

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
116TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to S.P. 778, L.D. 2008, Bill, "An Act to Clarify the Jobs and Investment Tax Credit"

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. 36 MRSA §5215, as amended by PL 1993, c. 395, §21, is further amended to read:

§5215. Jobs and investment tax credit

1. Credit allowed. A taxpayer, other than a public utility as defined by Title 35-A, section 102, is allowed a credit to be computed as hereinafter provided in this section against the tax imposed by this Part, subject to the limitations contained in subsection 3. The amount of the credit equals the qualified federal credit, as defined in subsection 2, for taxable years beginning on or after January 1, 1979, except that a credit may not be allowed with respect to an excluded investment.

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

A. "Qualified federal credit" means, with respect to any taxable year, that portion of the credit allowed by the Code of 1954, Section 38(b)(1), as of December 31, 1985, Section 38-(b)(1), ~~which~~ that is directly and solely attributable to qualified investment with a situs in this State.

**SENATE AMENDMENT**

2           A-1. "Excluded investment" means an investment related to a  
3           retail facility, unless the taxpayer can demonstrate to the  
4           satisfaction of the State Tax Assessor that the commercial  
5           result of the project or projects to which the credit  
6           relates has not or will not result in a substantial  
7           detriment to existing businesses in the State.

8  
9           A-2. "Retail facility" does not include a facility  
10           primarily engaged in warehousing, order taking,  
11           manufacturing, storage or distribution, even when a portion  
12           of the facility is used to make retail sales of tangible  
13           personal property directly from the facility.

14  
15           B. The term "new jobs credit base" means the excess of  
16           Maine Employment Security Commission wages for the taxable  
17           year of the qualified investment or either of the next 2  
18           calendar year years over the Maine Employment Security  
19           Commission wages for the highest of the 3 calendar years  
20           preceding the year of the qualified investment. In computing  
21           its new jobs credit base, a successor-taxpayer shall add to  
22           its own Maine Employment Security Commission wages the Maine  
23           Employment Security Commission wages of its predecessor.

24  
25           C. The term "Maine Employment Security Commission wages"  
26           means the total amount of wages paid by an employer subject  
27           to tax under Title 26, section 1221, less any excesses  
28           attributable to statutory increases.

29  
30           D. "Successor-taxpayer" means any a taxpayer which that has  
31           acquired, within 4 years of its taxable year-end year-end,  
32           the organization, trade or business, or 50% or more of the  
33           assets thereof of the organization, trade or business, of  
34           another taxpayer which that, at the time of the acquisition,  
35           was an employing unit.

36  
37           **3. Limitations.** The tax credit for any taxable year shall  
38           be is applicable only to those taxpayers:

39  
40           A. With property considered to be qualified investment of  
41           at least \$5,000,000 for that taxable year with a situs in  
42           Maine the State and placed in service by the taxpayer after  
43           January 1, 1979; and

44  
45           B. With payroll records and reports substantiating that at  
46           least 200 100 new jobs, attributable to the operation of  
47           property considered to be ~~--a~~ qualified investment, were  
48           created in the ~~12-month~~ 24-month period following the date  
49           the property was placed in service. To assess the  
50           continuing nature of the jobs, the taxpayer shall must

2 demonstrate that the new jobs credit base is at least  
3 \$1,400,000 ~~\$700,000~~ for the taxable year of the qualified  
4 federal credit or either of the next 2 calendar year years.  
5 The ~~\$1,400,000~~ ~~is~~ ~~to~~ \$700,000 must be adjusted  
6 proportionally for any change in Title 26, section 1043,  
7 subsection 2 wages from \$7,000.

8 **4. Carry-over.** The amount of credit that may be used by a  
9 taxpayer for any taxable year shall ~~may~~ not exceed either  
10 \$300,000 ~~\$500,000~~ or the amount of tax otherwise due, whichever  
11 is less. Any unused credit may be carried over to the following  
12 year or years for a period not to exceed 7 years, including the  
13 year the credit was first taken, and may be deducted from the  
14 taxpayer's tax for such that year or those years, subject to the  
15 same limitations provided herein in this subsection.

