

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 986

H. P. 830 House of Representatives, February 24, 1981
Referred to the Committee on Taxation. Sent up for concurrence and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative K. Brown of Bethel.
Cosponsor: Representative Kane of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Jobs and Investment Tax Credit Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 36 MRSA § 5214, as enacted by PL 1977, c. 722, is amended to read:

§ 5214. Legislative findings and purpose

The Legislature finds the encouragement of the growth of ~~major~~ industry in the State of ~~Maine~~ to be in the public interest and for the promotion of the general welfare of the people of the State of ~~Maine~~; and that the use of investment tax credits to encourage industry to make substantial capital investments in the State of ~~Maine~~ is necessary to promote the purpose of the Legislature of encouraging the growth of industry; ~~and that the Legislature further finds that the selecting of limits of \$5,000,000 in qualified investment in the State of Maine and an increase of new job credit base of \$1,200,000 for a taxable year are reasonable qualifying criteria for the application of an investment tax credit and will best promote substantial capital investment in the State of Maine.~~

Sec. 2. 36 MRSA § 5215, sub-§ 1, as enacted by PL 1977, c. 722, is repealed and the following enacted in its place:

1. Credit allowed. A taxpayer is allowed a credit to be computed as provided against the tax imposed by this chapter, subject to the limitations contained in

subsection 3. The amount of the credit shall equal the qualified federal credit, as defined in subsection 2, for taxable years beginning on or after January 1, 1982.

Sec. 3. 36 MRSA § 5215, sub-§ 2, as amended by PL 1979, c. 541, Pt. A, § 237, is repealed and the following enacted in its place:

2. **Definitions.** As used in this section and in section 5214, unless the context otherwise indicates, the following terms have the following meanings.

A. "Qualified federal credit" means, with respect to any taxable year, that portion of the credit allowed by the Internal Revenue Code, section 38, without regard to the limitations imposed by the Internal Revenue Code, section 46 (a) (3), which is directly and solely attributable to qualified investment with a situs in this State and placed in service by the taxpayer after December 31, 1981.

B. "New jobs credit base" means the excess of Maine Employment Security Commission wages for the taxable year over the Maine Employment Security Commission wages, if any, for the highest of the 3 preceding taxable years. In computing its new jobs credit base, a successor-taxpayer shall add to its own Maine Employment Security Commission wages the Maine Employment Security Commission wages of its predecessor.

C. "Maine Employment Security Commission wages" means the total amount of wages paid by an employer subject to tax under Title 26, section 1221, less any excesses attributable to statutory increases.

D. "Successor-taxpayer" means any taxpayer which has acquired within 4 years of its taxable year end in 1981 the organization, trade or business, or 50% or more of the assets thereof, of another taxpayer which, at the time of the acquisition, was an employing unit.

Sec. 4. 36 MRSA § 5215, sub-§§ 3 and 4, as enacted by PL 1977, c. 722, is repealed and the following enacted in its place:

3. **Limitations.** A taxpayer claiming a credit under this section shall elect to be subject to the limitations in either paragraph A or B.

A. For any taxable year, a credit may be taken against a qualified investment or portion thereof that equals:

(1) No more than 5 times the amount of the taxpayer's new jobs credit base for that taxable year; or

(2) Six million dollars or more if the taxpayer has new jobs credit base for that taxable year of at least \$1,200,000.

B. For any taxable year, a taxpayer may claim a credit only on that portion of a qualified investment that exceeds an amount equal to the taxpayer's average annual Maine net income for the 3 years immediately preceding the taxable year, if the taxpayer was required to file and has filed Maine income tax returns for each of those years.

4. Carryover. The amount of credit that may be used by a taxpayer for any taxable year shall not exceed \$300,000 or 50% of the taxpayer's Maine income tax for the taxable year, whichever is greater. In no event may a credit taken for any taxable year exceed the tax otherwise due for that year. Any unused credit may be carried over to the following taxable year or years, not to exceed 7, and may be deducted from the taxpayer's tax for the year or years subject to the same limitations in this section.

Sec. 5. 36 MRSA § 5215, sub-§ 4-A is enacted to read:

4-A. Transition. Notwithstanding this section, in tax years ending prior to July 1, 1983, no portion of a credit may be used unless:

- A.** The taxpayer's current tax liability exceeds that of the previous year; and
- B.** The amount of the credit used does not exceed the difference between the taxpayer's current tax liability and that of the previous year.

