

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 461, L.D. 626, Bill, "An Act to Encourage Industry to Maintain and Modernize Machinery and Equipment"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 5 MRSA §1515, sub-§3 is enacted to read:

3. Carry-forward. Any funds appropriated to the Corporate Income Tax Investment Credit Fund program, along with any interest earnings, shall not lapse, but shall be carried forward until June 30, 1991. These funds shall be used to offset the credits established in Title 36, section 5219-C.

Sec. 2. 36 MRSA §5219-C is enacted to read:

§5219-C. Investment tax credit

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Directly" has the same meaning as defined in section 1752, subsection 2-A.

B. "Investment credit base" means the total original basis, without adjustment, for federal income tax purposes, of the taxpayer of all machinery and equipment which was placed in service for the first time in this State by the taxpayer or other person during any of the prior 3 taxable years, excluding the basis of machinery and equipment placed in service in this State prior to January 1, 1989. In the case of a combined report, the term investment credit base means the sum of the investment credit bases for all corporations included in the report.

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3 C. "Machinery and equipment" means machinery and equipment
5 as defined in section 1752, subsection 7-B, with a situs in
7 Maine as of the last day of the immediately prior taxable
9 year:

11 (1) Which was subject to an allowance for depreciation
13 under the Code by the taxpayer as of the last day of
15 the immediately prior taxable year or would have been
17 subject to an allowance for depreciation under the Code
19 by the taxpayer as of that date, but for the fact that
21 the property had been fully depreciated; and

23 (2) Which is used directly and primarily in the
25 production of tangible personal property, which
27 property is intended to be sold or leased ultimately
29 for final use or consumption.

31 D. "Primarily" has the same meaning as defined in section
33 1752, subsection 9-A.

35 E. "Production" has the same meaning as defined in section
37 1752, subsection 9-B.

39 2. Credit allowed. A taxpayer is allowed a credit against
41 the tax imposed by this Part for each taxable year equal to 1.5%
43 of the investment credit base of the taxpayer. In the case of an
45 affiliated group of corporations engaged in a unitary business,
47 the credit shall be applied against the total tax liability of
49 all the taxable corporations in the affiliated group and shall be
apportioned among those taxable corporations in the same
proportion as the tax liability of each taxable corporation bears
to the total tax liability of all the taxable corporations.

3. Limitation. The credit allowed by subsection 2 for the
taxable year, plus any credit carry-forward or carry-back to the
taxable year allowed by subsection 5, shall not exceed so much of
the tax liability of the taxpayer, or the total tax liability of
all taxable corporations that are members of an affiliated group
engaged in a unitary business, for the taxable year as does not
exceed \$25,000 plus 75% of so much of the tax liability for the
taxable year as exceeds \$25,000. When the limitation provided in
this subsection is exceeded, carry-forwards are applied first,
credits under subsection 2 for the taxable year are applied
second and carry-backs are applied last. Carry-forwards from an
earlier unused credit year are applied before carry-forwards from
a later unused credit year and carry-backs from an earlier unused
credit year are used before carry-backs from a later unused
credit year.

1 4. Partnerships and S corporations. In the case of
2 machinery and equipment held by a partnership or an S
3 corporation, the term "taxpayer" as used in subsection 1 means
4 the partnership or S corporation. For the purposes of this
5 section, a partner of a partnership shall have an investment
6 credit base determined by multiplying the investment credit base
7 of the partnership by the partner's percentage interest in the
8 taxable income or loss of the partnership for federal income tax
9 purposes for the taxable year and a shareholder of an S
10 corporation shall have an investment credit base determined by
11 multiplying the investment credit base of the S corporation by
12 the shareholder's percentage share of the stock of the S
13 corporation as of the end of the taxable year.

14 5. Carry-forward and carry-back. If the sum of the amount
15 of the credit allowed for any taxable year under subsection 2,
16 plus the amount of any credit carry-forwards to the taxable year,
17 exceeds the amount of the limitation imposed by subsection 3 for
18 that taxable year, in this section referred to as the "unused
19 credit year," that excess attributable to the credit allowed for
20 the taxable year under subsection 2 may be carried back for no
21 more than 3 taxable years and may be carried forward for no more
22 than 5 taxable years and, subject to the provisions of subsection
23 3, may be applied as a credit against the tax imposed by this
24 Part for the taxable year or years to which carried. The entire
25 amount of the unused credit shall be carried to the earliest of
26 the taxable years to which, by reason of this subsection, the
27 credit may be carried and then to each of the other taxable years
28 to the extent the unused credit may not be used for a prior
29 taxable year due to the provisions of subsection 3.

30 **Sec. 3. 36 MRSA §5278, sub-§5, ¶B, as enacted by P&SL 1969, c.**
31 **154, §F, is amended to read:**

32 B. If the claim for credit or refund relates to an
33 overpayment attributable to a net operating loss carry-back
34 or a credit carry-back, the claim may be made, under
35 regulations prescribed by the assessor, within the period
36 which ends with the expiration of the 15th day of the 40th
37 month following the end of the taxable year of the net
38 operating loss or the unused credit which resulted in such
39 carry-back or the period prescribed in subsection 3 in
40 respect of such taxable year, whichever expires later or,
41 with respect to any portion of a credit carry-back from a
42 taxable year attributable to a net operating loss carry-back
43 or a capital loss carry-back from a subsequent taxable year,
44 the period within which the claim may be made shall be that
45 period which ends with the expiration of the 15th day of the
46 40th month following the end of such subsequent taxable year
47 or the period prescribed in subsection 3 in respect of such
48 taxable year, whichever expires later.

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Sec. 4. Application. Section 2 of this Act shall apply to tax years ending on or after July 1, 1990, but any unused credit may be carried back to tax years ending prior to July 1, 1990, in accordance with the Maine Revised Statutes, Title 36, section 5219-C, subsection 5. Section 3 of this Act shall apply to tax years ending prior to the effective date of this Act as well as tax years ending on or after the effective date of this Act.

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FISCAL NOTE

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This bill has no immediate effect on the General Fund because \$5,000,000 for the investment credit is already in the 1988-89 budget. These funds are carried forward to be used in fiscal year 1990-91, the first year the credit would be available. The bill also creates a significant potential future cost.'

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STATEMENT OF FACT

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This amendment creates a new investment tax credit program. The net effect of the bill, due to the definition of "investment credit base," is a 4.5% credit over 3 years, with carry-back, carry-forward provisions.

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Reported by Report A of the Committee on Taxation
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6/21/89

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