115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document **No. 2430**

S.P. 960 In Senate, March 19, 1992

Reference to the Committee on Taxation suggested and ordered printed.

Joy J O'Brien

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator COLLINS of Aroostook (GOVERNOR'S BILL).

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Establish Economic Recovery Tax Credits.

(EMERGENCY)

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, businesses in the State are significantly affected by the imposition of personal property taxes; and

Whereas, the burden represented by personal property taxes has become even more serious as a result of the recessionary status of the economy; and

Whereas, the business community and the economy in general would benefit by giving businesses increased incentives to make capital investments and to create new jobs; and

Whereas, it is essential for economic recovery that such incentives be granted as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA c. 822, first 2 lines are repealed and the following enacted in their place:

<u>**CHAPTER 822**</u>

<u>**TAX CREDITS**</u>

<u>**SUBCHAPTER I**</u>

<u>**GENERAL CREDITS**</u>

Sec. 2. 36 MRSA §5215, sub-§3, ¶A, as enacted by PL 1977, c. 722, is amended to read:

A. With property considered to be qualified investment of at least $5,000,000 for that taxable year with a situs in Maine and placed in service by the taxpayer after January 1, 1979 <u>but before the taxpayer's first taxable year beginning after June 30, 1992</u>; and

Sec. 3. 36 MRSA c. 822, sub-c. II is enacted to read:

<u>**SUBCHAPTER II**</u>

<u>**ECONOMIC RECOVERY TAX CREDITS**</u>

§5219-I. One-time investment tax credit

1. Definitions. For purposes of this section, "qualified machinery and equipment" means machinery and equipment of which no prior use has been made and depreciable telemarketing personal property when the business first began operation in this State during the taxable year. For purposes of this section, the terms "machinery and equipment" and "depreciable telemarketing personal property" and have the same meanings as set out in section 5219-K.

2. Credit allowed. A taxpayer is allowed a credit against the tax imposed by this Part in the amount of 20% of the total original basis for federal income tax purposes, without adjustment, of qualified machinery and equipment purchased by the taxpayer during the taxable year. The credit is allowed only for the taxable year in which the qualified property on which the credit is based is first claimed by the taxpayer for depreciation purposes under the Code. The credit exists only for taxable years beginning on or after July 1, 1992 but no later than June 30, 1993.

3. Adjustments. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use is added back as additional tax due in the year of disposition but, if that property is disposed of or ceases to be in qualified use after it has been in qualified use for more than 12 consecutive years, it is not necessary to add back any portion of the credit. The amount of credit allowed for actual use is determined by multiplying the original credit by the ratio the months of qualified use bear to the months of useful life. For the purposes of this paragraph, "useful life of property" has the same meaning as that used for depreciation purposes when computing federal income tax liability.

§5219-J. Jobs training tax credit

A taxpayer is allowed a credit against the tax imposed in this Part in the amount of 50% of the amount of educational assistance as defined in section 127 of the Code that qualifies for exclusion from the gross income of employees of the taxpayer for the taxable year. The credit allowed is limited to $1,000 per employee for the taxable year.

§5219-K. Investment tax credit

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

A. "Cumulative investment" means for the current taxable year the sum of the property investment for all prior consecutive taxable years to a limit of 9 taxable years, after the exclusion of any property investment amount attributable to property that has been disposed of by the taxpayer or ceases to be in qualified use prior to the end of its useful life, plus the property investment for the current taxable year.

B. "Cumulative investment base" means for the current taxable year the sum of the investment base for all prior consecutive taxable years to a limit of 9 taxable years plus the investment base for the current taxable year. The investment base for prior years must be recalculated to exclude property that has been disposed of by the taxpayer or ceases to be in qualified use prior to the end of its useful life.

C. "Depreciable telemarketing personal property" means tangible personal property with a situs in the State as of the last day of the taxable year that is used by the owner directly and primarily in telemarketing, was first placed in service in this State during the taxable year and was subject to an allowance for depreciation under the Code by the owner as of the last day of the taxable year.

D. "Directly" means directly as defined in section 1752, subsection 2-A.

E. "Gross receipts" means the taxpayer's gross business receipts for federal income tax purposes.

F. "Investment base" means for the current taxable year an amount that is the greater of:

(1) An amount determined by multiplying the taxpayer's gross receipts for the current taxable year by the taxpayer's investment receipts ratio for the current taxable year, except that for taxpayers with a business with less than 5 completed taxable years in this State this amount is zero; or

(2) An amount determined by multiplying the taxpayer's limitation factor for the current taxable year by the taxpayer's property investment for the current taxable year.

G. "Investment receipts ratio" means for the taxable year an amount that is determined by dividing the taxpayer's total property investment for the 4 prior taxable years by the taxpayer's total gross receipts for the 4 prior taxable years. If the taxpayer has been in business in this State for less than 4 taxable years the investment receipts ratio is computed using those taxable years during which business has been conducted in this State for the full taxable year. If no prior taxable year business was conducted in this State the investment receipts ratio is zero.

H. "Limitation factor" means for the taxable year an amount that is determined as follows:

(1) 0% if the taxpayer has completed only one taxable year of business in this State;

(2) 12.5% if the taxpayer has completed 2 taxable years of business in this State;

(3) 25% if the taxpayer has completed 3 taxable years of business in this State;

(4) 37.5% if the taxpayer has completed 4 taxable years of business in this State; or

(5) 50% if the taxpayer has completed 5 or more taxable years of business in this State.

I. "Machinery and equipment" means machinery and equipment, as defined in section 1752, subsection 7-B, with a situs in the State as of the last day of the taxable year, first placed in service in this State during the taxable year:

(1) That was subject to an allowance for depreciation under the Code by the owner as of the last day of the taxable year; and

(2) That is used by the owner directly and primarily in the production of tangible personal property intended to be sold or leased ultimately for final use or consumption.

J. "Primarily" has the same meaning as set out in section 1752, subsection 9-A.

K. "Production" has the same meaning as set out in section 1752, subsection 9-B.

L. "Property investment" means the total original basis for federal income tax purposes, without adjustment, of all qualified property owned by a taxpayer that is first claimed by the taxpayer for depreciation purposes on a federal income tax return during the taxable year.

M. "Qualified investment" means the excess of cumulative investment over the cumulative investment base.

N. "Qualified property" means machinery and equipment or depreciable telemarketing personal property.

O. "Telemarketing" means business activity in which telephonic communication is used for taking sales orders, providing information requested by potential customers relative to products or services for sale, soliciting sales orders or conducting market studies.

2. Credit allowed. A taxpayer is allowed a credit against the tax imposed in this Part for each taxable year equal to 1.5% of the taxpayer's qualified investment. When an affiliated group of corporations is engaged in a unitary business, the credit is applied against the total tax liability of all the taxable corporations in the affiliated group and 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. Partnerships and S corporations. When qualified property is owned by a partnership or an S corporation, the term "taxpayer" as used in subsection 1 means the partnership or S corporation. For the purposes of this section, a partner of a partnership has a qualified investment determined by multiplying the qualified investment of the partnership by the partner's percentage interest in the taxable income or loss of the partnership for federal income tax purposes for the taxable year, and a shareholder of an S corporation has a qualified investment determined by multiplying the qualified investment of the S corporation by the shareholder's percentage share of the stock of the S corporation as of the end of the taxable year.

§5219-L. New jobs credit

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

A. "New jobs credit base" means an amount equal to the greater of:

(1) The wages paid by the taxpayer during the calendar year prior to the calendar year ending during or with the taxable year; or

(2) The average annual wages paid by the taxpayer during the 3 calendar years prior to the calendar year ending during or with the taxable year, adjusted to compensate for statutory changes to the amount of wages subject to contribution under Title 26, section 1221.

Following a taxable year in which a particular new jobs credit base is used to compute a new jobs equivalent resulting in a credit, the new jobs credit base remains at that amount for the next 2 taxable years. For the 3rd following taxable year the new jobs credit base is again computed in the initially defined manner. In computing its new jobs credit base, a successor taxpayer shall add its own wages for the calendar year to the wages of its predecessor for the same calendar year.

B. "New jobs equivalent" means the excess of wages for the calendar year ending during or with the taxable year over the new jobs credit base, adjusted to compensate for statutory changes to the amount of wages subject to contribution under Title 26, section 1221, divided by $7,000 or an amount adjusted proportionally for any subsequent change in wages from $7,000 under Title 26, section 1043, subsection 2. If the quotient is less than 10, the new jobs equivalent is zero.

C. "Successor taxpayer" means a taxpayer that has acquired within the previous 4 calendar years the organization, trade or business of another business, or 50% or more of the assets of another business, which at the time of acquisition was an employing unit as defined in Title 26, section 1043, subsection 10.