16 **5. Carry-back.** There shall ~~may~~ be no ~~carryback~~ carry-back  
17 to prior years of the amount of credit allowable under this  
18 section.

19 **6. Recapture.** If, during any taxable year, any qualified  
20 investment property is disposed of, or otherwise ceases to be  
21 property covered by subsection 2, paragraph A, with respect to  
22 the taxpayer, before the end of the useful life ~~which~~ that was  
23 taken into account in computing the credit under subsection 1,  
24 then the tax under this Part for that taxable year shall must be  
25 increased by an amount equal to the aggregate decrease in the  
26 credit allowed under subsection 1 for all prior taxable years  
27 ~~which~~ that would have resulted solely from substituting for the  
28 useful life, in determining qualified investment under the  
29 Internal Revenue Code, the period beginning with the time the  
30 property was placed in service by the taxpayer and ending with  
31 the time the property ceased to be property covered by subsection  
32 2.

33 **6-A. Affiliated groups; tax years prior to January 1,**  
34 **1995.** This subsection applies retroactively to all tax years  
35 beginning before the effective date of this subsection as well as  
36 prospectively to all tax years beginning on or after the  
37 effective date of this subsection but prior to January 1, 1995  
38 and for which the taxpayer's right to file an original or amended  
39 return had not or has not expired at the time of the taxpayer's  
40 filing of the return. In the case of corporations that are  
41 members of an affiliated group engaged in a unitary business, the  
42 credit provided for in this section applies as follows.

43 **A.** The credit provided for in this section, in an amount  
44 equal to the aggregate qualified federal credit for all  
45 taxable corporations that are members of an affiliated group  
46 engaged in a unitary business, must be allowed against the

total tax liability of all the taxable corporations that are members of the affiliated group engaged in a unitary business if the taxable corporations that are members of the affiliated group have, in the aggregate:

(1) Property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxable corporations after January 1, 1979;

(2) Payroll records and reports substantiating that at least 200 new jobs attributable to the operation of property considered to be qualified investment were created in the 12-month period following the date the property was placed in service; and

(3) A new jobs credit base of at least \$1,400,000 for the taxable year of the qualified federal credit or the next calendar year. The \$1,400,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000.

B. The amount of the credit that may be used in any taxable year may not exceed the lesser of \$300,000 or the total amount of tax liability otherwise due of all taxable corporations that are members of an affiliated group engaged in a unitary business. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the tax imposed by this Part for that year or those years, subject to the same limitations provided in this subsection.

The credit must be apportioned among the taxable corporations in the affiliated group in the same proportion that the tax liability of each taxable corporation in the affiliated group bears to the total tax liability of all the taxable corporations in the affiliated group.

**6-B. Affiliated groups; tax years beginning on or after January 1, 1995.** This subsection applies to tax years beginning on or after January 1, 1995. In the case of corporations that are members of an affiliated group engaged in a unitary business, the credit provided for in this section applies as follows.

A. The credit provided for in this section, in an amount equal to the aggregate qualified federal credit for all taxable corporations that are members of an affiliated group engaged in a unitary business, must be allowed against the total tax liability of all the taxable corporations that are

members of the affiliated group engaged in a unitary business if the taxable corporations that are members of the affiliated group have, in the aggregate:

(1) Property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxable corporations after January 1, 1979;

(2) Payroll records and reports substantiating that at least 100 new jobs attributable to the operation of property considered to be qualified investment were created in the 24-month period following the date the property was placed in service; and

(3) A new jobs credit base of at least \$700,000 for the taxable year of the qualified federal credit or either of the next 2 calendar years. The \$700,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000.

