CHAPTER 44

Palmetto Seed Capital Fund Limited Partnership

Editor's Note

2004 Act No. 187, Section 6, provides as follows:

"Upon certification to the Secretary of State by the President of the Palmetto Seed Capital Corporation that the remaining investments of the private sector limited partners of the Palmetto Seed Capital Fund Limited Partnership have been liquidated, Chapter 44 of Title 41 of the 1976 Code is repealed, and any remaining public assets and liabilities of the Palmetto Seed Capital Corporation shall be transferred to the South Carolina Venture Capital Fund herein created."

**SECTION 41‑44‑10.** Definitions.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

(A) The "Fund" means the Palmetto Seed Capital Fund Limited Partnership, a limited partnership, established and operated as described in Section 41‑44‑60.

(B) The "corporation" means the corporate general partner of the fund.

(C) "Qualified investment" means qualified stock or a qualified interest which stock or interest is purchased solely for cash.

(D) "Qualified stock" means a share or shares of stock in the Corporation if the stock, when purchased by the taxpayer, is authorized but unissued.

(E) "Qualified interest" means, in the case of the Corporation, a general partnership interest in the Fund, and in the case of all other persons, a limited partnership interest in the Fund.

(F) Reserved.

(G) Reserved.

(H) "Seed capital" means investments in either the common stock, preferred stock, or bonds convertible to either common or preferred stock, or options, warrants, or rights to receive any of the foregoing or any other similar investment in a South Carolina business.

(I) "South Carolina business" means a corporation, general partnership, limited partnership, joint venture, trust, proprietorship or any other similar entity or organization which is either established and operating or will be established to operate in South Carolina.

(J) "Pre‑start‑up business" means a South Carolina business which is in the process of developing a product or service and prior to such time as the product or service is offered for sale in the ordinary course of business.

(K) "Start‑up business" means a South Carolina business which is in the first thirty‑six months of providing goods or services in the ordinary course of business or any South Carolina business which qualified as a start‑up business by this definition at the time it entered the fund's seed capital portfolio.

(L) "Less Developed Area" has the same meaning as set forth in Section 12‑6‑3360.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1989 Act No. 3, Section 1, eff February 15, 1989; 1990 Act No. 505, Section 2, with subsection (B) eff May 29, 1990, and subsection (F) eff January 1, 1990; 1995 Act No. 76, Section 17, eff for taxable years beginning after 1995.

Effect of Amendment

The 1989 amendment rewrote the definition of "Start‑up business" in subsection (K).

The 1990 amendment, in subsection (B), revised the definition of corporation and, in subsection (F), revised the definition of tax liability.

The 1995 amendment, in subsections (F) and (G), substituted "Reserved" for the existing material and in subsection (L), substituted "Section 12‑6‑3360" for "Section 12‑7‑616(a)".

**SECTION 41‑44‑20.** Taxpayer credit.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

A taxpayer is entitled to a credit for qualified investments in the Palmetto Seed Capital Corporation or the Palmetto Seed Capital Fund Limited Partnership as determined under Section 12‑6‑3430.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1995 Act No. 76, Section 18, eff for taxable years beginning after 1995.

Effect of Amendment

The 1995 amendment rewrote this section.

**SECTION 41‑44‑30.** Tax credit, computation; corporation filing consolidated return; effect of merger, consolidation, or reorganization.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

Subject to Section 41‑44‑50, the amount of the credit that a taxpayer may receive under this chapter for a particular taxable year is equal to the lesser of:

(1) the taxpayer's state tax liability for that taxable year;

(2) the amount determined in Step Three of the following steps:

Step One: Add the consideration paid for all qualified investments of the taxpayer during the taxable year of the taxpayer.

Step Two: Multiply the amount determined in Step One by three‑tenths.

Step Three: Add the product determined in Step Two to the credit carryover, if any, to which the taxpayer is entitled for the taxable year under Section 41‑44‑40; or

(3) one‑half of all the qualified investments of the taxpayer multiplied by three‑tenths.

A corporation which files or is required to file a consolidated return is entitled to the income tax credit allowed by this section on a consolidated basis. The tax credit may be determined on a consolidated basis regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group.

The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation but unused credits may be transferred and continued by the succeeding corporation. In addition, a corporation may assign its rights to its unused credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1994 Act No. 427, Section 4, eff for taxable years beginning after 1987 (approved by the Governor May 24, 1994).

Effect of Amendment

The 1994 amendment added the last two paragraphs, pertaining to entitlement to the credit on a consolidated basis, and to the effect of merger, consolidation or reorganization of a corporation, respectively.

