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SENATE BILL DRS45207-NIF-69

Short Title: NC Breakthrough Act.

(Public)

Sponsors: Senators Theodros and Blue (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REENACT AND MODIFY THE RESEARCH AND DEVELOPMENT TAX
3 CREDIT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 3F of Chapter 105 of the General Statutes is reenacted as it
6 existed immediately before its repeal and reads as rewritten:

7 "Article 3F.

8 "Research and Development.

9 **"§ 105-129.50. Definitions.**

10 The definitions in section 41 of the Code apply in this Article. In addition, the following
11 definitions apply in this Article:

12 (1) Development tier one area. – Defined in G.S. 143B-437.08.

13 (2) Full-time job. – Defined in G.S. 105-129.81.

14 ...

15 (4) North Carolina university research expenses. – Any amount the taxpayer paid
16 or incurred to a research university for qualified research performed in this
17 State or basic research performed in this State.

18 ...

19 (5) Period of measurement. – Defined in the Small Business Size Regulations of
20 the federal Small Business Administration.

21 (6) Qualified North Carolina research expenses. – Qualified research expenses,
22 other than North Carolina university research expenses, for research
23 performed in this State.

24 (7) Receipts. – Defined in the Small Business Size Regulations of the federal
25 Small Business Administration.

26 (8) Related person. – ~~Defined in G.S. 105-163.010.~~ A person described in one of
27 the relationships set forth in section 267(b) or 707(b) of the Code.

28 (9) Research university. – An institution of higher education that meets one or
29 both of the following conditions:

30 a. It is classified as one of the following in the most recent edition of "A
31 Classification of Institutions of Higher Education", the official report
32 of The Carnegie Foundation for the Advancement of Teaching:

33 1. Doctoral/Research Universities, Extensive or Intensive.

34 2. Masters Colleges and Universities, I or II.

35 3. Baccalaureate Colleges, Liberal Arts or General.

36 b. It is a constituent institution of The University of North Carolina.



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(10) Small business. – A business whose annual receipts, combined with the annual receipts of all related persons, for the applicable period of measurement did not exceed one million dollars (\$1,000,000).

"§ 105-129.51. Taxpayer standards and sunset.

(a) Taxpayer Standards. – A taxpayer is eligible for a credit allowed in this Article if it satisfies the requirements of ~~G.S. 105-129.83(e)~~, subsections (d), (e), (f), and (g) and (h) of this section relating to wage standard, health insurance, environmental impact, safety and health programs, and overdue tax debts, respectively.

(b) Sunset. – This Article is repealed for taxable years beginning on or after January 1, ~~2016~~, 2040.

(c) Repealed by Session Laws 2004-124, s. 32D.4, effective for taxable years beginning on or after January 1, 2006.

(d) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone, a port enhancement zone, or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

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

(e) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

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

(f) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, there has not been a final determination unfavorable to the taxpayer with respect to an environmental disqualifying event. For the purposes of this section, a "final determination unfavorable to the taxpayer" occurs when there is no further opportunity for the taxpayer to seek administrative or judicial appeal, review, certiorari, or rehearing of the environmental disqualifying event and the disqualifying event has not been reversed or withdrawn. No later than January 31 of each year, the Secretary of Environmental Quality shall provide an annual report to the Department listing all

1 environmental disqualifying events for which a final determination unfavorable to the taxpayer
2 was made in the prior calendar year and shall provide the name of the taxpayer involved and the
3 date that the disqualifying event occurred.

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

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

16 **"§ 105-129.52. Tax election; cap.**

17 (a) Tax Election. – A credit allowed in this Article is allowed against the franchise tax
18 levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The
19 taxpayer must elect the tax against which a credit will be claimed when filing the return on which
20 the credit is first claimed. This election is binding. Any carryforwards of a credit must be claimed
21 against the same tax.

22 (b) Cap. – A credit allowed in this Article may not exceed ~~fifty-fifteen~~ percent (~~50%~~
23 (15%)) of the amount of tax against which it is claimed for the taxable year, reduced by the sum
24 of all other credits allowed against that tax, except tax payments made by or on behalf of the
25 taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards,
26 claimed by the taxpayer under this Article against each tax for the taxable year. Any unused
27 portion of a credit allowed in this Article may be carried forward for the succeeding 15 years.

28 **"§ 105-129.53. Substantiation.**

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

36 **"§ 105-129.54. Report.**

37 The Department must include in the economic incentives report required by G.S. 105-256 the
38 following information itemized by credit and by taxpayer:

- 39 (1) The number of taxpayers that took a credit allowed in this Article, itemized
40 by the categories of small business, low-tier, university research,
41 Eco-Industrial Park, and other.
- 42 (2) The amount of each credit taken in each category.
- 43 (3) The total cost to the General Fund of the credits taken.

44 **"§ 105-129.55. Credit for North Carolina research and development.**

45 (a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North
46 Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the
47 expenses, determined as provided in this section. Only one credit is allowed under this section
48 with respect to the same expenses. If more than one subdivision of this section applies to the
49 same expenses, then the credit is equal to the higher percentage, not both percentages combined.
50 If part of the taxpayer's qualified North Carolina research expenses qualifies under more than

one subdivision of this section, the applicable percentages apply separately to each part of the expenses.

- (1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three and one-quarter percent (3.25%).
- (2) Low-tier research. – For expenses with respect to research performed in a development tier one area, the applicable percentage is three and one-quarter percent (3.25%).
- (2a) University research. – For North Carolina university research expenses, the applicable percentage is twenty percent (20%).
- (2b) Eco-Industrial Park. – For expenses with respect to research performed in an Eco-Industrial Park certified under G.S. 143B-437.08, the applicable percentage is thirty-five percent (35%).
- (3) Other research. – For expenses not covered under another subdivision of this section, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	\$50 million	1.25%
\$50 million	\$200 million	2.25%
\$200 million	–	3.25%

(b) North Carolina University Research Expenses. – A taxpayer that has North Carolina university research expenses for the taxable year is allowed a credit equal to twenty percent (20%) of the expenses.

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SECTION 2. This act is effective for taxable years beginning on or after January 1, 2025.