

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1141\*

Short Title: Expand Business Tax Credit.

(Public)

Sponsors: Senators Kerr; Perdue, Albertson, Odom, Speed, Soles, and Seymour.

Referred to: Finance.

May 12, 1993

A BILL TO BE ENTITLED  
AN ACT TO EXPAND THE TAX CREDITS FOR QUALIFIED BUSINESS  
INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.010 reads as rewritten:

**"§ 105-163.010. Definitions.**

The following definitions apply in this Division:

(1) Affiliate. – An individual or business that controls, is controlled by, or is under common control with another individual or business.

(2) Business. – A corporation, partnership, association, or sole proprietorship operated for profit.

(2a) Consideration. - Money, but not real property, securities, tangible or intangible personal property, or services.

(3) Control. —~~To have the power directly or indirectly to direct or cause the direction of the management or policies of a business, whether by ownership of voting securities, by contract, or otherwise.~~ A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

- 1 (4) Equity security. – Common stock, preferred stock, or an interest in a  
2 partnership, or subordinated debt that is convertible into, or entitles the  
3 holder to receive upon its exercise, common stock, preferred stock, or  
4 an interest in a partnership.
- 5 (5) Financial institution. – A business that is (i) a bank holding company,  
6 as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§  
7 1841 **et seq.**, or its wholly-owned subsidiary, (ii) registered as a  
8 broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§  
9 78a **et seq.**, or its wholly-owned subsidiary, (iii) an investment  
10 company as defined in the Investment Company Act of 1940, 15  
11 U.S.C. §§ 80a-1 **et seq.**, whether or not it is required to register under  
12 that act, (iv) a small business investment company as defined in the  
13 Small Business Investment Act of 1958, 15 U.S.C. §§ 661 **et seq.**, (v)  
14 a pension or profit-sharing fund or trust, or (vi) a bank, savings  
15 institution, trust company, financial services company, or insurance  
16 company; provided, however, that a business, other than a small  
17 business investment company, is not a financial institution if its net  
18 worth, when added to the net worth of all of its affiliates, is less than  
19 ten million dollars (\$10,000,000); provided further, however, that a  
20 business is not a financial institution if it does not generally market its  
21 services to the public and it is controlled by a business that is not a  
22 financial institution.
- 23 (6) Repealed by Session Laws 1991, c. 637.
- 24 (6a) North Carolina Enterprise Corporation. – A corporation established in  
25 accordance with Article 3 of Chapter 53A of the General Statutes or a  
26 limited partnership in which a North Carolina Enterprise Corporation  
27 is the only general partner.
- 28 (6b) Pass-through entity. - An entity or business, including a limited  
29 partnership, a general partnership, a joint venture, a Subchapter S  
30 Corporation, a limited liability company, or a trust, all of which is  
31 treated as owned by individuals under the federal tax laws, in which  
32 the owners report their share of the income, losses, and credits from  
33 the entity or business on their income tax returns filed with this State.  
34 For the purpose of this Division, an owner of a pass-through entity is  
35 an individual who is treated as an owner under the federal tax laws.
- 36 (7) Qualified business venture. – A North Carolina business that (i)  
37 engages primarily in manufacturing, processing, warehousing,  
38 wholesaling, research and development, or a service-related industry,  
39 and (ii) is registered with the Secretary of State under G.S. 105-  
40 163.013.
- 41 (8) Qualified grantee business. – A North Carolina business that (i) has  
42 received during the preceding three years a grant or other funding from  
43 the North Carolina Technological Development Authority, the North  
44 Carolina Technological Development Authority, Inc., North Carolina

1 First Flight, Inc., the North Carolina Biotechnology Center, the  
2 Microelectronics Center of North Carolina, or the Federal Small  
3 Business Innovation Research Program, and (ii) is registered with the  
4 Secretary of State under G.S. 105-163.013.

