

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

CHAPTER 672

S.P. 778 - L.D. 2008

An Act to Clarify the Jobs and
Investment Tax Credit

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

Sec. 1. 36 MRSA §5215, as amended by PL 1993, c. 395, §21, is further amended to read:

§5215. Jobs and investment tax credit

1. Credit allowed. A taxpayer, other than a public utility as defined by Title 35-A, section 102, is allowed a credit to be computed as ~~hereinafter~~ provided in this section against the tax imposed by this Part, subject to the limitations contained in subsection 3. The amount of the credit equals the qualified federal credit, as defined in subsection 2, for taxable years beginning on or after January 1, 1979, except that a credit may not be allowed with respect to an excluded investment.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms ~~shall~~ have the following meanings.

A. "Qualified federal credit" means, with respect to any taxable year, that portion of the credit allowed by the Code of 1954, Section 38(b)(1), as of December 31, 1985, ~~Section 38(b)(1)~~, which that is directly and solely attributable to qualified investment with a situs in this State.

A-1. "Excluded investment" means an investment related to a retail facility, unless the taxpayer can demonstrate to the satisfaction of the State Tax Assessor that the commercial result of the project or projects to which the credit relates has not or will not result in a substantial detriment to existing businesses in the State.

A-2. "Retail facility" does not include a facility primarily engaged in warehousing, order taking, manufacturing, storage or distribution, even when a portion of the facility is used to make retail sales of tangible personal property directly from the facility.

B. The term "new jobs credit base" means the excess of Maine Employment Security Commission wages for the taxable year of the qualified investment or either of the next 2 calendar year years over the Maine Employment Security Commission wages for the highest of the 3 calendar years preceding the year of the qualified investment. In computing its new jobs credit

base, a successor-taxpayer shall add to its own Maine Employment Security Commission wages the Maine Employment Security Commission wages of its predecessor.

C. The term "Maine Employment Security Commission wages" means the total amount of wages paid by an employer subject to tax under Title 26, section 1221, less any excesses attributable to statutory increases.

D. "Successor-taxpayer" means ~~any~~ a taxpayer ~~which that~~ has acquired, within 4 years of its taxable ~~year-end~~ year-end, the organization, trade or business, or 50% or more of the assets ~~thereof of the organization, trade or business~~, of another taxpayer ~~which that~~, at the time of the acquisition, was an employing unit.

3. Limitations. The tax credit for any taxable year ~~shall be~~ is applicable only to those taxpayers:

A. With property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in ~~Maine~~ the State and placed in service by the taxpayer after January 1, 1979; and

B. With payroll records and reports substantiating that at least ~~200~~ 100 new jobs, attributable to the operation of property considered to be ~~a~~ qualified investment, were created in the ~~12-month~~ 24-month period following the date the property was placed in service. To assess the continuing nature of the jobs, the taxpayer ~~shall~~ must demonstrate that the new jobs credit base is at least ~~\$1,400,000~~ \$700,000 for the taxable year of the qualified federal credit or either of the next 2 calendar year years. The ~~\$1,400,000~~ \$700,000 ~~is to~~ must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000.

4. Carry-over. The amount of credit that may be used by a taxpayer for any taxable year ~~shall may~~ not exceed either ~~\$300,000~~ \$500,000 or the amount of tax otherwise due, whichever is less. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the taxpayer's tax for ~~such that~~ year or those years, subject to the same limitations provided ~~herein~~ in this subsection.

5. Carry-back. There ~~shall may~~ be no ~~carry-back~~ carry-back to prior years of the amount of credit allowable under this section.

6. Recapture. If, during any taxable year, any qualified investment property is disposed of, or otherwise ceases to be property covered by subsection 2,

paragraph A, with respect to the taxpayer, before the end of the useful life ~~which that~~ was taken into account in computing the credit under subsection 1, then the tax under this Part for that taxable year ~~shall~~ must be increased by an amount equal to the aggregate decrease in the credit allowed under subsection 1 for all prior taxable years ~~which that~~ would have resulted solely from substituting for the useful life, in determining qualified investment under the Internal Revenue Code, the period beginning with the time the property was placed in service by the taxpayer and ending with the time the property ceased to be property covered by subsection 2.

6-A. Affiliated groups; tax years prior to January 1, 1995. This subsection applies retroactively to all tax years beginning before the effective date of this subsection as well as prospectively to all tax years beginning on or after the effective date of this subsection but prior to January 1, 1995 and for which the taxpayer's right to file an original or amended return had not or has not expired at the time of the taxpayer's filing of the return. In the case of corporations that are members of an affiliated group engaged in a unitary business, the credit provided for in this section applies as follows.

A. The credit provided for in this section, in an amount equal to the aggregate qualified federal credit for all taxable corporations that are members of an affiliated group engaged in a unitary business, must be allowed against the total tax liability of all the taxable corporations that are members of the affiliated group engaged in a unitary business if the taxable corporations that are members of the affiliated group have, in the aggregate:

- (1) Property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxable corporations after January 1, 1979;
- (2) Payroll records and reports substantiating that at least 200 new jobs attributable to the operation of property considered to be qualified investment were created in the 12-month period following the date the property was placed in service; and
- (3) A new jobs credit base of at least \$1,400,000 for the taxable year of the qualified federal credit or the next calendar year. The \$1,400,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000.

