

# MAINE STATE LEGISLATURE

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ROFS

L.D. 2047

Date: 3/16/20

(Filing No. H-766)

**TAXATION**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1458, L.D. 2047, Bill, "An Act To Amend the State Tax Laws"

Amend the bill in Part D in section 6 in §185-A in subsection 1 in the 5th and 6th lines (page 5, lines 34 and 35 in L.D.) by striking out the following: "any refund to which the person is entitled under this Title" and inserting the following: 'any amount due to the person under this Title, except for amounts due to that person under Part 2 of this Title'

Amend the bill in Part D in section 6 in §185-A in subsection 5 in the first 2 lines (page 6, lines 19 and 20 in L.D.) by striking out the following: "pursuant to this section as to the existence of a liquidated debt" and inserting the following: 'in a hearing pursuant to subsection 2'

Amend the bill in Part G in section 1 in the last line (page 11, line 35 in L.D.) by striking out the following: "granted the taxpayer"

Amend the bill in Part G by striking out all of section 2 and inserting the following:

'Sec. G-2. 36 MRSA §5231, sub-§1-A, as amended by PL 2017, c. 211, Pt. D, §11, is further amended to read:

**1-A. Federal extension.** When an individual, estate or trust is granted an extension of time within which to file a federal income tax return for any taxable year, ~~the due date for filing an extension to file~~ the taxpayer's income tax return with respect to the tax imposed by this Part is automatically ~~extended~~ granted for an equivalent period from the date prescribed for filing the return. When a taxable corporation or a financial institution subject to the tax imposed by chapter 819 is granted an extension of time within which to file its federal income tax return for any taxable year, ~~the due date for filing an extension to file~~ the taxpayer's income tax or franchise tax return with respect to the tax imposed by this Part is automatically ~~extended~~ granted for an equivalent period from the date prescribed for filing the return.'

Amend the bill by striking out all of Part H.

Amend the bill by striking out all of Part I and inserting the following:

**COMMITTEE AMENDMENT**

R O F S

'PART I

2           **Sec. I-1. 36 MRSA §5219-VV, sub-§1, ¶F**, as enacted by PL 2019, c. 386, §2,  
3 is amended to read:

4           F. "Facility" means a food processing and manufacturing facility, plant or mill,  
5 including one or more structures and including the equipment, machinery, fixtures  
6 and personal property located in, on, over, under and adjacent to those structures, by  
7 which the applicant, as determined by the commissioner ~~at the time of application,~~  
8 processes, produces and manufactures food from agricultural products primarily  
9 grown and harvested in the State.

10           **Sec. I-2. 36 MRSA §5219-VV, sub-§1, ¶K**, as enacted by PL 2019, c. 386, §2,  
11 is amended to read:

12           K. "Qualified investment" means an ~~investment~~ expenditure of at least \$35,000,000  
13 to design, permit, construct, modify, equip or expand the applicant's facility in the  
14 State. ~~The investments and activities expenditures of a qualified applicant and other~~  
15 ~~entities that are members of the qualified applicant's unitary business may, whether or~~  
16 ~~not incorporated, that are part of a single business enterprise must be aggregated to~~  
17 ~~determine whether a qualified investment has been made. A qualified investment~~  
18 ~~does not include an investment expenditure made prior to April 1, 2019 or after~~  
19 ~~December 31, 2024.~~

20           **Sec. I-3. 36 MRSA §5219-VV, sub-§2, ¶D**, as enacted by PL 2019, c. 386, §2,  
21 is amended to read:

22           D. The commissioner shall revoke a certificate of approval if the certified applicant  
23 or a person to whom a certificate of approval has been transferred pursuant to  
24 paragraph C fails to make a qualified investment within 5 years of the date of the  
25 certificate of approval. The commissioner shall revoke a certificate of approval or a  
26 certificate of completion under paragraph E if the applicant or transferee ceases  
27 operations of the facility in the State or the certificate of approval or certificate of  
28 completion is transferred to another person without approval from the commissioner  
29 pursuant to paragraph C. A certified applicant whose certificate of completion is  
30 revoked within 5 years after the date issued shall return ~~within 60 days following~~  
31 ~~revocation of the certificate~~ to the State an amount equal to the total credits claimed  
32 for all tax years under this section. A certified applicant whose certificate of  
33 completion is revoked during the period from 6 years after through 10 years after the  
34 date the certificate was issued shall return ~~within 60 days following revocation of the~~  
35 ~~certificate~~ to the State an amount equal to the total credits claimed under this section  
36 for the period from 6 years after through 10 years after the date the certificate was  
37 issued. The amount to be returned to the State under this paragraph is, for purposes  
38 of this Title, a tax subject to the collection and enforcement provisions contained in  
39 Part 1, including the application of applicable interest and penalties. The amount to  
40 be returned to the State must be added to the tax imposed on the taxpayer under this  
41 Part for the taxable year during which the certificate is revoked. An applicant whose  
42 certificate of approval or certificate of completion has been revoked pursuant to this  
43 paragraph is not eligible for the tax credit under this section for the tax year in which  
44 the certificate is revoked and any year after that.

