

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1476

S.P. 477

In Senate, May 10, 1993

An Act to Establish Economic Recovery Tax Credits.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ESTY of Cumberland.
Cosponsored by Representative DORE of Auburn and
Senators: BALDACCI of Penobscot, BERUBE of Androscoggin, CIANCHETTE of Somerset,
O'DEA of Penobscot, Representatives: BOWERS of Washington, GWADOSKY of Fairfield,
HOGLUND of Portland, KERR of Old Orchard Beach.

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

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4 **Sec. 1. 36 MRSA c. 822, first 2 lines** are repealed and the following enacted in their place:

6 CHAPTER 822

8 TAX CREDITS

10 SUBCHAPTER I
 GENERAL CREDITS

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

14 A. With property considered to be qualified investment of
16 at least \$5,000,000 for that taxable year with a situs in
18 Maine and placed in service by the taxpayer after January 1,
 1979 but before the taxpayer's first taxable year beginning
 after January 1, 1993; and

20 **Sec. 3. 36 MRSA §5219-E, sub-§1, ¶B,** as amended by PL 1991, c. 591, Pt. BBB, §1, is further amended to read:

24 B. "Investment credit base" means the total original basis,
26 without adjustment, for federal income tax purposes, of the
 taxpayer of all machinery and equipment placed in service
28 for the first time in this State by the taxpayer or other
 person during any of the prior 5 taxable years, except in
30 taxable years ending in 1995, the prior 6 taxable years,
 excluding the basis of machinery and equipment placed in
32 service in this State prior to January 1, 1989. "Investment
 credit base" also means the assessed value of any increase
34 or expansion of real property used directly and primarily to
 house machinery and equipment as defined in paragraph C. In
36 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.

38 **Sec. 4. 36 MRSA §5219-E, sub-§2,** by amended by PL 1991, c. 591, Pt. N, §18 and affected §19, is further amended to read:

42 2. **Credit allowed.** A taxpayer is allowed a credit against
44 the tax imposed by this Part for each taxable year equal to 1.0%
 1.5% of the investment credit base of the taxpayer. In the case
46 of an affiliated group of corporations engaged in a unitary
 business, the credit is applied against the total tax liability
48 of all the taxable corporations in the affiliated group and
 apportioned among those taxable corporations in the same
50 proportion as the tax liability of each taxable corporation bears
 to the total tax liability of all the taxable corporations.

2 C. "Participating employee" means an employee who received
3 educational assistance during the taxable year.

4 2. Credit. Credits are allowed subject to the following.

6 A. A taxpayer is allowed a credit against the tax imposed
7 in this Part for each taxable year equal to 50% of the
8 amount paid or incurred by the taxpayer for educational
9 assistance during that taxable year.

10 When a taxpayer is a member of an affiliated group of
11 corporations that is engaged in a unitary business, the
12 taxpayer's credit is applied against the total tax liability
13 of all the taxable corporations in the affiliated group and
14 apportioned among those taxable corporations in the same
15 proportion as the tax liability of each taxable corporation
16 bears to the total tax liability of all the taxable
17 corporations.

18 B. The maximum credit allowable for an employer for a
19 taxable year may not exceed \$1,000 per participating
20 employee of that employer.

21 C. For purposes of this section:

22 (1) A partner of a partnership is deemed to have
23 provided educational assistance determined by
24 multiplying the amount paid or incurred by the
25 partnership for educational assistance by that
26 partner's percentage interest in the taxable income or
27 loss of the partnership for federal income tax purposes
28 for that taxable year; and

29 (2) A shareholder of an S corporation is deemed to
30 have provided educational assistance determined by
31 multiplying the amount paid or incurred by the S
32 corporation for educational assistance by the
33 shareholder's percentage share of the stock of the S
34 corporation as of the end of the taxable year.

35 3. Record keeping. Every employer claiming the credit
36 allowed in this subsection shall maintain and make available to
37 the assessor upon request a record for each taxable year:

38 A. Listing the names of all participating employees;

39 B. Identifying the nature of the educational assistance
40 received by each participating employee;

41

2 C. Setting forth the amount paid or incurred, by category
3 of cost, to provide educational assistance to each
4 participating employee; and

5 D. Providing any other information determined necessary by
6 the State Tax Assessor.

8 **§5219-J. Maine Youth Apprenticeship Program tax credit**

10 **1. Credits. Credits are allowed subject to the following.**

12 A. A taxpayer is allowed a credit against the tax imposed
13 in this Part in the amount of 50% of the amount of costs,
14 including wages and other payments made by the taxpayer and
15 not reimbursed by the Maine Youth Apprenticeship Program,
16 that are certified as necessary by the Director of the Maine
17 Youth Apprenticeship Program to permit the taxpayer to
18 provide on-the-job training to persons under the Maine Youth
19 Apprenticeship Program.