B. The amount of the credit that may be used in any taxable year may not exceed the lesser of \$500,000 or the total amount of tax liability otherwise due of all taxable corporations that are members of an affiliated group engaged in a unitary business. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the tax imposed by this Part for that year or those years, subject to the same limitations provided in this subsection.

The credit must be apportioned among the taxable corporations in the affiliated group in the same proportion that the tax liability of each taxable corporation in the affiliated group bears to the total tax liability of all the taxable corporations in the affiliated group.

7. **Legislative findings.** The Legislature finds that the encouragement of the growth of major industry in the State ~~to be~~ is in the public interest and ~~for the promotion of~~ promotes the general welfare of the people of the State; and that the use of investment tax credits to encourage industry to make substantial capital investments in the State 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 requirements of at least \$5,000,000 in qualified investment in the State and an increase of ~~200~~ at least 100 new jobs following the investment are reasonable qualifying criteria

for the application of an investment tax credit and will best promote substantial capital investment in the State.

8. Report on jobs and investment tax credit. The State Tax Assessor shall submit annually, no later than June 1st, to the joint standing committee of the Legislature having jurisdiction over taxation matters a report on the jobs and investment tax credit. The report must reflect the number of taxpayers applying for the credits, the number of taxpayers granted the credit, the amount of qualified investments made, the number of jobs created and the annual average wage of the new jobs. The report must be presented in as much detail as possible without identifying the taxpayers receiving the credit or violating confidentiality requirements of section 191.

**Sec. 2. Application and transition provisions.** Those portions of this Act that amend the Maine Revised Statutes, Title 36, section 5215, subsection 1 and enact Title 36, section 5215, subsection 2, paragraphs A-1 and A-2 apply to tax years beginning on or after January 1, 1993 as well as to any amendment to a tax return for a tax year beginning before January 1, 1993 when that amended return is filed after January 1, 1993 and only to the extent that the amendment relates to credit not taken or not carried over on a prior return for the tax year being amended or increases the amount of the credit taken on a prior return for the tax year being amended.

The portions of this Act that amend Title 36, section 5215, subsection 2, paragraph B and subsections 3, 4 and 7 and that enact Title 36, section 5215, subsection 6-B apply to tax years beginning on or after January 1, 1995.'

Further amend the bill by inserting at the end before the statement of fact the following:

**FISCAL NOTE**

Modifying the jobs and investment tax credit by increasing the maximum credit in any taxable year from \$300,000 to \$500,000, lowering the minimum number of new jobs created from 200 in a 12-month period to 100 in a 24-month period and extending the credit to affiliated groups will not significantly affect budgeted General Fund revenue during the current biennium. However, the expanded credit is estimated to reduce General Fund revenue collections by approximately \$2,600,000 in fiscal year 1995-96 and \$4,400,000 annually beginning in fiscal year 1996-97. The creation of new jobs and new business investment is expected to generate additional sales and income tax revenue from the incremental increase of economic activity. The amount of this incremental revenue can not be determined at this time.


2 Restricting investment credits to only those retail  
3 organizations that do not operate to the detriment of other Maine  
4 businesses may result in increased General Fund revenue from  
5 disqualified taxpayers. The amount of income tax revenue may  
6 increase by as much as \$300,000 in fiscal year 1994-95 from  
7 disqualified taxpayers.

8  
9 Expanding the jobs and investment credit retroactively to  
10 corporations engaged in affiliated groups currently utilizing the  
11 credit will not result in a loss of budgeted General Fund revenue  
12 as no assessments have been issued by the Bureau of Taxation  
13 related to affiliated groups.'

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15  
16  
17  
18 **STATEMENT OF FACT**

19 This amendment replaces the bill to make technical changes  
20 for clarification. No substantive changes were made.

21 The amendment also adds a fiscal note.

22  
23  
24  
25  
26  
27  
28 SPONSORED BY:   
(Senator CAREY)

29 COUNTY: Kennebec  
30  
31  
32