

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1294
Committee Substitute Favorable 6/11/03

Short Title: Expand Qualified Business Credit.

(Public)

Sponsors:

Referred to:

May 15, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE QUALIFIED BUSINESS INVESTMENTS TAX
3 CREDIT.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 105-163.015. Sunset.**

7 This Part is repealed effective for investments made on or after January 1,
8 ~~2004-2007.~~"

9 **SECTION 2.** G.S. 105-163.010 reads as rewritten:

10 "**§ 105-163.010. Definitions.**

11 The following definitions apply in this Part:

12 ...

13 (7b) Qualified business. – A qualified business venture, a qualified grantee
14 business, or a qualified licensee business.

15 ...

16 (9) Qualified grantee business. – A business that (i) is registered with the
17 Secretary of State under G.S. 105-163.013, and (ii) has received during
18 the preceding three years a grant or other funding from a federal
19 agency under the Small Business Innovation Research Program
20 administered by the United States Small Business Administration or
21 from an organization that meets any of the following qualifications:

22 a. It is a domestic or foreign corporation that (i) is tax-exempt
23 pursuant to section 501(c)(3) of the Code, (ii) has as its
24 principal purpose the stimulation of the development of the
25 biotechnology industry, and in furtherance of that purpose has
26 received, or is a successor in interest to an organization that has
27 received, direct appropriations from the State in at least three
28 fiscal years.

- 1 b. It is a domestic or foreign corporation that (i) is tax-exempt
2 pursuant to section 501(c)(3) of the Code, (ii) has as its
3 principal purpose the stimulation of the development of the
4 microelectronics—~~and microelectronics,~~ wireless, or
5 communication industries, including networking and related
6 technologies, and (iii) in furtherance of that purpose has
7 received, or is a successor in interest to an organization that has
8 received, direct appropriations from the State in at least three
9 fiscal years.
- 10 c. It is an institute that (i) is administratively located within a
11 constituent institution of The University of North Carolina, (ii)
12 is financed in part by a domestic or foreign corporation that is
13 tax-exempt pursuant to section 501(c)(3) of the Code, (iii) has
14 as a principal purpose the stimulation of economic development
15 based on the advancement of science, engineering, and
16 technology, and (iv) funds, either directly or in collaboration
17 with other entities, small businesses engaging in developing
18 technology.
- 19 (9a) Qualified licensee business. – A business that meets all of the
20 following conditions:
- 21 a. It is registered with the Secretary of State under
22 G.S. 105-163.013.
- 23 b. During its most recent fiscal year before filing an application
24 for registration under G.S. 105-163.013, it had gross revenues,
25 as determined in accordance with generally accepted accounting
26 principles, of one million dollars (\$1,000,000) or less on a
27 consolidated basis.
- 28 c. It has been certified by a constituent institution of The
29 University of North Carolina or a research university as
30 currently performing under a licensing agreement with the
31 institution or university for the purpose of commercializing
32 technology developed at the institution or university. For the
33 purpose of this section, a research university is an institution of
34 higher education classified as a Doctoral/Research University,
35 Extensive or Intensive, in the most recent edition of "A
36 Classification of Institutions of Higher Education", the official
37 report of The Carnegie Foundation for the Advancement of
38 Teaching."

39 **SECTION 3.** G.S. 105-163.011 reads as rewritten:

40 "**§ 105-163.011. Tax credits allowed.**

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

1 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
2 individual who purchases the equity securities or subordinated debt of a qualified
3 ~~business venture or a qualified grantee business~~ directly from that business is allowed as
4 a credit against the tax imposed by Part 2 of this Article for the taxable year an amount
5 equal to twenty-five percent (25%) of the amount invested. The aggregate amount of
6 credit allowed an individual for one or more investments in a single taxable year under
7 this Part, whether directly or indirectly as owner of a pass-through entity, may not
8 exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in
9 which the investment is made but shall be taken for the taxable year beginning during
10 the calendar year in which the application for the credit becomes effective as provided
11 in subsection (c) of this section.

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

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

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

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

1 paid for other than in money, the taxpayer shall include with the application a certified
2 appraisal of the value of the property used to pay for the investment. The application for
3 a credit for an investment made by a pass-through entity must be filed by the
4 pass-through entity.

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

6 **SECTION 4.** G.S. 105-163.012(d) reads as rewritten:

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

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

13 **"§ 105-163.013. Registration.**

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

15 (b) Qualified Business Ventures. – In order to qualify as a qualified business
16 venture under this Part, a business must be registered with the Securities Division of the
17 Department of the Secretary of State. To register, the business must file with the
18 Secretary of State an application and any supporting documents the Secretary of State
19 may require from time to time to determine that the business meets the requirements for
20 registration as a qualified business venture. A business meets the requirements for
21 registration as a qualified business venture if all of the following are true as of the date
22 the business files the required application:

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

24 (1a) Reserved for future codification purposes.

25 (1b) Either (i) it was organized after January 1 of the calendar year in which
26 its application is filed or (ii) during its most recent fiscal year before
27 filing the application, it had gross revenues, as determined in
28 accordance with generally accepted accounting principles, of five
29 million dollars (\$5,000,000) or less on a consolidated basis.

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

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

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

36 a. Providing a professional service as defined in Chapter 55B of
37 the General Statutes.

38 b. Construction or contracting.

