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SESSION 2003

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HOUSE BILL 1294
Committee Substitute Favorable 6/11/03
Senate Finance Committee Substitute Adopted 6/26/03
Fourth Edition Engrossed 7/9/03

Short Title: Qualified Business Credit/Ports Credit. (Public)

Sponsors:

Referred to:

May 15, 2003

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE QUALIFIED BUSINESS INVESTMENTS TAX
CREDIT AND TO EXTEND THE SUNSET ON THE STATE PORTS TAX
CREDIT.

The General Assembly of North Carolina enacts:

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

"§ 105-163.015. **Sunset.**

This Part is repealed effective for investments made on or after January 1,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

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

"§ 105-163.010. **Definitions.**

The following definitions apply in this Part:

...

(5a) Granting entity. – Any of the following:

- a. A domestic or foreign corporation that (i) is tax-exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the biotechnology industry, and (iii) in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years.
- b. A domestic or foreign corporation that meets the following three conditions:
 1. It is tax-exempt pursuant to section 501(c)(3) of the Code, is a private foundation pursuant to section 509 of the Code, or is an affiliate of either of the foregoing.

- 1 2. It has as its principal purpose one of the following:
2 conducting research and development in, or stimulating
3 the development of, electronic, photonic, information, or
4 other technologies, which may include investing in
5 companies that provide research, development, products,
6 or services in these technologies.
- 7 3. It meets one of the following conditions:
8 I. It received direct appropriations in furtherance of
9 one of these purposes from the State in at least
10 three fiscal years.
11 II. It was organized to perform one of these purposes
12 for an organization that meets condition I of this
13 sub-subdivision.
14 III. It is an affiliate of an entity that meets condition II
15 of this sub-subdivision.
- 16 c. An institute that (i) is administratively located within a
17 constituent institution of The University of North Carolina, (ii)
18 is financed in part by a domestic or foreign corporation that is
19 tax-exempt pursuant to section 501(c)(3) of the Code, (iii) has
20 as a principal purpose the stimulation of economic development
21 based on the advancement of science, engineering, and
22 technology, and (iv) funds, either directly or in collaboration
23 with other entities, small businesses engaging in developing
24 technology.
- 25 ...
- 26 (7b) Qualified business. – A qualified business venture, a qualified grantee
27 business, or a qualified licensee business.
- 28 ...
- 29 (9) Qualified grantee business. – A business that (i) is registered with the
30 Secretary of State under G.S. 105-163.013, and (ii) has received during
31 the current year or any of the preceding three years a ~~grant~~ grant, an
32 investment, or other funding from a federal agency under the Small
33 Business Innovation Research Program administered by the United
34 States Small Business Administration or from a granting entity as
35 defined in this section. ~~an organization that meets any of the following~~
36 qualifications:
37 a. ~~It is a domestic or foreign corporation that (i) is tax exempt~~
38 ~~pursuant to section 501(c)(3) of the Code, (ii) has as its~~
39 ~~principal purpose the stimulation of the development of the~~
40 ~~biotechnology industry, and in furtherance of that purpose has~~
41 ~~received, or is a successor in interest to an organization that has~~
42 ~~received, direct appropriations from the State in at least three~~
43 ~~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 communication industries, and (iii) in~~
5 ~~furtherance of that purpose has received, or is a successor in~~
6 ~~interest to an organization that has received, direct~~
7 ~~appropriations from the State in at least three fiscal years.~~
8 e. ~~It is an institute that (i) is administratively located within a~~
9 ~~constituent institution of The University of North Carolina, (ii)~~
10 ~~is financed in part by a domestic or foreign corporation that is~~
11 ~~tax-exempt pursuant to section 501(c)(3) of the Code, (iii) has~~
12 ~~as a principal purpose the stimulation of economic development~~
13 ~~based on the advancement of science, engineering, and~~
14 ~~technology, and (iv) funds, either directly or in collaboration~~
15 ~~with other entities, small businesses engaging in developing~~
16 ~~technology.~~

17 (9a) Qualified licensee business. – A business that meets all of the
18 following conditions:

- 19 a. It is registered with the Secretary of State under G.S.
20 105-163.013.
21 b. During its most recent fiscal year before filing an application
22 for registration under G.S. 105-163.013, it had gross revenues,
23 as determined in accordance with generally accepted accounting
24 principles, of one million dollars (\$1,000,000) or less on a
25 consolidated basis.
26 c. It has been certified by a constituent institution of The
27 University of North Carolina or a research university as
28 currently performing under a licensing agreement with the
29 institution or university for the purpose of commercializing
30 technology developed at the institution or university. For the
31 purpose of this section, a research university is an institution of
32 higher education classified as a Doctoral/Research University,
33 Extensive or Intensive, in the most recent edition of "A
34 Classification of Institutions of Higher Education", the official
35 report of The Carnegie Foundation for the Advancement of
36 Teaching."

