

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1049
Finance Committee Substitute Adopted 6/6/95
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Short Title: Clarify Investment Tax Credit.

(Public)

Sponsors:

Referred to:

May 4, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE QUALIFIED BUSINESS TAX CREDIT TO ELIMINATE
3 AN UNINTENDED LOOPHOLE THAT ALLOWS DOUBLE CREDITS FOR THE
4 SAME INVESTMENT AND TO LIMIT CREDITS FOR INVESTMENTS IN
5 CERTAIN INVESTMENT BUSINESSES.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 105-163.011. (Repealed effective for investments made on or after January 1,**
9 **1999) Tax credits allowed.**

10 (a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a
11 corporation that purchases the equity securities of a North Carolina Enterprise
12 Corporation directly from the Enterprise Corporation is allowed as a credit for the taxable
13 year an amount equal to twenty-five percent (25%) of the amount invested. The
14 aggregate amount of credit allowed a corporation for one or more investments in a single
15 taxable year under this Division, whether directly or indirectly as owner of a pass-through
16 entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The credit is
17 allowed against one or more of the following taxes:

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

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

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

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

8 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
9 individual who purchases the equity securities or subordinated debt of (i) a qualified
10 business venture, (ii) a qualified grantee business, or (iii) a North Carolina Enterprise
11 Corporation directly from that entity is allowed as a credit against the tax imposed by
12 Division II of this Article for the taxable year an amount equal to twenty-five percent
13 (25%) of the amount invested. The aggregate amount of credit allowed an individual for
14 one or more investments in a single taxable year under this Division, whether directly or
15 indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars
16 (\$50,000).

17 The credit may not be taken for the year in which the investment is made but shall be
18 taken for the taxable year beginning during the calendar year in which the application for
19 the credit becomes effective as provided in subsection (c) of this section.

20 For the purpose of this Article, a credit for an investment in a qualified grantee
21 business that is an investment business, as provided in G.S. 105-163.013(c), is allowed
22 only upon the grantee business's subsequent investment of a like amount of funds in a
23 qualified business venture or a qualified grantee business that is not an investment
24 business, as evidenced by a certificate issued by the investment business pursuant to G.S.
25 105-163.013(c). This credit is allowed as if the individual's investment in the qualified
26 grantee business had been made on the date of the subsequent investment in a qualified
27 business venture or a qualified grantee business that is not an investment business.

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

42 Each individual who is an owner of a pass-through entity is allowed as a credit against
43 the tax imposed by Division II of this Article for the taxable year an amount equal to the

1 owner's allocated share of the credits for which the pass-through entity is eligible under
2 this subsection. The aggregate amount of credit allowed an individual for one or more
3 investments in a single taxable year under this Division, whether directly or indirectly as
4 owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

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

- 10 (1) The income tax imposed by Division I of this Article.
- 11 (2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.
- 12 (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-
13 228.8.

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

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

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

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

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

41 "(c) Qualified Grantee Businesses. – In order to qualify as a qualified grantee
42 business under this Division, a business must be registered with the Securities Division of
43 the Department of the Secretary of State. To register, the business must file with the

1 Secretary of State an application and any supporting documents the Secretary of State
2 may require from time to time to determine that the business meets the requirements for
3 registration as a qualified grantee business. A business meets the requirements for
4 registration as a qualified grantee business if all of the following are true as of the date
5 the business files the required application:

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

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

31 A qualified grantee business that is an investment business may account for its
32 investments in qualified business ventures and in qualified grantee businesses that are not
33 investment businesses, and may allocate amounts so invested among some or all of the
34 individuals who have invested in the investment business. The allocation may be on any
35 basis determined by the investment business as long as each dollar so invested is
36 allocated to no more than one individual investor and the amount allocated to each
37 individual investor does not exceed the amount that individual investor has previously
38 invested in the investment business. An investment business making this allocation shall
39 provide each affected individual investor with a statement certifying (i) the amount
40 allocated to the investor, (ii) that the amount has been invested in qualified business
41 ventures or in qualified grantee businesses that are not investment businesses, and (iii) the
42 names of these businesses and the dates funds were invested in each. After a certification
43 has been provided under this subsection, the allocation may not be revoked or modified.

1 To remain qualified as a qualified grantee business, the business must renew its
2 registration annually as prescribed by rule by filing an application for renewal in which
3 the business certifies the facts listed in this subsection. In the case of a qualified grantee
4 business that is an investment business, the application must include copies of certificates
5 issued by it pursuant to this subsection during the 12-month period preceding the
6 application for renewal."

7 Sec. 3. This act is effective for taxable years beginning on or after January 1,
8 1995, but does not apply to investments made before July 1, 1995, or to investments
9 made pursuant to commitments to invest entered into before July 1, 1995.