

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 716

Short Title: Modify Cogenerating Power Tax Credit.

(Public)

Sponsors: Senator Kerr.

Referred to: Public Utilities.

April 7, 1993

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A PARTNERSHIP MAY QUALIFY FOR THE
2 CORPORATE INCOME TAX CREDIT FOR CONSTRUCTION OF A
3 COGENERATING POWER PLANT, TO PROVIDE AN ALTERNATIVE
4 METHOD TO CALCULATE THE CREDIT, AND TO CLARIFY THAT A
5 PARTNERSHIP MAY PASS AN INCOME TAX CREDIT THROUGH TO ITS
6 PARTNERS.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 105-130.25 reads as rewritten:

10 "**§ 105-130.25. Credit against corporate income tax for construction of**
11 **cogenerating power plants.**

12 ~~Any corporation, except (a)~~ Credit. – A corporation or a partnership, other than a
13 public utility as defined in G.S. 62-3(23), which that constructs a cogenerating power
14 plant in North Carolina shall be allowed a tax is allowed as a credit against the tax
15 imposed by this division Division an amount equal to ten percent (10%) of the costs
16 required paid during the taxable year to purchase and install the electrical or mechanical
17 power generation equipment of that plant; provided, that in order to secure plant. To be
18 eligible for the credit allowed by this section, the taxpayer corporation or partnership
19 must own or control such the power plant at the time of construction, and payment in part
20 or in whole for such construction and equipment must be made by the taxpayer during the tax
21 year for which the credit is claimed; and the amount of credit allowed for any one income year
22 shall be limited to ten percent (10%) of such costs paid during the year, and the credit allowed
23 by this section shall not exceed the amount of the tax imposed by this Division for the taxable
24 year reduced by the sum of all credits allowable under this Division, except for payments of tax

1 ~~made by or on behalf of the taxpayer.~~ construction. The credit allowed by this section may
2 ~~not exceed the amount of tax imposed by this Division for the year reduced by the sum~~
3 ~~of all credits allowed, except payments of tax made by or on behalf of the taxpayer.~~

4 For purposes of this section, a cogenerating power plant is a power plant ~~which that~~
5 sequentially produces electrical or mechanical power and useful thermal energy from
6 the same primary energy source. The ~~tax credit provided for in~~ allowed by this section is
7 ~~not allowed to a corporation which constructs~~ does not apply to construction of a
8 cogenerating power plant whose combustion equipment uses residual oil, middle
9 distillate oil, gasoline, natural gas or liquid propane gas (LPG) as a primary fuel.

10 (b) Alternative Method. – A taxpayer eligible for the credit allowed by this
11 section may elect to treat the costs paid during an earlier year as if they were paid
12 during the year the plant becomes operational. If a taxpayer makes this election,
13 however, the credit may not exceed one-half the amount of tax imposed by this Division
14 for the year reduced by the sum of all credits allowed, except payments of tax by or on
15 behalf of the taxpayer, but any unused portion of the credit may be carried forward for
16 the next 15 taxable years. An election made under this subsection is irrevocable and is
17 binding on any partners to whom the credit is passed through."

18 Sec. 2. Article 9 of Chapter 105 of the General Statutes is amended by
19 adding at the end a new section to read:

20 "**§ 105-269.15. Income tax credits of partnerships.**

21 (a) Pass-Through of Credit. – A partnership may pass through to each of its
22 partners the partner's distributive share of an income tax credit for which the partnership
23 qualifies. All limitations on an income tax credit apply to the partnership, except the
24 following:

25 (1) The limitation that the credit may not exceed the amount of income tax
26 imposed on the taxpayer.

27 (2) A cap on the otherwise allowable amount of the credit, expressed as a
28 specific maximum dollar amount or a specific percentage of tax
29 imposed for the taxable year.

30 (b) Allowance of Credit to Partner. – A partner's distributive share of an income
31 tax credit passed through by a partnership is allowed to the partner only to the extent the
32 partner would have qualified for the credit if the partner stood in the position of the
33 partnership. All limitations on an income tax credit apply to each partner to the extent
34 of the partner's distributive share of the credit, except that a corporate partner's
35 distributive share of an individual income tax credit is allowed as a corporation income
36 tax credit to the extent the corporate partner could have qualified for a corporation
37 income tax credit if it stood in the position of the partnership. All limitations on an
38 income tax credit apply to the sum of the credit passed through to the partner plus the
39 credit for which the partner qualifies directly.

40 (c) Determination of Distributive Share. – A partner's distributive share of an
41 income tax credit shall be determined in accordance with sections 702 and 704 of the
42 Code."

43 Sec. 3. This act is effective for taxable years beginning on or after January 1,
44 1992.