

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1049
Finance Committee Substitute Adopted 6/6/95

Short Title: Clarify Investment Tax Credit.

(Public)

Sponsors:

Referred to:

May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE QUALIFIED BUSINESS TAX CREDIT TO ELIMINATE AN UNINTENDED LOOPHOLE THAT ALLOWS DOUBLE CREDITS FOR THE SAME INVESTMENT AND TO LIMIT CREDITS FOR INVESTMENTS IN CERTAIN INVESTMENT BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.011 reads as rewritten:

"§ 105-163.011. (Repealed effective for investments made on or after January 1, 1999) Tax credits allowed.

(a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a corporation that purchases the equity securities of a North Carolina Enterprise Corporation directly from the Enterprise Corporation is allowed as a credit for the taxable year an amount equal to twenty-five percent (25%) of the amount 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.

1 (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-
2 228.8.

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

7 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
8 individual who purchases the equity securities or subordinated debt of (i) a qualified
9 business venture, (ii) a qualified grantee business, or (iii) a North Carolina Enterprise
10 Corporation directly from that entity is allowed as a credit against the tax imposed by
11 Division II of this Article for the taxable year an amount equal to twenty-five percent
12 (25%) of the amount invested. The aggregate amount of credit allowed an individual for
13 one or more investments in a single taxable year under this Division, whether directly or
14 indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars
15 (\$50,000).

16 The credit may not be taken for the year in which the investment is made but shall be
17 taken for the taxable year beginning during the calendar year in which the application for
18 the credit becomes effective as provided in subsection (c) of this section. For the
19 purpose of this Article, an investment in a qualified grantee business that is an investment
20 business, as provided in G.S. 105-163.013(c), has not been made unless and until the
21 grantee business reinvests the investment in a qualified business venture or a qualified
22 grantee business that is not an investment business.

23 (b1) Pass-Through Entities. – This subsection does not apply to a pass-through
24 entity that is a qualified grantee business, a qualified business venture, or a North
25 Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-
26 163.012, a pass-through entity that purchases the equity securities or subordinated debt of
27 a qualified grantee business, a qualified business venture, or a North Carolina Enterprise
28 Corporation directly from the business or Corporation is eligible for a tax credit equal to
29 twenty-five percent (25%) of the amount invested. The aggregate amount of credit
30 allowed a pass-through entity for one or more investments in a single taxable year under
31 this Division, whether directly or indirectly as owner of another pass-through entity, may
32 not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is
33 not eligible for the credit for the year in which the investment by the pass-through entity
34 is made but shall be eligible for the credit for the taxable year beginning during the
35 calendar year in which the application for the credit becomes effective as provided in
36 subsection (c) of this section.

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

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

- 6 (1) The income tax imposed by Division I of this Article.
- 7 (2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.
- 8 (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-
9 228.8.

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

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

18 (c) Application. – To be eligible for the tax credit provided in this section, the
19 taxpayer must file an application for the credit with the Secretary on or before April 15 of
20 the year following the calendar year in which the investment was made. The Secretary
21 may grant extensions of this deadline, as the Secretary finds appropriate, upon the request
22 of the taxpayer, except that the application may not be filed after September 15 of the
23 year following the calendar year in which the investment was made. An application is
24 effective for the year in which it is timely filed. The application shall be on a form
25 prescribed by the Secretary and shall include any supporting documentation that the
26 Secretary may require. If an investment for which a credit is applied for was paid for
27 other than in money, the taxpayer shall include with the application a certified appraisal
28 of the value of the property used to pay for the investment. If the investment for which a
29 credit is applied for was made in a qualified grantee business that is an investment
30 business, as provided in G.S. 105-163.013(c), the taxpayer shall include with the
31 application the certification of the grantee business that it has reinvested the investment
32 in a qualified business venture or in a qualified grantee business that is not an investment
33 business. The application for a credit for an investment made by a pass-through entity
34 must be filed by the pass-through entity.

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

36 Sec. 2. G.S. 105-163.013(c) reads as rewritten:

37 "(c) Qualified Grantee Businesses. – In order to qualify as a qualified grantee
38 business under this Division, 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 grantee business. A business meets the requirements for

1 registration as a qualified grantee business if all of the following are true as of the date
2 the business files the required application:

- 3 (1) Its headquarters and principal business operations are in North Carolina
4 or it has, as a condition to approval of the registration, agreed to
5 establish its headquarters and principal business operations in North
6 Carolina within three months after the date the first investment eligible
7 for a credit under this Division is made.
- 8 (2) It has, as a condition to approval of the registration, agreed to retain its
9 headquarters and principal business operations in North Carolina for at
10 least three years after the date the last investment eligible for a credit
11 under this Division is made.
- 12 (3) It has received during the preceding three years a grant or other funding
13 from the North Carolina Technological Development Authority, the
14 North Carolina Technological Development Authority, Inc., North
15 Carolina First Flight, Inc., the North Carolina Biotechnology Center, the
16 Microelectronics Center of North Carolina, or the Federal Small
17 Business Innovation Research Program.
- 18 (4) Whether it is an investment business. A qualified grantee business is an
19 investment business if it engages or is organized to engage as a
20 substantial part of its business in the purchase, sale, or development, or
21 purchasing, selling, or holding for investment of commercial paper,
22 notes, other indebtedness, financial instruments, securities, or real
23 property, or in otherwise making investments.

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

28 A qualified grantee business that is an investment business must place in a trust
29 account all investments made in it by individuals. Funds in the trust account may be
30 invested only in qualified business ventures and qualified grantee businesses that are not
31 investment businesses. When the qualified grantee business reinvests an individual
32 investor's funds, it shall provide the investor with a statement certifying that the grantee
33 business has reinvested the investment in a qualified business venture or in a qualified
34 grantee business that is not an investment business.

35 To remain qualified as a qualified grantee business, the business must renew its
36 registration annually as prescribed by rule by filing an application for renewal in which
37 the business certifies the facts listed in this subsection. In the case of a qualified grantee
38 business that is an investment business, the application must include an accounting of
39 credits and debits to its trust account composed of investments made in it by individuals."

40 Sec. 3. This act is effective for taxable years beginning on or after January 1,
41 1995, but does not apply to investments and commitments to invest made before July 1,
42 1995.