

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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Legislative Document

No. 2008

S.P. 778

In Senate, April 8, 1994

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**An Act to Clarify the Jobs and Investment Tax Credit.**

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot. (GOVERNOR'S BILL).

Cosponsored by Representative MURPHY of Berwick and

Senators: CAHILL of Sagadahoc, CARPENTER of York, ESTY of Cumberland,

Representatives: CARR of Sanford, CLARK of Millinocket, DiPIETRO of South Portland,

FAIRCLOTH of Bangor, GWADOSKY of Fairfield, JACQUES of Waterville, MORRISON of

Bangor, PARADIS of Augusta, PLOURDE of Biddeford, RUHLIN of Brewer, SAXL of

Bangor, SIMONEAU of Thomaston, SULLIVAN of Bangor, TARDY of Palmyra, WHITCOMB

of Waldo, WINN of Glenburn, ZIRNKILTON of Mount Desert.

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

2  
3       **Sec. 1. 36 MRSA §5215**, as amended by PL 1993, c. 395, §21, is  
4 further amended to read:

6       **§5215. Jobs and investment tax credit**

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

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

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

26       A-1. "Excluded investment" means an investment related to a  
27 retail facility, unless the taxpayer can demonstrate to the  
28 satisfaction of the State Tax Assessor that the commercial  
29 result of the project or projects to which the credit  
30 relates has not and will not result in a substantial  
31 detriment to existing businesses in the State.

34       A-2. "Retail facility" does not include a facility  
35 primarily engaged in warehousing, order taking,  
36 manufacturing, storage or distribution, even when if a  
37 portion of the facility is used to make sales of tangible  
38 personal property directly from the facility.

40       B. The term "new jobs credit base" means the excess of  
41 Maine Employment Security Commission wages for the taxable  
42 year of the qualified investment or either of the next 2  
43 calendar year years over the Maine Employment Security  
44 Commission wages for the highest of the 3 calendar years  
45 preceding the year of the qualified investment. In computing  
46 its new jobs credit base, a successor-taxpayer shall must  
47 add to its own Maine Employment Security Commission wages  
48 the Maine Employment Security Commission wages of its  
49 predecessor.

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

6 D. "Successor-taxpayer" means any a taxpayer which that has  
7 acquired, within 4 years of its taxable year-end year-end,  
8 the organization, trade or business, or 50% or more of the  
9 assets thereof of the organization, trade or business, of  
10 another taxpayer which that, at the time of the acquisition,  
11 was an employing unit.

12  
13 3. **Limitations.** The tax credit for any taxable year shall  
14 be is applicable only to those taxpayers:

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

19  
20 B. With payroll records and reports substantiating that at  
21 least ~~200~~ 100 new jobs, attributable to the operation of  
22 property considered to be a qualified investment, were  
23 created in the ~~12-month~~ 24-month period following the date  
24 the property was placed in service. To assess the  
25 continuing nature of the jobs, the taxpayer shall must  
26 demonstrate that the new jobs credit base is at least  
27 ~~\$1,400,000~~ \$700,000 for the taxable year of the qualified  
28 federal credit or either of the next 2 calendar year years.  
29 The ~~\$1,400,000~~ \$700,000 ~~is~~ must be adjusted  
30 proportionally from \$7,000 for any change of wages in Title  
31 26, section 1043, subsection 2 ~~wages-from-\$7,000~~.

32  
33 4. **Carryover.** The amount of credit that may be used by a  
34 taxpayer for any taxable year shall may not exceed either  
35 ~~\$300,000~~ \$500,000 or the amount of tax otherwise due, whichever  
36 is less. Any unused credit may be carried over to the following  
37 year or years for a period not to exceed 7 years, including the  
38 year the credit was first taken, and may be deducted from the  
39 taxpayer's tax for such that year or those years, subject to the  
40 same limitations provided herein in this subsection.

41  
42 5. **Carry-back.** There shall ~~be~~ is no ~~carryback~~ carry-back to  
43 prior years of the amount of credit allowable under this section.

44  
45 6. **Recapture.** If, during any taxable year, any qualified  
46 investment property is disposed of, or otherwise ceases to be  
47 property covered by subsection 2, paragraph A, with respect to  
48 the taxpayer, before the end of the useful life which that was  
49 taken into account in computing the credit under subsection 1,  
50

2 then the tax under this Part for that taxable year shall ~~shall~~ must be  
3 increased by an amount equal to the aggregate decrease in the  
4 credit allowed under subsection 1 for all prior taxable years  
5 which ~~that~~ would have resulted solely from substituting for the  
6 useful life, in determining qualified investment under the  
7 Internal Revenue Code, the period beginning with the time the  
8 property was placed in service by the taxpayer and ending with  
9 the time the property ceased to be property covered by subsection  
10 2.

