

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 631, L.D. 1666, Bill, "An Act To Improve the Seed Capital Investment Tax Credit Program"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 10 MRSA §1100-T, sub-§1, as amended by PL 1991, c. 854, Pt. A, §7, is further amended to read:

1. **Legislative findings; authorization.** The Legislature finds that the growth of new and existing small businesses in the State results in increased job opportunities for Maine residents, produces more spending in the State and increases municipal tax bases. Businesses that export their products or services out of the State bring capital into the State and help to develop export markets for Maine products. Small new and existing businesses can provide significant economic benefits to the State if they can obtain sufficient seed equity financing to carry them from start-up through the initial development phases of a business. The jobs created by such businesses tend to pay higher wages and offer more benefits than other businesses; however, the per capita level of private venture capital investment in businesses located in the State is substantially below the national average and the average of the other New England states. In order to encourage the increased availability of risk equity capital to enterprises that have the potential for rapid growth and that bring capital into the State, the authority is authorized to issue certificates of eligibility for the seed capital investment tax credit permitted by Title 36, section 5216-B, subject to the requirements of this section. This program is known as the Maine Seed Capital Tax Credit Program.

Sec. 2. 10 MRSA §1100-T, sub-§1-A is enacted to read:

1-A. Private venture capital fund. As used in this section, "private venture capital fund" means a professionally managed pool of capital organized for a limited life to make equity or equity-like investments in unrelated private companies using capital derived from multiple limited partners or members at least half of which, measured in dollar commitments, are unaffiliated and unrelated, and includes any venture capital fund licensed by the United States Small Business Administration. The authority may require

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1 such information as may be necessary or desirable for determining whether an entity
2 qualifies as a private venture capital fund.

3 **Sec. 3. 10 MRSA §1100-T, sub-§2, ¶A**, as amended by PL 2003, c. 451, Pt. E,
4 §1, is further amended to read:

5 A. A For investments made in tax years beginning before January 1, 2011, a tax
6 credit certificate may be issued in an amount not more than 40% of the amount of
7 cash actually invested in an eligible Maine business in any calendar year or in an
8 amount not more than 60% of the amount of cash actually invested in any one
9 calendar year in an eligible Maine business located in a high-unemployment area, as
10 determined by rule by the authority. For investments made in tax years beginning on
11 or after January 1, 2011, a tax credit certificate may be issued to an investor other
12 than a private venture capital fund in an amount not more than 60% of the amount of
13 cash actually invested in an eligible Maine business in any calendar year. Rules
14 adopted pursuant to this section are routine technical rules as defined in Title 5,
15 chapter 375, subchapter 2-A.

16 **Sec. 4. 10 MRSA §1100-T, sub-§2, ¶H**, as enacted by PL 1987, c. 854, §§2 and
17 5, is amended to read:

18 H. The investors qualifying for the credit must collectively each own less than 1/2
19 of the business.

20 **Sec. 5. 10 MRSA §1100-T, sub-§2-A**, as amended by PL 2009, c. 470, §3, is
21 further amended to read:

22 **2-A. Eligibility of private venture capital funds for tax credit certificate.** The
23 authority shall adopt rules in accordance with the Maine Administrative Procedure Act to
24 implement application of the program to investment in a private venture capital fund.
25 ~~Without limitation, the~~ This subsection does not apply to credits claimed for tax years
26 beginning on or after January 1, 2011. The requirements for eligibility for a tax credit
27 certificate for investment in a private venture capital fund include the following.

28 A. A For investments made in tax years beginning before January 1, 2011, a tax
29 credit certificate may be issued to an individual who invests in a private venture
30 capital fund in an amount that:

31 (1) Is not more than 40% of the amount of cash actually invested in or
32 unconditionally committed to a private venture capital fund in any calendar year
33 by the individual or entity, except that with respect to fund investments that are
34 made in eligible businesses that are located in a high unemployment area, as
35 determined by rule of the authority under subsection 2, the tax credit certificate
36 may not be more than 60% of the cash actually invested in or unconditionally
37 committed to a private venture capital fund in any calendar year by the individual
38 or entity; and

