

H. Tax Incentives for Major Computer Manufacturing Facilities (Article 3G of Chapter 105)

1. General Information

A taxpayer that meets all the eligibility requirements is eligible for a credit against franchise and income taxes for business activities occurring on or after November 1, 2004 and for taxable years beginning on or after January 1, 2005.

a. Tax election (G.S. 105-129.64, G.S. 105-129.65)

The credit allowed by this Article may be taken against the franchise taxes and income taxes levied under Articles 3 and 4 of Chapter 105, respectively.

b. Allocation (G.S. 105-129.65)

When claiming a credit under this Article, taxpayers must elect the percentage of the credit to be applied against their franchise taxes with any remaining percentage to be applied against their income taxes. This election is not binding for the year in which it is made or for any carryforwards of that year's credit. Taxpayers may elect a different allocation for each year in which they qualify for a credit.

c. Cap (G.S. 105-129.65)

The amount of credit claimed in a taxable year under this Article is limited to the lesser of the amount determined under G.S. 105-129.64 and the total amount of franchise and income tax due for the year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. Credits that are limited to fifty percent (50%) of the taxpayer's liability must be taken before credits that may eliminate all of a taxpayer's liability, which in turn must be taken before any credits that are refundable. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this Article for previous tax years.

d. Make Up Account (G.S. 105-129.65)

If the amount of the credit calculated based on output exceeds the applicable cap in any year, the excess credit may be credited to a make up account. Amounts credited to the make up account remain in the account for a period of time equal to the earlier of seven years or until they are used.

If the amount of the credit calculated based on output is less than the applicable cap in any year, the taxpayer is allowed to use excess credit amounts available in the make up account to increase the credit allowed for that taxable year to the cap amount, as adjusted by any applicable employment level adjustment factor. A successor in business may take the amounts available in a make up account of a predecessor corporation as if they were excess credits available in a make up account of the successor in business.

e. Carryforward (G.S. 105-129.65)

Any unused portion of a credit allowed may be carried forward for the next succeeding twenty-five (25) years. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

f. Substantiation (G.S. 105-129.63)

The taxpayer is responsible for providing all information needed to verify eligibility for the credit, including the determination by the Secretary of Commerce, the certification relating

to the related entities or strategic partners of the taxpayer and any additional information requested by the Department of Revenue.

The taxpayer must apply to the Secretary of Commerce for the determination required under G.S. 105-129.62. The application must be made under oath and must provide any information the Secretary requires to make the determination. The determination by the Secretary of Commerce is a factual determination. The Secretary must make this determination in any case in which the taxpayer can demonstrate performance or can provide a credible plan for performance.

The taxpayer must provide, with the tax return for each year that a credit or carryforward of a credit is claimed, a certification that the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level continue to provide health insurance for all the full-time jobs at the facility with respect to which the credit is claimed.

g. Forfeiture (G.S. 105-129.63)

The taxpayer forfeits any credits claimed under this Article with respect to the facility if the taxpayer fails to continuously meet all eligibility requirements, create the required number of new jobs or to make the required investment, or if the information provided by the taxpayer on the application proves to have been false at the time it was given, and the person making the application knew or should have known that the information was false. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

h. Sunset (G.S. 105-129.66)

This Article is repealed for business activities occurring in taxable years beginning on or after January 1, 2020.

2. Definitions (G.S. 105-129.61)

a. Computer Manufacturing (G.S. 105-164.14)

Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.

b. Facility

A single building or structure or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

c. Full-time Job/Full-time Equivalent

A permanent position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.

