

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 443
SENATE BILL 1141

AN ACT TO EXPAND THE TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS AND TO PROVIDE THAT THE TAX CREDITS SHALL SUNSET FOR INVESTMENTS MADE ON OR AFTER JANUARY 1, 1999.

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.
- (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.
- (4) Equity security. – Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.
- (5) Financial institution. – A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 **et seq.**, or its wholly-owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a **et seq.**, or its wholly-owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 **et seq.**, whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661 **et seq.**, (v)

a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company; provided, however, that a business, other than a small business investment company, is not a financial institution if its net worth, when added to the net worth of all of its affiliates, is less than ten million dollars (\$10,000,000); provided further, however, that a business is not a financial institution if it does not generally market its services to the public and it is controlled by a business that is not a financial institution.

- (6) Repealed by Session Laws 1991, c. 637.
- (6a) North Carolina Enterprise Corporation. – A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner.
- (6b) Pass-through entity. – An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this Division, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.
- (7) Qualified business venture. – A North Carolina business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.
- (8) Qualified grantee business. – A North Carolina business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovation Research Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.
- ~~(9) Qualified investment organization. – A business that (i) has as its primary business activity the investment in equity securities or subordinated debt of qualified business ventures or qualified grantee businesses and (ii) is registered with the Secretary of State under G.S. 105-163.013.~~
- (9a) Real estate-related business. – A business that is involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, golf

courses, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings is a real estate-related business, except that a real estate-related business does not include (i) a business that purchases or leases real estate from others for the purpose of providing itself with facilities from which to conduct a business that is not itself a real estate-related business or (ii) a business that is not otherwise a real estate-related business but that leases, subleases, or otherwise provides to one or more other persons a number of square feet of space which in the aggregate does not exceed fifty percent (50%) of the number of square feet of space occupied by the business for its other activities.

- (9b) Selling or leasing at retail. – A business is selling or leasing at retail if the business either (i) sells or leases any product or service of any nature from a store or other location open to the public generally or (ii) sells or leases products or services of any nature by means other than to or through one or more other businesses.
- (9c) Service-related industry. – A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. 105-163.013(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.
- (10) Security. – A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).
- (11) Subordinated debt. – Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt."

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

"§ 105-163.011. Tax credits allowed.

(a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a corporation that ~~invests in purchases~~ the equity securities of a North Carolina Enterprise Corporation ~~or a qualified investment organization directly from the Enterprise Corporation~~ is allowed as a credit against the income tax imposed by Division I of this Article, ~~the franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122, or the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 for the taxable year~~

an amount equal to twenty-five percent (25%) of the amount invested or seven hundred fifty thousand dollars (\$750,000), whichever is less, invested. The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The credit is allowed against one or more of the following taxes:

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

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

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

(b1) Pass-Through Entities. – Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation directly from the business or Corporation is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is

eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

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

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

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

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year or if a corporate owner is not eligible for the credit because the investment was not made in a North Carolina Enterprise Corporation, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

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

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

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

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

(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of income tax imposed by Division I or II of this Article, the amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross premiums tax imposed by Article 8B of this Chapter, as appropriate, for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years. The fifty thousand dollar (\$50,000) and

seven hundred fifty thousand dollar (\$750,000) limitations on the amount of credit allowed a taxpayer under G.S. 105-163.011 do not apply to unused amounts carried forward under this subsection.

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

- (1) A total of six million dollars (\$6,000,000) in tax credits for investments in North Carolina Enterprise Corporations shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.
- (2) A total of six million dollars (\$6,000,000) in tax credits for investments in ~~qualified investment organizations, qualified business ventures,~~ business ventures and qualified grantee businesses shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.
- (3) If the total amount of the credits claimed by taxpayers for the investments described in either subdivision (1) or (2) is less than six million dollars (\$6,000,000), the Secretary shall allow additional credits for the investments described in the other subdivision until the total amount of all tax credits allowed equals twelve million dollars (\$12,000,000).

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

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

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

"§ 105-163.013. Registration.