39 (2) Does not exceed 40% of the amount of cash invested by the fund in eligible
40 businesses, except that with respect to fund investments that are made in eligible
41 businesses that are located in a high unemployment area, as determined by rule of
42 the authority under subsection 2, a tax credit certificate may not be more than
43 60% of the cash invested by the fund in any calendar year in such businesses;

1 provided that the authority may issue tax credit certificates in an amount not to
2 exceed 20% of the amount of cash actually invested in or unconditionally
3 committed to a private venture capital fund in any calendar year if the authority
4 determines that the private venture capital fund is located in this State, is owned
5 and controlled primarily by residents of this State and has designated investing in
6 eligible businesses of this State as a major investment objective. The credit may
7 be revoked to the extent that the private venture capital fund does not make
8 investments eligible for the tax credit in an amount sufficient to qualify for the
9 credits within 3 years after the date of the tax credit certificates. Notwithstanding
10 any revocation pursuant to this subparagraph, each investor remains eligible for
11 tax credit certificates for eligible investments as and when made by the private
12 venture capital fund.

13 The aggregate amount of credits issued to investors in a fund may not exceed 40% of
14 the amount of cash invested by the fund in eligible businesses, except that with
15 respect to fund investments in eligible businesses that are located in a high
16 unemployment area, the aggregate amount of tax credits issued to investors in a fund
17 may not exceed 60% of the cash invested by the fund in eligible businesses.

18 B. As used in this subsection, unless the context otherwise indicates, an "eligible
19 business" means a business located in the State that:

- 20 (1) Is a manufacturer;
- 21 (2) Is engaged in the development or application of advanced technologies;
- 22 (3) Provides a service that is sold or rendered, or is projected to be sold or
23 rendered, predominantly outside of the State;
- 24 (4) Brings capital into the State, as determined by the authority; or
- 25 (5) Is certified as a visual media production company under Title 5, section
26 13090-L.

27 C. Aggregate investment eligible for tax credits may not be more than \$5,000,000
28 for any one business for any one private venture capital fund as of the date of
29 issuance of a tax credit certificate.

30 D. The investment with respect to which any individual or entity is applying for a
31 tax credit certificate may not be more than an aggregate of \$500,000 in any one
32 eligible business invested in by a private venture capital fund in any 3 consecutive
33 calendar years, except that this paragraph does not limit other investment by any
34 applicant for which that applicant is not applying for a tax credit certificate and
35 except that, if the entity applying for a tax credit certificate is a partnership, limited
36 liability company, S corporation, nontaxable trust or any other entity that is treated as
37 a flow-through entity for tax purposes under the federal Internal Revenue Code, the
38 aggregate limit of \$500,000 or \$200,000, as applicable, applies to each individual
39 partner, member, stockholder, beneficiary or equity owner of the entity and not to the
40 entity itself. This paragraph does not limit other investment by any applicant for
41 which that applicant is not applying for a tax credit certificate.

1 E. Each business receiving an investment from a private venture capital fund, which
2 investment is used as the basis for the issuance of a tax credit certificate, must have
3 annual gross sales of \$3,000,000 or less and the operation of the business must be the
4 full-time professional activity of the principal owner, as determined by the authority.
5 The principal owner and principal owner's spouse, if any, are not eligible for a credit
6 for investment in that business or for an investment by the private venture capital
7 fund in that business. A tax credit certificate may not be issued to a parent, brother,
8 sister or child of a principal owner if the parent, brother, sister or child has any
9 existing ownership interest in that business or for an investment by the private
10 venture capital fund in that business.

11 F. Each investment received by a business from a private venture capital fund,
12 which investment is used as the basis for the issuance of a tax credit certificate, must
13 be expended on plant maintenance and construction, equipment, research and
14 development or working capital for the business or on such other business activity as
15 may be approved by the authority.

16 G. The authority shall establish limits on repayment of the investment by an
17 individual in and the investments made by a private venture capital fund, which
18 investment is used as the basis for the issuance of a tax credit certificate. The
19 investments must be at risk in the private venture capital fund and the business,
20 respectively.

21 H. The investors in a private venture capital fund are not entitled to the credit for
22 collective ownership in excess of 50% of any business. An investor in a private
23 venture capital fund determined by the authority to be a principal owner of a business
24 and the principal owner's spouse, if any, are not entitled to a credit with respect to
25 investment in that business, nor are the principal owner's parents, siblings or children
26 entitled to a credit if they have any existing ownership interest in the business.

27 **Sec. 6. 10 MRSA §1100-T, sub-§2-C** is enacted to read:

28 **2-C. Eligibility of private venture capital funds for refundable tax credit**
29 **certificate.** This subsection applies to investments by private venture capital funds in
30 eligible businesses made in tax years beginning on or after January 1, 2011. The
31 authority shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter
32 2-A to implement application of the program to investments in eligible businesses by
33 private venture capital funds. The requirements for eligibility for a tax credit certificate
34 for an investment by a private venture capital fund include the following.

35 A. For investments made in tax years beginning on or after January 1, 2011, a tax
36 credit certificate may be issued to a private venture capital fund in an amount that is
37 not more than 50% of the amount of cash actually invested in an eligible business.
38 The tax credit certificate may be revoked and the credit recaptured pursuant to Title
39 36, section 5216-B, subsection 5 to the extent that the authority determines that the
40 eligible business for which the tax credit certificate was issued moves substantially
41 all of its operations and assets outside of the State during the period ending 4 years
42 after an investment, except in the case of an arm's length, fair value acquisition
43 approved by the authority. A private venture capital fund that received a 20% credit
44 certificate under subsection 2-A, paragraph A, subparagraph (2) for an investment is
45 not eligible for a tax credit certificate under this subsection for that investment.

1 B. As used in this subsection, unless the context otherwise indicates, "eligible
2 business" means a business located in the State that:

- 3 (1) Is a manufacturer;
- 4 (2) Is engaged in the development or application of advanced technologies;
- 5 (3) Provides a service that is sold or rendered, or is projected to be sold or
6 rendered, predominantly outside of the State;
- 7 (4) Brings capital into the State, as determined by the authority; or
- 8 (5) Is certified as a visual media production company under Title 5, section
9 13090-L.

10 C. Aggregate investment eligible for tax credit certificates, including investments
11 under this subsection and under subsection 2, may not be more than \$5,000,000 for
12 any one eligible business.

13 D. The investment with respect to which any entity is applying for a tax credit
14 certificate may not be more than an aggregate of \$500,000 in any one eligible
15 business invested in by a private venture capital fund in any 3 consecutive calendar
16 years, except that this paragraph does not limit other investment by an applicant for
17 which that applicant is not applying for a tax credit certificate and except that, if the
18 entity applying for a tax credit certificate is a partnership, limited liability company, S
19 corporation, nontaxable trust or any other entity that is treated as a flow-through
20 entity for tax purposes under the federal Internal Revenue Code, the aggregate limit
21 of \$500,000 applies to each individual partner, member, stockholder, beneficiary or
22 equity owner of the entity and not to the entity itself. This paragraph does not limit
23 other investment by any applicant for which that applicant is not applying for a tax
24 credit certificate. A private venture capital fund must certify to the authority that it
25 will be in compliance with these limitations. The tax credit certificate issued to a
26 private venture capital fund may be revoked and any credit taken recaptured pursuant
27 to Title 36, section 5216-B, subsection 5 if the fund is not in compliance with this
28 paragraph.

29 E. An eligible business receiving an investment from a private venture capital fund,
30 which investment is used as the basis for the issuance of a tax credit certificate, may
31 not have annual gross sales of more than \$3,000,000 and the operation of the business
32 must be the full-time professional activity of the principal owner, as determined by
33 the authority. A tax credit certificate may not be issued to a private venture capital
34 fund if an investor in the fund is a principal owner of the eligible business or a
35 spouse, parent, sibling or child of a principal owner and if the spouse, parent, sibling
36 or child has any existing ownership interest in the business. A private venture capital
37 fund must certify to the authority that it will be in compliance with these limitations.
38 The tax credit certificate issued to a private venture capital fund may be revoked and
39 any credit taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the
40 fund is not in compliance with this paragraph.

41 F. An investment received by an eligible business from a private venture capital fund
42 for which the investment is used as the basis for the issuance of a tax credit certificate
43 must be expended on plant maintenance and construction, equipment, research and

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1 development or working capital for the business or on such other business activity as
2 may be approved by the authority.

