

**§5219-RR. Tax credit for Maine shipbuilding facility investment**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Certified applicant" means a qualified applicant that has received a certificate of approval from the commissioner pursuant to this section. [PL 2017, c. 361, §2 (NEW).]
- B. "Commissioner" means the Commissioner of Economic and Community Development. [PL 2017, c. 361, §2 (NEW).]
- C. "Employment" means, for each tax year, the amount determined by adding the total number of qualified employees of a certified applicant on each of 6 consecutive measurement days of that tax year as chosen by the certified applicant and then dividing that sum by 6. [PL 2017, c. 361, §2 (NEW).]
- D. "Full-time" means an average of at least 32 hours weekly during the tax year. [PL 2017, c. 361, §2 (NEW).]
- E. "Maine shipbuilding facility" means a facility or facilities located within the State dedicated to the design, production, maintenance and repair of surface water vessels and includes real estate, tangible personal property, fixtures, machinery and equipment necessary for those activities. [PL 2017, c. 361, §2 (NEW).]
- F. "Measurement day" means the last business day of every other month of a tax year. [PL 2017, c. 361, §2 (NEW).]
- G. "Qualified applicant" means an applicant for a tax credit under this section that satisfies each of the following requirements:
- (1) The applicant owns and operates or proposes to construct a Maine shipbuilding facility;
  - (2) The applicant proposes to make a qualified investment;
  - (3) The applicant employs at least 5,000 qualified employees at the time the application is filed; and
  - (4) The applicant does not otherwise qualify for the Pine Tree Development Zone program pursuant to Title 30-A, section 5250-O or the Maine Employment Tax Increment Financing Program established in chapter 917 at the time the application is filed. [PL 2017, c. 361, §2 (NEW).]
- H. "Qualified employee" means an individual:
- (1) Who is a full-time employee of the certified or qualified applicant, as the case may be, working at a Maine shipbuilding facility owned and operated by that applicant;
  - (2) Whose income from that employment is taxable under chapter 803;
  - (3) For whom a retirement program is provided subject to the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001 to 1461, as amended;
  - (4) For whom group health insurance is provided; and
  - (5) Whose income derived from employment with the Maine shipbuilding facility calculated on a calendar year basis is greater than the average annual per capita income in the State. [PL 2017, c. 361, §2 (NEW).]
- I. "Qualified investment" means expenditures incurred on or after January 1, 2018 that total at least \$100,000,000 and are related to the construction, improvement, modernization or expansion of a Maine shipbuilding facility, including, without limitation, all expenditures for investigation; planning; design; engineering; permitting; acquisition; financing; construction; demolition;

alteration; relocation; remodeling; repair; reconstruction; design, purchase or installation of machinery and equipment; clearing; filling; grading; reclamation of land; activities undertaken to upgrade a waterway serving the facility; training and development of employees; capitalized interest; professional services, including, but not limited to, architectural, engineering, legal, accounting or financial services; administration; environmental and utility costs, including, without limitation, sewage treatment plants, water, air and solid waste equipment and treatment plants, environmental protection devices, electrical facilities, storm or sanitary sewer lines, water lines or amenities, any other utility services, preparation of environmental impact studies, informing the public about the facility and environmental impact and environmental remediation, mitigation, clean-up and protection costs; related offices, support facilities and structures; and any of the foregoing expenditures made or costs incurred prior to or after the effective date of this section or certification of an applicant. "Qualified investment" includes only expenditures that are capitalized for federal income tax purposes. Except for employees who are engaged in the design, engineering and construction of the facility, "qualified investment" does not include the salaries or other compensation paid to the employees of the qualified applicant or of any affiliate of the qualified applicant. "Qualified investment" does not include any expenditure included as a qualified investment by an applicant under chapter 919 or any amount expended to qualify for Pine Tree Development Zone program benefits under Title 30-A, chapter 206, subchapter 4. [PL 2017, c. 361, §2 (NEW).]

