

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**HOUSE BILL 1294
RATIFIED BILL**

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

The General Assembly of North Carolina enacts:

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

"§ 105-163.015. Sunset.

This Part is repealed effective for investments made on or after January 1, 2004.2007."

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

"§ 105-163.010. Definitions.

The following definitions apply in this Part:

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

- a. A domestic or foreign corporation that (i) is tax-exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the biotechnology industry, and (iii) in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years.
- b. A domestic or foreign corporation that meets the following three conditions:
 1. It is tax-exempt pursuant to section 501(c)(3) of the Code, is a private foundation pursuant to section 509 of the Code, or is an affiliate of either of the foregoing.
 2. It has as its principal purpose one of the following: conducting research and development in, or stimulating the development of, electronic, photonic, information, or other technologies, which may include investing in companies that provide research, development, products, or services in these technologies.
 3. It meets one of the following conditions:
 - I. It received direct appropriations in furtherance of one of these purposes from the State in at least three fiscal years.
 - II. It was organized to perform one of these purposes for an organization that meets condition I of this sub-subdivision.
 - III. It is an affiliate of an entity that meets condition II of this sub-subdivision.
- c. An institute that (i) is administratively located within a constituent institution of The University of North Carolina, (ii) is financed in part by a domestic or foreign corporation that is tax-exempt pursuant to section 501(c)(3) of the Code, (iii) has

as a principal purpose the stimulation of economic development based on the advancement of science, engineering, and technology, and (iv) funds, either directly or in collaboration with other entities, small businesses engaging in developing technology.

...
(7b) Qualified business. – A qualified business venture, a qualified grantee business, or a qualified licensee business.

...
(9) Qualified grantee business. – A business that (i) is registered with the Secretary of State under G.S. 105-163.013, and (ii) has received during the current year or any of the preceding three years a grant-grant, an investment, or other funding from a federal agency under the Small Business Innovation Research Program administered by the United States Small Business Administration or from a granting entity as defined in this section. an organization that meets any of the following qualifications:

a. ~~It is a domestic or foreign corporation that (i) is tax exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the biotechnology industry, and in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years.~~

b. ~~It is a domestic or foreign corporation that (i) is tax exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the microelectronics and communication industries, and (iii) in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years.~~

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

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

a. It is registered with the Secretary of State under G.S. 105-163.013.

b. During its most recent fiscal year before filing an application for registration under G.S. 105-163.013, it had gross revenues, as determined in accordance with generally accepted accounting principles, of one million dollars (\$1,000,000) or less on a consolidated basis.

c. It has been certified by a constituent institution of The University of North Carolina or a research university as currently performing under a licensing agreement with the institution or university for the purpose of commercializing technology developed at the institution or university. For the purpose of this section, a research university is an institution of

higher education classified as a Doctoral/Research University, Extensive or Intensive, in the most recent edition of "A Classification of Institutions of Higher Education", the official report of The Carnegie Foundation for the Advancement of Teaching."

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

"§ 105-163.011. Tax credits allowed.

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

(b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of a qualified ~~business venture or a qualified grantee business~~ directly from that business is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Part, 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 in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. – This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars (\$5,000,000) or to a pass-through entity that is a qualified ~~grantee business, a qualified business venture, business~~ or a North Carolina Enterprise Corporation. 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 or a qualified business venture business~~ directly from the business 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 Part, 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 Part 2 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 Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

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, 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 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 Part."

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

"(d) The taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a qualified ~~business venture or qualified grantee~~ business shall be reduced for the purposes of this Article 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."

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

"§ 105-163.013. Registration.

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

(b) Qualified Business Ventures. – In order to qualify as a qualified business venture under this Part, 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 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) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(1a) Reserved for future codification purposes.

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

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

(4) It does not engage as a substantial part of its business in 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 60 days before the date its application is filed. No credit is allowed under this Part for an investment made before the effective date of the registration or after the registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned upon other investors'

commitment of additional funds, the date of the investment is the date escrowed funds are transferred to the qualified business venture free of the condition.

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 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.

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.

(b1) Qualified Licensee Businesses. – In order to qualify as a qualified licensee business under this Part, 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 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 licensee business. The requirements for registration as a qualified licensee business are set out in G.S. 105-163.010.

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

To remain qualified as a qualified licensee business, 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 principles, of one million dollars (\$1,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified licensee venture to renew its registration by the applicable deadline results in revocation of its registration effective as of the next day after the renewal deadline, but does 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 licensee business notice of revocation within 60 days after the renewal deadline. A qualified licensee business 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 one million dollars (\$1,000,000) 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 Part, 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 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. The requirements for registration as a qualified grantee business are set out in G.S. 105-163.010. ~~G.S. 105-163.010(9).~~

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 Part 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~~ demonstrating that it continues to meet the applicable requirements for qualification.

(d) Application Forms; Rules; Fees. – Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to furnish supporting information in addition to the information required by subsections ~~(b)~~ (b), (b1), and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Part. The Secretary of State 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 Class 1 misdemeanor.

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

An application for renewal of registration under this section ~~shall~~ must indicate whether the applicant is a minority business, as defined in G.S. 143-128, 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~~ this section.

(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, conversion, consolidation, or other similar transaction with another business and the

surviving company 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 must provide the Secretary of State with written notice of the merger, conversion, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation or organization of the surviving company.

(g) Report by Secretary of State. – The Secretary of State shall report to the Revenue Laws Study Committee by October 1 of each year all of the businesses that have registered with the Secretary of State as qualified business ~~ventures~~ ventures, qualified licensee businesses, and qualified grantee businesses. The report shall include the name and address of each business, the location of its headquarters and principal place of 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."

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

"§ 105-163.014. Forfeiture of credit.

(a) Participation in Business. – A taxpayer who has received a credit under this Part for an investment in a qualified ~~business venture or qualified grantee~~ business forfeits the credit if, within three years after the investment was made, the taxpayer participates in the operation of the qualified ~~business venture or qualified grantee~~ 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, 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 provides services to a qualified ~~business venture or a qualified grantee~~ business, whether as an officer, a member of the board of directors, or otherwise does not participate in its operation if the person receives as compensation only reasonable reimbursement of expenses incurred in 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 Part for an investment in a qualified ~~business venture or a qualified grantee~~ business forfeits the credit if the 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) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(d) Transfer or Redemption of Investment. – A taxpayer who has received a credit under this Part for an investment in 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, conversion, consolidation, or similar transaction requiring approval by the owners of the 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, conversion, consolidation, or other similar transaction.

- (2) Except as provided in subsection (d1) of this section, within five years after the investment was made, the 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.

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

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

(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."

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

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

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

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

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

In the General Assembly read three times and ratified this the 18th day of July, 2003.

Beverly E. Perdue
President of the Senate

Richard T. Morgan
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2003