

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 919

Short Title: Small Business Tax Relief & Stimulus. (Public)

Sponsors: Representatives Wray, Crawford, Owens, and Wainwright (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development, if favorable, Finance.

May 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX AND OTHER ECONOMIC INCENTIVES AND RELIEF TO
3 SMALL BUSINESSES.

4 The General Assembly of North Carolina enacts:

5
6 **SMALL BUSINESS TAX RELIEF**

7 **SECTION 1.(a)** G.S. 105-129.16J reads as rewritten:

8 "**§ 105-129.16J. Temporary unemployment insurance refundable tax credit.**

9 (a) Credit. – A small business that makes contributions during the taxable year to the
10 State Unemployment Insurance Fund with respect to wages paid for employment in this State is
11 allowed a credit equal to ~~twenty five percent (25%)~~ fifty percent (50%) of the contributions. A
12 small business is a business whose cumulative gross receipts from business activity for the
13 taxable year do not exceed ~~one million dollars (\$1,000,000)~~ two million five hundred thousand
14 dollars (\$2,500,000).

15 (b) Refundable. – Notwithstanding G.S. 105-129.17, the credit allowed by this section
16 is subject to the following:

17 (1) The credit may only be claimed against the income taxes imposed by Article
18 4 of this Chapter.

19 (2) If the credit exceeds the amount of tax imposed by Article 4 of this Chapter
20 for the taxable year reduced by the sum of all credits allowable, the excess is
21 refundable. The refundable excess is governed by the provisions governing a
22 refund of an overpayment by the taxpayer of the tax imposed in that Article.
23 In computing the amount of tax against which multiple credits are allowed,
24 nonrefundable credits are subtracted before refundable credits.

25 (c) Applicability. – This section ~~applies only to~~ is repealed for taxable years ~~2010 and~~
26 ~~2011~~ beginning on or after January 1, 2012."

27 **SECTION 1.(b)** This section is effective for taxable years beginning on or after
28 January 1, 2011.

29
30 **ENHANCE R&D TAX CREDIT FOR SMALL BUSINESSES**

31 **SECTION 2.(a)** G.S. 105-129.50 reads as rewritten:

32 "**§ 105-129.50. Definitions.**

33 The definitions in section 41 of the Code apply in this Article. In addition, the following
34 definitions apply in this Article:

35 ...



(10) Small business. – A business whose annual receipts, combined with the annual receipts of all related persons, for the applicable period of measurement did not exceed ~~one million dollars (\$1,000,000)~~ two million five hundred thousand dollars (\$2,500,000)."

SECTION 2.(b) G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this section. Only one credit is allowed under this section with respect to the same expenses. If more than one subdivision of this section applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under more than one subdivision of this section, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is ~~three and one-quarter percent (3.25%)~~ five percent (5%).

(2) Low-tier research. – For expenses with respect to research performed in a development tier one area, the applicable percentage is three and one-quarter percent (3.25%).

(2a) University research. – For North Carolina university research expenses, the applicable percentage is twenty percent (20%).

(2b) Eco-Industrial Park. – For expenses with respect to research performed in an Eco-Industrial Park certified under G.S. 143B-437.08, the applicable percentage is thirty-five percent (35%).

(3) Other research. – For expenses not covered under another subdivision of this section, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	\$50 million	1.25%
\$50 million	\$200 million	2.25%
\$200 million	–	3.25%"

SECTION 2.(c) This section is effective for taxable years beginning on or after January 1, 2011.

SMALL BUSINESS START-UP TAX RELIEF

SECTION 3.(a) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...
(22) The amount of the exclusion of gain for qualified businesses allowed under Part 5 of this Article, plus an amount equal to the amount of the credits recaptured pursuant to G.S. 105-163.021; provided, however, that a taxpayer is not required to claim this exclusion."

SECTION 3.(b) G.S. 105-163.013 and G.S. 105-163.015 are recodified as G.S. 105-163.010A and G.S. 105-163.010B, respectively.

SECTION 3.(c) Part 5 of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"Part 5. Tax ~~Credits~~ Incentives for Qualified Business Investments.