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

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

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

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

~~(b) Qualified Business Ventures. – In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State a financial statement certified by an independent certified public accountant for its most recent fiscal year showing revenues, as determined in accordance with generally accepted accounting procedures, of five million dollars (\$5,000,000) or less on a consolidated basis and an application in which it certifies the following facts: an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:~~

- ~~(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition of an investment eligible for a credit under this Division, to approval of the registration, agreed to establish its headquarters and principal business operations in North Carolina~~

within three months after the investment is made; the date the first investment eligible for a credit under this Division is made.

- (1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars (\$5,000,000) or less on a consolidated basis.
- (2) It has, as a condition of an investment eligible for a credit under this Division, to approval of the registration, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the investment is made; date the last investment eligible for credit under this Division is made.
- (3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry; and industry.
- (4) It does not engage as a substantial part of its business in construction, contracting, selling goods at retail, or the any of the following:
 - a. Providing a professional service as defined in Chapter 55B of the General Statutes.
 - b. Construction or contracting.
 - c. Selling or leasing at retail.
 - d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
 - e. Providing personal grooming or cosmetics services.
 - f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.
- (5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.
- (6) It is not a real estate-related business.

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

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

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

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

(c) Qualified Grantee Businesses. – In order to qualify as a qualified grantee business under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application ~~in which the business certifies the following facts:~~ and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. A business meets the requirements for registration as a qualified grantee business if all of the following are true as of the date the business files the required application:

- (1) Its headquarters and principal business operations are in North Carolina or it has, as a condition ~~of an investment eligible for a credit under this Division, to approval of the registration,~~ agreed to establish its headquarters and principal business operations in North Carolina within three months after the date the first investment is made; eligible for a credit under this Division is made.
- (2) It has, as a condition ~~of an investment eligible for a credit under this Division, to approval of the registration,~~ agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the date the last investment is made; and eligible for a credit under this Division is made.
- (3) It has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovation Research Program.

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

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

(d) Application Forms; Rules; Fees. – Applications for ~~registration and for registration, renewal of registration, and reinstatement~~ of registration under this section shall be in ~~such form as the form required by the Secretary of State may prescribe.~~ State. The Secretary may, by rule, require applicants to furnish supporting information in addition to the information required by subsections (a), (b), and (c) of this section. The Secretary may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a misdemeanor and is punishable as provided in G.S. 14-3.

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

An application for renewal of registration under this section shall indicate whether the applicant is a minority business enterprise and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided.

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

(f) Transfer of Registration. – A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, consolidation, or other similar transaction with another business and the surviving corporation would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without

further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company."

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

"§ 105-163.014. Forfeiture of credit.

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

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

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

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

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

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

- (1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:
 - a. The death of the taxpayer.
 - b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.
 - c. A merger, consolidation, or similar transaction requiring approval by the shareholders of the North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.
- (2) Within five years after the investment was made, the North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment.

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

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

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

Sec. 6. G.S. 105-241.1(e) reads as rewritten:

"(e) Where a proper application for a license or a return has been filed and in the absence of fraud, the Secretary of Revenue shall assess any tax or additional tax due from a taxpayer within three years after the date upon which such application or return is filed or within three years after the date upon which such application or return was required by law to be filed, whichever is the later. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary shall assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. Any tax or additional tax due from the taxpayer may be assessed at any time if (i) no proper application for a license or no return has been filed, (ii) a false or fraudulent application or return has been filed, or (iii) there has been an attempt in any manner to fraudulently defeat or evade tax.

Provided, the taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or indefinite time, and if such waiver is accepted by the Secretary he may institute assessment procedures at any time within the time extended by such waiver. This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes."

Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, 1999. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, 1999.

Sec. 8. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property."

Sec. 9. The Secretary of State shall report to the Legislative Research Commission by October 1 of each odd-numbered year and by February 1 of each even-numbered year all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each business, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S. 143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, 1999. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business

unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes.

In the General Assembly read three times and ratified this the 22nd day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives