EXHIBIT 1
DATE 4.6.05
SB 66

INVESTMENT TAX CREDIT

Senate Bill No. 66

Prepared by
Senator Kitzenberg

SENATE BILL NO. 66

INTRODUCED BY S. KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A GENERAL INVESTMENT TAX CREDIT; PROVIDING THAT A 3 PERCENT CREDIT FOR QUALIFIED INVESTMENTS IS ALLOWED AGAINST INDIVIDUAL INCOME TAXES OR CORPORATE LICENSE TAXES; LIMITING THE INVESTMENT CREDIT IN ANY 1 YEAR TO NO MORE THAN 45 PERCENT OF THE TAXPAYER'S TAX LIABILITY; PROVIDING FOR A 7-YEAR CARRYOVER OF UNUSED INVESTMENT CREDITS IF THE UNDERLYING INVESTMENT REMAINS IN MONTANA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Investment credit.** There is allowed an investment tax credit against the taxes imposed by 15-30-103 in an amount determined in [section 2].

NEW SECTION. **Section 2. Investment credit.** (1) There is allowed an investment tax credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122.

(2) The credit is an amount equal to:

(a) the investment credit carryovers; and

(b) the investment credit for the tax year.

(3) An investment qualifies for a credit if:

(a) the investment is depreciable property under sections 46(c) and 48 of the Internal Revenue Code of 1986, 26 U.S.C. 46(c) and 48, as those sections read prior to November 5, 1990, subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue Code of 1986, 26 U.S.C. 46(f), as that section read prior to November 5, 1990, and if the property is not a motor vehicle under 8,000 pounds gross weight;

(b) the property was placed in service in Montana; and

(c) the property was used, acquired, constructed, reconstructed, erected, or placed into service after December 31, 2005.

(4) (a) The amount of the investment credit for a tax year is 3% of the amount of qualified investments

made during the tax year. The investment credit allowed for the tax year may not exceed 45% of the tax liability of the taxpayer for that year.

(b) If the sum of investment credit carryovers and the amount of credit for the tax year from the credit allowed by subsection (1) exceeds the limitation imposed by subsection (4)(a) for the current tax year, the excess attributable to the current tax year's credit is an investment credit carryover to the 7 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first. The investment credit carryover may be used only as long as the qualified investment property for which the unused credit was granted remains in Montana.

(5) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction, the numerator of which is the number of days during the tax year that the property was located in Montana and the denominator of which is the number of days during the tax year that the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.

(6) The investment credit allowed by this section is subject to recapture as provided for in section 50 of the Internal Revenue Code, 26 U.S.C. 50. A recapture of the credit allowed by this section is not required with regard to property ceasing to qualify by reason of an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code, 26 U.S.C. 1033.

(7) If a small business corporation, as defined in 15-30-1101, qualifies for the credit provided for in this section, the credit must be attributed to the shareholders based upon the proportion used to report the corporation's income or loss for Montana income tax purposes.

(8) An investment credit claimed under this section may be claimed after any other tax credit to which the taxpayer may be entitled.

NEW SECTION. **Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 2].

NEW SECTION. **Section 4. Effective date.** [This act] is effective January 1, 2006.

NEW SECTION. **Section 5. Applicability.** [This act] applies to tax years beginning after December 31, 2005.

- END -

Investment tax credit bill:

Sec. 1-- Placeholder in individual income tax laws allowing the credit and referencing the details in the corporate license tax laws.

Sec. 2 -- Establishes credit in corporate license tax laws.

Describes investments that qualify for the credit, tying to a large degree to descriptions in specific sections of the internal revenue code;

Lists the criteria for the credit;

Provides that the credit would be 3% of the amount of qualified investment, that the credit cannot exceed 45% of the tax liability of the taxpayer for that year, and allows for a carry-forward of the credit it if exceeds the allowable percentage;

Amendment requires that the amount has to be factored by an employment requirement of $100,000 per new full-time employee position which must be filled for 3 years; and

Provides that the credit is subject to recapture for not holding the equipment or keeping the jobs for the length required.

Sec. 3 -- Effective January 1, 2006

Sec. 4 -- Applies to tax years after December 31, 2005.

Investment tax credit bill:

Sec. 1-- Placeholder in individual income tax laws allowing the credit and referencing the details in the corporate license tax laws.