5 ~~(9) Qualified investment organization. — A business that (i) has as its~~  
6 ~~primary business activity the investment in equity securities or~~  
7 ~~subordinated debt of qualified business ventures or qualified grantee~~  
8 ~~businesses and (ii) is registered with the Secretary of State under G.S.~~  
9 ~~105-163.013.~~

10 (9a) Real estate-related business. — A business that is involved in or related  
11 to the brokerage, selling, purchasing, leasing, operating, or managing  
12 of hotels, motels, nursing homes or other lodging facilities, golf  
13 courses, sports or social clubs, restaurants, storage facilities, or  
14 commercial or residential lots or buildings is a real estate-related  
15 business, except that a real estate-related business does not include (i)  
16 a business that purchases or leases real estate from others for the  
17 purpose of providing itself with facilities from which to conduct a  
18 business that is not itself a real estate-related business or (ii) a business  
19 that is not otherwise a real estate-related business but that leases,  
20 subleases, or otherwise provides to one or more other persons a  
21 number of square feet of space which in the aggregate does not exceed  
22 fifty percent (50%) of the number of square feet of space occupied by  
23 the business for its other activities.

24 (9b) Selling or leasing at retail. — A business is selling or leasing at retail if  
25 the business either (i) sells or leases any product or service of any  
26 nature from a store or other location open to the public generally or (ii)  
27 sells or leases products or services of any nature by means other than  
28 to or through one or more other businesses.

29 (9c) Service-related industry. — A business is engaged in a service-related  
30 industry, whether or not it also sells a product, if it provides services to  
31 customers or clients and does not as a substantial part of its business  
32 engage in a business described in G.S. 105-163.013(b)(4). A business  
33 is engaged as a substantial part of its business in an activity described  
34 in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all  
35 activities described in that subdivision exceed twenty-five percent  
36 (25%) of its gross revenues in any fiscal year or (ii) it is established as  
37 one of its primary purposes to engage in any activities described in that  
38 subdivision, whether or not its purposes were stated in its articles of  
39 incorporation or similar organization documents.

40 (10) Security. — A security as defined in Section 2(1) of the Securities Act  
41 of 1933, 15 U.S.C. § 77b(1).

42 (11) Subordinated debt. — Indebtedness that (i) by its terms matures five or  
43 more years after its issuance, (ii) is not secured, and (iii) is  
44 subordinated to all other indebtedness of the issuer issued or to be

1 issued to a financial institution other than a financial institution  
2 described in subdivisions (5)(ii) through (5)(v) of this section. Any  
3 portion of indebtedness that matures earlier than five years after its  
4 issuance is not subordinated debt."

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

6 **"§ 105-163.011. Tax credits allowed.**

7 (a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a  
8 corporation that ~~invests in~~ purchases for consideration the equity securities of a North  
9 Carolina Enterprise Corporation or a qualified investment organization directly from the  
10 entity is allowed as a credit against the income tax imposed by Division I of this Article, the  
11 franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122, or the gross premiums tax  
12 imposed by G.S. 105-228.5 and G.S. 105-228.8 for the taxable year an amount equal to  
13 twenty-five percent (25%) of the amount of consideration ~~invested or seven hundred fifty~~  
14 ~~thousand dollars (\$750,000), whichever is less.~~ invested. The aggregate amount of credit  
15 allowed a corporation for one or more investments in a single taxable year under this  
16 Division, whether directly or indirectly as owner of a pass-through entity, may not  
17 exceed seven hundred fifty thousand dollars (\$750,000). The credit is allowed against  
18 one or more of the following taxes:

19 (1) The income tax imposed by Division I of this Article.

20 (2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.

21 (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-  
22 228.8.

23 The credit may not be taken for the year in which the investment is made but shall  
24 be taken for the taxable year beginning during the calendar year ~~following the calendar~~  
25 ~~year in which the investment was made.~~ in which the application for the credit becomes  
26 effective as provided in subsection (c) of this section. This section does not apply to  
27 a corporation that is also a pass-through entity.

