

MAINE STATE LEGISLATURE

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MAJORITY
TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1048, L.D. 1467, Bill, "An
Act to Encourage Capital Investment in Maine"

Amend the bill by inserting after the title and before the
enacting clause the following:

'Mandate preamble. This measure requires one or more local
units of government to expand or modify activities so as to
necessitate additional expenditures from local revenues but does
not provide funding for at least 90% of those expenditures.
Pursuant to the Constitution of Maine, Article IX, Section 21,
two thirds of all of the members elected to each House have
determined it necessary to enact this measure.'

Further 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 §5219-E, ¶B, as amended by PL 1991, c. 591,
Pt. BBB, §1, is further amended to read:

B. "Investment credit base" means the total original basis,
without adjustment, for federal income tax purposes, of the
taxpayer of all machinery and equipment placed in service
for the first time in this State by the taxpayer or other
person during any of the prior 5 taxable years, except in
taxable years ending in 1995, the prior 6 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.

If the taxpayer is reimbursed pursuant to chapter 915 for 100% of the property taxes assessed during the taxable year against all of the machinery and equipment that constitutes eligible property as defined in section 6651, subsection 1, that machinery and equipment may not be included in the investment credit base for that taxable year. The term "taxable year" means the taxable year for income tax purposes of the taxpayer.

Sec. 2. 36 MRSA c. 915 is enacted to read:

CHAPTER 915

REIMBURSEMENT FOR TAXES PAID ON CERTAIN BUSINESS PROPERTY

§6651. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Eligible property. "Eligible property" means qualified business property first placed in service in the State, or constituting construction in progress in the State, after April 1, 1995. "Eligible property" includes, without limitation, repair parts, replacement parts, additions, accessions and accessories to other qualified business property placed in service on or before April 1, 1995 if the part, addition, accession or accessory is first placed in service, or constitutes construction in progress, in the State after April 1, 1995. "Eligible property" also includes inventory parts. After reimbursement has been made for "eligible property" for 12 years, that property is no longer "eligible property" under this chapter.

2. Inventory parts. "Inventory parts" includes repair parts, replacement parts, replacement equipment, additions, accessions and accessories on hand but not in service and stocks or inventories of repair parts, replacement parts, replacement equipment, additions, accessions and accessories on hand but not in service if acquired after April 1, 1995, regardless of when placed in service.

3. Qualified business property. "Qualified business property" means tangible personal property that:

A. Is used or held for use exclusively for a business purpose by the person in possession of it or, in the case of

construction in progress or inventory parts, is intended to be used exclusively for a business purpose by the person who will possess that property; and

B. That either:

(1) Was subject to an allowance for depreciation under the Code on April 1st of the property tax year to which the claim for reimbursement relates or would have been subject to an allowance for depreciation under the Code as of that date but for the fact that the property has been fully depreciated; or

(2) In the case of construction in progress or inventory parts, would be subject under the Code to an allowance for depreciation when placed in service or would have been subject to an allowance for depreciation under the Code as of that date but for the fact that the property has been fully depreciated.

"Qualified business property" also includes all property that is affixed or attached to a building or other real estate if it is used to further a particular trade or business activity taking place in that building or on that real estate. "Qualified business property" does not include components or attachments to a building if used primarily to serve the building as a building, regardless of the particular trade or activity taking place in or on the building. "Qualified business property" also does not include land improvements if used primarily to further the use of the land as land, regardless of the particular trade or business activities taking place in or on the land. In the case of construction in progress or inventory parts, the term "used" means intended to be used.

§6652. Reimbursement allowed; limitation

1. Generally. Subject to the provisions of subsection 2 and of sections 6653 and 6654, a person against whom taxes have been assessed pursuant to Part 2 with respect to eligible property and who has paid those taxes is entitled to reimbursement of those taxes from the State.

2. Limitation. Reimbursement may not be made by the State Tax Assessor pursuant to this chapter with respect to the payment of taxes assessed against property that is entitled to exemption pursuant to section 656, subsection 1, paragraph E or any other provision of law except that reimbursement must be made with respect to the payment of taxes assessed against property that has not been certified for exemption pursuant to section 656, subsection 1, paragraph E but that is entitled to exemption

2 pursuant to that provision if that property has been placed in
3 service after the December 1st immediately preceding April 1st of
4 the tax year for which reimbursement is sought but prior to April
5 1st of the property tax year for which reimbursement is sought.
6 The claimant may seek reconsideration, pursuant to section 151,
7 of the State Tax Assessor's denial of reimbursement under this
8 subsection. If the State Tax Assessor denies a reimbursement
9 claim on the ground that the property in question is entitled to
10 exemption under section 656, subsection 1, paragraph E and the
11 claimant seeks reconsideration of the denial, the State Tax
12 Assessor shall, at the claimant's request, allow the claimant up
13 to one year to obtain a statement from the Commissioner of
14 Environmental Protection that the property at issue is not
15 exempt. If the claimant timely produces such a statement or
16 otherwise demonstrates that the property is not exempt, the State
17 Tax Assessor shall allow the reimbursement.

