

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 22

H.P. 14

House of Representatives, January 4, 2011

An Act To Improve the Maine Seed Capital Tax Credit

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Clerk

Presented by Representative VALENTINO of Saco.
Cosponsored by Representatives: BRYANT of Windham, CHASE of Wells, KNIGHT of
Livermore Falls, NELSON of Falmouth, PILON of Saco, Senators: BARTLETT of
Cumberland, COURTNEY of York, CRAVEN of Androscoggin.

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

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

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

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

21 **1-A. Private venture capital fund.** As used in this section, "private venture capital
22 fund" means a professionally managed pool of capital organized for a limited life to make
23 equity or equity-like investments in unrelated private companies using capital derived
24 from multiple limited partners or members at least half of which, measured in dollar
25 commitments, are unaffiliated and unrelated, and includes any venture capital fund
26 licensed by the United States Small Business Administration. The authority may require
27 such information as may be necessary or desirable for determining whether an entity
28 qualifies as a private venture capital fund.

29 **Sec. 3. 10 MRSA §1100-T, sub-§2, ¶A**, as amended by PL 2003, c. 451, Pt. E,
30 §1, is further amended to read:

31 A. ~~A~~ For investments made in tax years beginning before January 1, 2012, a tax
32 credit certificate may be issued in an amount not more than 40% of the amount of
33 cash actually invested in an eligible Maine business in any calendar year or in an
34 amount not more than 60% of the amount of cash actually invested in any one
35 calendar year in an eligible Maine business located in a high-unemployment area, as
36 determined by rule by the authority. For investments made in tax years beginning on
37 or after January 1, 2012, a tax credit certificate may be issued to an investor other
38 than a private venture capital fund in an amount not more than 60% of the amount of
39 cash actually invested in an eligible Maine business in any calendar year. Rules
40 adopted pursuant to this section are routine technical rules as defined in Title 5,
41 chapter 375, subchapter 2-A.

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

3 H. The investors qualifying for the credit must ~~collectively~~ each own less than 1/2
4 of the business.

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

7 **2-A. Eligibility of private venture capital funds for tax credit certificate.** The
8 authority shall adopt rules in accordance with the Maine Administrative Procedure Act to
9 implement application of the program to investment in a private venture capital fund.
10 ~~Without limitation, the~~ This subsection does not apply to credits claimed for tax years
11 beginning on or after January 1, 2012. The requirements for eligibility for a tax credit
12 certificate for investment in a private venture capital fund include the following.

13 A. ~~A~~ For investments made in tax years beginning before January 1, 2012, a tax
14 credit certificate may be issued to an individual who invests in a private venture
15 capital fund in an amount that:

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

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

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

1 unemployment area, the aggregate amount of tax credits issued to investors in a fund
2 may not exceed 60% of the cash invested by the fund in eligible businesses.

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

- 5 (1) Is a manufacturer;
- 6 (2) Is engaged in the development or application of advanced technologies;
- 7 (3) Provides a service that is sold or rendered, or is projected to be sold or
8 rendered, predominantly outside of the State;
- 9 (4) Brings capital into the State, as determined by the authority; or
- 10 (5) Is certified as a visual media production company under Title 5, section
11 13090-L.

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

15 D. The investment with respect to which any individual or entity is applying for a
16 tax credit certificate may not be more than an aggregate of \$500,000 in any one
17 eligible business invested in by a private venture capital fund in any 3 consecutive
18 calendar years, except that this paragraph does not limit other investment by any
19 applicant for which that applicant is not applying for a tax credit certificate and
20 except that, if the entity applying for a tax credit certificate is a partnership, limited
21 liability company, S corporation, nontaxable trust or any other entity that is treated as
22 a flow-through entity for tax purposes under the federal Internal Revenue Code, the
23 aggregate limit of \$500,000 or \$200,000, as applicable, applies to each individual
24 partner, member, stockholder, beneficiary or equity owner of the entity and not to the
25 entity itself. This paragraph does not limit other investment by any applicant for
26 which that applicant is not applying for a tax credit certificate.

27 E. Each business receiving an investment from a private venture capital fund, which
28 investment is used as the basis for the issuance of a tax credit certificate, must have
29 annual gross sales of \$3,000,000 or less and the operation of the business must be the
30 full-time professional activity of the principal owner, as determined by the authority.
31 The principal owner and principal owner's spouse, if any, are not eligible for a credit
32 for investment in that business or for an investment by the private venture capital
33 fund in that business. A tax credit certificate may not be issued to a parent, brother,
34 sister or child of a principal owner if the parent, brother, sister or child has any
35 existing ownership interest in that business or for an investment by the private
36 venture capital fund in that business.

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

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

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

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

13 **2-C. Eligibility of private venture capital funds for refundable tax credit**
14 **certificate.** This subsection applies to investments by private venture capital funds in
15 eligible businesses made in tax years beginning on or after January 1, 2012. The
16 authority shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter
17 2-A to implement application of the program to investments in eligible businesses by
18 private venture capital funds. The requirements for eligibility for a tax credit certificate
19 for an investment by a private venture capital fund include the following.