28 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an  
29 individual who ~~invests in~~ purchases for consideration the equity securities or  
30 subordinated debt of (i) ~~a qualified investment organization,~~ (ii) ~~a qualified business~~  
31 ~~venture,~~ (iii) ~~(ii)~~ a qualified grantee business, or (iv) ~~(iii)~~ a North Carolina Enterprise  
32 Corporation directly from that entity is allowed as a credit against the tax imposed by  
33 Division II of this Article for the taxable year an amount equal to twenty-five percent  
34 (25%) of the amount of consideration ~~invested or one hundred thousand dollars (\$100,000),~~  
35 ~~whichever is less.~~ invested. The aggregate amount of credit allowed an individual for one  
36 or more investments in a single taxable year under this Division, whether directly or  
37 indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars  
38 (\$50,000). The credit may not be taken for the year in which the investment is made but  
39 shall be taken for the taxable year beginning during the calendar year following the  
40 calendar year in which the investment was made. in which the application for the credit  
41 becomes effective as provided in subsection (c) of this section.

42 (b1) Pass-Through Entities. – Subject to the limitations provided in G.S. 105-  
43 163.012, a pass-through entity that purchases for consideration (i) the equity securities  
44 or subordinated debt of a qualified grantee business or of a qualified business venture

1 directly from that entity or (ii) the equity securities of a North Carolina Enterprise  
2 Corporation directly from that entity is eligible for a tax credit equal to twenty-five  
3 percent (25%) of the amount of consideration invested. The aggregate amount of credit  
4 allowed a pass-through entity for one or more investments in a single taxable year under  
5 this Division, whether directly or indirectly as owner of another pass-through entity,  
6 may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through  
7 entity is not eligible for the credit for the year in which the investment by the pass-  
8 through entity is made but shall be eligible for the credit for the taxable year beginning  
9 during the calendar year in which the application for the credit becomes effective as  
10 provided in subsection (c) of this section.

11 Each individual who is an owner of a pass-through entity is allowed as a credit  
12 against the tax imposed by Division II of this Article for the taxable year an amount  
13 equal to the owner's allocated share of the credits for which the pass-through entity is  
14 eligible under this subsection. The aggregate amount of credit allowed an individual for  
15 one or more investments in a single taxable year under this Division, whether directly or  
16 indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars  
17 (\$50,000).

18 Each corporation that is an owner of a pass-through entity is allowed as a credit for  
19 the taxable year an amount equal to the corporation's allocated share of the tax credits  
20 for which the pass-through entity is eligible under this subsection as a result of the pass-  
21 through entity's investment in equity securities of a North Carolina Enterprise  
22 Corporation. The credit is allowed against one or more of the following taxes:

- 23 (1) The income tax imposed by Division I of this Article.
- 24 (2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.
- 25 (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-  
26 228.8.

27 The aggregate amount of credit allowed a corporation for one or more investments  
28 in a single taxable year under this Division, whether directly or indirectly as owner of a  
29 pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000).

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 or if a corporate owner is not  
32 eligible for the credit because the investment was not made in a North Carolina  
33 Enterprise Corporation, the pass-through entity and its owners may not reallocate the  
34 unused credit among the other owners.

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

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

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

4 Sec. 3. G.S. 105-163.012 reads as rewritten:

5 "**§ 105-163.012. Limit; carry-over; ~~ceiling~~; ceiling; reduction in basis.**

6 (a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the  
7 amount of income tax imposed by Division I or II of this Article, the amount of  
8 franchise tax imposed by Article 3 of this Chapter, or the amount of gross premiums tax  
9 imposed by Article 8B of this Chapter, as appropriate, for the taxable year reduced by  
10 the sum of all other credits allowable except tax payments made by or on behalf of the  
11 taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried  
12 forward for the next five succeeding years. The fifty thousand dollar (\$50,000) and  
13 seven hundred fifty thousand dollar (\$750,000) limitations on the amount of credit  
14 allowed a taxpayer under G.S. 105-163.011 do not apply to unused amounts carried  
15 forward under this subsection.

