

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 716

Finance Committee Substitute Adopted 7/1/93

House Committee Substitute Favorable 6/30/94

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 CREDIT, (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 EFFECTIVE BEGINNING IN 1994, 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. To be

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

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

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

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

33 Sec. 2. G.S. 105-130.25, as amended by Section 1 of this act, reads as
34 rewritten:

35 **"§ 105-130.25. Credit against corporate income tax for construction of**
36 **cogenerating power plants.**

37 (a) Credit. – A corporation or a partnership, other than a public utility as defined
38 in G.S. 62-3(23), that constructs a cogenerating power plant in North Carolina is
39 allowed as a credit against the tax imposed by this Division an amount equal to ten
40 percent (10%) of the costs paid during the taxable year to purchase and install the
41 electrical or mechanical power generation equipment of that plant. The credit may not
42 be taken for the year in which the costs are paid but shall be taken for the taxable year
43 beginning during the calendar year following the calendar year in which the costs were
44 paid. To be eligible for the credit allowed by this section, the corporation or partnership

1 must own or control the power plant at the time of construction. The credit allowed by
2 this section may not exceed the amount of tax imposed by this Division for the year
3 reduced by the sum of all credits allowed, except payments of tax made by or on behalf
4 of the taxpayer.

5 (a1) Cogenerating Power Plant Defined. – For purposes of this section, a
6 cogenerating power plant is a power plant that sequentially produces electrical or
7 mechanical power and useful thermal energy from the same primary energy source.
8 The credit allowed by this section does not apply to construction of a cogenerating
9 power plant whose combustion equipment uses residual oil, middle distillate oil,
10 gasoline, or liquid propane gas (LPG) as a primary fuel.

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

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

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

32 (d) Ceiling. – The total amount of all tax credits allowed to taxpayers under this
33 section for payments for construction and installation made in a calendar year may not
34 exceed five million dollars (\$5,000,000). The Secretary shall calculate the total amount
35 of tax credits claimed from the applications filed pursuant to subsection (c). If the total
36 amount of tax credits claimed for payments made in a calendar year exceeds five
37 million dollars (\$5,000,000), the Secretary shall allow a portion of the credits claimed
38 by allocating the total allowable amount among all taxpayers claiming the credits in
39 proportion to the size of the credit claimed by each taxpayer. In no case may the total
40 amount of all tax credits allowed under this section for costs paid in a calendar year
41 exceed five million dollars (\$5,000,000).

42 If a credit claimed under this section is reduced as provided in this subsection, the
43 Secretary shall notify the taxpayer of the amount of the reduction of the credit on or
44 before December 31 of the year the taxpayer applied for the credit. The amount of the

1 reduction of the credit may be carried forward and claimed for the next 10 taxable years
2 if the taxpayer reapplies for a credit for the amount of the reduction, as provided in
3 subsection (c). In such a reapplication, the costs for which a credit is claimed shall be
4 considered as if they had been paid in the year preceding the reapplication. The
5 Secretary's allocations based on applications filed pursuant to subsection (c) are final
6 and shall not be adjusted to account for credits applied for but not claimed."

7 Sec. 3. Article 9 of Chapter 105 of the General Statutes is amended by
8 adding at the end a new section to read:

9 **"§ 105-269.15. Income tax credits of partnerships.**

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

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

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

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

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

32 Sec. 4. G.S. 105-130.25(a1), as amended by this act, reads as rewritten:

33 "(a1) Cogenerating Power Plant Defined. – For purposes of this section, a
34 cogenerating power plant is a power plant that sequentially produces electrical or
35 mechanical power and useful thermal energy ~~from the same~~ using natural gas as its
36 primary energy source. ~~The credit allowed by this section does not apply to construction of a~~
37 eogenerating power plant whose combustion equipment uses residual oil, middle distillate oil,
38 gasoline, or liquid propane gas (LPG) as a primary fuel."

39 Sec. 5. Section 4 of this act is effective for costs paid on or after January 1,
40 1998; Section 2 of this act is effective for taxable years beginning on or after January 1,
41 1994; the remainder of this act is effective for taxable years beginning on or after
42 January 1, 1993.