Sec. 2 -- Establishes credit in corporate license tax laws.

Describes investments that qualify for the credit, tying to a large degree to descriptions in specific sections of the internal revenue code;

Lists the criteria for the credit;

Provides that the credit would be 3% of the amount of qualified investment, that the credit cannot exceed 45% of the tax liability of the taxpayer for that year, and allows for a carry-forward of the credit it if exceeds the allowable percentage;

Amendment requires that the amount has to be factored by an employment requirement of $100,000 per new full-time employee position which must be filled for 3 years; and

Provides that the credit is subject to recapture for not holding the equipment or keeping the jobs for the length required.

Sec. 3 -- Effective January 1, 2006

Sec. 4 -- Applies to tax years after December 31, 2005.

FISCAL NOTE

Bill #: SB0066 **Title:** Investment tax credit

Primary Sponsor: Kitzenberg, S **Status:** As Introduced

Sponsor signature Date David Ewer, Budget Director 1/11/05 Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$0	$61,657
Revenue:		
General Fund	$0	($4,943,000)
Net Impact on General Fund Balance:	$0	($5,004,657)

- ☐ Significant Local Gov. Impact
- ☐ Included in the Executive Budget
- ☐ Dedicated Revenue Form Attached
- ☐ Technical Concerns
- ☒ Significant Long-Term Impacts
- ☒ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Department of Revenue

1. For tax years beginning after December 31, 2005, this bill would allow a credit against personal income tax or corporate license tax of 3 percent of qualified investment expenditures with a limit of 45 percent of the taxpayer's tax liability.
2. The state of Idaho has an investment credit nearly identical to the one proposed in SB 66. In Idaho, taxpayers are allowed an investment credit of 3 percent of qualified investments (the same property as in this bill) up to 50 percent of the taxpayer's liability, with a 7-year carryover period. (The SB 66 proposal differs in that the taxpayer may not claim a credit greater than 45 percent of liability.)
3. In Idaho, over the period 1997 to 2003, corporations claimed an annual average of $15.020 million in investment credits, and individuals claimed an annual average of $9.148 million in investment credits.
4. The 1997 economic census reports capital expenditures for selected industries. Reported capital expenditures in Montana were 36.2 percent of capital expenditures in Idaho.
5. The ratio of investment tax credit claimed in Montana to that claimed in Idaho will be the same as the ratio of capital expenditures in Montana to capital expenditures in Idaho. Individuals will claim investment tax credits of $3.312 million each tax year (36.2% x $9.148 million) and corporations will claim credits of $5.437 million each tax year (36.2% x $15.020 million).

6. Credits against individual income tax would first be claimed on returns for tax year 2006, filed during fiscal 2007. A full year's worth of credits would be claimed, reducing income tax revenue in FY 2007 by $3.312 million.
7. For 30 percent of corporations, returns for the first tax year when this credit could be claimed would be filed in May and June of 2007. For 70 percent of corporations, the first return when this credit could be claimed would not be filed until FY 2008. Corporation license tax revenue in FY 2007 would be reduced by $1.631 million (30% x $5.437 million).
8. General fund revenue in FY 2007 would be reduced by $4.943 million ($3.312 million + $1.631 million).
9. Because of the significance of this credit, the Department of Revenue would require an additional 0.50 FTE for individual income tax compliance work and an additional 0.50 FTE for corporation license tax compliance work beginning in FY 2007. The additional cost in FY 2007 would be $61,657. No changes to the department's computer systems would be required.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
FTE		1.00
Expenditures:		
Personal Services	$0	$42,229
Operating Expenses	0	7,828
Equipment	0	11,600
TOTAL	$0	$61,657
Funding of Expenditures:		
General Fund (01)	$0	$61,657
Revenues:		
General Fund (01)	$0	($4,943,000)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund (01)	$0	($5,004,657)

LONG-RANGE IMPACTS:
FY 2008 is the first fiscal year when the full impact of the credit on corporation license tax would be felt. Credits claimed in FY 2008 and following years will be $8.749 ($3.312 million against individual income tax and $5.437 million against corporation license tax).