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

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

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

32 (3) If the total amount of the credits claimed by taxpayers for the  
33 investments described in either subdivision (1) or (2) is less than six  
34 million dollars (\$6,000,000), the Secretary shall allow additional  
35 credits for the investments described in the other subdivision until the  
36 total amount of all tax credits allowed equals twelve million dollars  
37 (\$12,000,000).

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

1 (d) For purposes of this Article, the taxpayer's basis in the equity securities or  
2 subordinated debt acquired as a result of an investment in a North Carolina Enterprise  
3 Corporation, qualified business venture, or qualified grantee business shall be reduced  
4 by the amount of allowable credit. 'Allowable credit' means the amount of credit  
5 allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section.'

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

7 **"§ 105-163.013. Registration.**

8 (a) ~~Qualified Investment Organizations.~~—In order to qualify as a qualified  
9 ~~investment organization under this Division, a business must be registered with the~~  
10 ~~Securities Division of the Department of the Secretary of State. To register, the~~  
11 ~~business must file with the Secretary of State an application in which the business~~  
12 ~~certifies the following facts:~~

- 13 (1) ~~It intends to invest at least seventy percent (70%) of its capital in~~  
14 ~~equity securities or subordinated debt of qualified business ventures or~~  
15 ~~qualified grantee businesses;~~
- 16 (2) ~~It has an initial capitalization of at least five million dollars~~  
17 ~~(\$5,000,000), of which no more than two million dollars (\$2,000,000)~~  
18 ~~is to be contributed pursuant to binding commitments;~~
- 19 (3) ~~It does not own the securities of any business for the purpose of~~  
20 ~~operating the business or for any purpose other than as an investment~~  
21 ~~for future sale;~~
- 22 (4) ~~It is controlled by a financial institution or is not controlled by another~~  
23 ~~business; and~~
- 24 (5) ~~It was not organized to invest in only one business or one group of~~  
25 ~~businesses that conduct the same or a similar type of business activity.~~

26 ~~To remain qualified as a qualified investment organization under this Division, the~~  
27 ~~business must renew its registration annually as prescribed by rule by filing an~~  
28 ~~application for renewal in which the business certifies the facts required in the original~~  
29 ~~application and describes its investments in qualified business ventures and qualified~~  
30 ~~grantee businesses. Upon termination of the qualified investment organization, it shall~~  
31 ~~file a final report describing its investments in qualified business ventures and qualified~~  
32 ~~grantee businesses and certifying that it invested at least seventy percent (70%) of its~~  
33 ~~capital in equity securities or subordinated debt of such businesses.~~

34 ~~If a qualified business venture in which the qualified investment organization has~~  
35 ~~invested fails to file an application for renewal of registration under subsection (b) of~~  
36 ~~this section or if the registration of the qualified business venture is revoked by the~~  
37 ~~Secretary of State, any investment by the qualified investment organization in the~~  
38 ~~business venture within five years after the qualified investment organization's initial~~  
39 ~~investment in the business venture is, for the purpose of this Division, an investment in~~  
40 ~~a qualified business venture.~~

41 (b) ~~Qualified Business Ventures.~~ – In order to qualify as a qualified business  
42 ~~venture under this Division, a business must be registered with the Securities Division~~  
43 ~~of the Department of the Secretary of State. To register, the business must file with the~~  
44 ~~Secretary of State a financial statement certified by an independent certified public accountant~~

1 for its most recent fiscal year showing revenues, as determined in accordance with generally  
2 accepted accounting procedures, of five million dollars (\$5,000,000) or less on a consolidated  
3 basis and an application in which it certifies the following facts: an application and any  
4 supporting documents the Secretary of State may require from time to time to determine  
5 that the business meets the requirements for registration as a qualified business venture.  
6 A business meets the requirements for registration as a qualified business venture if all  
7 of the following are true as of the date the business files the required application:

- 8 (1) Its headquarters and principal business operations are in North  
9 Carolina or it has, as a condition ~~of an investment eligible for a credit~~  
10 ~~under this Division,~~ to approval of the registration, agreed to establish  
11 its headquarters and principal business operations in North Carolina  
12 within three months after ~~the investment is made;~~ the date the first  
13 investment eligible for a credit under this Division is made.
- 14 (1b) Either (i) it was organized after January 1 of the calendar year in which  
15 its application is filed or (ii) during its most recent fiscal year before  
16 filing the application, it had gross revenues, as determined in  
17 accordance with generally accepted accounting procedures, of five  
18 million dollars (\$5,000,000) or less on a consolidated basis.
- 19 (2) It has, as a condition ~~of an investment eligible for a credit under this~~  
20 ~~Division,~~ to approval of the registration, agreed to retain its  
21 headquarters and principal business operations in North Carolina for at  
22 least three years after ~~the investment is made;~~ date the last investment  
23 eligible for credit under this Division is made.
- 24 (3) It is organized to engage primarily in manufacturing, processing,  
25 warehousing, wholesaling, research and development, or a service-  
26 related ~~industry;~~ and industry.
- 27 (4) It does not engage as a substantial part of its business in ~~construction,~~  
28 ~~contracting, selling goods at retail, or the~~ any of the following:
- 29 a. A real estate-related activity.  
30 b. Providing a professional service as defined in Chapter 55B of  
31 the General Statutes.  
32 c. Construction or contracting.  
33 d. Selling or leasing at retail.  
34 e. The purchase, sale, or development, or purchasing, selling, or  
35 holding for investment of commercial paper, notes, other  
36 indebtedness, financial instruments, securities, or real property,  
37 or otherwise make investments.  
38 f. Providing personal grooming or cosmetics services.  
39 g. Offering any form of entertainment, amusement, recreation, or  
40 athletic or fitness activity for which an admission or a  
41 membership is charged.
- 42 (5) It was not formed for the primary purpose of acquiring all or part of  
43 the stock or assets of one or more existing businesses.



1       The effective date of registration for a qualified business venture whose application  
2 is accepted for registration is the filing date of its application. No credit is allowed  
3 under this Division for an investment made before the effective date of the registration  
4 or after the registration is revoked.

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

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. – In order to qualify as a qualified grantee  
30 business 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 an application ~~in which the business certifies the following facts: and any~~  
33 supporting documents the Secretary of State may require from time to time to determine  
34 that the business meets the requirements for registration as a qualified grantee business.  
35 A business meets the requirements for registration as a qualified grantee business if all  
36 of the following are true as of the date the business files the required application:

- 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, to approval of the registration,~~ agreed to establish  
40 its headquarters and principal business operations in North Carolina  
41 within three months after the date the first investment is made; eligible  
42 for a credit under this Division is made.
- 43       (2) It has, as a condition ~~of an investment eligible for a credit under this~~  
44 ~~Division, to approval of the registration,~~ agreed to retain its

1 headquarters and principal business operations in North Carolina for at  
2 least three years after the date the last investment is made, and eligible  
3 for a credit under this Division is made.

- 4 (3) It has received during the preceding three years a grant or other  
5 funding from the North Carolina Technological Development  
6 Authority, the North Carolina Technological Development Authority,  
7 Inc., North Carolina First Flight, Inc., the North Carolina  
8 Biotechnology Center, the Microelectronics Center of North Carolina,  
9 or the Federal Small Business Innovation Research Program.

10 The effective date of registration for a qualified grantee business whose application  
11 is accepted for registration is the filing date of its application. No credit is allowed  
12 under this Division for an investment made before the effective date of the registration  
13 or after the registration is revoked.

14 To remain qualified as a qualified grantee business, the business must renew its  
15 registration annually as prescribed by rule by filing an application for renewal in which  
16 the business certifies the facts listed in this subsection.

