

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1666

S.P. 631

In Senate, December 21, 2009

An Act To Improve the Seed Capital Investment Tax Credit Program

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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 President MITCHELL of Kennebec.
Cosponsored by Representative CAIN of Orono and
Senators: ALFOND of Cumberland, GOODALL of Sagadahoc, PERRY of Penobscot,
RECTOR of Knox, Representatives: BRYANT of Windham, FLEMINGS of Bar Harbor,
SHAW of Standish.

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

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

4 A. A tax credit certificate may be issued in an amount not more than 40% 60% of the
5 amount of cash actually invested in an eligible Maine business in any calendar year
6 ~~or in an amount not more than 60% of the amount of cash actually invested in any~~
7 ~~one calendar year in an eligible Maine business located in a high unemployment area,~~
8 as determined by rule by the authority. Rules adopted pursuant to this section are
9 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

12 A. A tax credit certificate may be issued to an ~~individual who invests~~ investor in a
13 private venture capital fund in an amount that:

14 (1) Is not more than 40% 60% of the amount of cash actually invested in or
15 unconditionally committed to a private venture capital fund in any calendar year
16 by the individual or entity, ~~except that with respect to fund investments that are~~
17 ~~made in eligible businesses that are located in a high unemployment area, as~~
18 ~~determined by rule of the authority under subsection 2, the tax credit certificate~~
19 ~~may not be more than 60% of the cash actually invested in or unconditionally~~
20 ~~committed to a private venture capital fund in any calendar year by the individual~~
21 ~~or entity; and~~

22 (2) Does not exceed 40% 60% of the amount of cash invested by the fund in
23 eligible businesses, ~~except that with respect to fund investments that are made in~~
24 ~~eligible businesses that are located in a high unemployment area, as determined~~
25 ~~by rule of the authority under subsection 2, a tax credit certificate may not be~~
26 ~~more than 60% of the cash invested by the fund in any calendar year in such~~
27 ~~businesses; provided that the authority may issue tax credit certificates in an~~
28 ~~amount not to exceed 20% of the amount of cash actually invested in or~~
29 ~~unconditionally committed to a private venture capital fund in any calendar year~~
30 ~~if the authority determines that the private venture capital fund is located in this~~
31 ~~State, is owned and controlled primarily by residents of this State and has~~
32 ~~designated investing in eligible businesses of this State as a major investment~~
33 ~~objective. The credit may be revoked to the extent that the private venture capital~~
34 ~~fund does not make investments eligible for the tax credit in an amount sufficient~~
35 ~~to qualify for the credits within 3 years after the date of the tax credit certificates.~~
36 ~~Notwithstanding any revocation pursuant to this subparagraph, each investor~~
37 ~~remains eligible for tax credit certificates for eligible investments as and when~~
38 ~~made by the private venture capital fund.~~

39 The aggregate amount of credits issued to investors in a fund may not exceed 40%
40 60% of the amount of cash invested by the fund in eligible businesses, ~~except that~~
41 ~~with respect to fund investments in eligible businesses that are located in a high~~
42 ~~unemployment area, the aggregate amount of tax credits issued to investors in a fund~~
43 ~~may not exceed 60% of the cash invested by the fund in eligible businesses.~~

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

3 D. The investment with respect to which any individual or entity is applying for a tax
4 credit certificate may not be more than an aggregate of \$500,000 in any one eligible
5 business invested in by a private venture capital fund in any 3 consecutive calendar
6 years, except that this paragraph does not limit other investment by any applicant for
7 which that applicant is not applying for a tax credit certificate and except that, if the
8 entity applying for a tax credit certificate is a partnership, limited liability company, S
9 corporation, nontaxable trust or any other entity that is treated as a flow-through
10 entity for tax purposes under the federal Internal Revenue Code, the aggregate limit
11 of \$500,000 ~~or \$200,000, as applicable~~, applies to each individual partner, member,
12 stockholder, beneficiary or equity owner of the entity and not to the entity itself. This
13 paragraph does not limit other investment by any applicant for which that applicant is
14 not applying for a tax credit certificate.

15 **Sec. 4. 10 MRSA §1100-T, sub-§2-A, ¶E**, as amended by PL 2001, c. 446, §2
16 and affected by §6, is further amended to read:

17 E. Each business receiving an investment from a private venture capital fund, which
18 investment is used as the basis for the issuance of a tax credit certificate, must have
19 annual gross sales of \$3,000,000 or less and the operation of the business must be the
20 full-time professional activity of the principal owner, as determined by the authority.
21 The principal owner and principal owner's spouse, if any, are not eligible for a credit
22 for investment in that business or for an investment by the private venture capital
23 fund in that business. A tax credit certificate may not be issued to a parent, brother,
24 sister or child of a principal owner if the parent, brother, sister or child has any
25 existing ownership interest in that business ~~or for an investment by the private~~
26 ~~venture capital fund in that business.~~

27 **Sec. 5. 10 MRSA §1100-T, sub-§2-A, ¶H**, as amended by PL 2001, c. 446, §2
28 and affected by §6, is further amended to read:

29 H. The investors in a private venture capital fund are not entitled to ~~the a~~ credit for
30 ~~collective ownership~~ the investment in an eligible business to the extent the private
31 venture capital fund owns in excess of 50% of any that business at the time of the
32 application for the tax credit certificate. An investor in a private venture capital fund
33 determined by the authority to be a principal owner of a business and the principal
34 owner's spouse, if any, are not entitled to a credit with respect to investment in that
35 business, nor are the principal owner's parents, siblings or children entitled to a credit
36 if they have any existing ownership interest in the business.

