

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 487
Second Edition Engrossed 6/28/91

Short Title: Amend Business Investment Credits.

(Public)

Sponsors: Representative Anderson.

Referred to: Finance.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW ALLOWING TAX CREDITS FOR QUALIFIED
3 BUSINESS INVESTMENTS.

4 The General Assembly of North Carolina enacts:

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 G.S. 105-163.010(6) is repealed.

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

7 "**§ 105-163.011. Tax credits allowed.**

8 (a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a
9 corporation that invests in the equity securities of a ~~North Carolina Capital Resource~~
10 ~~Corporation, a North Carolina Enterprise Corporation, Corporation~~ or a qualified
11 investment organization is allowed as a credit against the income tax imposed by
12 Division I of this Article, the franchise tax imposed by G.S. 105-116, 105-120.2, and
13 105-122, or the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 for
14 the taxable year an amount equal to twenty-five percent (25%) of the amount invested
15 or seven hundred fifty thousand dollars (\$750,000), whichever is less. The credit may
16 not be taken for the year in which the investment is made but shall be taken for the
17 taxable year beginning during the calendar year following the calendar year in which
18 the investment was made.

19 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
20 individual who invests in the equity securities or subordinated debt of (i) ~~a North~~
21 ~~Carolina Capital Resource Corporation, (ii) a qualified investment organization, (iii) (ii) a~~
22 ~~qualified business venture, (iv) (iii) a qualified grantee business, or (v) (iv) a North~~
23 ~~Carolina Enterprise Corporation~~ is allowed as a credit against the tax imposed by

1 Division II of this Article for the taxable year an amount equal to twenty-five percent
2 (25%) of the amount invested or one hundred thousand dollars (\$100,000), whichever is
3 less. The credit may not be taken for the year in which the investment is made but shall
4 be taken for the taxable year beginning during the calendar year following the calendar
5 year in which the investment was made.

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

11 (d) Penalties. – The penalties provided in G.S. 105-236 apply in this Division."
12 Sec. 3. G.S. 105-163.012(b) reads as rewritten:

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

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

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

30 (3) If the total amount of the credits claimed by taxpayers for the
31 investments described in either subdivision (1) or (2) is less than six
32 million dollars (\$6,000,000), the Secretary shall allow additional
33 credits for the investments described in the other subdivision until the
34 total amount of all tax credits allowed equals twelve million dollars
35 (\$12,000,000)."

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

37 "**§ 105-163.013. Registration.**

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

- 1 (1) It intends to invest at least seventy percent (70%) of its capital in
2 equity securities or subordinated debt of qualified business ventures or
3 qualified grantee businesses;
- 4 (2) It has an initial capitalization of at least five million dollars
5 (\$5,000,000), of which no more than two million dollars (\$2,000,000)
6 is to be contributed pursuant to binding commitments;
- 7 (3) It does not own the securities of any business for the purpose of
8 operating the business or for any purpose other than as an investment
9 for future sale;
- 10 (4) It is controlled by a financial institution or is not controlled by another
11 business; and
- 12 (5) It was not organized to invest in only one business or one group of
13 businesses that conduct the same or a similar type of business activity.

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

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

29 (b) Qualified Business Ventures. – In order to qualify as a qualified business
30 venture under this Division, a business must be registered with the Securities Division
31 of the Department of the Secretary of State. To register, the business must file with the
32 Secretary of State a financial statement certified by an independent certified public
33 accountant for its most recent fiscal year showing revenues, as determined in
34 accordance with generally accepted accounting procedures, of five million dollars
35 (\$5,000,000) or less on a consolidated basis and an application in which it certifies the
36 following facts:

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

1 operations in North Carolina for at least three years after the
2 investment is made;

3 (3) It is organized to engage primarily in manufacturing, processing,
4 warehousing, wholesaling, research and development, or a service-
5 related industry; and

6 (4) It does not engage as a substantial part of its business in construction,
7 contracting, selling goods at retail, or the purchase, sale, development,
8 or holding for investment of commercial paper, financial instruments,
9 securities, or real property, or otherwise make investments.

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

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

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

25 (1) Its headquarters and principal business operations are in North
26 Carolina or it has, as a condition of an investment eligible for a credit
27 under this Division, agreed to establish its headquarters and principal
28 business operations in North Carolina within three months after the
29 investment is made;

30 (2) It has, as a condition of an investment eligible for a credit under this
31 Division, agreed to retain its headquarters and principal business
32 operations in North Carolina for at least three years after the
33 investment is made; and

34 (3) It has received during the preceding three years a grant or other
35 funding from the North Carolina Technological Development
36 Authority, the North Carolina Biotechnology Center, the
37 Microelectronics Center of North Carolina, or the Federal Small
38 Business Innovation Research Program.

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

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

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

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

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

22 "**§ 105-163.014. Forfeiture of credit.**

23 ~~If the Commissioner of Banks certifies that a North Carolina Capital Resource~~
24 ~~Corporation has failed to comply with the requirements of Article 2 of Chapter 53A of~~
25 ~~the General Statutes, every taxpayer who has received a tax credit under this Division~~
26 ~~for an investment in the corporation made during the preceding five years forfeits the~~
27 ~~credit.—If a qualified investment organization fails to file an application for renewal of~~
28 ~~registration under G.S. 105-163.013 or if its registration is revoked by the Secretary of~~
29 ~~State, every taxpayer who has received a tax credit under this Division for an~~
30 ~~investment in the organization made during the preceding five years forfeits the credit.~~

31 A taxpayer who has received a tax credit under this Division for an investment in a
32 qualified business venture or qualified grantee business forfeits the credit if, within
33 three years after the investment was made, (i) he participates in the operation of the
34 qualified business venture or qualified grantee business, (ii) except as provided in the
35 following paragraph, the qualified business venture or qualified grantee business fails to
36 file an application for renewal of registration under G.S. 105-163.013, or (iii) the
37 registration of the qualified business venture or qualified grantee business is revoked by
38 the Secretary of State. For the purpose of this section, a taxpayer participates in the
39 operation of a qualified business if the taxpayer, his spouse, parent, or child, or an
40 employee of any of these individuals or of a business controlled by any of these
41 individuals, provides services of any nature to the qualified business for compensation,
42 whether as an employee, a contractor, or otherwise. However, a person who serves as a
43 member of the board of directors of a business does not participate in its operation if he
44 performs only the functions ordinarily performed by directors and receives as

1 compensation only reasonable reimbursement of expenses incurred in serving as a
2 director. A person who owns stock in a business does not participate in its operation if
3 he performs only the functions ordinarily performed by shareholders.

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

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

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