1           **Sec. I-4. 36 MRSA §5219-VV, sub-§2, ¶E**, as enacted by PL 2019, c. 386, §2,  
2 is amended to read:

3           E. A certified applicant shall submit an application to the commissioner for a  
4 certificate of completion. If the commissioner determines that the certified applicant  
5 has made a qualified investment and ~~satisfied the facility and employment~~ determines  
6 that, at the time the application for a certificate of completion is submitted, the  
7 certified applicant is itself, or is the parent or subsidiary of, an entity that satisfies all  
8 of the criteria in subsection 1, paragraph J, subparagraphs (1) and (5), the  
9 commissioner shall issue a certificate of completion to the certified applicant as soon  
10 as is practical. The certificate of completion must state the amount of qualified  
11 investment made by the certified applicant.

12           **Sec. I-5. 36 MRSA §5219-VV, sub-§3, ¶B**, as enacted by PL 2019, c. 386, §2,  
13 is amended to read:

14           B. The credit under this subsection is limited as follows.

15           (1) A credit is not allowed for any tax year during which the taxpayer does not  
16 meet or exceed the following employment targets as measured on the last day of  
17 the tax year.

18           (a) For each of the first 3 tax years for which the credit is claimed, there  
19 must be a total of at least 40 full-time employees based in the State above the  
20 certified applicant's base level of employment whose jobs were added since  
21 the first day of the ~~first tax year for in~~ in which the ~~credit was claimed~~  
22 certificate of approval was issued.

23           (b) For each tax year after the 3rd tax year for which the credit is claimed,  
24 the taxpayer must employ a total of at least 60 full-time employees based in  
25 the State above the certified applicant's base level of employment whose jobs  
26 were added since the first day of the ~~first tax year for in~~ in which the ~~credit was~~  
27 claimed certificate of approval was issued.

28           Jobs for additional full-time employees that are counted for determining  
29 eligibility for the credit under one certificate of completion under subsection 2,  
30 paragraph E may not be counted for determining eligibility for the credit under a  
31 separate certificate of completion. For purposes of this subparagraph, "additional  
32 full-time employees" does not include employees who are shifted to a certified  
33 applicant's facility in the State from an affiliated business in the State. The  
34 commissioner shall determine whether a shifting of employees has occurred. For  
35 purposes of this subparagraph, "affiliated business" has the same meaning as in  
36 section 6753, subsection 1-A.

37           (2) A credit is not allowed for any tax year following 2 consecutive tax years  
38 during which the certified applicant did not have between \$5,500,000 and  
39 \$12,000,000 in ordinary business income.

40           (3) Cumulative credits under this subsection may not exceed ~~\$34,000,000~~  
41 \$30,600,000 under any one certificate.

1                   (4) A credit is not allowed for any tax year during which the certified applicant  
 2                   does not satisfy all of the following criteria:

3                   (a) The certified applicant's headquarters are located in the State;

4                   (b) The certified applicant has a facility in the State; and

5                   (c) The annual income derived from employment with the certified applicant  
 6                   of at least 75% of the certified applicant's employees exceeds the most recent  
 7                   annual per capita personal income in the county in which the facility is  
 8                   located.

9                   For purposes of this subparagraph, "certified applicant" includes the parent or  
 10                   subsidiary of the certified applicant.

11                   **Sec. I-6. 36 MRSA §5219-VV, sub-§5, ¶A,** as enacted by PL 2019, c. 386, §2,  
 12 is amended by amending subparagraph (1) to read:

13                   (1) The number of full-time employees based in the State of the certified  
 14                   applicant on the last day of the ~~tax year ending during the calendar year~~  
 15                   ~~immediately preceding the report year; and~~

16                   **PART J**

17                   **Sec. J-1. 36 MRSA §5122, sub-§2, ¶OO,** as amended by PL 2019, c. 527, Pt. A,  
 18 §1, is further amended to read:

19                   OO. For taxable years beginning on or after January 1, 2016 ~~and before January 1,~~  
 20                   ~~2020,~~ an amount equal to the net increase in the depreciation deduction allowable  
 21                   under the Code, Sections 167 and 168 that would have been applicable to that  
 22                   property had the depreciation deduction under the Code, Section 168(k) not been  
 23                   claimed with respect to such property placed in service during ~~the any~~ taxable year  
 24                   beginning on or after January 1, 2015 but before January 1, 2020 for which an  
 25                   addition was required under subsection 1, paragraph KK, subparagraph (2) for the  
 26                   taxable year.