20 When a taxpayer is a member of an affiliated group of
21 corporations that is engaged in a unitary business, the
22 taxpayer's credit is applied against the total tax liability
23 of all the corporations in the affiliated group and
24 apportioned among those taxable corporations in the same
25 proportion as the tax liability of each taxable corporation
26 bears to the total tax liability of all the taxable
27 corporations.

30 B. The maximum credit allowable for a taxable year may not
31 exceed \$1,000 per person trained by the taxpayer under the
32 Maine Youth Apprenticeship Program during that taxable year.

34 C. For purposes of this section:

36 (1) The partner's share of the Maine Youth
37 Apprenticeship Program tax credit for a partner of a
38 partnership is determined by multiplying the amount
39 paid or incurred by that partnership by the partner's
40 percentage interest in the taxable income or loss of
41 the partnership for federal income tax purposes for
42 that taxable year; and

44 (2) The shareholder's share of the Maine Youth
45 Apprenticeship Program tax credit for a shareholder of
46 an S corporation is determined by multiplying the
47 amount paid or incurred by the S corporation by that
48 shareholder's percentage share of the stock of the S
49 corporation as of the end of that taxable year.

50

2 §5219-K. Incremental investment tax credit

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

10 A. "Annualization factor" for a taxable year means:

12 (1) If the taxpayer was in business in the State for
14 more than 12 months but less than 36 months during the
16 36-month period immediately preceding the taxable year,
18 whether or not any of those months was before the
20 effective date of this section, a fraction, of which
22 the numerator is 12 and the denominator is the number
24 of full consecutive months that the taxpayer was in
26 business in the State immediately prior to the taxable
28 year.

30 (2) If the taxpayer was in business in the State for
32 12 consecutive months or less immediately preceding the
34 taxable year, whether or not any of those months was
36 before the effective date of this section, a factor of
38 one.

40 B. "Average prior investment" for a taxable year, except as
42 provided otherwise in this paragraph, is 1/3 of the
44 taxpayer's property investment for the prior period, whether
46 or not any of the prior period was before the effective date
48 of this section. If the taxpayer was in business in the
State for less than 36 months during the 36-month period
immediately preceding the taxable year, "average prior
investment" for the taxable year is the product of the
taxpayer's property investment for that prior period
multiplied by the taxpayer's annualization factor. If the
taxpayer had no property investment during the 36-month
period immediately preceding the taxable year, the
taxpayer's average prior investment is zero.

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

D. "First credit year" means the first taxable year of a
taxpayer beginning on or after January 1, 1993 and before
January 1, 1994.

E. "Incremental investment" for a taxable year means the
excess of a taxpayer's property investment in the taxable
year over a taxpayer's average prior investment.

- 2 F. "Machinery and equipment" means machinery and equipment
4 as defined in section 1752, subsection 7-B, with a useful
6 life under the code of at least 4 years.
- 8 G. "Manufacturing facility" means manufacturing facility as
10 defined in section 1752, subsection 6-A.
- 12 H. "Predecessor taxpayer" means the person from which the
14 successor taxpayer acquired the assets described in
16 paragraph N.
- 18 I. "Primarily" means primarily as defined in section 1752,
20 subsection 9-A.
- 22 J. "Prior period" means, in the case of a taxpayer in
24 business in the State for 36 months or more immediately
26 preceding the taxable year, the 36-month period immediately
28 preceding the taxable year. "Prior period" means, in the
30 case of a taxpayer in business in the State for less than 36
32 months during the 36-month period immediately preceding the
34 taxable year, the number of full consecutive months that the
36 taxpayer was in business in the State immediately preceding
38 the taxable year.
- 40 K. "Production" means production as defined in section
42 1752, subsection 9-B.
- 44 L. "Property investment" means:
 - 46 (1) For a taxable year, the total original basis of
48 the taxpayer for federal income tax purposes, without
50 adjustment, of all machinery and equipment:
 - (a) With a situs in the State as of the last day
 of that taxable year;
 - (b) Placed in service for the first time in the
 State by that taxpayer during that taxable year;
 - (c) That was subject to an allowance for
 depreciation under the code by the taxpayer as of
 the last day of the taxable year or would have
 been subject to an allowance for depreciation
 under the code by the taxpayer as of that date but
 for the fact that the property has been fully
 depreciated; and
 - (d) Used by the taxpayer in the State during the
 taxable year directly and primarily in the
 production of tangible personal property intended

2 to be sold or leased ultimately for final use or
3 consumption or in the production of tangible
4 personal property pursuant to a contract with the
5 Federal Government or any agency of the Federal
6 Government.