"Subpart 1. General Provisions.**"§ 105-163.010. Definitions.**

The following definitions apply in this Part:

- ...
- (4) Equity security. – Common stock, preferred stock, or an interest in a ~~partnership~~, partnership or limited liability company, 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~~, partnership or limited liability company.
- ...
- (8) Qualified business venture. – A business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. ~~405-163.013~~, 105-163.010A.
- (9) Qualified grantee business. – A business that (i) is registered with the Secretary of State under G.S. ~~405-163.013~~, 105-163.010A and (ii) has received during the current year or any of the preceding three years a 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.
- (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. ~~405-163.013~~, 105-163.010A.
- b. During its most recent fiscal year before filing an application for registration under G.S. ~~405-163.013~~, 105-163.010A, 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.
- ...
- (13) Service-related industry. – A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. ~~405-163.013(b)(4)~~, 105-163.010A(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. ~~405-163.013(b)(4)~~, 105-163.010A(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.

- 1 (14) Subordinated debt. – Indebtedness that is not secured and is subordinated to
2 all other indebtedness of the issuer issued or to be issued to a financial
3 institution other than a financial institution described in subdivisions (5)(ii)
4 through (5)(v) of this section. ~~Except~~ For the purposes of Subpart 2 of this
5 Part only, except as provided in G.S. 105-163.014(d1), any portion of
6 indebtedness that matures earlier than five years after its issuance is not
7 subordinated debt.

8 **"§ 105-163.010A. 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 venture
11 under this Part, a business must be registered with the Securities Division of the Department of
12 the Secretary of State. To register, the business must file with the Secretary of State an
13 application and any supporting documents the Secretary of State may require from time to time
14 to determine that the business meets the requirements for registration as a qualified business
15 venture. A business meets the requirements for registration as a qualified business venture if all
16 of the following are true as of the date the business files the required application:

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

18 (1a) Reserved for future codification purposes.

19 (1b) Either (i) it was organized after January 1 of the calendar year in which its
20 application is filed or (ii) during its most recent fiscal year before filing the
21 application, it had gross revenues, as determined in accordance with
22 generally accepted accounting principles, of five million dollars
23 (\$5,000,000) or less on a consolidated basis.

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

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

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

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

32 b. Construction or contracting.

33 c. Selling or leasing at retail.

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

38 e. Providing personal grooming or cosmetics services.

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

42 (5) It was not formed for the primary purpose of acquiring all or part of the
43 ~~stock-stock, other ownership interest,~~ or assets of one or more existing
44 businesses.

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

46 The effective date of registration for a qualified business venture whose application is
47 accepted for registration is 60 days before the date its application is filed. No credit or
48 exclusion of gain is allowed under this Part for an investment made before the effective date of
49 the registration or after the registration is revoked. For the purpose of this Article, if a
50 taxpayer's investment is placed initially in escrow conditioned upon other investors'

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

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

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

21 If the gross revenues of a qualified business venture exceed five million dollars
22 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this
23 fact by filing a financial statement showing the revenues of the business for that year.

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

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

35 To remain qualified as a qualified licensee business, the business must renew its registration
36 annually as prescribed by rule by filing a financial statement for the most recent fiscal year
37 showing gross revenues, as determined in accordance with generally accepted accounting
38 principles, of one million dollars (\$1,000,000) or less on a consolidated basis and an
39 application for renewal in which the business certifies the facts required in the original
40 application.

41 Failure of a qualified licensee ~~venture-business~~ business to renew its registration by the applicable
42 deadline results in revocation of its registration effective as of the next day after the renewal
43 deadline, but does not result in forfeiture of tax credits previously allowed to taxpayers who
44 invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall
45 send the qualified licensee business notice of revocation within 60 days after the renewal
46 deadline. A qualified licensee business may apply to have its registration reinstated by the
47 Secretary of State by filing an application for reinstatement, accompanied by the reinstatement
48 application fee and a late filing penalty of one thousand dollars (\$1,000), within 30 days after
49 receipt of the revocation notice from the Secretary of State. A business that seeks approval of a
50 new application for registration after its registration has been revoked must also pay a penalty

1 of one thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had
2 not been revoked.

3 If the gross revenues of a qualified licensee business ~~venture~~ exceed one million dollars
4 (\$1,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this
5 fact by filing a financial statement showing the revenues of the business for that year.

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

13 The effective date of registration for a qualified grantee business whose application is
14 accepted for registration is the filing date of its application. No credit or exclusion of gain is
15 allowed under this Part for an investment made before the effective date of the registration or
16 after the registration is revoked.