A full-time equivalent results when the total hours per year for two or more new permanent part-time jobs equal 1600 hours.

d. Increased Employment Level

The total number of new full time jobs and new permanent part time jobs converted into full time equivalences created by the taxpayer at the facility with respect to which the credit is claimed, either directly or indirectly through a related entity or strategic partner, as of December 31 as compared to the employment level of the taxpayer as of December 31 in the year in which the taxpayer begins construction of the facility with respect to which the credit is claimed or as of the date the Secretary of Commerce makes the written determination required under G.S. 105-129.62, whichever is earlier. Jobs transferred from one area in the State to another area in the State are not considered new jobs for the purposes of this Article and may not be included in the increased employment level.

e. Related Entity

An entity for which the taxpayer possesses directly or indirectly at least eighty percent (80%) of the control and value.

f. Strategic Partner

A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.

g. Successor in Business

A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the computer manufacturing and distribution business.

h. Unit Output

The total number of computers and computer peripherals produced, assembled, or manufactured at the facility during the taxable year.

3. Eligibility (G.S. 105-129.62)

To be eligible for the credit allowed under this Article, a taxpayer must meet *all* of the following eligibility requirements.

a. Determination by Secretary of Commerce

With respect to a facility in this State, the Secretary of Commerce must make a written determination that

- The taxpayer has or is expected to have an increased employment level at the facility of at least 1,200 within five years after the time that the facility is first used as a computer manufacturing and distribution facility, and
- The taxpayer, either directly or indirectly through a related entity or strategic partner, has invested or is expected to invest at least one hundred million dollars

(\$100,000,000) in private funds to construct a computer manufacturing and distribution facility over a five year period.

For the purposes of this Article, costs of construction may include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.

b. Health Insurance

A taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level must provide health insurance for all of the full-time jobs at the facility with respect to which the credit is claimed each year it claims a credit or carryforward of a credit.

For the purposes of this subsection, an entity 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.

If the taxpayer, or a related entity or strategic partner of the taxpayer whose employees are included in the increased employment level of 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 carryforward of the credit.

c. Environmental Impact

As of the last day of the taxable year for which a credit or carryforward is claimed, the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level must meet both of these conditions:

- Have no pending administrative, civil, or criminal enforcement actions based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and
- Have had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years.

A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d).

For the taxpayer's related entities and strategic partners, this subsection applies only to the activities of the related entity or strategic partner at the facility with respect to which a credit is claimed.

Upon request, the Secretary of Environment and Natural Resources must notify the Department of Revenue of whether a person currently has any of these pending actions or has had any of these final determinations within the last five years.

d. Safety and Health Programs

As of the last day of the taxable year for which a credit or carryforward is claimed, the taxpayer and the taxpayer's related entities and strategic partners whose employees are

included in the taxpayer's increased employment level must have no citations under the Occupational Safety and Health Act at the facility with respect to which the credit is claimed that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, "serious violation" has the same meaning as in G.S. 95-127.

Upon request, the Secretary of Labor must notify the Department of Revenue of whether a person has had these citations become final orders within the past three years.

e. Overdue Tax Debts

The taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level must have no overdue tax debts that have not been satisfied or otherwise resolved as of the last day of the taxable year for which a credit or carryforward is claimed.

f. Relationship with Related Entities and Strategic Partners

A taxpayer must obtain the written consent of related entities and strategic partners to include jobs created by those entities in the taxpayer's increased employment level.

If a taxpayer fails to obtain this written consent, the taxpayer may not include jobs created by the applicable business in its increased employment level. This consent, once granted, is irrevocable.

A job may not be included in the increased employment level of more than one entity.

4. Credit for Major Computer Manufacturing Facility (G.S. 105-129.64)

A taxpayer that meets all the eligibility requirements of G.S. 105-129.62 is eligible for a credit against franchise and income taxes. For taxable years beginning with the 2006 taxable year, the amount of the credit allowable in a year is determined based on the taxable year, the unit output of the facility, the production factor, and the increased employment level at the facility in the current taxable year and previous taxable years.

a. 2005 Taxable Year

For taxable years beginning on or after January 1, 2005, but before January 1, 2006, the amount of the credit is equal to ten million dollars (\$10,000,000) if the taxpayer, either directly or through a related entity, has invested at least twenty five million dollars (\$25,000,000) in private funds by the end of the taxable year to construct a computer manufacturing and distribution facility in this State.

b. 2006-2009 Taxable Years

For taxable years beginning on or after January 1, 2006, but before January 1, 2010, the maximum amount of the credit is ten million dollars (\$10,000,000).

