

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

H

D

HOUSE DRH45135-LC-122 (5/6)

Short Title: Expand Qualified Business Credit. (Public)

Sponsors: Representative G. Allen.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE QUALIFIED BUSINESS INVESTMENTS TAX CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.015 reads as rewritten:

"§ **105-163.015. Sunset.**

This Part is repealed effective for investments made on or after January 1, 2004.2010."

SECTION 2. G.S. 105-163.010 is amended by adding the following new subdivisions to read:

"§ **105-163.010. Definitions.**

The following definitions apply in this Part:

...

(7b) Qualified business. – A qualified business venture, a qualified grantee business, or a qualified licensee business.

...

(9a) Qualified licensee business. – A business that is registered with the Secretary of State under G.S. 105-163.013 and has been certified by a constituent institution of The University of North Carolina or a research university as currently performing under a licensing agreement with the institution or university for the purpose of commercializing technology developed at the institution or university. For the purpose of this section, a research university is an institution of higher education classified as a Research I university in the most recent edition of "A Classification of Institutions of Higher Education", the official report of The Carnegie Foundation for the Advancement of Teaching."

1 **SECTION 3.** G.S. 105-163.012 reads as rewritten:

2 "**§ 105-163.012. Limit; carry-over; ceiling; reduction in basis.**

3 (a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the
4 amount of income tax imposed by Part 2 of this Article for the taxable year reduced by
5 the sum of all other credits allowable except tax payments made by or on behalf of the
6 taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried
7 forward for the next five succeeding years. The fifty thousand dollar (\$50,000)
8 limitation on the amount of credit allowed a taxpayer under G.S. 105-163.011 does not
9 apply to unused amounts carried forward under this subsection.

10 (b) The total amount of all tax credits allowed to taxpayers under G.S.
11 105-163.011 for investments made in a calendar year may not exceed ~~six million dollars~~
12 ~~(\$6,000,000)~~. the applicable maximum provided in the table at the end of this subsection.
13 The Secretary of Revenue shall calculate the total amount of tax credits claimed from
14 the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits
15 claimed for investments made in a calendar year exceeds ~~six million dollars~~
16 ~~(\$6,000,000)~~, the applicable maximum for that year, the Secretary shall allow a portion
17 of the credits claimed by allocating a total of ~~six million dollars (\$6,000,000)~~ amount
18 equal to the applicable maximum in tax credits in proportion to the size of the credit
19 claimed by each taxpayer.

<u>Year</u>	<u>Maximum</u>
<u>Before 2005</u>	<u>\$ 6,000,000</u>
<u>2005</u>	<u>8,000,000</u>
<u>2006</u>	<u>10,000,000</u>
<u>After 2006</u>	<u>12,000,000</u>

25 (c) If a credit claimed under G.S. 105-163.011 is reduced as provided in this
26 section, the Secretary shall notify the taxpayer of the amount of the reduction of the
27 credit on or before December 31 of the year following the calendar year in which the
28 investment was made. The Secretary's allocations based on applications filed pursuant
29 to G.S. 105-163.011(c) are final and shall not be adjusted to account for credits applied
30 for but not claimed.

31 (d) The taxpayer's basis in the equity securities or subordinated debt acquired as a
32 result of an investment in a qualified ~~business venture or qualified grantee~~-business shall
33 be reduced for the purposes of this Article by the amount of allowable credit.
34 "Allowable credit" means the amount of credit allowed under G.S. 105-163.011 reduced
35 as provided in subsection (c) of this section."

36 **SECTION 4.** G.S. 105-163.011 reads as rewritten:

37 "**§ 105-163.011. Tax credits allowed.**

38 (a) No Credit for Brokered Investments. – No credit is allowed under this section
39 for a purchase of equity securities or subordinated debt if a broker's fee or commission
40 or other similar remuneration is paid or given directly or indirectly for soliciting the
41 purchase.

