. Credit for agrimanufacturing.**

38 (a) Credit. – A qualifying agrimanufacturer that (i) meets the eligibility requirements set  
 39 out in G.S. 105-129.83 and (ii) satisfies in a development tier one or two area in this State the  
 40 threshold requirements for new job creation and investment under this subsection during the  
 41 taxable year is allowed a credit for agrimanufacturing. The amount of the credit is equal to the  
 42 qualifying agrimanufacturer's cumulative amount of income taxes for the taxable year for a  
 43 number of years, as follows:

<u>Job Threshold</u>	<u>Investment Threshold</u>	<u>Years of Credit</u>
<u>25</u>	<u>\$1,500,000</u>	<u>3</u>
<u>50</u>	<u>\$2,500,000</u>	<u>5</u>
<u>100</u>	<u>\$5,000,000</u>	<u>10</u>

44 (b) Job Calculation Provisions. – The following provisions apply to the job threshold  
 45 provided in subsection (a) of this section:

- 46 (1) If the taxpayer creates new jobs at more than one eligible establishment in the  
 47 State during the taxable year, the threshold applies to the aggregate number of  
 48  
 49  
 50  
 51

- 1            new jobs created at all eligible establishments within the eligible counties  
2            during that year.
- 3            (2)       A job is located in a county if more than fifty percent (50%) of the employee's  
4            duties are performed in the county. The number of new jobs a taxpayer creates  
5            during the taxable year is determined by subtracting the average number of  
6            full-time employees the taxpayer had in this State during the 12-month period  
7            preceding the beginning of the taxable year from the average number of  
8            full-time employees the taxpayer has in this State during the taxable year.
- 9            (3)       Jobs transferred from one area in the State to another area in the State are not  
10           considered new jobs for purposes of this section. Jobs that were located in this  
11           State and that are transferred to the taxpayer from a related member of the  
12           taxpayer are not considered new jobs for purposes of this section. If the job  
13           with respect to which the credit was claimed is moved to a development tier  
14           three area, the remaining installments of the credit are not allowed.
- 15           (4)       For the purposes of this section, a taxpayer satisfies the wage standard  
16           requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement  
17           with respect to both the new jobs, considered collectively, for which a credit  
18           is claimed and all of the jobs at the establishment, considered collectively,  
19           with respect to which a credit is claimed.
- 20           (c)       Investment Provisions. – The following provisions apply to the investment threshold  
21           provided in subsection (a) of this section:
- 22           (1)       The investment threshold with private funds invested in the form of (i)  
23           purchasing or leasing business property and placing it in service in this State  
24           during the taxable year or (ii) purchasing or leasing real property in this State  
25           and beginning to use the property during the taxable year.
- 26           (2)       Business property is eligible if it is not leased to another party. The eligible  
27           investment amount is the lesser of (i) the cost of the eligible business property  
28           and (ii) the amount by which the cost of all of the taxpayer's eligible business  
29           property that is in service in this State on the last day of the taxable year  
30           exceeds the cost of all of the taxpayer's eligible business property that was in  
31           service in this State on the last day of the base year. The base year is that year,  
32           of the three immediately preceding taxable years, in which the taxpayer had  
33           the most eligible business property in service in this State. If the taxpayer  
34           places eligible business property in service at establishments in different  
35           counties and some of the establishments are in development tier three areas,  
36           the investment calculation will be reduced proportionately. If the taxpayer  
37           places eligible business property in service at an establishment over the course  
38           of more than one year, the applicable threshold for each subsequent taxable  
39           year is reduced by the eligible investment amount for the previous taxable  
40           years.
- 41           (3)       Real property is located in the development tier area applicable to the county  
42           at the time the taxpayer made a written application for the determination  
43           required under this Article. The eligible investment amount is the lesser of (i)  
44           the cost of the property and (ii) the amount by which the cost of all of the real  
45           property the taxpayer is using in this State in an eligible business on the last  
46           day of the taxable year exceeds the cost of all of the real property the taxpayer  
47           was using in this State in an eligible business on the last day of the base year.  
48           The base year is that year, of the three immediately preceding taxable years,  
49           in which the taxpayer was using the most real property in this State in an  
50           eligible business. In the case of property that is leased, the cost of the property  
51           is considered to be the taxpayer's lease payments for the years for which the



1 credit is given, plus any expenditures made by the taxpayer to improve the  
2 property before it is used by the taxpayer if the expenditures are not  
3 reimbursed or credited by the lessor. When part of the property is first used in  
4 one year and part is first used in a later year, separate credits may be claimed  
5 for the amount of property first used in an eligible business in each year. The  
6 basis in any real property for which a credit is allowed under this section shall  
7 be reduced by the amount of credit allowable. If the taxpayer uses only part  
8 of the property in agrimanufacturing, the amount of the credit allowed under  
9 this section is reduced by multiplying it by a fraction, the numerator of which  
10 is the square footage of the property used in agrimanufacturing and the  
11 denominator of which is the total square footage of the property.

12 (4) If, in one of the years in which the credit remains, the property with respect to  
13 which the credit was claimed is no longer used in agrimanufacturing, the credit  
14 expires and the taxpayer is not allowed the credit in any years remaining. If,  
15 in one of the years in which the credit remains, a part of the property with  
16 respect to which the credit was claimed is no longer used in agrimanufacturing  
17 and that amount reduces the number of years calculated for the credit, only  
18 remaining years for the lower calculation may be claimed."

19 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,

20 2023.