27                   Upon the taxable disposition of property to which this paragraph applies, the amount  
 28                   of any gain or loss includable in federal adjusted gross income must be adjusted for  
 29                   Maine income tax purposes by an amount equal to the difference between the  
 30                   addition modification for such property under subsection 1, paragraph KK,  
 31                   subparagraph (2) and the subtraction modifications allowed pursuant to this  
 32                   paragraph.

33                   The total amount of subtraction claimed under this paragraph for all tax years may  
 34                   not exceed the addition modification under subsection 1, paragraph KK,  
 35                   subparagraph (2) for the same property.

36                   **Sec. J-2. 36 MRSA §5200-A, sub-§2, ¶AA,** as amended by PL 2019, c. 527, Pt.  
 37                   A, §3, is further amended to read:

38                   AA. For taxable years beginning on or after January 1, 2016 ~~and before January 1,~~  
 39                   ~~2020,~~ an amount equal to the net increase in the depreciation deduction allowable

1 under the Code, Sections 167 and 168 that would have been applicable to that  
 2 property had the depreciation deduction under the Code, Section 168(k) not been  
 3 claimed with respect to such property placed in service during ~~the~~ any taxable year  
 4 beginning on or after January 1, 2015 but before January 1, 2020 for which an  
 5 addition was required under subsection 1, paragraph CC, subparagraph (2) for the  
 6 taxable year.

7 Upon the taxable disposition of property to which this paragraph applies, the amount  
 8 of any gain or loss includable in federal taxable income must be adjusted for Maine  
 9 income tax purposes by an amount equal to the difference between the addition  
 10 modification for such property under subsection 1, paragraph CC, subparagraph (2)  
 11 and the subtraction modifications allowed pursuant to this paragraph.

12 The total amount of subtraction claimed under this paragraph for all tax years may  
 13 not exceed the addition modification under subsection 1, paragraph CC, subparagraph  
 14 (2) for the same property.

## 15 PART K

16 **Sec. K-1. 30-A MRSA §4722, sub-§1, ¶DD**, as corrected by RR 2017, c. 1, §24,  
 17 is amended by amending subparagraph (4) to read:

18 (4) Annually by every August 1st until and including August 1, ~~2023~~ 2025, the  
 19 Maine State Housing Authority shall review the report issued pursuant to Title  
 20 27, section 511, subsection 5, paragraph A to determine the percentage of the  
 21 total aggregate square feet of completed projects that constitutes new affordable  
 22 housing, rehabilitated and developed using:

23 (a) Either of the income tax credits under Title 36, section 5219-BB,  
 24 subsection 2; and

25 (b) The income tax credit increase under Title 36, section 5219-BB,  
 26 subsection 3.

27 If the total aggregate square feet of new affordable housing does not equal or  
 28 exceed 30% of the total aggregate square feet of rehabilitated and developed  
 29 completed projects eligible for a credit under Title 36, section 5219-BB, the  
 30 Maine State Housing Authority and Maine Historic Preservation Commission  
 31 shall notify the State Tax Assessor of this fact;

32 **Sec. K-2. 36 MRSA §5219-BB, sub-§1, ¶C**, as amended by PL 2011, c. 453,  
 33 §7, is further amended to read:

34 C. "Certified qualified rehabilitation expenditure" means a qualified rehabilitation  
 35 expenditure, as defined by the Code, Section 47(c)(2), made ~~between on or after~~  
 36 January 1, 2008 and December 31, 2023. ~~For purposes of subsection 2, paragraph B,~~  
 37 ~~qualified rehabilitation expenditures incurred in the certified rehabilitation of a~~  
 38 ~~certified historic structure located in the State do not include a requirement that the~~  
 39 ~~certified historic structure be substantially rehabilitated.~~ with respect to a certified  
 40 historic structure, if:

- 1                   (1) For credits claimed under subsection 2, paragraph A, the United States  
2                   Department of the Interior, National Park Service issues a determination on or  
3                   before December 31, 2025 that the proposed rehabilitation of that structure meets  
4                   the Secretary of the Interior's standards for rehabilitation, with or without  
5                   conditions; or
- 6                   (2) For credits claimed under subsection 2, paragraph B, the Maine Historic  
7                   Preservation Commission issues a determination on or before December 31, 2025  
8                   that the proposed rehabilitation of that structure meets the Secretary of the  
9                   Interior's standards for rehabilitation, with or without conditions.
- 10                   For purposes of subsection 2, paragraph B, qualified rehabilitation expenditures  
11                   incurred in the certified rehabilitation of a certified historic structure located in the  
12                   State do not include a requirement that the certified historic structure be substantially  
13                   rehabilitated.