42 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
43 individual who purchases the equity securities or subordinated debt of a qualified
44 ~~business venture or a qualified grantee~~-business directly from that business is allowed as

1 a credit against the tax imposed by Part 2 of this Article for the taxable year an amount
2 equal to twenty-five percent (25%) of the amount invested. The aggregate amount of
3 credit allowed an individual for one or more investments in a single taxable year under
4 this Part, whether directly or indirectly as owner of a pass-through entity, may not
5 exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in
6 which the investment is made but shall be taken for the taxable year beginning during
7 the calendar year in which the application for the credit becomes effective as provided
8 in subsection (c) of this section.

9 (b1) Pass-Through Entities. – This subsection does not apply to a pass-through
10 entity that has committed capital under management in excess of five million dollars
11 (\$5,000,000) or to a pass-through entity that is a qualified ~~grantee business, a qualified~~
12 ~~business venture, business~~ or a North Carolina Enterprise Corporation. Subject to the
13 limitations provided in G.S. 105-163.012, a pass-through entity that purchases the
14 equity securities or subordinated debt of a qualified ~~grantee business or a qualified~~
15 ~~business venture business~~ directly from the business is eligible for a tax credit equal to
16 twenty-five percent (25%) of the amount invested. The aggregate amount of credit
17 allowed a pass-through entity for one or more investments in a single taxable year under
18 this Part, whether directly or indirectly as owner of another pass-through entity, may not
19 exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not
20 eligible for the credit for the year in which the investment by the pass-through entity is
21 made but shall be eligible for the credit for the taxable year beginning during the
22 calendar year in which the application for the credit becomes effective as provided in
23 subsection (c) of this section.

24 Each individual who is an owner of a pass-through entity is allowed as a credit
25 against the tax imposed by Part 2 of this Article for the taxable year an amount equal to
26 the owner's allocated share of the credits for which the pass-through entity is eligible
27 under this subsection. The aggregate amount of credit allowed an individual for one or
28 more investments in a single taxable year under this Part, whether directly or indirectly
29 as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

30 If an owner's share of the pass-through entity's credit is limited due to the maximum
31 allowable credit under this section for a taxable year, the pass-through entity and its
32 owners may not reallocate the unused credit among the other owners.

33 (c) Application. – To be eligible for the tax credit provided in this section, the
34 taxpayer must file an application for the credit with the Secretary on or before April 15
35 of the year following the calendar year in which the investment was made. The
36 Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon
37 the request of the taxpayer, except that the application may not be filed after September
38 15 of the year following the calendar year in which the investment was made. An
39 application is effective for the year in which it is timely filed. The application shall be
40 on a form prescribed by the Secretary and shall include any supporting documentation
41 that the Secretary may require. If an investment for which a credit is applied for was
42 paid for other than in money, the taxpayer shall include with the application a certified
43 appraisal of the value of the property used to pay for the investment. The application for

1 a credit for an investment made by a pass-through entity must be filed by the
2 pass-through entity.

3 (d) Penalties. – The penalties provided in G.S. 105-236 apply in this Part."

4 **SECTION 5.** G.S. 105-163.013 reads as rewritten:

5 **"§ 105-163.013. Registration.**

6 (a) Repealed by Session Laws 1993, c. 443, s. 4.

7 (b) Qualified Business Ventures. – In order to qualify as a qualified business
8 venture under this Part, a business must be registered with the Securities Division of the
9 Department of the Secretary of State. To register, the business must file with the
10 Secretary of State an application and any supporting documents the Secretary of State
11 may require from time to time to determine that the business meets the requirements for
12 registration as a qualified business venture. A business meets the requirements for
13 registration as a qualified business venture if all of the following are true as of the date
14 the business files the required application:

15 (1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

16 (1a) Reserved for future codification purposes.

17 (1b) Either (i) it was organized after January 1 of the calendar year in which
18 its application is filed or (ii) during its most recent fiscal year before
19 filing the application, it had gross revenues, as determined in
20 accordance with generally accepted accounting principles, of five
21 million dollars (\$5,000,000) or less on a consolidated basis.

