

General Information

The information below does not cover all provisions of the law. See North Carolina General Statutes 105-163.010 through 105-163.014 for additional information.

- A. Tax Credit** - This credit is not allowed to individuals or to pass-through entities for investments in a qualified business if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

Individuals - An individual who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business is allowed a credit against the tax for the taxable year equal to 25% of the amount invested or \$50,000, whichever is less. The credit is not allowable for the year in which the investment was made, but is allowable for the taxable year beginning during the calendar year following the calendar year in which the investment was made.

Pass-Through Entities - A pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business or a qualified business venture is allowed a tax credit for the taxable year equal to 25% of the amount invested or \$750,000, whichever is less. This credit is not allowed to a pass-through entity that has committed capital under management in excess of \$5,000,000. Each individual who is an owner of a pass-through entity is allowed a credit equal to his allocated share of the credits (not to exceed \$50,000) for which the pass-through entity is eligible. If the owner's share of the pass-through entity's credit is limited due to the maximum allowable credit for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

- B. Application** - To be eligible for the tax credit, this application must be filed with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the investment was made. The application for a qualified business investment by a pass-through entity must be filed by the pass-through entity. If the investment was paid for other than in money, the taxpayer must include with the application a certified appraisal of the value of the property used to pay for the investment. Pursuant to rule .0612, subchapter 6B, Title 17 of the North Carolina Administrative Code, the date set for filing the application may be extended provided a written statement is furnished by April 15 requesting additional time to file the application; however, this application must be filed by September 15. An extension of time to file an individual income tax return (Form D-400) does not extend the time for filing Form D-499.

- C. Limit** - The credit may not exceed the amount of tax liability for the taxable year reduced by the sum of all other credits allowable, except tax payments. Any unused credit may be carried forward for the next five succeeding years. Annual limitations on the amount of credit do not apply to unused amounts carried forward.

- D. Ceiling** - The total amount of all tax credits allowed for qualified business investments in a calendar year may not exceed \$6,000,000. The Secretary of Revenue will calculate the total credits from the applications filed. If the total for the calendar year exceeds \$6,000,000, a portion of the credits claimed will be allowed by allocating the \$6,000,000 in proportion to the size of the credit claimed by each taxpayer. The Secretary of Revenue will notify each taxpayer on or before December 31 of the year following the calendar year in which the investment was made, if the credit applied for is approved or if the amount of the credit has been reduced.

- E. Reduction in Basis** - A 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 must be reduced by the amount of allowable credit.

- F. Registration** - A qualified business venture and a qualified grantee business must be registered with the Securities Division of the Office of the Secretary of State. Information on the qualifying conditions under which they are registered can be obtained from the Secretary of State. An investment made prior to the effective date of the registration or after the revocation of the registration does not qualify for the tax credit. The effective date of registration of a qualified business venture whose application is accepted for registration is 60 days before the date its application is filed. The

effective date of registration for a qualified grantee business whose application is accepted for registration is the filing date of its application.

For investments placed initially in escrow, conditioned upon other investors' commitment of additional funds, the date of the investment is the date the escrowed funds are transferred to the qualified business venture.

- G. Forfeiture of Credit** - The credit is forfeited by the taxpayer if:
- (1) within three years after the investment was made, the taxpayer participates in the operation of the qualified business. A taxpayer participates in the operation of the qualified business if the taxpayer, the taxpayer's spouse, parent, brother or sister, 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 for compensation, whether as an employee, a contractor, or otherwise.
 - (2) the registration of the qualified business is revoked because the qualified business provided false information to the Secretary of State on its registration application.
 - (3) the taxpayer transfers the securities received in the investment to another person or entity within one year except in the case of (a) the death of the taxpayer, (b) a final distribution in liquidation, or (c) a merger, conversion, consolidation, or other similar transaction in which no cash or tangible property is received.
 - (4) The organization in which the investment was made makes a redemption of the securities within five years. However, if a qualified business venture engaged primarily in motion picture film production redeems its stock, the credit is not forfeited if the following conditions are met:
 - (a) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.
 - (b) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the business.

If the tax credit is forfeited, the taxpayer is liable for all past taxes avoided as a result of the credit, plus interest computed from the date the taxes would have been due had the credit not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. Any additional tax due as a result of forfeiture of the credit may be assessed within three years after the date of forfeiture.

H. Definitions -

Control - A person controls an entity if the person owns, directly or indirectly more than ten percent (10%) of the voting securities of that entity.

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.

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. An owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.

Related person - A person described in one of the relationships in section 267(b) or 707(b) of the Internal Revenue Code.

Subordinated debt - Indebtedness that (1) by its terms matures five or more years after its issuance, (2) is not secured, and (3) 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 G. S. 105-163.010(5). Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt. However the requirement that indebtedness mature five or more years after it was issued is not applicable to the subordinated debt of a qualified business venture that is engaged primarily in motion picture film production.