Amendments to Senate Bill No. 66
1st Reading Copy

Requested by Senator Sam Kitzenberg

For the Senate Taxation Committee

Prepared by Lee Heiman
January 12, 2005 (4:38pm)

1. Title, line 6.
Following: "TAXES;"
Insert: "LIMITING THE AMOUNT OF INVESTMENT FOR WHICH THE CREDIT MAY BE CLAIMED TO $100,000 FOR EACH NEW FULL-TIME EMPLOYMENT POSITION LASTING 3 YEARS;"

2. Title, line 9.
Following: "MONTANA;"
Insert: "PROVIDING A RECAPTURE FOR EMPLOYMENT LESS THAN 3 YEARS;"

3. Page 1, line 30.
Following: "3% of the"
Insert: "employment-adjusted"

4. Page 2.
Following: line 2
Insert: "(b) The maximum amount of qualified investments must be adjusted to not exceed $100,000 for each additional full-time employee of the taxpayer for a employment position that will be filled for at least 3 years. The employee must be an employee who is in addition to the number of full-time employees employed by the taxpayer on the day 1 year prior to the day on which the taxpayer applies for the credit and who has not been counted to meet the employment requirement of this section in a previous year. The hiring of an employee to replace an employee who was originally hired to meet the employment requirement of this section in a previous year does not qualify as an additional employee under this subsection (4)(b)."
Renumber: subsequent subsection

5. Page 2, line 15.
Following: "(6)"
Insert: "(a)"

6. Page 2.

Following: line 18

Insert: "(b) The investment credit allowed by this section is subject to recapture of the credit if a full-time employee position required under subsection (4)(b) terminates prior to the 3-year term required for the position. The credit, and any carryforward of the credit, must be adjusted by disallowing the maximum $100,000 investment amount for an employment position terminated during the first year of the credit, $66,600 during the second year of the credit, and $33,300 during the third year of the credit, irrespective of the percentage of the year that the position was actually filled."

Amendments to Senate Bill No. 66
1st Reading Copy

Requested by Senator Sam Kitzenberg

For the Senate Taxation Committee

Prepared by Lee Heiman
January 12, 2005 (4:38pm)

1. Title, line 6.
Following: "TAXES;"
Insert: "LIMITING THE AMOUNT OF INVESTMENT FOR WHICH THE CREDIT MAY BE CLAIMED TO $100,000 FOR EACH NEW FULL-TIME EMPLOYMENT POSITION LASTING 3 YEARS;"

2. Title, line 9.
Following: "MONTANA;"
Insert: "PROVIDING A RECAPTURE FOR EMPLOYMENT LESS THAN 3 YEARS;"

3. Page 1, line 30.
Following: "3% of the"
Insert: "employment-adjusted"

4. Page 2.
Following: line 2
Insert: "(b) The maximum amount of qualified investments must be adjusted to not exceed $100,000 for each additional full-time employee of the taxpayer for a employment position that will be filled for at least 3 years. The employee must be an employee who is in addition to the number of full-time employees employed by the taxpayer on the day 1 year prior to the day on which the taxpayer applies for the credit and who has not been counted to meet the employment requirement of this section in a previous year. The hiring of an employee to replace an employee who was originally hired to meet the employment requirement of this section in a previous year does not qualify as an additional employee under this subsection (4)(b)."
Renumber: subsequent subsection

5. Page 2, line 15.
Following: "(6)"
Insert: "(a)"

6. Page 2.
Following: line 18
Insert: "(b) The investment credit allowed by this section is subject to recapture of the credit if a full-time employee position required under subsection (4)(b) terminates prior to the 3-year term required for the position. The credit, and any carryforward of the credit, must be adjusted by disallowing the maximum $100,000 investment amount for an employment position terminated during the first year of the credit, $66,600 during the second year of the credit, and $33,300 during the third year of the credit, irrespective of the percentage of the year that the position was actually filled."

Tim Tone

From: Jay Engstrom [jay.engstrom@business.idaho.gov]
Sent: Tuesday, January 11, 2005 4:09 PM
To: sam@kitzenberg.net

Dear Senator Kitzenberg:

Attached is the most recent data on our Investment Tax Credit from our Tax Commission. I hope this will help. Commerce and Labor does not have any details on the filings due to tax laws. If you need more detail let me know and I will see if they can generate something for you.

You asked how effective it has been. I believe the filings are a good indicator. We use the ITC in our marketing efforts and it is very beneficial. However, like any economic development tool it can only be expected to help your efforts. Sometimes we have found that individuals believe it will have more of a causal effect.