20 A. For investments made in tax years beginning on or after January 1, 2012, a tax
21 credit certificate may be issued to a private venture capital fund in an amount that is
22 not more than 50% of the amount of cash actually invested in an eligible business.
23 The tax credit certificate may be revoked and the credit recaptured pursuant to Title
24 36, section 5216-B, subsection 5 to the extent that the authority determines that the
25 eligible business for which the tax credit certificate was issued moves substantially
26 all of its operations and assets outside of the State during the period ending 4 years
27 after an investment, except in the case of an arm's length, fair value acquisition
28 approved by the authority. A private venture capital fund that received the 20%
29 credit certificate under subsection 2-A, paragraph A, subparagraph (2) for an
30 investment is not eligible for a tax credit certificate under this subsection for that
31 investment.

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

- 34 (1) Is a manufacturer;
35 (2) Is engaged in the development or application of advanced technologies;
36 (3) Provides a service that is sold or rendered, or is projected to be sold or
37 rendered, predominantly outside of the State;
38 (4) Brings capital into the State, as determined by the authority; or
39 (5) Is certified as a visual media production company under Title 5, section
40 13090-L.

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

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

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

32 F. An investment received by an eligible business from a private venture capital fund
33 for which the investment is used as the basis for the issuance of a tax credit certificate
34 must be expended on plant maintenance and construction, equipment, research and
35 development or working capital for the business or on such other business activity as
36 may be approved by the authority.

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

41 H. A private venture capital fund is not entitled to the credit if it owns in excess of
42 50% of the eligible business, except that, if the private venture capital fund is issued a
43 tax credit certificate and later makes an additional investment that increases its
44 ownership to more than 50%, the existing tax credit certificate remains valid and is

1 not subject to revocation due to the ownership percentage as long as there was no
2 intent to take controlling ownership at the time of the initial qualified investment.

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

5 **4. Total of credits authorized.** The authority may issue tax credit certificates to
6 investors eligible pursuant to subsections 2 ~~and~~, 2-A and 2-C in an aggregate amount not
7 to exceed \$2,000,000 up to and including calendar year 1996, \$3,000,000 up to and
8 including calendar year 1997, \$5,500,000 up to and including calendar year 1998,
9 \$8,000,000 up to and including calendar year 2001, \$11,000,000 up to and including
10 calendar year 2002, \$14,000,000 up to and including calendar year 2003, \$17,000,000 up
11 to and including calendar year 2004, \$20,000,000 up to and including calendar year 2005,
12 \$23,000,000 up to and including calendar year 2006, \$26,000,000 up to and including
13 calendar year 2007 and \$30,000,000 thereafter. The authority may provide that investors
14 eligible for a tax credit under this section in a year when there is insufficient credit
15 available are entitled to take the credit when it becomes available.

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

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

- 23 A. The total amount of private investment received;
- 24 B. The total number of persons employed as of December 31st;
- 25 C. The total numbers of jobs created and retained;
- 26 D. Total annual payroll; and
- 27 E. Total sales revenue.

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

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

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

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

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

- 1 (1) Maine taxable income is not reduced below zero;
2 (2) The taxable year is within the allowable federal period for carryover of the
3 net operating loss plus one year; and
4 (3) The amount has not been previously used as a modification pursuant to this
5 subsection; ~~and~~

6 **Sec. 11. 36 MRSA §5200-A, sub-§2, ¶T**, as repealed and replaced by PL 2009,
7 c. 652, Pt. A, §56, is amended to read:

8 T. An amount equal to the value of any prior year addition modification under
9 subsection 1, paragraph V, but only to the extent that:

- 10 (1) Maine taxable income is not reduced below zero;
11 (2) The taxable year is within the allowable federal period for carry-over plus the
12 number of years that the net operating loss carry-over adjustment was not
13 deducted as a result of the restriction with respect to tax years beginning in 2009,
14 2010 and 2011;
15 (3) The amount has not been previously used as a modification pursuant to this
16 subsection; and
17 (4) The modification under this paragraph is not claimed for any tax year
18 beginning in 2009, 2010 or 2011; ~~and~~

19 **Sec. 12. 36 MRSA §5200-A, sub-§2, ¶U**, as enacted by PL 2009, c. 652, Pt. A,
20 §57 and affected by §58, is amended to read:

21 U. An amount equal to the gross income from discharge of indebtedness previously
22 deferred under the Code, Section 108(i) and included in federal taxable income. The
23 total subtraction for all years under this paragraph may not exceed the amount of the
24 addition modification under subsection 1, paragraph W for the same indebtedness;
25 and

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

27 V. To the extent included in federal taxable income, an amount equal to the
28 refundable portion of the credit allowed under section 5216-B and an amount equal to
29 the distribution from a private venture capital fund of the refundable portion of the
30 credit allowed under section 5216-B.

31 **Sec. 14. 36 MRSA §5216-B, sub-§1, ¶C**, as enacted by PL 1987, c. 854, §§4
32 and 5, is amended to read:

33 C. "Investor" means a taxpayer ~~who~~ or private venture capital fund that has
34 received a certificate.

35 **Sec. 15. 36 MRSA §5216-B, sub-§1, ¶D** is enacted to read:

36 D. "Private venture capital fund" has the same meaning as under Title 10, section
37 1100-T, subsection 1-A.

