

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 487

Short Title: Amend Business Investment Credits.

(Public)

Sponsors: Representative Anderson.

Referred to: Finance.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW ALLOWING TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.010(6) is repealed.

Sec. 2. G.S. 105-163.011 reads as rewritten:

"§ 105-163.011. Tax credits allowed.

(a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a corporation that invests in the equity securities of a ~~North Carolina Capital Resource Corporation, a North Carolina Enterprise Corporation, Corporation~~ or a qualified investment organization is allowed as a credit against the income tax imposed by Division I of this Article, the franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122, or the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or seven hundred fifty thousand dollars (\$750,000), whichever is less. The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made.

(b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an individual who invests in the equity securities or subordinated debt of (i) ~~a North Carolina Capital Resource Corporation, (ii)~~ a qualified investment organization, ~~(iii)~~ (ii) a qualified business venture, ~~(iv)~~ (iii) a qualified grantee business, or ~~(v)~~ (iv) a North Carolina Enterprise Corporation is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent

1 (25%) of the amount invested or one hundred thousand dollars (\$100,000), whichever is
2 less. The credit may not be taken for the year in which the investment is made but shall
3 be taken for the taxable year beginning during the calendar year following the calendar
4 year in which the investment was made.

5 (c) Application. – To be eligible for the tax credit provided in this section, the
6 taxpayer must file an application for the credit with the Secretary of Revenue on or
7 before April 15 of the year following the calendar year in which the investment was
8 made. The application shall be on a form prescribed by the Secretary and shall include
9 any supporting documentation that the Secretary may require.

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

11 Sec. 3. G.S. 105-163.012(b) reads as rewritten:

12 "(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-
13 163.011 for investments made in a calendar year may not exceed twelve million dollars
14 (\$12,000,000). The Secretary of Revenue shall calculate the total amount of tax credits
15 claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount
16 of tax credits claimed for investments made in a calendar year exceeds twelve million
17 dollars (\$12,000,000), the Secretary shall allow a portion of the credits claimed on the
18 following basis:

19 (1) A total of six million dollars (\$6,000,000) in tax credits for
20 investments in North Carolina Enterprise Corporations ~~or North~~
21 ~~Carolina Capital Resource Corporations~~ shall be allocated among all
22 taxpayers claiming the credits in proportion to the size of the credit
23 claimed by each taxpayer.

24 (2) A total of six million dollars (\$6,000,000) in tax credits for
25 investments in qualified investment organizations, qualified business
26 ventures, and qualified grantee businesses shall be allocated among all
27 taxpayers claiming the credits in proportion to the size of the credit
28 claimed by each taxpayer.

29 (3) If the total amount of the credits claimed by taxpayers for the
30 investments described in either subdivision (1) or (2) is less than six
31 million dollars (\$6,000,000), the Secretary shall allow additional
32 credits for the investments described in the other subdivision until the
33 total amount of all tax credits allowed equals twelve million dollars
34 (\$12,000,000)."

35 Sec. 4. G.S. 105-163.013 reads as rewritten:

36 "**§ 105-163.013. Registration.**

37 (a) Qualified Investment Organizations. – In order to qualify as a qualified
38 investment organization under this Division, a business must be registered with the
39 Securities Division of the Department of the Secretary of State. To register, the
40 business must file with the Secretary of State an application in which the business
41 certifies the following facts:

42 (1) It intends to invest at least seventy percent (70%) of its capital in
43 equity securities or subordinated debt of qualified business ventures or
44 qualified grantee businesses;

- 1 (2) It has an initial capitalization of at least five million dollars
2 (\$5,000,000), of which no more than two million dollars (\$2,000,000)
3 is to be contributed pursuant to binding commitments;
4 (3) It does not own the securities of any business for the purpose of
5 operating the business or for any purpose other than as an investment
6 for future sale;
7 (4) It is controlled by a financial institution or is not controlled by another
8 business; and
9 (5) It was not organized to invest in only one business or one group of
10 businesses that conduct the same or a similar type of business activity.