B. The amount of the credit that may be used in any taxable year may not exceed the lesser of \$300,000 or the total amount of tax liability otherwise due of all taxable corporations that are members of an affiliated group engaged in a unitary business. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the tax imposed by this Part for that year or those years, subject to the same limitations provided in this subsection.

The credit must be apportioned among the taxable corporations in the affiliated group in the same proportion that the tax liability of each taxable corporation in the affiliated group bears to the total tax liability of all the taxable corporations in the affiliated group.

6-B. Affiliated groups; tax years beginning on or after January 1, 1995. This subsection applies to tax years beginning on or after January 1, 1995. In the case of corporations that are members of an affiliated group engaged in a unitary business, the credit provided for in this section applies as follows.

A. The credit provided for in this section, in an amount equal to the aggregate qualified federal credit for all taxable corporations that are members of an affiliated group engaged in a unitary business, must be allowed against the total tax liability of all the taxable corporations that are members of the affiliated group engaged in a unitary business if the taxable corporations that are members of the affiliated group have, in the aggregate:

- (1) Property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxable corporations after January 1, 1979;
- (2) Payroll records and reports substantiating that at least 100 new jobs attributable to the operation of property considered to be qualified investment were created in the 24-month period following the date the property was placed in service; and
- (3) A new jobs credit base of at least \$700,000 for the taxable year of the qualified federal credit or either of the next 2 calendar years. The \$700,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000.

B. The amount of the credit that may be used in any taxable year may not exceed the lesser of \$500,000 or the total amount of tax liability otherwise due of all taxable corporations that are members of an affiliated group engaged in a unitary business. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the tax imposed by this Part for that year or those years, subject to the same limitations provided in this subsection.

The credit must be apportioned among the taxable corporations in the affiliated group in the same proportion that the tax liability of each taxable corporation in the affiliated group bears to the total tax liability of all the taxable corporations in the affiliated group.

7. Legislative findings. The Legislature finds ~~the~~ that encouragement of the growth of major industry in the State ~~to be~~ is in the public interest and ~~for the promotion of~~ promotes the general welfare of the people of the State; ~~and~~ that the use of investment tax credits to encourage industry to make substantial capital investments in the State is necessary to promote the purpose of the Legislature of encouraging the growth of industry; and that the Legislature ~~fur-~~ ther finds that the selecting of limits requirements of at least \$5,000,000 in qualified investment in the State and an increase of 200 at least 100 new jobs following the investment are reasonable qualifying criteria for the application of an investment tax credit and will best promote substantial capital investment in the State.

8. Report on jobs and investment tax credit. The State Tax Assessor shall submit annually, no later than June 1st, to the joint standing committee of the Legislature having jurisdiction over taxation matters a report on the jobs and investment tax credit. The report must reflect the number of taxpayers applying for the credits, the number of taxpayers granted the credit, the amount of qualified investments made, the number of jobs created and the annual average wage of the new jobs. The report must be presented in as much detail as possible without identifying the taxpayers receiving the credit or violating confidentiality requirements of section 191.

Sec. 2. Application and transition provisions. Those portions of this Act that amend the Maine Revised Statutes, Title 36, section 5215, subsection 1 and enact Title 36, section 5215, subsection 2, paragraphs A-1 and A-2 apply to tax years beginning on or after January 1, 1993 as well as to any amendment to a tax return for a tax year beginning before January 1, 1993 when that amended return is filed after January 1, 1993 and only to the extent that

the amendment relates to credit not taken or not carried over on a prior return for the tax year being amended or increases the amount of the credit taken on a prior return for the tax year being amended.

The portions of this Act that amend Title 36, section 5215, subsection 2, paragraph B and subsections 3, 4 and 7 and that enact Title 36, section 5215, subsection 6-B apply to tax years beginning on or after January 1, 1995.

See title page for effective date.

CHAPTER 673

S.P. 781 - L.D. 2012

An Act to Continue the Maine Health Program

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, funds are needed immediately to continue the Maine Health Program; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §396-G, sub-§6, as enacted by PL 1993, c. 410, Pt. FFF, §4, is amended to read:

6. Differentials; Maine Health Program. The commission shall provide that the differential determined pursuant to this section for the Maine Health Program for charges incurred by the program is equal to ~~60%~~ 100%.

Sec. 2. 22 MRSA §3189, sub-§1, as amended by PL 1993, c. 410, Pt. FFF, §5, is further amended to read:

1. Program created; intent. The Maine Health Program is created to expand access of Maine citizens to basic health care services. The Maine Health Program is intended to meet, to the extent of available funds, the health care needs of uninsured Maine residents with the highest priority being those needs of residents who are financially needy and under the age of 18. After April 1, ~~1994~~ 1995, the Maine Health Program is a privately administered