7 (2) For a prior period, the total original basis of
8 the taxpayer for federal income tax purposes, without
9 adjustment, of all machinery and equipment:

10 (a) With a situs in the State during the prior
11 period;

12 (b) Placed in service for the first time in the
13 State by the taxpayer during the prior period;

14 (c) That was subject to an allowance for
15 depreciation under the code by the taxpayer during
16 the prior period or would have been subject to an
17 allowance for depreciation under the code by the
18 taxpayer during the prior period but for the fact
19 that the property has been fully depreciated; and

20 (d) Used by the taxpayer during the prior period
21 directly and primarily in the production of
22 tangible personal property intended to be sold or
23 leased ultimately for final use or consumption or
24 in the production of tangible personal property
25 pursuant to a contract with the Federal Government
26 or any agency of the Federal Government.

27 In the case of a prior period, "property investment"
28 includes, in the case of a successor taxpayer, the
29 predecessor taxpayer's property investment for the
30 prior period attributable to that portion of the assets
31 acquired by the successor taxpayer from the predecessor
32 taxpayer that constituted property investment in the
33 hands of the predecessor taxpayer for that prior period
34 and excludes, in the case of a predecessor taxpayer,
35 that same property investment from the predecessor
36 taxpayer's property investment.

37 M. "Second credit year" means the first taxable year of a
38 taxpayer beginning on or after January 1, 1994 and before
39 January 1, 1995.

40 N. "Successor taxpayer" means a taxpayer that has acquired
41 50% or more of all of the assets, determined with reference
42 to book value after depreciation, of a manufacturing
43 facility that was in operation prior to the acquisition by
44

2 the taxpayer and continues to use those assets at the same
3 manufacturing facility.

4 O. "Taxable year," for purposes of this section and unless
5 otherwise indicated, includes a taxable year of less than 12
6 months.

7 2. Credit. A taxpayer is allowed a credit against the tax
8 imposed in this Part for each taxable year as follows.

9 A. In the taxpayer's first credit year, the credit equals
10 20% of the taxpayer's incremental investment for the first
11 credit year.

12 B. In the taxpayer's second credit year, the credit equals
13 10% of the taxpayer's incremental investment for the 2nd
14 credit year.

15 C. For each taxable year after the 2nd credit year, the
16 credit equals 5% of the taxpayer's incremental investment
17 for that year.

18 When a taxpayer is a member of an affiliated group of
19 corporations that is engaged in a unitary business, the
20 taxpayer's credit is applied against the total tax liability of
21 all the taxable corporations in the affiliated group and
22 apportioned among those taxable corporations in the same
23 proportion as the tax liability of each taxable corporation bears
24 to the total tax liability of all the taxable corporations.

25 3. Partnerships and S corporations. In the case of a
26 partnership or an S corporation, the term "taxpayer" as used in
27 subsection 1 means the partnership or S corporation. For
28 purposes of this section, a partner of a partnership has
29 incremental investment determined by multiplying the incremental
30 investment of the partnership by that partner's percentage
31 interest in that taxable income or loss of the partnership for
32 federal income tax purposes for that taxable year and a
33 shareholder of an S corporation has incremental investment
34 determined by multiplying the incremental investment of the S
35 corporation by that shareholder's percentage share of the stock
36 of the S corporation as of the end of that taxable year.

37 §5219-L. Applicable limitations

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

2 A. "Allowable credits" for a taxable year means the credits
4 allowed by this subchapter for the taxable year, after
 applying subsection 5, plus any carry-forwards of those
 credits to the taxable year.

6 B. "Current year credits" means the total credits under
8 this subchapter for a taxable year, excluding carry-forwards
 and before application of subsections 5 and 6.

10 C. "Taxpayer," as used in subsections 4 and 5 in the case
12 of a partnership or an S corporation, means the partnership
 or S corporation.

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

18 3. Minimum credit required. Current year credits of less
20 than \$2,500 may not be taken and are reduced to zero.

22 4. Minimum investment. To be included in the computation
24 of the credits provided by section 5219-K, a taxpayer's property
 investment for a taxable year under section 5219-K must exceed
 \$100,000.

26 5. Disallowance of current year credits. A taxpayer's
28 current year credits for a taxable year may not exceed \$500,000.
 If current year credits exceed \$500,000, that excess may not be
 taken and is reduced to zero.

30 6. Limitation on allowable credits. Allowable credits are
32 available as follows.

34 A. A taxpayer's allowable credits for a taxable year may
 not exceed the lesser of:

- 36 (1) An amount of \$500,000; or
38 (2) The amount of credit that, when applied after the
40 credit allowed under section 5219-E, would decrease
42 the taxpayer's tax liability below 50% of the
44 taxpayer's tax liability as calculated before claiming
46 any credits, carry-forwards or carry-backs allowed
48 under this chapter. When an affiliated group of
50 corporations is engaged in a unitary business, this
 limit is determined by reference to the aggregate 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.

2 B. If the allowable credits for a taxable year exceed the
4 limit in paragraph A, the excess must be carried forward
 pursuant to subsection 7.

6 7. Carry-forward provisions. If the allowable credits for
8 a taxable year exceed the limitation imposed by subsection 6,
10 paragraph A for that taxable year, the excess may be carried
12 forward for up to 5 taxable years, subject to the limitation
14 imposed by subsection 6, paragraph A, and may be applied as a
16 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 subsequent taxable years to the extent not
 used.

18 8. Priority of credits and carry-forwards. When applying
20 the credits and carry-forwards allowed by this subchapter,
22 carry-forwards under subsection 7 are applied first.
24 Carry-forwards from an earlier year are applied before
 carry-forwards from a later year. Any credit, including
 carry-forwards, allowed for the taxable year pursuant to section
 5219-E must be applied before the tax credits, including
 carry-forwards, allowed by this subchapter.

26 **Sec. 7. Further study.** If the United States Congress enacts
28 any legislation creating new credits or expanding existing
30 credits for research and development activities during calendar
32 year 1993, then the Joint Standing Committee on Taxation shall
 study the issues to determine the feasibility of enacting similar
 legislation at the state level.

34 **Sec. 8. Application.** "Delay credits" means credits allowed by
36 the Maine Revised Statutes, Title 36, chapter 822, subchapter II
 for tax years that begin prior to July 1, 1993 after application
 of the limitations provision applicable to that taxable year.

38 Notwithstanding any other provision of law, a taxpayer may
40 not claim delayed credits until the taxable year beginning on or
42 after July 1, 1993 and before July 1, 1994. Delayed credits are
44 allowed in full and are not subject to any limitations other than
 those applicable in originally calculating the delayed credits.
46 For purposes of applying the 5-year carry-forward provision of
 section 5219-L, subsection 7, the delayed credits are considered
 credits first generated in the taxable year beginning on or after
 July 1, 1993 and before July 1, 1994.

48 This Act applies to any tax year beginning on or after
50 January 1, 1993.

STATEMENT OF FACT

4

6 This bill creates income tax credits to provide businesses
7 with incentives for new investment and job training. A jobs
8 training credit is established based on educational assistance
9 provided by employers to their employees. The credit is equal to
10 50% of the amount paid or incurred by the employer for
11 educational assistance in maximum amounts of \$1,000 per
12 participating employee. An apprenticeship credit is established
13 for employers who participate in the Maine Youth Apprenticeship
14 Program. The credit is 50% of the employer's costs associated
15 with the Maine Youth Apprenticeship Program in maximum amounts of
16 \$1,000 per apprentice. An incremental investment tax credit is
17 established to provide a credit for machinery and equipment
18 placed in service in the State in the current taxable year to the
19 extent that the property investment exceeds the taxpayer's
20 average over the prior 3 years or such lesser period as the
21 taxpayer has been in business in the State. The incremental
22 investment tax credit does not apply to property that was
23 previously used in the State, but is limited to property that was
24 placed in service for the first time in the State by the taxpayer
25 during the taxable year and to property that was used in another
26 state by the taxpayer or other company prior to being placed in
27 service for the first time in the State by the taxpayer during
28 the taxable year. Therefore, this credit encourages businesses
29 to not only purchase new equipment for use in the State but to
30 relocate existing equipment from other states into this State.
31 The bill also increases the rate of existing investment tax
32 credit by 50% and expands that credit to cover expansions of real
33 property primarily to house machinery and equipment. The bill
34 also requires the Joint Standing Committee on Taxation to study
35 the feasibility of enacting at the state level any credits for
36 research and development activities that may be enacted at the
federal level.