[PL 2017, c. 361, §2 (NEW).]

**2. Procedures for application; certificate of approval.** This subsection governs the application and approval process for the tax credit under this section.

A. A qualified applicant may apply to the commissioner for a certificate of approval. An applicant shall submit to the commissioner information demonstrating that the applicant is a qualified applicant. A certified applicant may hold only one certificate under this section at any time. [PL 2017, c. 361, §2 (NEW).]

B. The commissioner, within 30 days of receipt of an application under paragraph A, shall review the information contained in the application and issue a written determination as to whether the applicant is a qualified applicant. If the commissioner determines that the applicant is a qualified applicant, the commissioner shall issue a certificate of approval to the qualified applicant at the time of the determination. If the commissioner determines that the applicant is not a qualified applicant, the commissioner shall issue a denial of the application at the time of the determination. [PL 2017, c. 361, §2 (NEW).]

C. If a certified applicant proposes to transfer, including, without limitation, transfer by operation of law, all or substantially all of the Maine shipbuilding facility in which a qualified investment was made to another person or if a person proposes to acquire more than 50% of the voting stock of the certified applicant, application may be made to the commissioner to approve transfer of the certificate of approval to that person in connection with the transfer of the stock or facility. The commissioner shall grant the transfer of the certificate only if:

(1) The transferee of the Maine shipbuilding facility or of the certified applicant's stock is a member of the certified applicant's unitary affiliated group as defined in section 5102, subsection 1-B at the time of the transfer; or

(2) The transferee of the Maine shipbuilding facility or of the certified applicant's stock is not a member of the certified applicant's unitary affiliated group as defined in section 5102, subsection 1-B at the time of the transfer and the commissioner finds that the transferee intends to continue the operations of the Maine shipbuilding facility in substantially the same manner as prior to the transfer and has the financial capability to do so.

If the commissioner grants a transfer of the certificate of approval, the transferee must be treated as the certified applicant for all purposes of this section. For purposes of calculation of employment and qualified investments of the certified applicant, the qualified employees and the qualified investments of the transferor prior to transfer must be considered the qualified employees and qualified investments of the transferee. [PL 2017, c. 361, §2 (NEW).]

D. The applicant or certified applicant may appeal in accordance with Title 5, chapter 375, subchapter 7 any determination, action or failure to act by the commissioner. [PL 2017, c. 361, §2 (NEW).]

[PL 2017, c. 361, §2 (NEW).]

**3. Credit.** A certified applicant is allowed a credit annually against the tax otherwise due under this Part as provided in this subsection.

A. Beginning with the tax year after the certified applicant has made qualified investments of at least \$100,000,000, or the tax year beginning on or after January 1, 2020, whichever is later, and for each of the following 9 tax years, a certified applicant is allowed a credit against the tax due under this Part for each taxable year in an amount equal to 3% of the certified applicant's total qualified investment. [PL 2017, c. 361, §2 (NEW).]

B. If a certified applicant completes an additional qualified investment of at least \$100,000,000 prior to January 1, 2025, the certified applicant is allowed a credit against the tax due under this Part beginning with the 11th tax year after the investment required in paragraph A was made and continuing through the 15th tax year after making that investment. The amount of the additional credit available in each of those tax years is 3% of the certified applicant's additional qualified investment. Eligibility for the additional credit must be demonstrated by the certified applicant in the annual reports submitted pursuant to subsection 9. [PL 2017, c. 361, §2 (NEW).]

C. The credit allowed under this subsection may not reduce the tax otherwise due under this Part to less than zero. [PL 2017, c. 361, §2 (NEW).]

[PL 2017, c. 361, §2 (NEW).]

**4. Limitations.** The following are limitations on the credit allowed under subsection 3.

A. Except as provided in subsection 5, the annual credit allowed to a certified applicant or its transferee may not exceed \$3,000,000 in any tax year. Cumulative credits taken under subsection 3, paragraph A may not exceed \$30,000,000 to any certified applicant or transferee. Total cumulative credits taken under this section may not exceed \$45,000,000 to any certified applicant or transferee. [PL 2017, c. 361, §2 (NEW).]