**SECTION 41‑44‑40.** Credit carryover.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

If the amount of the credit determined under Section 41‑44‑30(2) exceeds the credit allowed under Section 41‑44‑30 for that taxable year, then the taxpayer may carry the excess over to the immediately succeeding taxable years. However, the credit carryover may not be used for any taxable year that begins on or after ten years from the date of the qualified investment. The amount of the credit carryover from a taxable year must be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988.

**SECTION 41‑44‑50.** Maximum amount of credits allowed.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

The total amount of credits allowed under this chapter may not exceed in the aggregate five million dollars for all taxpayers and all taxable years, excluding any allowable tax credits of the Corporation. The credit must be allowed to taxpayers in the order of the time of the purchase of the qualified investments.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988.

**SECTION 41‑44‑60.** Palmetto Seed Capital Corporation established.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

(A) A corporation must be formed in the manner provided in this chapter and by law to be the general partner of the Palmetto Seed Capital Fund Limited Partnership, and operated pursuant to the laws of this State. The articles of incorporation, bylaws, and any other agreement relating to the organization or operation of the corporation must comply with the provisions set forth in this section.

(B) The Governor shall cause the corporation to be formed, and he shall designate the incorporators. The initial board of directors must consist of three members, one of whom must be appointed by the Governor and two of whom must be appointed by the Secretary of Commerce. Members of the initial board of directors shall serve three‑year terms. The initial board of directors must be representative of the State as a whole. The registered agent must be designated by the Governor. The corporation's existence begins upon filing of the articles of incorporation. The corporation's existence is perpetual, unless dissolved as provided herein. The corporation is authorized to issue shares of a number, class, and par or no‑par value, as provided in its articles of incorporation. The general nature of the business of the corporation is to serve as general partner of the Palmetto Seed Capital Fund Limited Partnership, to provide financing to high growth oriented businesses, to provide seed capital to South Carolina businesses, and to undertake any acts appropriate or necessary to carry out the foregoing. The bylaws, the organizational minutes, the election of officers, the issuance of any stock of the corporation, and any other actions appropriate or necessary for the organization and operation of the corporation must be of that form and content as determined by the board of directors. Nothing contained in the chapter may prohibit the shareholders or board of directors of the corporation from altering, amending, or otherwise modifying the articles of incorporation, bylaws, or any other agreement governing the corporation as otherwise permitted pursuant to the laws of this State, except that the general nature of the business of the corporation may not be amended, altered, or otherwise modified or restricted, and except that the corporation may be dissolved, merged, or otherwise cease to exist pursuant to the appropriate vote of the board of directors and shareholders. The Governor may expend those discretionary funds as he has available and considers appropriate for the purpose of organizing the corporation and promoting the sale of the qualified investments.

(C) The directors of the Corporation need not be shareholders in the Corporation, and there must be not less than three nor more than seven directors, with the initial three directors selecting any additional directors as provided by the bylaws. After the terms of initial directors expire, successors must be chosen in the manner provided by the bylaws of the Corporation. Members of the initial board are eligible to succeed themselves. Directors shall receive no salary but may receive mileage, subsistence, and per diem provided by law for members of state boards, committees, and commissions. If a director is a full‑time state employee, he may not receive per diem.

(D) The Corporation shall cause the Fund to be formed as a limited partnership established pursuant to Chapter 41 of Title 33. The partnership agreement relating to the organization and operation of the Fund must be of that form and content as determined by the board of directors of the Corporation. The Corporation must be the sole general partner of the Fund, and the initial limited partner must be a person or entity designated by the Corporation's board of directors. Additional limited partners may be admitted to the Fund in accordance with the terms of the partnership agreement.

(E) The fund shall raise funds to provide financing to high growth oriented businesses. A "high growth oriented business" for purposes of this chapter means a corporation, general partnership, limited partnership, joint venture, trust, proprietorship, or other similar entity or organization which is expected to experience significant sales growth over the subsequent five‑year period. All investments made from investment monies raised by the fund, for which the tax credit provided by this chapter is allowed and for which the tax credit is made available by the fund in the prospectus or offering, must be made to provide seed capital to South Carolina businesses, this seed capital to be used primarily for the purpose of enhancing the production capacity of these businesses or their ability to do business in South Carolina. However, to the extent that the fund directly induces seed capital monies from outside the State to be invested in South Carolina businesses in which it is also investing, the fund may substitute up to two‑thirds of these outside monies for its own capital in fulfillment of the requirements of this section. Seventy percent of these investment monies induced into the State or acquired by the fund for which the tax credit is allowed and available must be invested to provide seed capital financing of either start‑up businesses or pre‑start‑up businesses. The remaining thirty percent may be invested as the general partner of the fund determines to provide capital to South Carolina businesses.

(F) No business may be transacted or indebtedness incurred except that as is incidental to the organization of the Corporation or the Fund or to obtaining subscriptions to or payment for either its qualified stock or qualified interests, until consideration for the five million dollars has been paid to the Corporation or to the Fund.