22 (2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

23 (3) It is organized to engage primarily in manufacturing, processing,
24 warehousing, wholesaling, research and development, or a
25 service-related industry.

26 (4) It does not engage as a substantial part of its business in any of the
27 following:

28 a. Providing a professional service as defined in Chapter 55B of
29 the General Statutes.

30 b. Construction or contracting.

31 c. Selling or leasing at retail.

32 d. The purchase, sale, or development, or purchasing, selling, or
33 holding for investment of commercial paper, notes, other
34 indebtedness, financial instruments, securities, or real property,
35 or otherwise make investments.

36 e. Providing personal grooming or cosmetics services.

37 f. Offering any form of entertainment, amusement, recreation, or
38 athletic or fitness activity for which an admission or a
39 membership is charged.

40 (5) It was not formed for the primary purpose of acquiring all or part of
41 the stock or assets of one or more existing businesses.

42 (6) It is not a real estate-related business.

43 The effective date of registration for a qualified business venture whose application
44 is accepted for registration is 60 days before the date its application is filed. No credit is

1 allowed under this Part for an investment made before the effective date of the
2 registration or after the registration is revoked. For the purpose of this Article, if a
3 taxpayer's investment is placed initially in escrow conditioned upon other investors'
4 commitment of additional funds, the date of the investment is the date escrowed funds
5 are transferred to the qualified business venture free of the condition.

6 To remain qualified as a qualified business venture, the business must renew its
7 registration annually as prescribed by rule by filing a financial statement for the most
8 recent fiscal year showing gross revenues, as determined in accordance with generally
9 accepted accounting principles, of five million dollars (\$5,000,000) or less on a
10 consolidated basis and an application for renewal in which the business certifies the
11 facts required in the original application.

12 Failure of a qualified business venture to renew its registration by the applicable
13 deadline shall result in revocation of its registration effective as of the next day after the
14 renewal deadline, but shall not result in forfeiture of tax credits previously allowed to
15 taxpayers who invested in the business except as provided in G.S. 105-163.014. The
16 Secretary of State shall send the qualified business venture notice of revocation within
17 60 days after the renewal deadline. A qualified business venture may apply to have its
18 registration reinstated by the Secretary of State by filing an application for
19 reinstatement, accompanied by the reinstatement application fee and a late filing penalty
20 of one thousand dollars (\$1,000), within 30 days after receipt of the revocation notice
21 from the Secretary of State. A business that seeks approval of a new application for
22 registration after its registration has been revoked must also pay a penalty of one
23 thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had
24 not been revoked.

25 If the gross revenues of a qualified business venture exceed five million dollars
26 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing
27 of this fact by filing a financial statement showing the revenues of the business for that
28 year.

29 (c) Qualified Grantee Businesses and Qualified Licensee Businesses. – In order
30 to qualify as a qualified grantee business or a qualified licensee business under this Part,
31 a business must be registered with the Securities Division of the Department of the
32 Secretary of State. To register, the business must file with the Secretary of State an
33 application and any supporting documents the Secretary of State may require from time
34 to time to determine that the business meets the requirements for registration as a
35 qualified grantee business or a qualified licensee business. The requirements for
36 registration as a qualified grantee business or a qualified licensee business are set out in
37 G.S. 105-163.010, G.S. 105-163.010(9).

38 The effective date of registration for a qualified grantee business or a qualified
39 licensee business whose application is accepted for registration is the filing date of its
40 application. No credit is allowed under this Part for an investment made before the
41 effective date of the registration or after the registration is revoked.