Just for your information, during the Governor's State of the State Message last night, he proposed to double our tax credit to 6% and take the 50% limitation off if companies hire more than 500, pay more than $50,000, invest more than $50 million and do it all in 5 or less years (this is condensed). We will see if the legislature supports his efforts.

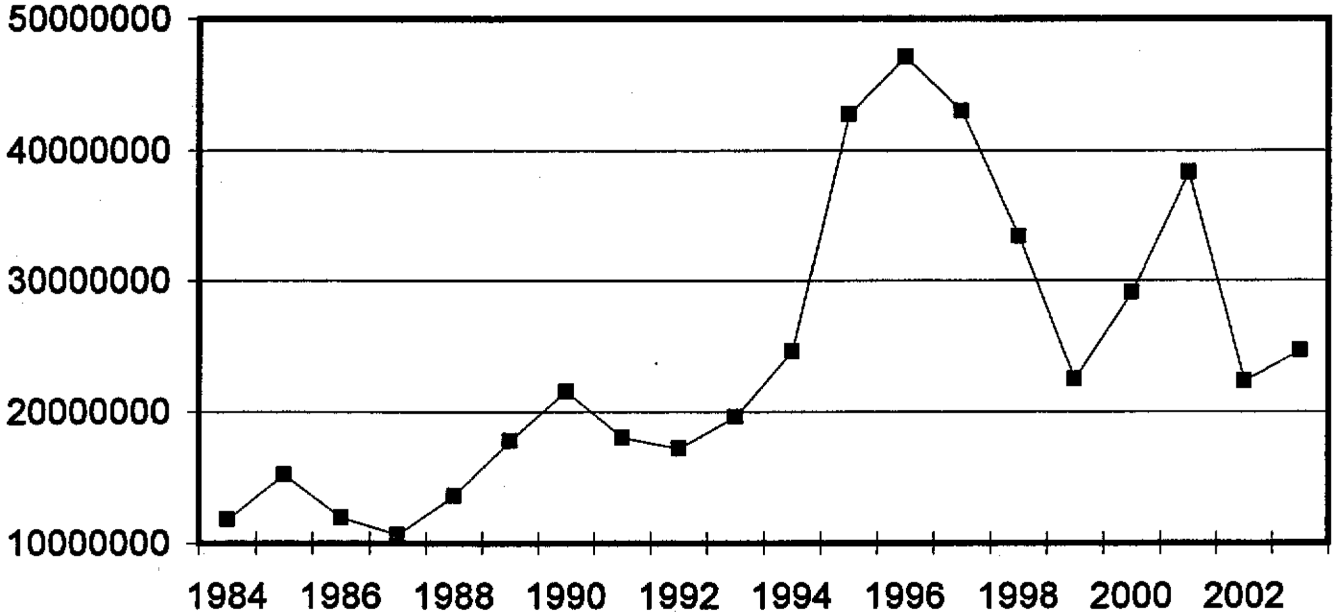
I wish you well in your session. Let me know if you need additional information

Cordially,

Jay

Jay Engstrom
Idaho Department of Commerce and Labor
Administrator, Economic Development
700 W State Street
P. O. Box 83720
Boise, ID 83720-0093
E-mail: jay.engstrom@business.idaho.gov
Direct: 208-334-2650 ext 2121
Cell: 208-830-8942
Office: 208-334-2470
Fax: 208-334-2631
Web URL: idahoworks.com

INVESTMENT TAX CREDIT CLAIMED
ALL TAXPAYERS



Investment Tax Credit Statistics

Processing Year	Individual Returns Amount of Credit	Individual Returns # of Returns Claiming Credit	Business Returns Amount of Credit	Business Returns # of Returns Claiming Credi	Total Credit Claimed
1984	$5,296,185	22,490	$6,554,447	3,093	$11,850,632
1985	$5,144,559	21,597	$10,125,255	4,723	$15,269,814
1986	$4,704,382	20,054	$7,271,014	4,849	$11,975,396
1987	$3,771,010	13,466	$6,912,138	4,396	$10,683,148
1988	$4,085,476	12,084	$9,557,956	4,068	$13,643,432
1989	$5,328,567	11,842	$12,448,618	3,999	$17,777,185
1990	$6,575,493	12,470	$14,974,561	4,069	$21,550,054
1991	$6,517,678	11,820	$11,493,157	3,517	$18,010,835
1992	$5,640,848	11,457	$11,579,640	3,895	$17,220,488
1993	$6,075,541	11,610	$13,501,934	3,643	$19,577,475
1994	$6,722,831	11,214	$17,858,761	3,768	$24,581,592
1995	$6,758,818	11,252	$35,935,117	3,673	$42,693,935
1996	$7,744,302	11,738	$39,352,963	3,732	$47,097,265
1997	$8,329,099	12,260	$34,622,073	3,658	$42,951,172
1998	$8,705,699	11,885	$24,716,037	3,542	$33,421,736
1999	$8,232,078	12,941	$14,205,549	3,508	$22,437,627
2000	$9,082,043	12,925	$19,969,248	3,438	$29,051,291
2001	$8,917,366	12,588	$29,381,615	3,391	$38,298,981
2002	$9,444,791	11,993	$12,858,877 [1]	3,155	$22,303,668
2003	$11,591,649	15,963	$13,045,431 [2]	3,212	$24,637,080

Source: Idaho State Tax Commission, 2/10/04

1 Amount includes $7,307491 in credit from business tax returns received in 2002 but processed in January 2003.

Comments by Jay Engstrom, Economic Administrator
Division of Economic Development
Idaho Department of Commerce

RE: Idaho's Investment Tax Credit (ITC) 1/11/01

Idaho has had an ITC (3%) for many years. Last year we included a 14 year carry forward. We feel the ITC has been very been beneficial in our recruiting efforts and has made a difference in major expansions and relocations. But it is only one tool and it would be impossible to say that the ITC was the only or the largest contributor to anyone business decision. We have no positive percentages or figures that would illustrate the benefits of an ITC vs. the revenue costs....

Last years extension (to the 14 years) was backed by Micron Technology, Idaho's largest employer (they manufacture memory chips). It was supported by them because of the large investments needed to grow high-tech companies and the subsequent benefit from an ITC. You could draw conclusions that an ITC is important for Micron's expansions. (they have done many and continue to grow and expand, they employ around 12,500 in Idaho)

Some people in Idaho have argued that the existing utility companies benefit the greatest from the ITC and therefore it is a waste of tax revenue. However, considering California's current energy situation I wonder what they would say about that argument. By the way, Idaho still has some of the lowest energy costs which is a great economic asset and the ITC has helped keep the price low but again hard to assign specific benefits.

This year Idaho has ended up with over $300 million in surplus. Because of the surplus and input from this department the Governor has proposed broadening the ITC with increased benefits for broadband telecommunications development and development in rural depressed areas.

The broadband credit is worth an additional 3% (on top of the original 3% for a total of 6%) but if it is located in counties suffering from high unemployment and/or low personal income there could be an additional credit of 0% to 4.19% depending upon the counties distress. All three of the different ITCs can be added together if they apply to the development.

For example if a telecommunications company placed a switch in a rural depressed county, they could claim up to 10.19% ITC (3% original, 3% broadband, and up to 4.19% rural) or a business investment could be 7.19% (3% original + 4.19 rural). This may give you an idea of the importance the Governor places on the ITC.

The budget message was just yesterday so we do not know what the legislature will do with the package. I am guessing they will vote for all or most of the package.
I hope this helps. Let me know if you need any further information and good luck with your legislature.

Sincerely,

Jay Engstrom
Economic Administrator
Division of Economic Development
Idaho Department of Commerce

MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

Room 110 Capitol Building • P.O. Box 201711 • Helena, MT 59620-1711 • (406) 444-2986 • FAX (406) 444-3036

Legislative Fiscal Analyst
CLAYTON SCHENCK

January 19, 2001

TO: Senator Sam Kitzenberg

FROM: Jon Moe
Fiscal Specialist
Jon Moe

RE: Options for Investment Tax Credit

The following are some options for an investment tax credit in Montana. These come from a look at what some other states have done.

1. **North Carolina** appears to allow the credit in equal installments of the 7 years following the year the investment occurs (description attached). It would seem like this would more closely tie the negative revenue impacts to the potential positive revenue impacts.

2. **New Mexico** and **Alabama** include criteria that require job creation as a condition of receiving the credit. New Mexico's credit appears to require one full-time job for every $100,000 invested and Alabama has a minimum requirement for investment and job creation (descriptions attached).

