

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1294
Committee Substitute Favorable 6/11/03
Senate Finance Committee Substitute Adopted 6/26/03

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

Sponsors:

Referred to:

May 15, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE QUALIFIED BUSINESS INVESTMENTS TAX
3 CREDIT AND TO EXTEND THE SUNSET ON THE STATE PORTS TAX
4 CREDIT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 105-163.015 reads as rewritten:
7 "§ 105-163.015. Sunset.

8 This Part is repealed effective for investments made on or after January 1,
9 2004-2007."

10 SECTION 2. G.S. 105-163.010 reads as rewritten:
11 "§ 105-163.010. Definitions.

12 The following definitions apply in this Part:

13 ...

14 (5a) Granting entity. – Any of the following:

- 15 a. A domestic or foreign corporation that (i) is tax-exempt
16 pursuant to section 501(c)(3) of the Code, (ii) has as its
17 principal purpose the stimulation of the development of the
18 biotechnology industry, and (iii) in furtherance of that purpose
19 has received, or is a successor in interest to an organization that
20 has received, direct appropriations from the State in at least
21 three fiscal years.
- 22 b. A domestic or foreign corporation that meets the following
23 three conditions:
- 24 1. It is tax-exempt pursuant to section 501(c)(3) of the
25 Code, is a private foundation pursuant to section 509 of
26 the Code, or is an affiliate of either of the foregoing.
- 27 2. It has as its principal purpose one of the following:
28 conducting research and development in, or stimulating

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

1 microelectronics and communication industries, and (iii) in
2 furtherance of that purpose has received, or is a successor in
3 interest to an organization that has received, direct
4 appropriations from the State in at least three fiscal years.

- 5 e. It is an institute that (i) is administratively located within a
6 constituent institution of The University of North Carolina, (ii)
7 is financed in part by a domestic or foreign corporation that is
8 tax exempt pursuant to section 501(c)(3) of the Code, (iii) has
9 as a principal purpose the stimulation of economic development
10 based on the advancement of science, engineering, and
11 technology, and (iv) funds, either directly or in collaboration
12 with other entities, small businesses engaging in developing
13 technology.

14 (9a) Qualified licensee business. – A business that meets all of the
15 following conditions:

- 16 a. It is registered with the Secretary of State under G.S.
17 105-163.013.
18 b. During its most recent fiscal year before filing an application
19 for registration under G.S. 105-163.013, it had gross revenues,
20 as determined in accordance with generally accepted accounting
21 principles, of one million dollars (\$1,000,000) or less on a
22 consolidated basis.
23 c. It has been certified by a constituent institution of The
24 University of North Carolina or a research university as
25 currently performing under a licensing agreement with the
26 institution or university for the purpose of commercializing
27 technology developed at the institution or university. For the
28 purpose of this section, a research university is an institution of
29 higher education classified as a Doctoral/Research University,
30 Extensive or Intensive, in the most recent edition of "A
31 Classification of Institutions of Higher Education", the official
32 report of The Carnegie Foundation for the Advancement of
33 Teaching."

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

35 **"§ 105-163.011. Tax credits allowed.**

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

40 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
41 individual who purchases the equity securities or subordinated debt of a qualified
42 ~~business venture or a qualified grantee~~ business directly from that business is allowed as
43 a credit against the tax imposed by Part 2 of this Article for the taxable year an amount
44 equal to twenty-five percent (25%) of the amount invested. The aggregate amount of

1 credit allowed an individual for one or more investments in a single taxable year under
2 this Part, whether directly or indirectly as owner of a pass-through entity, may not
3 exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in
4 which the investment is made but shall be taken for the taxable year beginning during
5 the calendar year in which the application for the credit becomes effective as provided
6 in subsection (c) of this section.

7 (b1) Pass-Through Entities. – This subsection does not apply to a pass-through
8 entity that has committed capital under management in excess of five million dollars
9 (\$5,000,000) or to a pass-through entity that is a qualified ~~grantee business, a qualified~~
10 ~~business-venture, business~~ or a North Carolina Enterprise Corporation. Subject to the
11 limitations provided in G.S. 105-163.012, a pass-through entity that purchases the
12 equity securities or subordinated debt of a qualified ~~grantee business or a qualified~~
13 ~~business-venture business~~ directly from the business is eligible for a tax credit equal to
14 twenty-five percent (25%) of the amount invested. The aggregate amount of credit
15 allowed a pass-through entity for one or more investments in a single taxable year under
16 this Part, whether directly or indirectly as owner of another pass-through entity, may not
17 exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not
18 eligible for the credit for the year in which the investment by the pass-through entity is
19 made but shall be eligible for the credit for the taxable year beginning during the
20 calendar year in which the application for the credit becomes effective as provided in
21 subsection (c) of this section.

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

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

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

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

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

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

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

8 "**§ 105-163.013. Registration.**

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

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

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

19 (1a) Reserved for future codification purposes.