42 To remain qualified as a qualified grantee business or a qualified licensee business,
43 the business must renew its registration annually as prescribed by rule by filing an
44 application for renewal in which the business certifies the facts ~~listed in this~~

1 ~~subsection demonstrating that it continues to meet the applicable requirements for~~
2 ~~qualification.~~

3 (d) Application Forms; Rules; Fees. – Applications for registration, renewal of
4 registration, and reinstatement of registration under this section shall be in the form
5 required by the Secretary of State. The Secretary of State may, by rule, require
6 applicants to furnish supporting information in addition to the information required by
7 subsections (b) and (c) of this section. The Secretary of State may adopt rules in
8 accordance with Chapter 150B of the General Statutes that are needed to carry out the
9 Secretary's responsibilities under this Part. The Secretary of State shall prepare blank
10 forms for the applications and shall distribute them throughout the State and furnish
11 them on request. Each application shall be signed by the owners of the business or, in
12 the case of a corporation, by its president, vice-president, treasurer, or secretary. There
13 shall be annexed to the application the affirmation of the person making the application
14 in the following form: "Under penalties prescribed by law, I certify and affirm that to
15 the best of my knowledge and belief this application is true and complete." A person
16 who submits a false application is guilty of a Class 1 misdemeanor.

17 The fee for filing an application for registration under this section is one hundred
18 dollars (\$100.00). The fee for filing an application for renewal of registration under this
19 section is fifty dollars (\$50.00). The fee for filing an application for reinstatement of
20 registration under this section is fifty dollars (\$50.00).

21 An application for renewal of registration under this section ~~shall~~ must indicate
22 whether the applicant is a minority business, as defined in G.S. 143-128, and ~~shall~~
23 include a report of the number of jobs the business created during the preceding year
24 that are attributable to investments that qualify under this section for a tax credit and the
25 average wages paid by each job. An application that does not contain this information is
26 incomplete and the applicant's registration may not be renewed until the information is
27 provided.

28 (e) Revocation of Registration. – If the Securities Division of the Department of
29 the Secretary of State finds that any of the information contained in an application of a
30 business registered under this section is false, it shall revoke the registration of the
31 business. The Secretary of State shall not revoke the registration of a business solely
32 because it ceases business operations for an indefinite period of time, as long as the
33 business renews its registration each year as required under ~~G.S. 105-163.013~~ this
34 section.

35 (f) Transfer of Registration. – A registration as a qualified ~~business venture or~~
36 ~~qualified grantee~~ business may not be sold or otherwise transferred, except that if a
37 qualified ~~business venture or qualified grantee~~ business enters into a merger,
38 conversion, consolidation, or other similar transaction with another business and the
39 surviving company would otherwise meet the criteria for being a qualified ~~business~~
40 ~~venture or qualified grantee~~ business, the surviving company retains the registration
41 without further application to the Secretary of State. In such a case, the qualified
42 ~~business venture or qualified grantee~~ business ~~shall~~ must provide the Secretary of State
43 with written notice of the merger, conversion, consolidation, or similar transaction and

1 the name, address, and jurisdiction of incorporation or organization of the surviving
2 company.

3 (g) Report by Secretary of State. – The Secretary of State shall report to the
4 Revenue Laws Study Committee by October 1 of each year all of the businesses that
5 have registered with the Secretary of State as qualified business ~~ventures~~ventures,
6 qualified licensee businesses, and qualified grantee businesses. The report shall include
7 the name and address of each business, the location of its headquarters and principal
8 place of business, a detailed description of the types of business in which it engages,
9 whether the business is a minority business as defined in G.S. 143-128, the number of
10 jobs created by the business during the period covered by the report, and the average
11 wages paid by these jobs."

12 **SECTION 6.** G.S. 105-163.014 reads as rewritten:

13 "**§ 105-163.014. Forfeiture of credit.**

14 (a) Participation in Business. – A taxpayer who has received a credit under this
15 Part for an investment in a qualified ~~business venture~~ or ~~qualified grantee~~ business
16 forfeits the credit if, within three years after the investment was made, the taxpayer
17 participates in the operation of the qualified ~~business venture~~ or ~~qualified grantee~~
18 business. For the purpose of this section, a taxpayer participates in the operation of a
19 qualified ~~business venture~~ or a ~~qualified grantee~~ business if the taxpayer, the taxpayer's
20 spouse, parent, sibling, or child, or an employee of any of these individuals or of a
21 business controlled by any of these individuals, provides services of any nature to the
22 qualified ~~business venture~~ or ~~qualified grantee~~ business for compensation, whether as an
23 employee, a contractor, or otherwise. However, a person who provides services to a
24 qualified ~~business venture~~ or a ~~qualified grantee~~ business, whether as an officer, a
25 member of the board of directors, or otherwise does not participate in its operation if the
26 person receives as compensation only reasonable reimbursement of expenses incurred in
27 providing the services, participation in a stock option or stock bonus plan, or both.

28 (b) False Application. – A taxpayer who has received a credit under this Part for
29 an investment in a qualified ~~business venture~~ or a ~~qualified grantee~~ business forfeits the
30 credit if the registration of the qualified ~~business venture~~ or ~~qualified grantee~~ business is
31 revoked because information in the registration application was false at the time the
32 application was filed with the Secretary of State.

33 (c) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

34 (d) Transfer or Redemption of Investment. – A taxpayer who has received a
35 credit under this Part for an investment in a qualified ~~business venture~~ or a ~~qualified~~
36 ~~grantee~~ business forfeits the credit in the following cases:

37 (1) Within one year after the investment was made, the taxpayer transfers
38 any of the securities received in the investment that qualified for the
39 tax credit to another person or entity, other than in a transfer resulting
40 from one of the following:

41 a. The death of the taxpayer.

42 b. A final distribution in liquidation to the owners of a taxpayer
43 that is a corporation or other entity.

1 c. A merger, conversion, consolidation, or similar transaction
2 requiring approval by the owners of the qualified ~~business~~
3 ~~venture or qualified grantee~~ business under applicable State
4 law, to the extent the taxpayer does not receive cash or tangible
5 property in the merger, conversion, consolidation, or other
6 similar transaction.

7 (2) Except as provided in subsection (d1) of this section, within five years
8 after the investment was made, the qualified ~~business venture or~~
9 ~~qualified grantee~~ business in which the investment was made makes a
10 redemption with respect to the securities received in the investment.

11 In the event the taxpayer transfers fewer than all the securities in a manner that
12 would result in a forfeiture, the amount of the credit that is forfeited is the product
13 obtained by multiplying the aggregate credit attributable to the investment by a fraction
14 whose numerator equals the number of securities transferred and whose denominator
15 equals the number of securities received on account of the investment to which the
16 credit was attributable. In addition, if the redemption amount is less than the amount
17 invested by the taxpayer in the securities to which the redemption is attributable, the
18 amount of the credit that is forfeited is further reduced by multiplying it by a fraction
19 whose numerator equals the redemption amount and whose denominator equals the
20 aggregate amount invested by the taxpayer in the securities involved in the redemption.
21 The term "redemption amount" means all amounts paid that are treated as a distribution
22 in part or full payment in exchange for securities under section 302(a) of the Code.

23 (d1) Certain Redemptions Allowed. – Forfeiture of a credit does not occur under
24 this section if a qualified business venture that engages primarily in motion picture film
25 production makes a redemption with respect to securities received in an investment and
26 the following conditions are met:

- 27 (1) The redemption occurred because the qualified business venture
28 completed production of a film, sold the film, and was liquidated.
29 (2) Neither the qualified business venture nor a related person continues to
30 engage in business with respect to the film produced by the qualified
31 business venture.

32 (e) Effect of Forfeiture. – A taxpayer who forfeits a credit under this section is
33 liable for all past taxes avoided as a result of the credit plus interest at the rate
34 established under G.S. 105-241.1(i), computed from the date the taxes would have been
35 due if the credit had not been allowed. The past taxes and interest are due 30 days after
36 the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by
37 the due date is subject to the penalties provided in G.S. 105-236."

38 **SECTION 7.** This act becomes effective for taxable years beginning on or
39 after January 1, 2004.