D. "Wages" means total wages paid during a calendar year for which a taxpayer is subject to make contributions under Title 26, section 1221.

2. Credit. A taxpayer that constitutes an employing unit, as defined in Title 26, section 1043, subsection 10, is allowed a credit against the tax imposed in this Part in the amount of $1,000 multiplied by the taxpayer's new jobs equivalent.

§5219-M. Applicable limitations

1. Public utilities excluded. Public utilities as defined in Title 35-A, section 102, subsection 13 are not eligible for any of the tax credits established by this subchapter.

2. Minimum credit required. A tax credit claimed under this subchapter must equal at least $2,500 for any taxable year. Credits of less than $2,500 may not be taken and are reduced to zero.

3. Maximum credit. The credit allowed for a taxable year under this subchapter may not total more than $250,000 and must be proportionally reduced if necessary to reach this limit.

4. Minimum investment. To be included in the computation of the credits provided by section 5219-I or 5219-K, a taxpayer's property investment, as defined in section 5219-K, must exceed $100,000 in order for the taxpayer to be qualified for either of those provisions.

5. Eligible property. For property to be included in the computation of credits pursuant to this subchapter the property must:

A. Have a useful life under the Code of at least 4 years;

B. Have been owned and in use in this State by the taxpayer on the last day of the taxable year; and

C. Have been depreciable for the taxable year by the taxpayer under the Code.

6. New jobs; educational assistance. To be included in the computation of credits pursuant to this subchapter, the new jobs must be located in this State and the educational assistance must be for employees who work in this State.

7. Carry-forward provisions. If the sum of the credits allowed for a taxable year under this subchapter plus the amount of any credit carried forward to the taxable year exceeds the amount of the limitation imposed by section 5219-N for that taxable year, the excess attributable to the sum of the credits allowed under this subchapter may be carried forward for up to 5 taxable years subject to the limitation imposed by section 5219-N and may be applied as a credit against the tax imposed in this Part for the taxable year or years to which carried. The entire amount of the unused credit must be carried forward to the earliest of the taxable years to which, under this provision, the credit may be carried forward and then to each of the other taxable years to the extent the unused credit is not used for a prior taxable year due to the limitation imposed by section 5219-N.

8. Election of new job credit. New jobs may not be claimed under both section 5215 and section 5219-L. The taxpayer may elect to make a claim under either section.

<u>**9. Priority of credits.** The tax credits provided by this subchapter for a taxable year may be claimed only after any credit available for the taxable year pursuant to section 5219-E has been claimed.</u>

<u>**§5219-N. Limitation on business credits**</u>

<u>Notwithstanding any other provision of this chapter, tax credits contained in this chapter, except in section 5217-A, are considered to reduce tax liability for the taxable year in which they are taken except that the credits taken pursuant to this subchapter may not reduce the tax liability of a taxpayer, exclusive of tax credits contained elsewhere in this chapter resulting from business activities, other than section 5217-A, by more than 50%.</u>

Sec. 4. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 36, section 5219-K is effective for tax years beginning on or after July 1, 1992 and for property first placed in service in Maine on or after the beginning of that taxable year.

Sec. 5. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 36, section 5219-I is effective for property first placed in service in this State for the taxpayer's taxable year beginning on or after July 1, 1992 but no later than June 30, 1993.

Sec. 6. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 36, section 5219-L is effective for jobs created during or after calendar year 1992.

Sec. 7. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 36, section 5219-J is effective for educational assistance provided for taxable years beginning on or after July 1, 1992.

Sec. 9. Supplemental appropriations from General Fund. There are appropriated from the General Fund for the fiscal year ending June 30, 1993 to the Department of Administrative and Financial Services the following sums.

1992-93

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Bureau of Taxation

Positions - Legislative Count	3
Personal Services	$40,254
All Other	121,496
Capital Expenditures	15,586

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES TOTAL $177,336

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved except as otherwise indicated.

STATEMENT OF FACT

This bill creates several income tax credits intended to provide business with incentives for new investment and job creation in this State. A one-time investment tax credit provides a substantial credit to counteract the current dire economic situation and provide an immediate and significant investment incentive for business in this State. A separate investment tax credit available for up to 10 years is established to replace the existing 5-year investment tax credit. A new jobs tax credit provides a significant credit for the creation of new jobs in this State. A jobs training tax credit establishes a credit based upon educational assistance provided by state employers pursuant to the Internal Revenue Code.