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

38 **"§ 105-163.011. Tax credits allowed.**

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

43 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
44 individual who purchases the equity securities or subordinated debt of a qualified

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

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

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

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

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

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

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

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

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

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

11 **"§ 105-163.013. Registration.**

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

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

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

22 (1a) Reserved for future codification purposes.

23 (1b) Either (i) it was organized after January 1 of the calendar year in which
24 its application is filed or (ii) during its most recent fiscal year before
25 filing the application, it had gross revenues, as determined in
26 accordance with generally accepted accounting principles, of five
27 million dollars (\$5,000,000) or less on a consolidated basis.

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

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

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

34 a. Providing a professional service as defined in Chapter 55B of
35 the General Statutes.

36 b. Construction or contracting.

37 c. Selling or leasing at retail.

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

42 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 (b1) Qualified Licensee Businesses. – In order to qualify as a qualified licensee
38 business under this Part, a business must be registered with the Securities Division of
39 the Department of the Secretary of State. To register, the business must file with the
40 Secretary of State an application and any supporting documents the Secretary of State
41 may require from time to time to determine that the business meets the requirements for
42 registration as a qualified licensee business. The requirements for registration as a
43 qualified licensee business are set out in G.S. 105-163.010.

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

5 To remain qualified as a qualified licensee business, 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 principles, of one million dollars (\$1,000,000) 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.

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

24 If the gross revenues of a qualified business venture exceed one million dollars
25 (\$1,000,000) in a fiscal year, the business must notify the Secretary of State in writing
26 of this fact by filing a financial statement showing the revenues of the business for that
27 year.

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

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

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 ~~listed in this subsection~~ demonstrating that it continues to
42 meet the applicable requirements for qualification.

43 (d) Application Forms; Rules; Fees. – Applications for registration, renewal of
44 registration, and reinstatement of registration under this section shall be in the form

1 required by the Secretary of State. The Secretary of State may, by rule, require
2 applicants to furnish supporting information in addition to the information required by
3 subsections ~~(b)~~(b), (b1), and (c) of this section. The Secretary of State may adopt rules
4 in accordance with Chapter 150B of the General Statutes that are needed to carry out the
5 Secretary's responsibilities under this Part. The Secretary of State shall prepare blank
6 forms for the applications and shall distribute them throughout the State and furnish
7 them on request. Each application shall be signed by the owners of the business or, in
8 the case of a corporation, by its president, vice-president, treasurer, or secretary. There
9 shall be annexed to the application the affirmation of the person making the application
10 in the following form: "Under penalties prescribed by law, I certify and affirm that to
11 the best of my knowledge and belief this application is true and complete." A person
12 who submits a false application is guilty of a Class 1 misdemeanor.

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

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

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

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

42 (g) Report by Secretary of State. – The Secretary of State shall report to the
43 Revenue Laws Study Committee by October 1 of each year all of the businesses that
44 have registered with the Secretary of State as qualified business ~~ventures~~ventures,

1 qualified licensee businesses, and qualified grantee businesses. The report shall include
2 the name and address of each business, the location of its headquarters and principal
3 place of business, a detailed description of the types of business in which it engages,
4 whether the business is a minority business as defined in G.S. 143-128, the number of
5 jobs created by the business during the period covered by the report, and the average
6 wages paid by these jobs."

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

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

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

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

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

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

- 32 (1) Within one year after the investment was made, the taxpayer transfers
33 any of the securities received in the investment that qualified for the
34 tax credit to another person or entity, other than in a transfer resulting
35 from one of the following:
 - 36 a. The death of the taxpayer.
 - 37 b. A final distribution in liquidation to the owners of a taxpayer
38 that is a corporation or other entity.
 - 39 c. A merger, conversion, consolidation, or similar transaction
40 requiring approval by the owners of the qualified ~~business~~
41 ~~venture or qualified grantee~~ business under applicable State
42 law, to the extent the taxpayer does not receive cash or tangible
43 property in the merger, conversion, consolidation, or other
44 similar transaction.

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

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

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

- 21 (1) The redemption occurred because the qualified business venture
22 completed production of a film, sold the film, and was liquidated.
23 (2) Neither the qualified business venture nor a related person continues to
24 engage in business with respect to the film produced by the qualified
25 business venture.

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

32 **SECTION 7.** G.S. 105-130.41(d) reads as rewritten:

33 "(d) Sunset. – This section is repealed effective for taxable years beginning on or
34 after January 1, ~~2004-2009.~~"

35 **SECTION 8.** G.S. 105-151.22(d) reads as rewritten:

36 "(d) Sunset. – This section is repealed effective for taxable years beginning on or
37 after January 1, ~~2004-2009.~~"

38 **SECTION 9.** Sections 1 through 6 of this act become effective for taxable
39 years beginning on or after January 1, 2004. The remainder of this act is effective when
40 it becomes law.