B. For a tax year in which the qualified applicant has employment of fewer than 5,500, the amount of the credit is reduced as provided in subsection 6. [PL 2017, c. 361, §2 (NEW).]

C. A taxpayer that is certified as a qualified Pine Tree Development Zone business under Title 30-A, section 5250-O or that has received a certificate of approval for its employment tax increment financing program pursuant to section 6755 is not eligible for a credit under this section. [PL 2017, c. 361, §2 (NEW).]

D. In no case may the credit be claimed for a tax year that begins after December 31, 2034. [PL 2017, c. 361, §2 (NEW).]

[PL 2017, c. 361, §2 (NEW).]

**5. Accelerated credit.** If a certified applicant has employment in any tax year of at least 6,000, the credit limitation in subsection 4, paragraph A is increased to \$3,125,000 for that tax year. If employment is at least 6,500, the credit limitation is increased to \$3,250,000. If employment is at least 7,000, the credit is increased to \$3,375,000. If employment is 7,500 or more, the credit is increased to \$3,500,000.

[PL 2017, c. 361, §2 (NEW).]

**6. Reduced credit for reduced employment.** If a certified applicant's employment is fewer than 5,500 employees during the tax year, the credit allowed pursuant to subsection 3 is reduced as follows.

A. If a certified applicant has employment in a tax year of fewer than 5,500 but at least 5,250, the credit for that year is 90% of the credit otherwise allowed under subsection 3. [PL 2017, c. 361, §2 (NEW).]

B. If a certified applicant has employment in a tax year of fewer than 5,250 but at least 5,000, the credit authorized for that year is 80% of the credit otherwise allowed under subsection 3. [PL 2017, c. 361, §2 (NEW).]

C. If a certified applicant has employment in a tax year of fewer than 5,000 but at least 4,750, the credit for that year is 70% of the credit otherwise allowed under subsection 3. [PL 2017, c. 361, §2 (NEW).]

D. If a certified applicant has employment in a tax year of fewer than 4,750 but at least 4,500, the credit for that year is 60% of the credit otherwise allowed under subsection 3. [PL 2017, c. 361, §2 (NEW).]

E. If a certified applicant has employment in a tax year of fewer than 4,500 but at least 4,250, the credit for that year is 50% of the credit otherwise allowed under subsection 3. [PL 2017, c. 361, §2 (NEW).]

F. If a certified applicant has employment in a tax year of fewer than 4,250 but at least 4,000, the credit for that year is 40% of the credit otherwise allowed under subsection 3. [PL 2017, c. 361, §2 (NEW).]

G. If a certified applicant has employment in a tax year of fewer than 4,000, the credit allowed under subsection 3 may not be taken. [PL 2017, c. 361, §2 (NEW).]

[PL 2017, c. 361, §2 (NEW).]

**7. Revocation.** A certificate of approval must be revoked by the commissioner if the certified applicant has not made qualified investments of at least \$100,000,000 within 5 years after issuance of the certificate of approval.

[PL 2017, c. 361, §2 (NEW).]

**8. Additional requirements.** A certified applicant, when awarding contracts, purchasing supplies or subcontracting work related to a qualified investment, shall give preference, to the greatest extent possible, to Maine workers, companies and bidders as long as the supplies, products, services and bids meet the standards required by the certified applicant regarding value, quality, delivery terms and price. [PL 2017, c. 361, §2 (NEW).]

**9. Annual reporting requirement.** A certified applicant, the commissioner and the State Tax Assessor shall report annually in accordance with this subsection. Notwithstanding any other provision of law to the contrary, the reports provided under this subsection are public records as defined in Title 1, section 402, subsection 3.