The carryover period for qualified investments made in tax years prior to July 1, 1983 shall be 9 years.

Sec. 6. **Effective date.** This Act becomes effective on January 1, 1982.

STATEMENT OF FACT

This bill amending the "Pratt & Whitney legislation" would extend eligibility for an investment tax credit to businesses and industries of all sizes and types. As in present law, the credit would be the same as provided for qualified investments under the Internal Revenue Code. With certain exceptions under federal law, the 10% credit is available for investments in tangible personal property in the nature of machinery and other tangible personal property that is used as an integral part of manufacturing, production or extraction or as an integral part of furnishing transportation, communications, electrical energy, gas, water or sewage disposal services. The credit is also available for property which constitutes a research or storage facility for use in connection with the activities described in this paragraph. No credit is allowed for investments in buildings or their structural components except for investments made for the purpose of rehabilitating existing buildings. If the useful life of the property is less than 7, but more than 5 years, the credit is reduced by 1/3 and if the useful life is less than 5 years, but more than 3 years, it is reduced by 2/3. There is no credit for an investment with a useful life of less than 3 years, or said another way, it is not a qualified investment.

Under present Maine law, a minimum 200 new jobs, \$1,200,000 new jobs credit base and at least a \$5,000,000 investment are required in order to claim a credit. This bill would modify the recently enacted "Pratt & Whitney legislation" in several respects.

Unlike the current law, the provisions of this bill would permit a taxpayer to

claim a 10% credit against that portion of a qualified investment that does not exceed 5 times the taxpayer's new jobs credit base. For example, if a taxpayer invested \$7,000,000 and created 166 new jobs, \$1,000,000 new jobs credit base, he would be allowed a 10% credit against \$5,000,000 of the new investment. The new jobs credit base is already defined in the law and is the increment in taxable wages under the Employment Security Law. Under present statutes, taxpayers with a new jobs credit base in excess of \$1.2 million, 200 new jobs, are allowed to claim a 10% credit against any qualified investment in excess of \$6,000,000. If the taxpayer's investment is less than \$6,000,000, he is still permitted to claim a credit under the formula prescribed in proposed the Maine Revised Statutes, Title 36, section 5215, subsection 3, paragraph A. Subparagraph (1). For example, if the taxpayer created 200 new jobs with a \$4,000,000 investment, he would be entitled to claim a 10% credit against the entire investment. Once the 200 job threshold has been met, any investment larger than \$6,000,000 is eligible for credit without additional job creation.

An example of a smaller firm using this option might work like this: If the firm made a qualified investment of \$180,000 and created 5 new jobs; 5 new jobs would mean a new jobs credit base of \$30,000. The firm would be eligible for a credit on an investment equal to 5 times that amount, or \$150,000 of \$180,000. If the investment was \$100,000 and 5 new jobs, all of the investment would be eligible.

In proposed Maine Revised Statutes, Title 36, section 5215, subsection 3, paragraph B, there is a recognition that existing Maine industries can enhance the quality of jobs and wages of those now employed by the investment of new capital to improve productivity. For capital intensive industries and others in Maine which might make substantial investment with adequate incentives, this alternative provision would allow a credit only on that portion of an investment that exceeds the taxpayer's average Maine net income for the previous 3 years. For example, if the taxpayer's average Maine net income for each of the past 3 years was \$500,000, the taxpayer would be eligible for a credit on the portion of investment that exceeds \$500,000. The taxpayer would not receive a credit on the first \$500,000. A smaller firm with an average annual net Maine income of \$20,000 for the past 3 years would get no credit on the first \$20,000 investment but would be eligible for a credit on all investment above that amount. Out-of-state industries moving into Maine would not be eligible for a credit under this provision, but would be under the previous paragraph relating to job creation.

The carryover provisions in section 4 of the bill are the same as current law, except that the maximum annual credit could exceed \$300,000 in those instances where 50% of the taxpayer's Maine income tax for that year is more than \$300,000. As in the current law, any credit that cannot be used against tax liability in a 7-year period is lost. This means that there is no "automatic" \$2,100,000 credit over 7 years for an investment of \$21,000,000 or more. The firm must have a cumulative Maine income tax liability of at least \$2,100,000 on order to take the full credit.