37 **Sec. 6. 10 MRSA §1100-T, sub-§4**, as amended by PL 2003, c. 451, Pt. E, §5, is
38 further amended to read:

39 **4. Total of credits authorized.** The authority may issue tax credit certificates to
40 investors eligible pursuant to subsections 2 and 2-A in an aggregate amount not to exceed
41 \$2,000,000 up to and including calendar year 1996, \$3,000,000 up to and including
42 calendar year 1997, \$5,500,000 up to and including calendar year 1998, \$8,000,000 up to
43 and including calendar year 2001, \$11,000,000 up to and including calendar year 2002,

1 \$14,000,000 up to and including calendar year 2003, \$17,000,000 up to and including
2 calendar year 2004, \$20,000,000 up to and including calendar year 2005, \$23,000,000 up
3 to and including calendar year 2006, \$26,000,000 up to and including calendar year 2007
4 and, \$30,000,000 up to and including calendar year 2011 and \$50,000,000 thereafter.
5 The authority may provide that investors eligible for a tax credit under this section in a
6 year when there is insufficient credit available are entitled to take the credit when it
7 becomes available.

8 **Sec. 7. 36 MRSA §5216-B, sub-§2**, as amended by PL 2003, c. 451, Pt. E, §8, is
9 further amended to read:

10 **2. Credit.** An investor is entitled to a credit against the tax otherwise due under this
11 Part equal to the amount of the tax credit certificate issued by the Finance Authority of
12 Maine in accordance with Title 10, section 1100-T and as limited by this section. In the
13 case of partnerships, limited liability companies, S corporations, nontaxable trusts and
14 any other entities that are treated as flow-through entities for tax purposes under the
15 Code, the individual partners, members, ~~stockholders, beneficiaries~~ or equity owners of
16 such entities must be treated as the investors under this section and are allowed a credit
17 against the tax otherwise due from them under this Part in proportion to their respective
18 interests in those partnerships, limited liability companies, S corporations, trusts or other
19 flow-through entities or pursuant to an executed agreement among the partners, members
20 or equity owners documenting an alternate allocation method. Credits may be allocated to
21 partners, members or equity owners that are exempt from taxation under Section
22 501(c)(3), 501(c)(4) or 501(c)(6) of the Code, and those partners, members or owners
23 must be treated as taxpayers for the purposes of this subsection. Except as limited or
24 authorized by subsection 3 or 4, 25% of the credit must be taken in the taxable year the
25 investment is made and 25% per year must be taken in each of the next 3 taxable years.
26 Notwithstanding other provisions of this subsection, for credits authorized for
27 investments made after September 15, 2009 and before December 31, 2009, 16.67% of
28 the credit must be taken in the taxable year the investment is made, 16.67% of the credit
29 must be taken in the next taxable year and 33.33% of the credit must be taken in each
30 subsequent taxable year; and for credits authorized for investments made during calendar
31 year 2010, 16.66% of the credit must be taken in the taxable year the investment is made
32 and 27.78% of the credit must be taken in each subsequent taxable year.

33 **Sec. 8. 36 MRSA §5216-B, sub-§3**, as enacted by PL 1987, c. 854, §§4 and 5, is
34 amended to read:

35 **3. Credit refundable.** The credit allowed under this section is fully refundable,
36 except that for residents of Maine the amount of the credit allowed under this section for
37 any one taxable year shall may not exceed 50% of the tax imposed by this Part on the
38 investor for the taxable year before application of the credit.

39

SUMMARY

40 This bill changes the seed capital investment tax credit program by increasing the
41 existing credit from 40% of an eligible investment to 60% and applying it uniformly
42 across the State rather than basing it on unemployment rates. The bill eliminates the up-

1 front tax credit for investors in certain venture capital funds and makes changes to the
2 conditions and restrictions related to business ownership by investors in private venture
3 capital funds. The bill retains the current amount of \$30,000,000 as the aggregate amount
4 of credits that the Finance Authority of Maine may issue through the end of calendar year
5 2011 and then increases the amount to \$50,000,000 starting in 2012. It allows investors
6 entitled to the credit that are part of a partnership, corporation or similar entity to allocate
7 the credit using an alternate allocation method rather than allocating the credit in direct
8 proportion to their respective interests in those partnerships, corporations or similar
9 entities. It adds the partners, members or equity owners of certain nonprofit, civic and
10 charitable organizations to the list of those entitled to the credit and states that they must
11 be treated as taxpayers for the purposes of this refundable credit. The bill provides an
12 exception to the provision that specifies that 25% of the tax credit must be taken in the
13 year the investment is made for certain time periods and provides a schedule that
14 specifies what percentage must be taken in each taxable year. The bill also makes the tax
15 credit refundable to provide an incentive for investment in Maine businesses.