17 To remain qualified as a qualified grantee business, the business must renew its registration
18 annually as prescribed by rule by filing an application for renewal in which the business
19 certifies the facts demonstrating that it continues to meet the applicable requirements for
20 qualification.

21 (d) Application Forms; Rules; Fees. – Applications for registration, renewal of
22 registration, and reinstatement of registration under this section shall be in the form required by
23 the Secretary of State. The Secretary of State may, by rule, require applicants to furnish
24 supporting information in addition to the information required by subsections (b), (b1), and (c)
25 of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the
26 General Statutes that are needed to carry out the Secretary's responsibilities under this Part. The
27 Secretary of State shall prepare blank forms for the applications and shall distribute them
28 throughout the State and furnish them on request. Each application shall be signed by the
29 ~~owners of the business or, in the case of a corporation, by its president, vice president,~~
30 ~~treasurer, or secretary.~~ owners, a manager, or an executive officer of the business. There shall be
31 annexed to the application the affirmation of the person making the application in the following
32 form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge
33 and belief this application is true and complete.' A person who submits a false application is
34 guilty of a Class 1 misdemeanor.

35 The fee for filing an application for registration under this section is one hundred dollars
36 (\$100.00). The fee for filing an application for renewal of registration under this section is fifty
37 dollars (\$50.00). The fee for filing an application for reinstatement of registration under this
38 section is fifty dollars (\$50.00).

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

45 ...

46 **"§ 105-163.010B. Sunset.**

47 This Part is repealed effective for investments made on or after January 1, ~~2013.~~2016.

48 "Subpart 2. Tax Credits for Qualified Business Investments.

49 **"§ 105-163.011. Tax credits allowed.**

50 ...

51 **"§ 105-163.012. Limit; carry-over; ceiling; reduction in basis.**

1 ...
2 (b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for
3 investments made in a calendar year may not exceed ~~seven million five hundred thousand~~
4 ~~dollars (\$7,500,000).~~ nine million five hundred thousand dollars (\$9,500,000). The Secretary of
5 Revenue shall calculate the total amount of tax credits claimed from the applications filed
6 pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments
7 made in a calendar year exceeds this maximum amount, the Secretary shall allow a portion of
8 the credits claimed by allocating the maximum amount in tax credits in proportion to the size of
9 the credit claimed by each taxpayer.

10 ...
11 **"§ 105-163.014. Forfeiture of credit.**

12 ...
13 "Subpart 3. Exclusion of Gain on Qualified Business Investments.

14 **"§ 105-163.020. Exclusion of gain allowed.**

15 (a) Individuals. – An individual may elect to exclude from the individual's income
16 taxable under this Article any gain or other taxable income recognized for federal income tax
17 purposes from the sale or exchange of qualified securities.

18 (b) Gain Recognized on Sales by Pass-Through Entities. – This subsection does not
19 apply to a pass-through entity that has committed capital under management in excess of five
20 million dollars (\$5,000,000) or to a pass-through entity that is a qualified business or a North
21 Carolina Enterprise Corporation. Each individual that is an owner of a pass-through entity may
22 elect to exclude from the individual's income taxable under this Article an amount equal to the
23 individual's allocated share of the exclusion for which the pass-through entity would be eligible
24 under subsection (a) of this section if the pass-through entity were an individual.

25 (c) Gain Recognized on Sale of Pass-Through Entities. – This subsection does not
26 apply to a pass-through entity that has committed capital under management in excess of five
27 million dollars (\$5,000,000) or to a pass-through entity that is a qualified business or a North
28 Carolina Enterprise Corporation. An individual may exclude from the individual's income
29 taxable under this Article a portion of the gain or other taxable income recognized as a result of
30 the individual's sale or exchange of an ownership interest in the pass-through entity that
31 invested in qualified securities. The portion of the gain or other taxable income that may be
32 excluded from income taxable under this Article is the gain or other taxable income recognized
33 as a result of the sale or exchange of an ownership interest in the pass-through entity multiplied
34 by a fraction, the numerator of which is the total amount invested by the pass-through entity in
35 qualified securities and the denominator of which is the total amount invested by the
36 pass-through entity. For purposes of this subsection, the amounts invested by a pass-through
37 entity shall be the amounts invested at the time of the pass-through entity's sale or exchange.