11 To remain qualified as a qualified investment organization under this Division, the
12 business must renew its registration annually as prescribed by rule by filing an
13 application for renewal in which the business certifies the facts required in the original
14 application and describes its investments in qualified business ventures and qualified
15 grantee businesses. Upon termination of the qualified investment organization, it shall
16 file a final report describing its investments in qualified business ventures and qualified
17 grantee businesses and certifying that it invested at least seventy percent (70%) of its
18 capital in equity securities or subordinated debt of such businesses.

19 If a qualified business venture in which the qualified investment organization has
20 invested fails to file an application for renewal of registration under subsection (b) of
21 this section or if the registration of the qualified business venture is revoked by the
22 Secretary of State, any investment by the qualified investment organization in the
23 business venture within five years after the qualified investment organization's initial
24 investment in the business venture is, for the purpose of this Division, an investment in
25 a qualified business venture.

26 (b) Qualified Business Ventures. – In order to qualify as a qualified business
27 venture under this Division, a business must be registered with the Securities Division
28 of the Department of the Secretary of State. To register, the business must file with the
29 Secretary of State a financial statement certified by an independent certified public
30 accountant for its most recent fiscal year showing revenues, as determined in
31 accordance with generally accepted accounting procedures, of five million dollars
32 (\$5,000,000) or less on a consolidated basis and an application in which it certifies the
33 following facts:

- 34 (1) Its headquarters and principal business operations are in North
35 Carolina or it has, as a condition of an investment eligible for a credit
36 under this Division, agreed to establish its headquarters and principal
37 business operations in North Carolina within three months after the
38 investment is made;
39 (2) It has, as a condition of an investment eligible for a credit under this
40 Division, agreed to retain its headquarters and principal business
41 operations in North Carolina for at least three years after the
42 investment is made;

- 1 (3) It is organized to engage primarily in manufacturing, processing,
2 warehousing, wholesaling, research and development, or a service-
3 related industry; and
- 4 (4) It does not engage as a substantial part of its business in construction,
5 contracting, selling goods at retail, or the purchase, sale, development,
6 or holding for investment of commercial paper, financial instruments,
7 securities, or real property, or otherwise make investments.

8 To remain qualified as a qualified business venture, the business must renew its
9 registration annually as prescribed by rule by filing a financial statement for the most
10 recent fiscal year showing revenues, as determined in accordance with generally
11 accepted accounting procedures, of five million dollars (\$5,000,000) or less on a
12 consolidated basis and an application for renewal in which the business certifies the
13 facts required in the original application and that it has not moved its headquarters or
14 principal business operations out of North Carolina.

15 If the revenues of a qualified business venture exceed five million dollars
16 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing
17 of this fact by filing a financial statement showing the revenues of the business for that
18 year.

19 (c) Qualified Grantee Businesses. – In order to qualify as a qualified grantee
20 business under this Division, a business must be registered with the Securities Division
21 of the Department of the Secretary of State. To register, the business must file with the
22 Secretary of State an application in which the business certifies the following facts:

- 23 (1) Its headquarters and principal business operations are in North
24 Carolina or it has, as a condition of an investment eligible for a credit
25 under this Division, agreed to establish its headquarters and principal
26 business operations in North Carolina within three months after the
27 investment is made;
- 28 (2) It has, as a condition of an investment eligible for a credit under this
29 Division, agreed to retain its headquarters and principal business
30 operations in North Carolina for at least three years after the
31 investment is made; and
- 32 (3) It has received during the preceding three years a grant or other
33 funding from the North Carolina Technological Development
34 Authority, the North Carolina Biotechnology Center, the
35 Microelectronics Center of North Carolina, or the Federal Small
36 Business Innovation Research Program.

37 To remain qualified as a qualified grantee business, the business must renew its
38 registration annually as prescribed by rule by filing an application for renewal in which
39 the business certifies the facts ~~required in the original application and that it has not moved~~
40 ~~its headquarters or principal business operations out of North Carolina.~~ listed in this
41 subsection.