(G) All securities issued by either the Corporation or the Fund before dissolution pursuant to Section 6 of Act 187 of 2004 are considered exempt securities with regard to Section 35‑1‑201 of the Uniform Securities Act.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1989 Act No. 3, Sections 2 and 3, eff February 15, 1989; 1990 Act No. 505, Section 3, eff May 29, 1990; 1993 Act No. 181, Section 983, eff July 1, 1993; 1994 Act No. 361, Section 8, eff May 3, 1994; 2005 Act No. 110, Section 6, eff January 1, 2006.

Effect of Amendment

The 1989 amendment revised the 9th sentence of subsection (B) by adding "to provide financing to high growth oriented businesses,", and rewrote subsection (E).

The 1990 amendment, in subsection (A), replaced "The" with "A", inserted "in the manner provided in this chapter and by law to be the general partner of the Palmetto Seed Capital Fund Limited Partnership," after "formed", in subsection (B), deleted the reference to the "Palmetto Seed Capital Corporation", and in subsection (E), provided for the use and investing of the outside investment monies acquired by the fund.

The 1993 amendment in subsection (B) substituted "Director of the Department of Commerce" for "State Development Board".

The 1994 amendment in subsection (B), substituted "Secretary of Commerce" for "Director of the Department of Commerce".

The 2005 amendment, in subsection (G), added "before dissolution pursuant to Section 6 of Act 187 of 2004" and substituted "35‑1‑201" for "35‑1‑310".

**SECTION 41‑44‑70.** Tax exemptions.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

(A) The Corporation, but not the shareholders thereof, is exempt from all state income taxes and also corporate license fees.

(B) Partners of the fund are allowed an exclusion from gross income as provided in Section 12‑6‑1120(8).

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1995 Act No. 76, Section 19, eff for taxable years beginning after 1995.

Effect of Amendment

The 1995 amendment rewrote this section.

**SECTION 41‑44‑80.** Redemption of qualified investment.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

(A) If a qualified investment which is the basis for a credit under this chapter is redeemed by the Fund or the Corporation, within five years of the date it is purchased, the credit provided by this chapter for the qualified investment is disallowed, and any credit previously claimed and allowed with respect to the qualified investment so redeemed must be paid to the Department of Revenue with the appropriate return of the taxpayer covering the period in which the redemption occurred. When payments are made to the Department of Revenue under this section, the amount collected must be handled in the same manner as if no credit had been allowed.

(B) However, neither a distribution by the Fund nor dividends or other distributions by the Corporation are considered to be redemption of a qualified investment unless either the amount of qualified stock owned by the taxpayer or the qualified interest held by the taxpayer, after the distribution or dividend is less than the amount of qualified stock or qualified interest held by the taxpayer immediately prior to the distribution or dividend.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1993 Act No. 181, Section 984, eff July 1, 1993.

Effect of Amendment

The 1993 amendment in subsection (A) substituted "Department of Revenue" for "Tax Commission" and for "Commission".

**SECTION 41‑44‑90.** Procedure to receive tax credit.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

To receive the credit provided by this chapter, a taxpayer shall:

(1) claim the credit on the taxpayer's annual state income or premium tax return in the manner prescribed by the appropriate commission; and

(2) file with the appropriate commission and with the taxpayer's annual state income or premium tax return a copy of the form issued by the corporation as to the qualified investment by the taxpayer, which includes an undertaking by the taxpayer to report to the appropriate commission any redemption of the qualified investment within the meaning of Section 41‑44‑80.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1990 Act No. 505, Section 4, approved May 29, 1990, and eff January 1, 1990.

Effect of Amendment

The 1990 amendment provided for tax credits for insurance premium taxes.

**SECTION 41‑44‑100.** Forms.

[This section is repealed upon certification that remaining investments of private sector limited partners have been liquidated. See Editor's Note at the beginning of this Chapter.]

The corporation shall complete forms prescribed by the appropriate commission which must show as to each qualified investment in the fund:

(1) the name, address, and identification number of the taxpayer who purchased a qualified investment; and

(2) the nature of the qualified investment purchased by the taxpayer and the amount paid for it.

These forms must be filed with the appropriate commission on or before the fifteenth day of the third month following the month in which the qualified investment is purchased. Copies of the forms to be provided to the appropriate commission must be mailed to the taxpayer on or before the fifteenth day of the second month following the month in which the qualified investment is purchased.

HISTORY: 1988 Act No. 643, Section 2, eff June 7, 1988; 1990 Act No. 505, Section 5, approved May 29, 1990, and eff January 1, 1990.

Effect of Amendment

The 1990 amendment changed the references to the "Tax Commission" to the "appropriate commission."