38 (d) Election Irrevocable. – A taxpayer's election as to whether to exclude gain from
39 taxable income becomes irrevocable upon filing the taxpayer's income tax return for the taxable
40 year.

41 **"§ 105-163.021. Recapture of credit.**

42 If a taxpayer claims an exclusion of gain from income pursuant to G.S. 105-163.020, the
43 income tax liability of the taxpayer for the tax year for which the exclusion is claimed shall be
44 increased by the amount of all credits previously claimed by the taxpayer pursuant to
45 G.S. 105-163.011 with respect to qualified securities that (i) have been sold or exchanged and
46 (ii) the gain from which has been excluded pursuant to G.S. 105-163.020.

47 **"§ 105-163.022. Qualified securities.**

48 (a) Qualified Security. – Except as otherwise provided in this section, any equity
49 security or subordinated debt instrument issued by a qualified business is a qualified security if
50 it satisfies all of the following conditions:

- 51 (1) It is originally issued by the business on or after January 1, 2012.

- 1 (2) As of the date of issuance, the issuing business is a qualified business.
2 (3) The security or instrument is acquired by the taxpayer at its original issue in
3 exchange for any tangible or intangible property or benefit to the business,
4 including cash, promissory notes, services performed, contracts for services
5 to be performed, or other equity securities of the business.
6 (4) It is held by the taxpayer for a continuous period of more than one year.
7 (5) No broker's fee or commission or other similar remuneration is paid or given
8 directly or indirectly for soliciting the purchase.
9 (6) If the security or instrument was purchased by a pass-through entity, the
10 entity met the requirements of G.S. 105-163.011(b1) at the time of purchase.

11 (b) Registration. – Securities of a qualified business acquired before the effective date
12 of its registration are not qualified securities. Revocation of the registration of a qualified
13 business pursuant to G.S. 105-163.010A does not affect the exclusion of gain from qualified
14 securities acquired while the registration was in effect if all conditions for registration are
15 satisfied.

16 (c) Effect of Redemptions and Other Distributions. – An equity security or subordinated
17 debt instrument is not a qualified security to the extent the taxpayer purchased it with the
18 proceeds of a redemption, dividend, or distribution made by the business that issued the
19 security or instrument. For the purpose of this subsection, when a business makes a redemption,
20 dividend, or distribution during the four-year period beginning two years before the issuance of
21 securities or instruments to a taxpayer, the taxpayer is considered to have used the proceeds of
22 the redemption, dividend, or distribution toward the purchase of the securities or instruments. A
23 redemption, dividend, or distribution occurs when the business issuing the security or
24 instrument does either of the following:

- 25 (1) Purchases, directly or indirectly, any of its outstanding equity securities or
26 subordinated debt, other than qualified securities, from the taxpayer or a
27 related person.
28 (2) Declares a dividend or makes a distribution with respect to any of its
29 outstanding equity securities or subordinated debt, other than qualified
30 securities, to the taxpayer or a related person. This subdivision does not
31 apply, however, to a distribution in connection with one of the following:
32 a. The reimbursement to the taxpayer of the reasonable costs of
33 forming, syndicating, managing, and operating the business.
34 b. An increase in the taxpayer's taxes, penalties, or interest to the extent
35 the increase is caused by the allocation to the taxpayer of income of
36 the business.

37 The repayment of principal on subordinated debt is a purchase of the debt except to the
38 extent the repayment is repayment of principal due on the subordinated debt at its maturity
39 pursuant to the terms of the subordinated debt instrument. If a transaction is treated under
40 section 304(a) of the Code as a distribution in redemption of the equity securities of a business,
41 that business has, for the purpose of this subsection, purchased an amount of its equity
42 securities equal to the amount treated as such a distribution under section 304(a) of the Code.

43 (d) Exception for Certain Transactions. – The following transactions are not treated as a
44 redemption or distribution for the purposes of subsection (c) of this section:

- 45 (1) Any deemed liquidation of a business pursuant to section 708(b)(1)(A) of
46 the Code by reason of the business becoming a disregarded entity for federal
47 tax purposes, to the extent there is not actual distribution of money or other
48 property to the taxpayer or a related person.
49 (2) Any deemed distribution or redemption by reason of a technical termination
50 of a business pursuant to section 708(b)(1)(B) of the Code to the extent there

1 is no actual distribution of money or other property to the taxpayer or a
2 related person.

