

MAINE STATE LEGISLATURE

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August 31, 1979

Jerome F. Goldberg, Esq.
Bernstein, Shur, Sawyer & Nelson
1 Monument Square
Portland, ME 04101

Dear Jerry:

Subject to the qualifications set forth in Steven Wright's August 6, 1979 letter to you as to the expression of this office's views on your questions pertaining to the Maine Capital Corporation, I am replying to the two tax questions posed in your June 28, 1979 letter.

You restated the first tax question as follows: whether persons other than subscribers of original issue stock will be entitled to the tax credit set forth in Title 36.

There are three sections in the Maine Income Tax Law directly applicable to credits allowed against the Maine Income Tax for the amount of any investment in the Maine Capital Corporation, to wit; 36 M.R.S.A. § 5129 (the credit allowed resident individuals), 36 M.R.S.A. § 5167 (the credit allowed a resident estate or trust), and 36 M.R.S.A. § 5202 (the credit allowed taxable corporations). Subsection 2, Paragraph C of each of these cited sections reads:

"The credit allowed under this section shall be available only to subscribers in the common stock of the Maine Capital Corporation."

There are several definitions of a subscriber to stock. It appears that the definition in Latimer v. Bennett, 139 S.E. 570 (1927), of a subscriber is applicable. "A subscriber is one who becomes bound by subscription to the capital stock of a corporation." Id @572 'Subscription' in turn has been defined in reference to capital stock as:

"A written contract by which one engages to take and pay for capital stock of a corporation,..."
Black's Law Dictionary, 4th Ed., P. 1596

In light of these definitions, I have concluded that a transferee purchasing stock from a subscriber is not a subscriber, and thus, the credit cannot extend to transferees.

I would note that your question as restated refers to original issue stock. I have assumed that you mean by the term "original issue stock" any issue of common stock to be issued by the Maine Capital Corporation for which subscriptions are to be made, and that you are not referring only to the first issue of common stock of the Maine Capital Corporation for which subscriptions are made. If my assumption is correct, my answer to your question as restated is that no persons other than subscribers of original issue stock can be entitled to the tax credit set forth in Title 36.

In respect to your second tax question as to whether an estate succeeds to the interest of a deceased investor for any remaining available tax credit, it is my view an estate does not so succeed. The only tax credits available to estates and trusts are those in which a resident estate or trust is the subscriber to the common stock of the Maine Capital Corporation. 36 M.R.S.A. § 5167, sub-§ 2, ¶ C.

I trust the foregoing may be of assistance to you.

Sincerely,

Jerome S. Matus
Assistant Attorney General

JSM:cc