42 (d) Application Forms; Rules; Fees. – Applications for registration and for
43 renewal of registration under this section shall be in such form as the Secretary of State
44 may prescribe. The Secretary may, by rule, require applicants to furnish supporting

1 information in addition to the information required by subsections (a), (b), and (c) of
2 this section. The Secretary may adopt, amend, suspend, and repeal rules, forms, and
3 orders as necessary to carry out the Secretary's responsibilities under this Division.
4 These rules, forms, and orders may include reports and definitions of terms, whether or
5 not used in this Division, as long as the definitions are not inconsistent with the
6 provisions of this Division. The Secretary shall prepare blank forms for the applications
7 and shall distribute them throughout the State and furnish them on request. Each
8 application shall be signed by the owners of the business or, in the case of a corporation,
9 by its president, vice-president, treasurer, or secretary. There shall be annexed to the
10 application the affirmation of the person making the application in the following form:
11 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge
12 and belief this application is true and complete.'

13 The fee for filing an application for registration under this section shall be one
14 hundred dollars (\$100.00). The fee for filing an application for renewal of registration
15 under this section shall be fifty dollars (\$50.00).

16 (e) Revocation of Registration. – If the Securities Division of the Department of
17 the Secretary of State finds that any of the information contained in an application of a
18 business registered under this section is false, it shall revoke the registration of the
19 business."

20 Sec. 5. G.S. 105-163.014 reads as rewritten:

21 "**§ 105-163.014. Forfeiture of credit.**

22 ~~If the Commissioner of Banks certifies that a North Carolina Capital Resource~~
23 ~~Corporation has failed to comply with the requirements of Article 2 of Chapter 53A of~~
24 ~~the General Statutes, every taxpayer who has received a tax credit under this Division~~
25 ~~for an investment in the corporation made during the preceding five years forfeits the~~
26 ~~credit.—If a qualified investment organization fails to file an application for renewal of~~
27 ~~registration under G.S. 105-163.094 or if its registration is revoked by the Secretary of~~
28 ~~State, every taxpayer who has received a tax credit under this Division for an~~
29 ~~investment in the organization made during the preceding five years forfeits the credit.~~

30 A taxpayer who has received a tax credit under this Division for an investment in a
31 qualified business venture or qualified grantee business forfeits the credit if, within
32 three years after the investment was made, (i) he participates in the operation of the
33 qualified business venture or qualified grantee business, (ii) except as provided in the
34 following paragraph, the qualified business venture or qualified grantee business fails to
35 file an application for renewal of registration under G.S. 105-163.094, or (iii) the
36 registration of the qualified business venture or qualified grantee business is revoked by
37 the Secretary of State. For the purpose of this section, a taxpayer participates in the
38 operation of a qualified business if the taxpayer, his spouse, parent, or child, or an
39 employee of any of these individuals or of a business controlled by any of these
40 individuals, provides services of any nature to the qualified business for compensation,
41 whether as an employee, a contractor, or otherwise. However, a person who serves as a
42 member of the board of directors of a business does not participate in its operation if he
43 performs only the functions ordinarily performed by directors and receives as
44 compensation only reasonable reimbursement of expenses incurred in serving as a

1 director. A person who owns stock in a business does not participate in its operation if
2 he performs only the functions ordinarily performed by shareholders.

3 A taxpayer who has received a credit under this Division for an investment in a
4 qualified business venture does not forfeit the credit if the business is unable to renew
5 its registration solely for the reason that in its most recent fiscal year, its revenues
6 exceeded five million dollars (\$5,000,000). A taxpayer who has received a credit under
7 this Division for an investment in a qualified grantee business does not forfeit the credit
8 if the business is unable to renew its registration solely for the reason that its receipt of
9 the grant or funding referred to in G.S. 105-163.013(c)(3) occurred more than three
10 years prior to the date on which the business would have been required to renew its
11 registration.

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

18 Sec. 6. This act is effective upon ratification.