39 c. Selling or leasing at retail.

40 d. The purchase, sale, or development, or purchasing, selling, or
41 holding for investment of commercial paper, notes, other
42 indebtedness, financial instruments, securities, or real property,
43 or otherwise make investments.

44 e. Providing personal grooming or cosmetics services.

1 f. Offering any form of entertainment, amusement, recreation, or
2 athletic or fitness activity for which an admission or a
3 membership is charged.

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

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

7 The effective date of registration for a qualified business venture whose application
8 is accepted for registration is 60 days before the date its application is filed. No credit is
9 allowed under this Part for an investment made before the effective date of the
10 registration or after the registration is revoked. For the purpose of this Article, if a
11 taxpayer's investment is placed initially in escrow conditioned upon other investors'
12 commitment of additional funds, the date of the investment is the date escrowed funds
13 are transferred to the qualified business venture free of the condition.

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

20 Failure of a qualified business venture to renew its registration by the applicable
21 deadline shall result in revocation of its registration effective as of the next day after the
22 renewal deadline, but shall not result in forfeiture of tax credits previously allowed to
23 taxpayers who invested in the business except as provided in G.S. 105-163.014. The
24 Secretary of State shall send the qualified business venture notice of revocation within
25 60 days after the renewal deadline. A qualified business venture may apply to have its
26 registration reinstated by the Secretary of State by filing an application for
27 reinstatement, accompanied by the reinstatement application fee and a late filing penalty
28 of one thousand dollars (\$1,000), within 30 days after receipt of the revocation notice
29 from the Secretary of State. A business that seeks approval of a new application for
30 registration after its registration has been revoked must also pay a penalty of one
31 thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had
32 not been revoked.

33 If the gross revenues of a qualified business venture exceed five million dollars
34 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing
35 of this fact by filing a financial statement showing the revenues of the business for that
36 year.

37 (c) Qualified Grantee Businesses and Qualified Licensee Businesses. – In order
38 to qualify as a qualified grantee business or a qualified licensee business under this Part,
39 a business must be registered with the Securities Division of the Department of the
40 Secretary of State. To register, the business must file with the Secretary of State an
41 application and any supporting documents the Secretary of State may require from time
42 to time to determine that the business meets the requirements for registration as a
43 qualified grantee business or a qualified licensee business. The requirements for

1 registration as a qualified grantee business or a qualified licensee business are set out in
2 G.S. 105-163.010, G.S. 105-163.010(9).

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

7 To remain qualified as a qualified grantee business or a qualified licensee business,
8 the business must renew its registration annually as prescribed by rule by filing an
9 application for renewal in which the business certifies the facts ~~listed in this~~
10 ~~subsection demonstrating that it continues to meet the applicable requirements for~~
11 qualification.

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

26 The fee for filing an application for registration under this section is one hundred
27 dollars (\$100.00). The fee for filing an application for renewal of registration under this
28 section is fifty dollars (\$50.00). The fee for filing an application for reinstatement of
29 registration under this section is fifty dollars (\$50.00).

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

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

1 (f) Transfer of Registration. – A registration as a qualified ~~business venture or~~
2 ~~qualified grantee business~~ may not be sold or otherwise transferred, except that if a
3 qualified ~~business venture or qualified grantee business~~ enters into a merger,
4 conversion, consolidation, or other similar transaction with another business and the
5 surviving company would otherwise meet the criteria for being a qualified ~~business~~
6 ~~venture or qualified grantee business~~, the surviving company retains the registration
7 without further application to the Secretary of State. In such a case, the qualified
8 ~~business venture or qualified grantee business~~ shall must provide the Secretary of State
9 with written notice of the merger, conversion, consolidation, or similar transaction and
10 the name, address, and jurisdiction of incorporation or organization of the surviving
11 company.

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

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

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

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

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

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

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

- 4 (1) Within one year after the investment was made, the taxpayer transfers
5 any of the securities received in the investment that qualified for the
6 tax credit to another person or entity, other than in a transfer resulting
7 from one of the following:
8 a. The death of the taxpayer.
9 b. A final distribution in liquidation to the owners of a taxpayer
10 that is a corporation or other entity.
11 c. A merger, conversion, consolidation, or similar transaction
12 requiring approval by the owners of the qualified ~~business~~
13 ~~venture or qualified grantee-business~~ under applicable State
14 law, to the extent the taxpayer does not receive cash or tangible
15 property in the merger, conversion, consolidation, or other
16 similar transaction.
- 17 (2) Except as provided in subsection (d1) of this section, within five years
18 after the investment was made, the qualified ~~business venture or~~
19 ~~qualified grantee-business~~ in which the investment was made makes a
20 redemption with respect to the securities received in the investment.

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

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

- 37 (1) The redemption occurred because the qualified business venture
38 completed production of a film, sold the film, and was liquidated.
39 (2) Neither the qualified business venture nor a related person continues to
40 engage in business with respect to the film produced by the qualified
41 business venture.

42 (e) Effect of Forfeiture. – A taxpayer who forfeits a credit under this section is
43 liable for all past taxes avoided as a result of the credit plus interest at the rate
44 established under G.S. 105-241.1(i), computed from the date the taxes would have been

1 due if the credit had not been allowed. The past taxes and interest are due 30 days after
2 the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by
3 the due date is subject to the penalties provided in G.S. 105-236."

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