GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 716
Finance Committee Substitute Adopted 7/1/93

Short Title: Modify Cogenerating Power Tax Credit. (Public)

Sponsors:

Referred to:

April 7, 1993

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CORPORATE INCOME TAX CREDIT FOR CONSTRUCTION OF A COGENERATING POWER PLANT BY (1) PROVIDING THAT A PARTNERSHIP MAY QUALIFY FOR THE PARTNERSHIP, (2) CLARIFYING THAT A PARTNERSHIP MAY PASS AN INCOME TAX CREDIT THROUGH TO ITS PARTNERS, (3) EXPANDING THE CREDIT TO INCLUDE NATURAL GAS COGENERATING POWER PLANTS, (4) PROVIDING AN ALTERNATIVE METHOD TO CALCULATE THE CREDIT, (5) LIMITING THE AMOUNT OF CREDIT THAT MAY BE ALLOWED EACH YEAR, AND (6) RESTRICTING THE CREDIT TO NATURAL GAS COGENERATING POWER PLANTS EFFECTIVE BEGINNING IN 1998.

The General Assembly of North Carolina enacts:

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

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

~~Any corporation, except~~ (a) Credit. – A corporation or a partnership, other than a public utility as defined in G.S. 62-3(23), ~~which~~ that constructs a cogenerating power plant in North Carolina ~~shall be allowed a tax~~ is allowed as a credit against the tax imposed by this ~~division~~ Division an amount equal to ten percent (10%) of the costs ~~required~~ paid during the taxable year to purchase and install the electrical or mechanical power generation equipment of that ~~plant; provided, that in order to secure~~ plant. The credit may not be taken for the year in which the costs are paid but shall be taken for the

taxable year beginning during the calendar year following the calendar year in which the costs were paid. To be eligible for the credit allowed by this section, the ~~taxpayer~~ corporation or partnership must own or control ~~such~~ the power plant at the time of ~~construction, and payment in part or in whole for such construction and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year shall be limited to ten percent (10%) of such costs paid during the year, and the credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.~~ construction. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(a1) Cogenerating Power Plant Defined. – For purposes of this section, a cogenerating power plant is a power plant ~~which~~ that sequentially produces electrical or mechanical power and useful thermal energy from the same primary energy source. The ~~tax~~ credit ~~provided for in~~ allowed by this section ~~is not allowed to a corporation which constructs~~ does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, ~~natural gas~~ or liquid propane gas (LPG) as a primary fuel.

(b) Alternative Method. – A taxpayer eligible for the credit allowed by this section may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. This election must be made on or before April 15 following the calendar year in which the plant becomes operational. The election must be in the form prescribed by the Secretary and must contain any supporting documentation the Secretary may require. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

The costs with respect to which this election is made will be treated, for the purposes of this section, as if they had actually been paid in the year the plant becomes operational. If a taxpayer makes this election, however, the credit may not exceed one-fourth the amount of tax imposed by this Division for the year reduced by the sum of all credits allowed, except payments of tax by or on behalf of the taxpayer, but any unused portion of the credit may be carried forward for the next 10 taxable years. An election made under this subsection is irrevocable.

(c) Application. – To be eligible for the credit allowed in this section, a taxpayer must file an application for the credit with the Secretary on or before April 15 following the calendar year in which the costs were paid. The application shall be in the form prescribed by the Secretary and shall include any supporting documentation the Secretary may require. An application with respect to costs paid by a partnership must be made by the partnership on behalf of its partners.

(d) Ceiling. – The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed five million dollars ($5,000,000). The Secretary shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total

amount of tax credits claimed for payments made in a calendar year exceeds five million dollars ($5,000,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. In no case may the total amount of all tax credits allowed under this section for costs paid in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next 10 taxable years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the costs for which a credit is claimed shall be considered as if they had been paid in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed."

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

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

(a) Pass-Through of Credit. – A partnership may pass through to each of its partners the partner's distributive share of an income tax credit for which the partnership qualifies. Except as otherwise provided in this Chapter, all limitations on an income tax credit apply to the partnership, except the following:

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

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

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

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

Sec. 3. G.S. 105-130.25(a1), as amended by Section 1 of this act, reads as rewritten:

"(a1) Cogenerating Power Plant Defined. – For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or

mechanical power and useful thermal energy ~~from the same~~ using natural gas as its primary energy source. ~~The credit allowed by this section does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel.~~"

Sec. 4. Section 3 of this act is effective for costs paid on or after January 1, 1998; the remainder of this act is effective for taxable years beginning on or after January 1, 1993.