3. Although I could not identify a state using this option, the taking of the credit could be delayed for two or three years to allow for the positive revenue impacts of the credit to begin to take hold before allowing the negative revenue impacts to occur. Longevity of the new and retained jobs would seem critical to the success of the implementation of the credit.

In the material I gave you from the Idaho Tax Commission, you will find a more current list of what other states are doing. I also, found some material by searching the internet.

I hope this is some help. If you have further question, feel free to contact me at extension 4581.

I:\Legislative_Fiscal_Division\LFD_Correspondence\LFD_Correspondence_2001\January\kitzenburg2_investmenttaxcredit.doc

NORTH CAROLINA

Credit for Investing in Machinery and Equipment

(Effective for taxable years beginning January 1, 1996 or later and applicable to property placed in service on or after August 1, 1996 unless otherwise noted.

Eligibility

If a taxpayer that has purchased *(effective for taxable years beginning January 1, 1997 or later, a taxpayer must have purchased **or leased**)* machinery and equipment:

- places it in service in North Carolina during the taxable year (G.S. 105-129.9), and
- meets the eligibility requirements as recognized by the Department of Commerce; this includes meeting the wage standard, for the jobs at the location of the machinery and equipment, as determined by the Department of Commerce at the time the taxpayer applies for the credit (G.S. 105-129.4(b)), then the taxpayer is eligible for the credit.

Technology Commercialization Credit Option *(Effective for taxable year beginning on or after January 1, 2000)*

A taxpayer that is eligible for investing in machinery and equipment (7% credit), and also qualifies for the technology commercialization credit (15% or 20% credit) with respect to the same machinery and equipment may choose to take one of the technology credits instead of the credit allowed under this section. A taxpayer that qualifies for each credit may take either credit, but may only take one credit with respect to the same machinery and equipment. (G.S. 105-129.(a1))

Purchase or Lease

In taxable years beginning on or after January 1, 1996, but before January 1, 1997, taxpayers who *purchased* machinery and equipment and put it into service on or after August 1, 1996 were allowed a credit, but taxpayers who *leased* such machinery and equipment were not allowed a credit. The 1997 amendment to G.S. 105-129.9 provided that the credit previously allowed only to purchasers would also be allowed to lessees.

Types of Leases

Whether or not leased machinery and equipment qualifies for the credit will depend on the type of lease. For example, machinery and equipment leased under a capitalized lease would qualify for the credit, but machinery and equipment leased under an operating lease would not qualify.

Definition of Machinery and Equipment

Effective for taxable years beginning on or after January 1, 1999 machinery and equipment is defined under G.S. 105-129.2(10) as,

"Engines, machinery, equipment, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333."

SUMMARY OF SB 93
AN ACT PROVIDING FOR A GENERAL INVESTMENT TAX CREDIT…

Sec. No.	Section Description	What the Section Does?
1	Amends 15-30-161 to redefine the purpose of the investment tax credit.	Provides that the purpose of the following section is to broaden the application of an investment tax credit to more businesses to take the credit. The existing credit is limited to small businesses.
2	Amends 15-30-162 to provide that an investment tax credit be allowed against individual income tax.	Reaffirms that an investment tax credit is allowed against individual income tax. It strikes the language that describes the tax credit and its limits and the criteria for taking the credit. It adds language that refers the reader to 15-31-123 for the description and criteria. In effect, it simply avoids some redundant language.
3	Amends 15-31-123, relating to corporation taxes to broaden the application of the credit to all business, not just small business; and it describes the tax and the criteria that must be met in order to take the credit.	• Removes the criteria that limited the tax credit to small businesses; • Describes investments that qualify for the credit, tying it to a large degree to descriptions in specific sections of Internal Revenue Code; • Lists the criteria for qualifying for the credit; • Provides that the credit would be 3% of the amount of qualified investment, that the credit cannot exceed 45% of the tax liability of the taxpayer for that year, and allows for a carry-forward of the credit if it exceeds the allowable percentage; and • Provides that credit is subject to recapture under certain circumstances.
4	Provides effective date and applicability date.	Bill is effective upon passage and approval, and the credit provisions are effective January 1, 2002. The Department of Revenue may proceed to adopt rules but the rules cannot be effective before January 1, 2002.

The economy remains the important issue. However, we have seen a slight increase in concern about education, and the environment.

"And, what would you say is the single MOST important problem facing you and your family today, that is, the one that you, yourself, are most concerned about?"