17 (d) Application Forms; Rules; Fees. – Applications for ~~registration and for~~  
18 registration, renewal of registration, and reinstatement of registration under this section  
19 shall be in such form as the form required by the Secretary of State may prescribe. State.  
20 The Secretary may, by rule, require applicants to furnish supporting information in  
21 addition to the information required by subsections (a), (b), and (c) of this section. The  
22 Secretary may adopt rules in accordance with Chapter 150B of the General Statutes that  
23 are needed to carry out the Secretary's responsibilities under this Division. The  
24 Secretary shall prepare blank forms for the applications and shall distribute them  
25 throughout the State and furnish them on request. Each application shall be signed by  
26 the owners of the business or, in the case of a corporation, by its president, vice-  
27 president, treasurer, or secretary. There shall be annexed to the application the  
28 affirmation of the person making the application in the following form: 'Under  
29 penalties prescribed by law, I certify and affirm that to the best of my knowledge and  
30 belief this application is true and complete.'

31 The fee for filing an application for registration under this section shall be one  
32 hundred dollars (\$100.00). The fee for filing an application for renewal of registration  
33 under this section shall be fifty dollars (\$50.00). The fee for filing an application for  
34 reinstatement of registration under this section shall be fifty dollars (\$50.00).

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

41 (f) Transfer of Registration. – A registration as a qualified business venture or  
42 qualified grantee business may not be sold or otherwise transferred, except that if a  
43 qualified business venture or qualified grantee business enters into a merger,  
44 consolidation, or other similar transaction with another business and the surviving

1 corporation would otherwise meet the criteria for being a qualified business venture or  
2 qualified grantee business, the surviving company retains the registration without  
3 further application to the Secretary of State. In such a case, the qualified business  
4 venture or qualified grantee business shall provide the Secretary of State with written  
5 notice of the merger, consolidation, or similar transaction and the name, address, and  
6 jurisdiction of incorporation of the surviving company."

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

8 **"§ 105-163.014. Forfeiture of credit.**

9 ~~If a qualified investment organization fails to file an application for renewal of~~  
10 ~~registration under G.S. 105-163.013 or if its registration is revoked by the Secretary of~~  
11 ~~State, every taxpayer who has received a tax credit under this Division for an~~  
12 ~~investment in the organization made during the preceding five years forfeits the credit.~~

13 (a) Participation in Business. – A taxpayer who has received a tax credit under  
14 this Division for an investment in a qualified business venture or qualified grantee  
15 business forfeits the credit if, within three years after the investment was made, (i) ~~he the~~  
16 taxpayer participates in the operation of the qualified business venture or qualified  
17 grantee business, (ii) except as provided in the following paragraph, the qualified business  
18 venture or qualified grantee business fails to file an application for renewal of registration  
19 under G.S. 105-163.013, or (iii) the registration of the qualified business venture or qualified  
20 grantee business is revoked by the Secretary of State. business. For the purpose of this  
21 section, a taxpayer participates in the operation of a qualified business venture or a  
22 qualified grantee business if the taxpayer, his the taxpayer's spouse, parent, sibling, or  
23 child, or an employee of any of these individuals or of a business controlled by any of  
24 these individuals, provides services of any nature to the qualified business venture or  
25 qualified grantee business for compensation, whether as an employee, a contractor, or  
26 otherwise. However, a person who ~~serves as a~~ provides services to a qualified business  
27 venture or a qualified grantee business, whether as an officer, a member of the board of  
28 directors of a business directors, or otherwise does not participate in its operation if he  
29 performs only the functions ordinarily performed by directors and the person receives as  
30 compensation only reasonable reimbursement of expenses incurred in ~~serving as a~~  
31 director. A person who owns stock in a business does not participate in its operation if he  
32 performs only the functions ordinarily performed by shareholders. providing the services,  
33 participation in a stock option or stock bonus plan, or both.

34 (b) False Application. – A taxpayer who has received a credit under this Division  
35 for an investment in a qualified business venture ~~does not forfeit or a qualified grantee~~  
36 business forfeits the credit if the ~~business is unable to renew its registration solely for the~~  
37 reason that in its most recent fiscal year, its revenues exceeded five million dollars  
38 (\$5,000,000). registration of the qualified business venture or qualified grantee business  
39 is revoked because information in the registration application was false at the time the  
40 application was filed with the Secretary of State.