11 6-A. Affiliated groups. This subsection applies  
12 retroactively to all tax years beginning before the effective  
13 date of this Act as well as prospectively to all tax years  
14 beginning on or after the effective date of this Act but prior to  
15 January 1, 1995 and for which the taxpayer's right to file an  
16 original or amended return had not or has not expired at the  
17 taxpayer's filing of the return. In the case of corporations  
18 that are members of an affiliated group engaged in a unitary  
19 business, the credit provided for in this section applies as  
20 follows.

21 A. The credit provided for in this section, in an amount  
22 equal to the aggregate qualified federal credit for all  
23 taxable corporations that are members of an affiliated group  
24 engaged in a unitary business, must be allowed against the  
25 total tax liability of all the taxable corporations that are  
26 members of the affiliated group engaged in a unitary  
27 business if the taxable corporations that are members of the  
28 affiliated group have, in the aggregate:

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

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

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

43 B. The amount of the credit that may be used in any taxable  
44 year may not exceed the lesser of \$300,000 or the total  
45 amount of tax liability otherwise due of all taxable  
46 property.

2 corporations that are members of an affiliated group engaged  
4 in a unitary business. An unused credit may be carried over  
6 to the following year or years for a period not to exceed 7  
8 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.

10 The credit must be apportioned among the taxable corporations in  
12 the affiliated group in the same proportion as it is to the total  
tax liability of all the taxable corporations in the affiliated  
group.

14 6-B. Affiliated groups. This subsection applies to tax  
16 years beginning on or after January 1, 1995. In the case of  
18 corporations that are members of an affiliated group engaged in a  
unitary business, the credit provided for in this section applies  
as follows.

20 A. The credit provided for in this section, in an amount  
22 equal to the aggregate qualified federal credit for all  
24 taxable corporations that are members of an affiliated group  
engaged in a unitary business, must be allowed against the  
26 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:

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

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

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

46 B. The amount of the credit that may be used in any taxable  
48 year may not exceed the lesser of \$500,000 or the total  
amount of tax liability otherwise due of all taxable  
50 corporations that are members of an affiliated group engaged  
in a unitary business. An unused credit may be carried over

2 to the following year or years for a period not to exceed 7  
3 years, including the year the credit was first taken, and  
4 may be deducted from the tax imposed by this Part for that  
5 year or those years, subject to the same limitations  
6 provided in this subsection.

7 The credit must be apportioned among the taxable corporations in  
8 the affiliated group in the same proportion as it is to the total  
9 tax liability of all the taxable corporations in the affiliated  
10 group.

11 **7. Legislative findings.** The Legislature finds the that  
12 encouragement of the growth of major industry in the State ~~to be~~  
13 is in the public interest and for the promotion of the general  
14 welfare of the people of the State; and that the use of  
15 investment tax credits to encourage industry to make substantial  
16 capital investments in the State is necessary to promote the  
17 purpose of the Legislature of encouraging the growth of industry;  
18 and that the Legislature further finds that the selecting of  
19 limits of \$5,000,000 in qualified investment in the State and an  
20 increase of 200 100 new jobs following the investment are  
21 reasonable qualifying criteria for the application of an  
22 investment tax credit and will best promote substantial capital  
23 investment in the State.  
24

25 **Sec. 2. Application and transition provisions.** The section of  
26 this Act that amends the Maine Revised Statutes, Title 36,  
27 section 5215, subsections 1 and 2 apply to tax years beginning on  
28 or after January 1, 1993, as well as to amendments to tax returns  
29 for tax years beginning before January 1, 1993 when those amended  
30 returns are filed after January 1, 1993.  
31

32 Title 36, section 5215, subsection 2, paragraph B and  
33 subsections 3, 4, 6-B and 7, "new jobs credit base" limitations  
34 on the tax credit carry over the credit that amended the  
35 Legislative findings, apply to tax years beginning on or after  
36 January 1, 1995.  
37  
38  
39

## 40 STATEMENT OF FACT

41 This bill is intended to clarify the jobs and investment tax  
42 credit provisions of the state income tax laws. For tax years  
43 beginning on or after January 1, 1995, the number of jobs that  
44 must be created in order to qualify for the credit will be  
45 reduced from 200 to 100. Investment in certain retail facilities  
46 that operate to the detriment of other businesses in the State  
47 are excluded from the credit. After 1995, the credit will be  
48 limited to \$500,000 per year. A provision relating to the  
49

2 application of the credit to affiliated groups engaged in a unitary business is also included.