The amount of the credit that may be claimed is determined by multiplying the employment level adjustment factor by the lesser of ten million dollars (\$10,000,000) and the product of the unit output of the facility and the applicable production factor listed in (e) below.

For the purposes of this subsection, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's increased employment level for the year by the applicable target increased employment level provided in the table below:

Year	Target Increased Employment Level
2006	600
2007	1,000
2008	1,100
2009	1,500

c. 2010-2014 Taxable Years

For taxable years beginning on or after January 1, 2010, but before January 1, 2015, the maximum amount of the credit is fifteen million dollars (\$15,000,000) if the taxpayer has in any year attained an increased employment level of 1,500. Otherwise the maximum amount of the credit is ten million dollars (\$10,000,000). The amount of the credit is determined as follows:

- If the taxpayer has ever attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is the lesser of fifteen million dollars (\$15,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in (e) below. If the taxpayer's increased employment level has decreased by more than forty percent (40%) from that of the previous taxable year, the amount of the credit that may be claimed must be reduced by multiplying the amount determined under this subdivision by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.
- If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of ten million dollars (\$10,000,000) and the product of the unit output of the facility and the applicable production factor listed in (e) below. For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's increased employment level for the year by 1,500.

d. 2015-2019 Taxable Years

For taxable years beginning on or after January 1, 2015, but before January 1, 2020, the maximum amount of the credit is twenty million dollars (\$20,000,000) if the taxpayer has in any year attained an increased employment level of 2,500. If the taxpayer has in any year attained an increased employment level of at least 1,500, but in no year has attained an increased employment level of at least 2,500, the maximum amount of the credit is fifteen million dollars (\$15,000,000). Otherwise the maximum amount of the credit is ten million dollars (\$10,000,000).

The amount of the credit is determined as follows:

- If the taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's increased employment level for the current year is at least 1,500, the amount of the credit is the lesser of twenty million dollars (\$20,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in (e) below.
- If the taxpayer has ever attained an increased employment level of at least 1,500 but has never attained an increased employment level of at least 2,500, or if the

taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's current increased employment level is less than 1,500, the amount of the credit that may be claimed is the lesser of fifteen million dollars (\$15,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in (e) below.

If the taxpayer's increased employment level has decreased by more than forty percent (40%) from that of the previous taxable year and (i) the increased employment level of the previous year was 1,500 or less or (ii) the increased employment level of the current year is 900 or less, the amount of the credit that may be claimed must be reduced by multiplying the amount determined under this subdivision by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.

- If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of ten million dollars (\$10,000,000) and the product of the unit output of the facility and the applicable production factor listed in (e) below. For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's employment level for the year by 1,500.

e. Production Factor

For taxable years beginning on or after January 1, 2006, but before January 1, 2007, the production factor is fifteen dollars (\$15.00). For all other taxable years, the production factor is six dollars and twenty five cents (\$6.25).

f. Expiration

If the taxpayer fails to attain an increased employment level of at least 1,200, either directly or in conjunction with its strategic partners and related entities, within five years after beginning construction of the facility with respect to which a credit is claimed or the taxpayer fails to invest at least one hundred million dollars (\$100,000,000) in private funds to construct a computer manufacturing and distribution facility over a five year period, the taxpayer may not take any further credits under this Article with respect to that facility. Failure to attain an increased employment level of 1,200 within the five years or to invest at least one hundred million dollars (\$100,000,000) in private funds to construct the facility does not result in forfeiture of credits previously taken under this section unless the provisions of G.S. 105-129.63 apply.