41 (c) Location Out-of-State. – A taxpayer who has received a credit under this  
42 Division for an investment in a qualified business venture or a qualified grantee  
43 business does not forfeit the credit if the ~~business is unable~~ fails to renew its registration  
44 solely for the reason that its receipt of the grant or funding referred to in G.S. 105-  
45 163.013(c)(3) occurred more than three years prior to the date on which the business would

1 ~~have been required to renew its registration.~~ registration, except that a taxpayer forfeits the  
2 credit if the qualified business venture (i) moves its headquarters or its principal  
3 business operations outside this State within three years after the date of the taxpayer's  
4 investment or (ii) in the case of a business that promised to move its headquarters and  
5 principal business operations to this State as a condition to approval of its registration,  
6 fails to comply with this condition.

7 (d) Transfer or Redemption of Investment. – A taxpayer who has received a  
8 credit under this Division for an investment in a North Carolina Enterprise Corporation,  
9 a qualified business venture, or a qualified grantee business forfeits the credit in the  
10 following cases:

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

15 a. The death of the taxpayer.

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

18 c. A merger, consolidation, or similar transaction requiring  
19 approval by the shareholders of the North Carolina Enterprise  
20 Corporation, qualified business venture, or qualified grantee  
21 business under applicable State law, to the extent the taxpayer  
22 does not receive cash or tangible property in the merger,  
23 consolidation, or other similar transaction.

24 (2) Within five years after the investment was made, the North Carolina  
25 Enterprise Corporation, qualified business venture, or qualified grantee  
26 business in which the investment was made makes a redemption with  
27 respect to the securities received in the investment.

28 In the event the taxpayer transfers fewer than all the securities in a manner that  
29 would result in a forfeiture, the amount of the credit that is forfeited is the product  
30 obtained by multiplying the aggregate credit attributable to the investment by a fraction  
31 whose numerator equals the number of securities transferred and whose denominator  
32 equals the number of securities received on account of the investment to which the  
33 credit was attributable. In addition, if the redemption amount is less than the amount of  
34 consideration invested by the taxpayer in the securities to which the redemption is  
35 attributable, the amount of the credit that is forfeited is further reduced by multiplying it  
36 by a fraction whose numerator equals the redemption amount and whose denominator  
37 equals the aggregate consideration invested by the taxpayer in the securities involved in  
38 the redemption. The term 'redemption amount' means all amounts paid that are treated  
39 as a distribution in part or full payment in exchange for securities under section 302(a)  
40 of the Code.

41 (e) Effect of Forfeiture. – A taxpayer who forfeits a credit under this section is  
42 liable for all past taxes avoided as a result of the credit plus interest at the rate  
43 established under G.S. 105-241.1(i), computed from the date the taxes would have been  
44 due if the credit had not been allowed. The past taxes and interest are due 30 days after

1 the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by  
2 the due date is subject to the penalties provided in G.S. 105-236."

3           Sec. 6. This act becomes effective for taxable years beginning on or after  
4 January 1, 1993, and applies to investments made and qualified businesses registered or  
5 renewed on or after July 1, 1993. A business registered as a qualified business venture  
6 or a qualified grantee business before July 1, 1993, retains its registration until the  
7 renewal date for the registration of that business under Division V of Article 4 of  
8 Chapter 105 of the General Statutes as in effect before July 1, 1993. The Secretary of  
9 State shall not grant renewal of a registration as a qualified business venture or a  
10 qualified grantee business unless at the time of filing the renewal application, the  
11 business meets the requirements then in effect for a new registration; however, a  
12 taxpayer shall not forfeit a credit under Division V of Article 4 of Chapter 105 of the  
13 General Statutes for an investment made before July 1, 1993, solely because of the  
14 amendments made by this act. The Secretary of State may require a qualified business  
15 venture or a qualified grantee business that is unable to renew its registration after July  
16 1, 1993, to file reports the Secretary of State considers appropriate to determine the  
17 location of the headquarters and principal business operations of the business until three  
18 years after the date of the last investment in business that qualified for the tax credit  
19 allowed under Division V of Article 4 of Chapter 105 of the General Statutes.