3 G. The authority shall establish limits on repayment of the investments made by a
4 private venture capital fund for which the investments are used as the basis for the
5 issuance of tax credit certificates. The investments must be at risk in the private
6 venture capital fund and the eligible business, respectively.

7 H. A private venture capital fund is not entitled to the credit if it owns in excess of
8 50% of the eligible business, except that if the private venture capital fund is issued a
9 tax credit certificate and later makes an additional investment that increases its
10 ownership to more than 50%, the existing tax credit certificate remains valid and is
11 not subject to revocation due to the ownership percentage as long as there was no
12 intent to take controlling ownership at the time of the initial qualified investment.

13 **Sec. 7. 10 MRSA §1100-T, sub-§4**, as amended by PL 2003, c. 451, Pt. E, §5, is
14 further amended to read:

15 **4. Total of credits authorized.** The authority may issue tax credit certificates to
16 investors eligible pursuant to subsections 2 and 2-A and 2-C in an aggregate amount not
17 to exceed \$2,000,000 up to and including calendar year 1996, \$3,000,000 up to and
18 including calendar year 1997, \$5,500,000 up to and including calendar year 1998,
19 \$8,000,000 up to and including calendar year 2001, \$11,000,000 up to and including
20 calendar year 2002, \$14,000,000 up to and including calendar year 2003, \$17,000,000 up
21 to and including calendar year 2004, \$20,000,000 up to and including calendar year 2005,
22 \$23,000,000 up to and including calendar year 2006, \$26,000,000 up to and including
23 calendar year 2007 and \$30,000,000 thereafter. The authority may provide that investors
24 eligible for a tax credit under this section in a year when there is insufficient credit
25 available are entitled to take the credit when it becomes available.

26 **Sec. 8. 10 MRSA §1100-T, sub-§6**, as enacted by PL 2001, c. 642, §10 and
27 affected by §12, is amended to read:

28 **6. Reports.** Any business eligible to have investors receive a tax credit under this
29 section must report to the authority, in a manner to be determined by the authority, the
30 following information regarding its activities in the State over the calendar year in which
31 the investment occurred and for such additional years as may be required by the
32 authority:

- 33 A. The total amount of private investment received;
34 B. The total number of persons employed as of December 31st;
35 C. The total numbers of jobs created and retained;
36 D. Total annual payroll; and
37 E. Total sales revenue.

38 The authority shall report annually to the joint standing committee of the Legislature
39 having jurisdiction over taxation matters on the activity under this section during the prior
40 calendar year.

41 **Sec. 9. 36 MRSA §5122, sub-§2, ¶FF** is enacted to read:

1 FF. To the extent included in federal adjusted gross income, an amount equal to the
2 distribution from a private venture capital fund of the refundable portion of the credit
3 allowed under section 5216-B.

4 **Sec. 10. 36 MRSA §5200-A, sub-§2, ¶S,** as amended by PL 2009, c. 213, Pt.
5 ZZZ, §12 and by Pt. BBBB, §14, is further amended to read:

6 S. An amount equal to the value of any prior year addition modification under
7 subsection 1, paragraph U, but only to the extent that:

8 (1) Maine taxable income is not reduced below zero;

9 (2) The taxable year is within the allowable federal period for carryover of the
10 net operating loss plus one year; and

11 (3) The amount has not been previously used as a modification pursuant to this
12 subsection; ~~and~~

13 **Sec. 11. 36 MRSA §5200-A, sub-§2, ¶U** is enacted to read:

14 U. To the extent included in federal taxable income, an amount equal to the
15 refundable portion of the credit allowed under section 5216-B and an amount equal to
16 the distribution from a private venture capital fund of the refundable portion of the
17 credit allowed under section 5216-B.