20 (1b) Either (i) it was organized after January 1 of the calendar year in which
21 its application is filed or (ii) during its most recent fiscal year before
22 filing the application, it had gross revenues, as determined in
23 accordance with generally accepted accounting principles, of five
24 million dollars (\$5,000,000) or less on a consolidated basis.

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

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

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

31 a. Providing a professional service as defined in Chapter 55B of
32 the General Statutes.

33 b. Construction or contracting.

34 c. Selling or leasing at retail.

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

39 e. Providing personal grooming or cosmetics services.

40 f. Offering any form of entertainment, amusement, recreation, or
41 athletic or fitness activity for which an admission or a
42 membership is charged.

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

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

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

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

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

28 If the gross revenues of a qualified business venture exceed five million dollars
29 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing
30 of this fact by filing a financial statement showing the revenues of the business for that
31 year.

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

39 The effective date of registration for a qualified licensee business whose application
40 is accepted for registration is the filing date of its application. No credit is allowed under
41 this Part for an investment made before the effective date of the registration or after the
42 registration is revoked.

43 To remain qualified as a qualified licensee business, the business must renew its
44 registration annually as prescribed by rule by filing a financial statement for the most

1 recent fiscal year showing gross revenues, as determined in accordance with generally
2 accepted accounting principles, of one million dollars (\$1,000,000) or less on a
3 consolidated basis and an application for renewal in which the business certifies the
4 facts required in the original application.

5 Failure of a qualified licensee venture to renew its registration by the applicable
6 deadline results in revocation of its registration effective as of the next day after the
7 renewal deadline, but does not result in forfeiture of tax credits previously allowed to
8 taxpayers who invested in the business except as provided in G.S. 105-163.014. The
9 Secretary of State shall send the qualified licensee business notice of revocation within
10 60 days after the renewal deadline. A qualified licensee business may apply to have its
11 registration reinstated by the Secretary of State by filing an application for
12 reinstatement, accompanied by the reinstatement application fee and a late filing penalty
13 of one thousand dollars (\$1,000), within 30 days after receipt of the revocation notice
14 from the Secretary of State. A business that seeks approval of a new application for
15 registration after its registration has been revoked must also pay a penalty of one
16 thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had
17 not been revoked.

18 If the gross revenues of a qualified business venture exceed one million dollars
19 (\$1,000,000) in a fiscal year, the business must notify the Secretary of State in writing
20 of this fact by filing a financial statement showing the revenues of the business for that
21 year.

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

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

33 To remain qualified as a qualified grantee business, the business must renew its
34 registration annually as prescribed by rule by filing an application for renewal in which
35 the business certifies the facts ~~listed in this subsection.~~ demonstrating that it continues to
36 meet the applicable requirements for qualification.

37 (d) Application Forms; Rules; Fees. – Applications for registration, renewal of
38 registration, and reinstatement of registration under this section shall be in the form
39 required by the Secretary of State. The Secretary of State may, by rule, require
40 applicants to furnish supporting information in addition to the information required by
41 subsections (b) and (c) of this section. The Secretary of State may adopt rules in
42 accordance with Chapter 150B of the General Statutes that are needed to carry out the
43 Secretary's responsibilities under this Part. The Secretary of State shall prepare blank
44 forms for the applications and shall distribute them throughout the State and furnish

1 them on request. Each application shall be signed by the owners of the business or, in
2 the case of a corporation, by its president, vice-president, treasurer, or secretary. There
3 shall be annexed to the application the affirmation of the person making the application
4 in the following form: "Under penalties prescribed by law, I certify and affirm that to
5 the best of my knowledge and belief this application is true and complete." A person
6 who submits a false application is guilty of a Class 1 misdemeanor.

7 The fee for filing an application for registration under this section is one hundred
8 dollars (\$100.00). The fee for filing an application for renewal of registration under this
9 section is fifty dollars (\$50.00). The fee for filing an application for reinstatement of
10 registration under this section is fifty dollars (\$50.00).

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

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

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

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

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

2 "**§ 105-163.014. Forfeiture of credit.**

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

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

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

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

26 (1) Within one year after the investment was made, the taxpayer transfers
27 any of the securities received in the investment that qualified for the
28 tax credit to another person or entity, other than in a transfer resulting
29 from one of the following:

30 a. The death of the taxpayer.

31 b. A final distribution in liquidation to the owners of a taxpayer
32 that is a corporation or other entity.

33 c. A merger, conversion, consolidation, or similar transaction
34 requiring approval by the owners of the qualified ~~business~~
35 ~~venture or qualified grantee business~~ under applicable State
36 law, to the extent the taxpayer does not receive cash or tangible
37 property in the merger, conversion, consolidation, or other
38 similar transaction.

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

43 In the event the taxpayer transfers fewer than all the securities in a manner that
44 would result in a forfeiture, the amount of the credit that is forfeited is the product

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

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

15 (1) The redemption occurred because the qualified business venture
16 completed production of a film, sold the film, and was liquidated.

17 (2) Neither the qualified business venture nor a related person continues to
18 engage in business with respect to the film produced by the qualified
19 business venture.

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

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

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

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

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

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