18 **§6653. Taxpayer to obtain information**

19 Before filing a request for reimbursement with the State Tax
20 Assessor pursuant to section 6654, a taxpayer must notify the
21 assessor or assessors for any taxing jurisdiction in which
22 eligible property is subject to tax and for which the taxpayer
23 intends to claim reimbursement that the taxpayer intends to file
24 a reimbursement request. The notification must also include a
25 list of the property that the taxpayer believes constitutes
26 eligible property, the original cost of that property, the date
27 that property was acquired and whether the property was acquired
28 new or used. The taxpayer must submit to the assessor or
29 assessors of each taxing jurisdiction at the same time a request
30 that the assessor or assessors of the taxing jurisdiction provide
31 to the taxpayer a statement identifying the assessed just value
32 of eligible property for which reimbursement will be requested
33 and the associated tax attributed to that property. If the
34 taxpayer submits the request to the assessor or assessors 60 days
35 or more before the commitment date for the property tax year at
36 issue, the assessor or assessors of the taxing jurisdiction shall
37 make the statement available to the taxpayer at the time the
38 taxing jurisdiction first bills the taxpayer for property taxes
39 for the property tax year at issue. If the taxpayer submits the
40 request to the assessor or assessors less than 60 days before the
41 commitment date or after the commitment date, the assessor or
42 assessors shall make the statement available to the taxpayer
43 within 60 days after the request is made.

44
45
46 **§6654. Claim for reimbursement**

47 A person entitled to reimbursement pursuant to section 6652
48 may file a claim for reimbursement with the State Tax Assessor.
49 The reimbursement claim must be filed with the State Tax Assessor
50

on or before 60 days after the tax is paid. The State Tax Assessor may extend the date on which the claim for reimbursement is due for good cause. Except as otherwise provided, the claim must be accompanied by the statement obtained by the claimant pursuant to section 6653. If the claimant requests reimbursement of an amount of tax that differs from the amount of tax specified for the eligible property in the statement provided by the assessor or assessors of the taxing jurisdiction, the claimant must attach to the claim form an explanation of the reasons for that difference and the State Tax Assessor shall determine the correct amount of reimbursement to which the claimant is entitled, taking into consideration both the statement from the assessor or assessors and the taxpayer's explanation. If, for any reason, the claimant is unable to obtain the statement specified in section 6653 from the assessor or assessors within the time specified in section 6653, the claimant must attach to the claim form an explanation of the amount of reimbursement requested and the State Tax Assessor shall process the claim without that statement. If the property taxes are billed in more than one installment, a claimant may submit multiple claims for reimbursement corresponding to the amount of property tax paid with each installment.

§6655. Forms

The State Tax Assessor shall prescribe forms for the notice of claim and statement of the assessor or assessors provided in section 6653 and the claim for reimbursement, with instructions, and make those forms available to taxpayers and taxing jurisdictions.

§6656. Payment of claims

Upon receipt of a timely and properly completed claim for reimbursement, the State Tax Assessor shall certify that the claimant is eligible for reimbursement and shall pay the amount claimed from the General Fund within 180 days after the claim is filed.

§6657. Audit of claim

The State Tax Assessor has the authority to audit any claim filed under this chapter and take any action provided in section 384. If the State Tax Assessor determines that the amount of the claimed reimbursement is incorrect, the State Tax Assessor shall redetermine the claim and notify the claimant in writing of the redetermination and the State Tax Assessor's reasons. If the claimant has received reimbursement of an amount that the State Tax Assessor concludes should not have been reimbursed, the State Tax Assessor may issue an assessment for that amount within 3

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years from the date the reimbursement claim was filed or at any time if a fraudulent reimbursement claim was filed. The claimant may seek reconsideration, pursuant to section 151, of the redetermination or assessment.

§6658. Subsequent changes

If, after a claim for reimbursement has been filed, the associated property tax assessment is reduced or abated for any reason, the claimant shall file, within 60 days after receipt of the reduction or abatement, an amended claim for reimbursement reflecting the reduction or abatement. If a claimant has received reimbursement for property tax that is reduced or abated, the claimant shall, within 60 days of receipt of the reduction or abatement, refund to the Bureau of Taxation the amount of the reimbursement for the property tax that has been reduced or abated. If the claimant fails to make the refund within the 60-day period, the State Tax Assessor, within 3 years from the claimant's receipt of reimbursement, may issue an assessment for the amount that the claimant owes to the Bureau of Taxation. The claimant may seek reconsideration, pursuant to section 151, of the assessment.