3 (e) Conversion of Other Securities. – Any equity security or subordinated debt
4 instrument issued by a business and acquired by the taxpayer solely through the conversion of
5 another equity security or subordinated debt instrument that was issued by the business and was
6 a qualified security in the hands of the taxpayer is considered, for the purpose of this section, a
7 qualified security in the hands of the taxpayer and acquired by the taxpayer on the date the
8 taxpayer acquired the converted qualified security.

9 (f) Transfers. – In the case of a transfer by gift, by death, or from a pass-through entity
10 to one of its owners, the transferee is considered, for the purpose of this section, to have
11 acquired the qualified security in the same manner as the transferor and to have held it during
12 any continuous period immediately preceding the transfer during which it was held or treated as
13 held by the transferor.

14 In the case of a transaction described in section 351 or 721 of the Code or a reorganization
15 described in section 368 of the Code, if qualified securities are exchanged for other securities,
16 the other securities are considered, for the purpose of this section, qualified securities acquired
17 on the date the exchanged qualified securities were acquired. In the case of a transaction
18 described in section 351 or 721 of the Code, the newly acquired securities are considered
19 qualified securities, however, only if, immediately after the transaction, the business issuing the
20 securities owns, directly or indirectly, securities representing control, within the meaning of
21 section 368(c) of the Code, of the business whose securities were exchanged.

22 **"§ 105-163.023. Limitations.**

23 (a) Contributions and Exchanges of Property. – In the case of a transaction described in
24 section 351 or 721 of the Code or a reorganization described in section 368 of the Code, if a
25 taxpayer contributes property to or exchanges property with a qualified business, the following
26 rules apply:

27 (1) Qualified securities exchanged for property. – Except as otherwise provided
28 in subdivision (3) of this subsection, a taxpayer who transfers property to a
29 business in exchange for qualified securities in the business must, for
30 purposes of determining North Carolina taxable income, recognize gain
31 equal to the amount by which the fair market value of the property exceeded
32 the taxpayer's basis in the property on the date the property was exchanged
33 for the qualified securities. This gain must be recognized for the years for
34 which the taxpayer claims an exclusion of gain under this Part with respect
35 to the disposition of qualified securities received in exchange for the
36 property.

37 (2) Contributions to capital. – Except as otherwise provided in subdivision (3) of
38 this subsection, if the adjusted basis of a qualified security is adjusted due to
39 a contribution to capital after the date the qualified security was issued
40 originally, for purposes of determining North Carolina taxable income, the
41 taxpayer must recognize gain equal to the amount by which the fair market
42 value of the contributed property exceeded the taxpayer's basis in the
43 property on the date the property was contributed. This gain must be
44 recognized for the years for which the taxpayer claims an exclusion of gain
45 under this Part with respect to the disposition of the qualified securities.

46 (3) Disposition of contributed property. – If a qualified business disposes of
47 property contributed to it, the disposition occurs before the taxpayer who
48 contributed the property claims an exclusion of gain pursuant to this Part
49 with respect to qualified securities affected by the contribution, and the
50 taxpayer recognizes gain from the disposition, then for purposes of
51 subdivisions (1) and (2) of this subsection, the taxpayer's basis in the

1 contributed property is increased by any gain the taxpayer recognized from
2 the disposition.

3 (b) Transactions That Substantially Reduce the Risk of Loss. – If a taxpayer has entered
4 into any transaction that substantially reduces the risk of loss from holding the qualified
5 securities, there is no exclusion of gain under this Part from the sale or exchange of the
6 qualified securities unless the taxpayer entered into the transaction on or after January 1, 2012,
7 and elects to recognize gain as if the qualified securities were sold at fair market value on the
8 date the taxpayer first entered into that transaction. The following are examples of a transaction
9 that substantially reduces the risk of loss from holding the qualified securities:

10 (1) The taxpayer or a related person has made a short sale of substantially
11 identical property.

12 (2) The taxpayer or a related person has acquired an option to sell substantially
13 identical property at a fixed price."

14 **SECTION 3.(d)** This section is effective for taxable years beginning on or after
15 January 1, 2011.

