

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

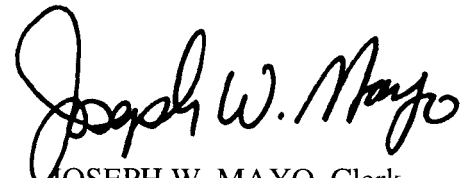
No. 1467

H.P. 1048

House of Representatives, May 2, 1995

An Act to Encourage Capital Investment in Maine.

Reference to the Committee on Taxation suggested and ordered printed.



JOSEPH W. MAYO, Clerk

Presented by Representative SIMONEAU of Thomaston. (GOVERNOR'S BILL)
Cosponsored by Senator CAREY of Kennebec and
Representatives: AIKMAN of Poland, BAILEY of Township 27, BARTH of Bethel, BIGL of Bucksport, BUCK of Yarmouth, CAMERON of Rumford, CAMPBELL of Holden, CARLETON of Wells, CHICK of Lebanon, CLARK of Millinocket, CLOUTIER of South Portland, DAMREN of Belgrade, DEXTER of Kingfield, DiPIETRO of South Portland, DONNELLY of Presque Isle, FISHER of Brewer, GIERINGER of Portland, GOOLEY of Farmington, GOULD of Greenville, GREENLAW of Standish, GWADOSKY of Fairfield, HARTNETT of Freeport, HEINO of Boothbay, JACQUES of Waterville, JOSEPH of Waterville, JOYCE of Biddeford, JOYNER of Hollis, KERR of Old Orchard Beach, LANE of Enfield, LEMONT of Kittery, LIBBY of Kennebunk, LIBBY of Buxton, LINDAHL of Northport, LOVETT of Scarborough, LUMBRA of Bangor, MARVIN of Cape Elizabeth, MAYO of Bath, MERES of Norridgewock, MORRISON of Bangor, MURPHY of Berwick, O'GARA of Westbrook, POIRIER of Saco, POULIN of Oakland, POULIOT of Lewiston, REED of Falmouth, RICE of South Bristol, ROBICHAUD of Caribou, ROSEBUSH of East Millinocket, SAVAGE of Union, SPEAR of Nobleboro, STONE of Bangor, TUFTS of Stockton Springs, UNDERWOOD of Oxford, WHITCOMB of Waldo, WINGLASS of Auburn, WINN of Glenburn, WINSOR of Norway, YACKOBITZ of Hermon, Senators: ABROMSON of Cumberland, BUTLAND of Cumberland, CARPENTER of York, CASSIDY of Washington, CIANCHETTE of Somerset, FERGUSON of Oxford, HARRIMAN of Cumberland, KIEFFER of Aroostook, LONGLEY of Waldo, MICHAUD of Penobscot, RUHLIN of Penobscot.

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

4 Sec. 1. 36 MRSA c. 915 is enacted to read:

6 CHAPTER 915

8 REIMBURSEMENT FOR TAXES PAID ON CERTAIN BUSINESS PROPERTY

10 §6651. Definitions

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

14 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 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.

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

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

36 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

42 B. That either:

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

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

38 **§6652. Reimbursement allowed; limitation**

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

50 **2. Limitation.** Reimbursement may not be made by the State
52 Tax Assessor pursuant to this chapter with respect to the payment
54 of taxes assessed against property that is entitled to exemption
56 pursuant to section 656, subsection 1, paragraph E or any other
58 provision of law. Reimbursement is allowed with respect to the
60 payment of taxes assessed against property that has not been
62 certified for exemption pursuant to section 656, subsection 1,
64 paragraph E but that is entitled to exemption pursuant to that
66 provision if that property has been placed in service after
68 December 1st but prior to April 1st of the property tax year for
70 which reimbursement is sought. The claimant may seek
72 reconsideration, pursuant to section 151, of the assessor's
74 denial of reimbursement under this section. If the assessor
76 denies a reimbursement claim on the ground that the property in
78 question is entitled to exemption under section 656, subsection
80 1, paragraph E and the claimant seeks reconsideration of the
82 denial, the assessor shall, at the claimant's request, allow the
84 claimant up to one year to obtain a statement from the
86 Commissioner of Environmental Protection that the property at
88 issue is not exempt. If the claimant timely produces such a

2 statement or otherwise demonstrates that the property is not
3 exempt, the assessor shall allow the reimbursement.

4 **§6653. Taxpayer to obtain information from municipality**

6 Before filing a request for reimbursement with the State Tax
7 Assessor pursuant to section 6654, a taxpayer must notify each
8 municipality in which the taxpayer's eligible property is located
9 that the taxpayer intends to file a reimbursement request. The
10 taxpayer must submit to each municipality at the same time a
11 request that the municipality provide to the taxpayer a statement
12 identifying the assessed just value of eligible property for
13 which reimbursement will be requested and the associated tax
14 attributed to that property. The municipal assessors shall then
15 make this information available to the taxpayer.

16 **§6654. Claim for reimbursement**

18 A person entitled to reimbursement pursuant to section 6652
19 may file a claim for reimbursement with the State Tax Assessor.
20 The reimbursement claim must be filed with the assessor on or
21 before 60 days after the tax is paid or September 1st of the year
22 in which the tax is assessed, whichever is later. Except as
23 otherwise provided, the claim must be accompanied by the
24 statement obtained by the claimant pursuant to section 6653. If
25 the claimant requests reimbursement of an amount of tax that
26 differs from the amount of tax specified for the eligible
27 property in the statement provided by the municipality or if the
28 claimant is unable to obtain the information specified in section
29 6653, the claimant must attach to the claim form an explanation
30 of the difference or otherwise explain the amount of
31 reimbursement requested. If the property taxes are billed in
32 more than one installment, a claimant may submit multiple claims
33 for reimbursement corresponding to the amount of property tax
34 paid with each installment.

36 **§6655. Forms**

38 The State Tax Assessor shall prescribe forms on which to
39 file a claim for reimbursement, with instructions, and shall make
40 the forms available to taxpayers.

42 **§6656. Payment of claims**

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

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§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 assessor determines that the amount of the claimed reimbursement is incorrect, the assessor shall redetermine the claim and notify the claimant of the redetermination and the assessor's reasons. If the claimant has received reimbursement of an amount that the assessor concludes should not have been reimbursed, the assessor may issue an assessment for that amount within 3 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 of the redetermination or assessment pursuant to section 151.

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§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 the reduction or abatement, an amended claim for reimbursement reflecting the reduction or abatement. If a claimant receives reimbursement for property tax that had been reduced or abated, the claimant shall, within 60 days of receipt of the reimbursement, 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 assessor may issue an assessment for the amount that the claimant should have refunded within 3 years from the claimant's receipt of reimbursement. The claimant may seek reconsideration of the assessment pursuant to section 151.

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STATEMENT OF FACT

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This bill 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.

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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. On the other hand, building

2 attachments and components are not eligible for reimbursement if
they are primarily related to the use of the building as a
4 building. As a result, normal building plumbing, heating and
electrical systems not designed for the particular trade or
6 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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10 Nothing in this bill is intended to have any bearing on the
question of whether particular types of property are entitled to
12 exemption from sales and use taxes pursuant to the Maine Revised
Statutes, Title 36, Part 3 or whether particular types of
14 property are properly categorized as real or personal property
for purposes of sales and use taxation.