A. On or before March 1st annually, a certified applicant shall file a report with the commissioner for the tax year ending during the immediately preceding calendar year, referred to in this subsection as the "report year," containing the following information:

(1) The employment of the certified applicant for the report year, including specific information on:

(a) The number of qualified employees that are employed by the certified applicant at the end of the report year;

(b) The total number of qualified employees hired during the report year; and

- (c) The number of qualified employees in positions that are covered by a collective bargaining agreement;
- (2) The total dollar amount of payroll associated with employment in the report year, including specific information on:
  - (a) The average annual salary and wages for qualified employees; and
  - (b) The median annual salary and wages for qualified employees;
- (3) The total dollar amount that was spent on goods and services obtained from businesses with an office in the State from which business operations in the State are managed; and
- (4) The incremental level of qualified investments made during the report year, including specific information on:
  - (a) The amount of qualified investment in facility, production equipment and employee training and development, reported as an aggregate sum;
  - (b) The portion of the qualified investment reported under subparagraph (a) that was spent on goods and services from businesses with an office in the State from which business operations in the State are managed; and
  - (c) Whether the certified applicant has qualified for the additional credit under subsection 3, paragraph B.

The commissioner may prescribe forms for the annual reports required under this paragraph. The commissioner shall provide copies of the report to the State Tax Assessor and to the joint standing committee of the Legislature having jurisdiction over taxation matters at the time the report is received. [PL 2019, c. 607, Pt. C, §5 (AMD).]

B. On or before April 1st annually, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters aggregate data, with detail consistent with information required of certified applicants under paragraph A, on employment levels and qualified investment amounts of certified applicants for each year beginning with expenditures incurred on or after January 1, 2018. [PL 2017, c. 361, §2 (NEW).]

C. By December 31st of each year, the State Tax Assessor shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters the revenue loss during the report year as a result of this section for each taxpayer claiming the credit and, if necessary, shall include updated revenue loss amounts for any previous tax year. For purposes of this paragraph, "revenue loss" means the credit claimed by the taxpayer and allowed pursuant to this section. [PL 2019, c. 607, Pt. C, §6 (AMD).]

[PL 2019, c. 607, Pt. C, §§5, 6 (AMD).]

**10. Evaluation; specific public policy objective; performance measures.** The credit provided under this section is subject to ongoing legislative review in accordance with Title 3, chapter 37. In developing evaluation parameters to perform the review, the Office of Program Evaluation and Government Accountability, the Legislature's government oversight committee and the joint standing committee of the Legislature having jurisdiction over taxation matters shall consider:

A. That the specific public policy objective of the credit provided under this section is to create and retain jobs in the shipbuilding industry in this State by providing an income tax credit to reduce the cost of investments in shipbuilding businesses and thereby encourage investment in shipbuilding businesses and improve the competitiveness of this State's shipbuilding industry; and [PL 2017, c. 361, §2 (NEW).]

B. Performance measures, including, but not limited to:

- (1) Employment during the period being reviewed and how employment during that period compares to the minimum employment requirements set forth in subsection 4, paragraph B;
- (2) The amount of qualified investment during the period being reviewed, and how expenditures compare to the minimum level of expenditure set forth in subsection 1, paragraph I;
- (3) Measures of industry competitiveness;
- (4) Measures of fiscal impact and overall economic impact to the State; and
- (5) Information regarding the procedures for ensuring compliance with the preference requirements under subsection 8. [PL 2017, c. 361, §2 (NEW).]

The Office of Program Evaluation and Government Accountability shall provide a report of its evaluation under this subsection to the joint standing committee of the Legislature having jurisdiction over taxation matters by August 15, 2024. Following receipt of the report, the joint standing committee shall determine whether the credit provided under this section is meeting its public policy objectives and whether it should be continued. The joint standing committee may submit a bill to the First Regular Session of the 132nd Legislature to accomplish its recommendations.

[PL 2017, c. 361, §2 (NEW).]

#### SECTION HISTORY

PL 2017, c. 361, §2 (NEW). PL 2019, c. 607, Pt. C, §§5, 6 (AMD).

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