17 **SMALL BUSINESS CONSTRUCTION CONTRACTOR ASSISTANCE**

18 **SECTION 4.(a)** Chapter 143 of the General Statutes is amended by adding a new
19 section to read as follows:

20 **"§ 143-131.1. Informal letting of repair and renovation projects.**

21 (a) Notwithstanding any other provisions of law, for projects estimated to cost two
22 million dollars (\$2,000,000) or less providing for repairs or renovations to State facilities and
23 related infrastructure that are supported from the General Fund, and where the majority of the
24 funding for such project is to be furnished out of the Repairs and Renovations Reserve Account
25 as otherwise provided by statute, contracts shall be let informally, pursuant to procedures
26 adopted by the North Carolina Office of State Construction after consultation with the State
27 Building Commission.

28 (b) The procedures adopted by the Office of State Construction shall include, but are
29 not limited to, the following minimum requirements:

30 (1) That the awarding authority for such contracts, including the Board of
31 Governors of The University of North Carolina and its designees, shall
32 solicit written quotes from at least three contractors that possess such
33 experience, expertise, and reputation in the contracting community as the
34 awarding authority deems sufficient in order to successfully complete the
35 project, and such solicitations shall be directed to at least two contractors
36 that also meet the qualifications for Resident Small Contractors set forth
37 below.

38 (2) That the awarding authority shall first negotiate with the contractor
39 furnishing the lowest written quote; provided, however, that for purposes of
40 selecting the contractor with which to first negotiate, any quote provided by
41 a Resident Small Contractor that is within five percent (5%) of the lowest
42 quote received shall be deemed to have submitted a quote equal to that low
43 quote, and the awarding authority shall first negotiate with any such
44 Resident Small Contractor that, in the opinion of the awarding authority,
45 presents the best qualifications to complete the project.

46 (3) That if a contract cannot be negotiated with the contractor first selected, the
47 awarding authority shall next negotiate with any other Resident Small
48 Contractor whose quote has been deemed equal to the lowest quote received
49 and thereafter with any other contractor furnishing quotes, lowest first.

50 (4) An illustrative description of circumstances in which the North Carolina
51 Office of State Construction may, in its discretion, waive the use of the

- 1 procedures provided in this section for other competitive procedures
2 provided elsewhere in the General Statutes.
- 3 (5) Provide for a waiver, in whole or in part, of Article 3 of Chapter 44A of the
4 General Statutes regarding performance and payment of surety bonds,
5 including such alternative provisions as may seem practicable to the North
6 Carolina Office of State Construction aimed at providing performance and
7 payment security to the State and to the suppliers and subcontractors on the
8 project similar to the protections furnished pursuant to Article 3 of Chapter
9 44A of the General Statutes regarding sureties and bonds.
- 10 (6) Such other and further provisions as the North Carolina Office of State
11 Construction deems necessary.
- 12 (c) As used in this section, the term "Resident Small Contractor" shall mean a
13 contractor that meets all of the following requirements:
- 14 (1) Is a properly licensed contractor that has been in business, since its
15 establishment, in North Carolina and for at least 36 consecutive months.
- 16 (2) Had gross revenues from operations less than ten million dollars
17 (\$10,000,000) during its most recent accounting year.
- 18 (3) Has at least fifty-one percent (51%) of the ownership of the enterprise
19 owned by one or more natural persons, some or all of whom participate in
20 the enterprise as follows:
- 21 a. Exercise operational authority over daily affairs of the enterprise.
22 b. Retain the power to direct policies and management.
23 c. Receive a beneficial interest from the enterprise, including, without
24 limitation, a share of the profit or loss of the enterprise. The
25 procedures adopted by the North Carolina Office of State
26 Construction after consultation with the State Building Commission
27 described above shall set forth the proofs necessary to establish
28 qualification as a Resident Small Contractor, and decisions on such
29 qualification shall be in the sole discretion of the State Construction
30 Director or the Director's designee.
- 31 (d) The adoption of procedures provided for in this section shall not be subject to the
32 rule-making provisions of Chapter 150B of the General Statutes, and any claims by contractors
33 shall be presented pursuant to the provisions of G.S. 143-135.3, except such claims shall be
34 finally and conclusively resolved by the State Construction Director without recourse to the
35 General Court of Justice or the contested case provisions of Chapter 150B of the General
36 Statutes."

37 **SECTION 4.(b)** This section becomes effective July 1, 2011.