14                   **Sec. K-3. 36 MRSA §5219-BB, sub-§2**, as amended by PL 2011, c. 240, §38  
15 and c. 453, §8, is further amended to read:

16                   **2. Credit allowed.** A taxpayer is allowed a credit against the tax imposed under this  
17 Part:

- 18                   A. Equal to 25% of the taxpayer's certified qualified rehabilitation expenditures for  
19                   which a tax credit is claimed under Section 47 of the Code for a certified historic  
20                   structure located in the State; or
- 21                   B. Equal to 25% of the certified qualified rehabilitation expenditures of a taxpayer  
22                   who incurs not less than \$50,000 and up to \$250,000 in certified qualified  
23                   rehabilitation expenditures in the rehabilitation of a certified historic structure located  
24                   in the State and who does not claim a credit under the Code, Section 47 with regard  
25                   to those expenditures. If the certified historic structure is a condominium, as defined  
26                   in Title 33, section 1601-103, subsection 7, the dollar limitations of this paragraph  
27                   apply to the total aggregate amount of certified qualified rehabilitation expenditures  
28                   incurred by the unit owners' association and all of the unit owners in the rehabilitation  
29                   of that certified historic structure. The credit may be claimed for the taxable year in  
30                   which the certified historic structure is placed in service.

31                   A taxpayer is allowed a credit under paragraph A or B but not both. A credit may not be  
32                   claimed for expenditures incurred before January 1, 2008 ~~or after December 31, 2023.~~

33                   Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
34                   section number to read consecutively.

35                   **SUMMARY**

36                   This amendment does the following.

- 37                   1. It excludes amounts due pursuant to the Maine Revised Statutes, Title 36, Part 2  
38                   from the refund offset expansion in the bill and clarifies a taxpayer's appeal rights during  
39                   the process.

- 1           2. It clarifies the effect of a federal income tax extension on the state income tax  
2 filing dates.
- 3           3. It strikes Part H of the bill, which makes changes to the real estate transfer tax.
- 4           4. It makes the following changes to the credit for major food processing and  
5 manufacturing facility expansion.
  - 6           A. It clarifies that the requirement for a facility to process, produce and manufacture  
7 food from agricultural products primarily grown and harvested in the State is an  
8 ongoing requirement.
  - 9           B. It clarifies that the expenditures of a qualified applicant and other entities,  
10 whether or not incorporated, that are part of a single business enterprise must be  
11 aggregated to determine whether a qualified investment has been made.
  - 12           C. It clarifies that jobs that must be added in order to qualify for the credit must be  
13 added after the first day of the year in which the certificate of approval was issued.
  - 14           D. It clarifies that the headquarters and facility of a certified applicant or of a parent  
15 or subsidiary of the certified applicant, must be located in the State and that the  
16 annual income of at least 75% of the certified applicant's employees must exceed the  
17 most recent annual per capita personal income in the county in which the facility is  
18 located in order for the applicant to qualify for a certificate of completion or the  
19 credit.
- 20           5. It clarifies that property placed in service during tax years beginning on or after  
21 January 1, 2015 but before January 1, 2020 for which a bonus depreciation addition  
22 modification was required and for which the Maine capital investment credit was not  
23 claimed is eligible for a depreciation subtraction modification in tax years beginning after  
24 2019 to allow the taxpayer to fully claim depreciation on that property over the class life  
25 of the property for Maine income tax purposes.
- 26           6. It extends the credit for rehabilitation of historic properties from allowing a credit  
27 for qualified rehabilitation expenditures made prior to December 31, 2023 to allowing a  
28 credit for qualified rehabilitation expenditures made by certified project if the Maine  
29 Historic Preservation Commission or the United States Department of the Interior,  
30 National Park Service, as required, issues a determination on or before December 31,  
31 2025 that the proposed rehabilitation of that structure meets the Secretary of the Interior's  
32 standards for rehabilitation.

**FISCAL NOTE REQUIRED**

**(See attached)**





# 129th MAINE LEGISLATURE

LD 2047

LR 2992(02)

An Act To Amend the State Tax Laws

Fiscal Note for Bill as Amended by Committee Amendment *A(H-766)*

Committee: Taxation

Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Departments of Economic and Community Development and Administrative and Financial Services as well as to the Maine Historic Preservation Commission to implement the requirements of this legislation can be absorbed within existing budgeted resources.