18 **Sec. 12. 36 MRSA §5216-B, sub-§1, ¶C,** as enacted by PL 1987, c. 854, §§4
19 and 5, is amended to read:

20 C. "Investor" means a taxpayer who or private venture capital fund that has
21 received a certificate.

22 **Sec. 13. 36 MRSA §5216-B, sub-§1, ¶D** is enacted to read:

23 D. "Private venture capital fund" has the same meaning as under Title 10, section
24 1100-T, subsection 1-A.

25 **Sec. 14. 36 MRSA §5216-B, sub-§2,** as amended by PL 2003, c. 451, Pt. E, §8,
26 is further amended to read:

27 **2. Credit.** An investor is entitled to a credit against the tax otherwise due under this
28 Part equal to the amount of the tax credit certificate issued by the Finance Authority of
29 Maine in accordance with Title 10, section 1100-T and as limited by this section. ~~It~~
30 Except with respect to tax credit certificates issued under Title 10, section 1100-T,
31 subsection 2-C, in the case of partnerships, limited liability companies, S corporations,
32 nontaxable trusts and any other entities that are treated as flow-through entities for tax
33 purposes under the Code, the individual partners, members, stockholders, beneficiaries or
34 equity owners of such entities must be treated as the investors under this section and are
35 allowed a credit against the tax otherwise due from them under this Part in proportion to
36 their respective interests in those partnerships, limited liability companies, S corporations,
37 trusts or other flow-through entities. Except as limited or authorized by subsection 3 or 4,
38 25% of the credit must be taken in the taxable year the investment is made and 25% per
39 year must be taken in each of the next 3 taxable years. With respect to tax credit

certificates issued under Title 10, section 1100-T, subsection 2-C, the credits are fully refundable.

Sec. 15. 36 MRSA §5216-B, sub-§3, as enacted by PL 1987, c. 854, §§4 and 5, is amended to read:

3. Limitation. The With respect to tax credit certificates issued under Title 10, section 1100-T, subsection 2 or 2-A, the amount of the credit allowed under this section for any one taxable year shall may not exceed 50% of the tax imposed by this Part on the investor for the taxable year before application of the credit.

Sec. 16. 36 MRSA §5216-B, sub-§5, as enacted by PL 1987, c. 854, §§4 and 5, is amended to read:

5. Recapture. In the event that the Finance Authority of Maine revokes a certificate, there shall must be added to the tax imposed on the investor under this Part for the taxable year in which the revocation occurs an amount equal to the ~~excess of the total~~ amount of credit authorized and revoked over minus the amount of credit not yet taken.'

SUMMARY

This amendment replaces the bill. The amendment, like the bill, changes the Maine Seed Capital Tax Credit Program by increasing the existing credit from 40% of an eligible investment to 60% and applying it uniformly across the State rather than basing it on unemployment rates. The amendment eliminates the up-front tax credit for investors in certain venture capital funds and authorizes a refundable tax credit of 50% for investments in eligible businesses by venture capital funds. Any income recognized on a taxpayer's federal tax return from the refundable tax credit would be subtracted from federal adjusted gross income for state income tax purposes. The amendment retains the current amount of \$30,000,000 as the aggregate amount of credits that the Finance Authority of Maine may issue. It requires the Finance Authority of Maine to report annually to the Joint Standing Committee on Taxation on activity in the program in the prior year.

FISCAL NOTE REQUIRED

(See attached)



124th MAINE LEGISLATURE

LD 1666

LR 2135(02)

An Act To Improve the Seed Capital Investment Tax Credit Program

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Taxation

Fiscal Note Required: Yes

Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Net Cost (Savings)				
General Fund	\$0	\$0	\$506,747	\$493,060
Revenue				
General Fund	\$0	\$0	(\$506,747)	(\$493,060)
Other Special Revenue Funds	\$0	\$0	(\$26,671)	(\$25,951)

Fiscal Detail and Notes

Expansion of the seed capital investment tax credit program by (1) increasing the credit from 40% of an eligible investment to 60% and making the credit available state-wide; (2) raising the individual/entity tax credit limit in certain circumstances from \$200,000 to \$500,000; and (3) allowing venture capital funds to claim a 50% refundable credit will reduce General Fund revenues. The General Fund revenue loss is estimated at \$506,747 in fiscal year 2011-12 and \$493,060 in fiscal year 2012-13, then declines to \$236,000 in fiscal year 2013-14 and \$26,000 in fiscal year 2014-15.

Additional costs to the Finance Authority of Maine associated with rulemaking can be absorbed within existing budgeted resources.