§6659. Legislative findings

The Legislature finds that encouragement of the growth of capital investment in this State is in the public interest and promotes the general welfare of the people of the State. The Legislature further finds that the high cost of owning qualified business property in this State is a disincentive to the growth of capital investment in this State. The Legislature further finds that the program set forth in this chapter is a reasonable means of overcoming this disincentive and will encourage capital investment in this State.

Sec. 3. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 5219-E, subsection 1, paragraph B, applies to taxable years ending on or after July 1, 1997.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1996-97

**ADMINISTRATIVE AND FINANCIAL
SERVICES, DEPARTMENT OF**

Bureau of Taxation

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2	Positions - Legislative Count	(2.0)
	Personal Services	\$59,613
4	All Other	18,613
	Capital Expenditures	13,064

6

8	TOTAL	<hr/> 91,290
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10 Provides funds for one Property Appraiser II
and one Clerk-Typist II positions to
12 administer the Personal Property Tax Reform
program.

14

Personal Property Tax Reform

16

	All Other	4,746,068
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18

20 Provides funds for reimbursements to
businesses for personal property taxes paid
on certain eligible property.

22

24 **DEPARTMENT OF ADMINISTRATIVE
AND FINANCIAL SERVICES
TOTAL**

\$4,837,358'

26

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

30

FISCAL NOTE

32

1996-97

34

APPROPRIATIONS/ALLOCATIONS

36

	General Fund	\$4,837,358
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38

40 Providing reimbursement for municipal property taxes on
certain personal property will require additional General Fund
appropriations of \$4,746,068 in fiscal year 1996-97. The costs
42 to reimburse businesses for their personal property taxes on
certain machinery and equipment will increase significantly in
44 future years as more personal property becomes eligible. These
costs are estimated to be \$13,900,000 in fiscal year 1997-98 and
46 \$22,500,000 in fiscal year 1998-99. After 12 years the estimated
annual cost to reimburse businesses will be approximately
48 \$71,000,000 based on existing levels of investment.

50

The Bureau of Taxation will require an additional General
Fund appropriation of \$91,290 in fiscal year 1996-97 for one

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Property Appraiser II and one Clerk-Typist II and associated administrative costs to administer the Personal Property Tax Reform program.

The requirement that municipalities provide taxpayers with special statements and track valuations and taxes for eligible and ineligible property represents a state mandate pursuant to the Constitution of Maine. The additional local costs can not be determined at this time. Pursuant to the Mandate Preamble, the 2/3 vote of all members elected to each House exempts the State from the Constitutional requirement to fund 90% of the additional local costs.

The Governor's proposed supplemental budget, Part 2 includes \$5,000,000 in fiscal year 1996-97 for the Personal Property Tax Reform program.'

STATEMENT OF FACT

This amendment replaces the bill. It encourages capital investment in the State by providing for reimbursement by the State of property taxes paid on certain business property. To qualify, the property must be used solely for a business purpose, must be depreciable and must be first placed in service in the State after April 1, 1995. Reimbursements will be made for a maximum of 12 years with respect to any particular property. A taxpayer claiming reimbursement under this program will not be able to claim an investment tax credit pursuant to the Maine Revised Statutes, Title 36, section 5219-E.

Many types of business property are attached to buildings or other real estate. Property eligible for reimbursement is distinguished from ineligible property based on a functional test. Property is eligible for reimbursement even though affixed to a building or other real estate if it is used primarily to further the particular trade or business activity carried on in the building or on the real estate. Examples are manufacturing equipment, piping and electrical systems associated with manufacturing equipment, freezers and specialized ventilating systems necessary to the particular business activity being conducted. On the other hand, building attachments and components are not eligible for reimbursement if they are primarily related to the use of the building as a building. As a result, normal building plumbing, heating and electrical systems not designed for the particular trade or business activity taking place within the building are not eligible for reimbursement. Similarly, normal land improvements such as paving and fencing are not eligible for reimbursement.

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2 Nothing in this amendment is intended to have any bearing on
the question of whether particular types of property are entitled
4 to exemption from sales and use taxes pursuant to the Maine
Revised Statutes, Title 36, Part 3 or whether particular types of
6 property are properly categorized as real or personal property
for purposes of sales and use taxation.

8 It is intended that as part of the appropriation for the
reimbursement program provided for in section 1 of this bill, the
10 Legislature will appropriate for each fiscal year the amount of
State income tax credit that would have been available to
12 taxpayers but for section 2 of this bill to the cost of property
tax reimbursements provided for in section 1 of this bill.

14 This amendment adds an appropriation section and a fiscal
16 note to the bill.