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SEN. ROGER J. KATZ, SENATE CHAIR
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

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To: The Honorable Dana L. Dow, Senate Chair
The Honorable Ryan Tipping, House Chair
And Members of Taxation Committee

From: Senator Roger J. Katz, Senate Chair RK
Representative Anne-Marie Mastraccio, House Chair AM
Government Oversight Committee

Date: April 21, 2017

Re: Concerns Regarding Benefits to Out-of-State Corporations from the Maine Capital Investment Credit

At our last meeting on April 14, 2017, the Government Oversight Committee took stakeholder comment on the Evaluation Parameters proposed for an OPEGA review of the Maine Capital Investment Credit. At that time, Mr. Albert DiMillo, Jr. raised concerns about out-of-state corporations who had less than 100% of their sales apportioned to Maine receiving unintended tax benefits due to the way the credit is calculated. Mr. DiMillo also provided documents to illustrate his concerns which he believed showed that as much as $20 million in unintended credits had gone to these corporations. Mr. DiMillo advocated that the Legislature should take immediate action to confirm his concerns were valid and, if so, to make technical corrections to Maine's tax laws to stop the unintended benefits from continuing.

GOC members agreed that this seemed a matter that warranted quicker examination, and potential action, than what an OPEGA evaluation would provide. GOC members also agreed, after conferring with Senator Dow, who was in attendance that the proper avenue for examining the matter with Maine Revenue Services was through the Taxation Committee.

Consequently, we are hereby forwarding this concern to your committee for prompt consideration and action as appropriate. We are including Mr. DiMillo's written testimony and the other documents he provided. An audio recording of Mr. DiMillo's testimony and the GOC's discussion, or the written meeting summary of it, can be made available at your request.

We also respectfully request that you inform the GOC, as soon as possible, whether your Committee intends to take up this matter and, if so, when it expects to do so. We also request to be informed of the results of your examination of the matter and what action, if any, you determined should be taken.

Enclosure
Cc: Julie Jones, Senior Analyst, Office of Fiscal and Program Review
Suzanne Voynik, Analyst, Office of Fiscal and Program Review
Members of the Government Oversight Committee

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To: Joint Government Oversight Committee

From: Albert A. DiMillo, Jr., Retired Corporate Tax Director & CPA

Subject: Comments on OPEGA Review Of MCIC – 4/14/17

Good morning members of the Joint Government Oversight Committee. My name is Albert DiMillo and I am a retired corporate tax director and CPA with more than 30 years of tax experience with both Maine's tax laws and most other states. The first 17 years of my experience included working with major Maine corporations and individuals including over seven years as the Director of Taxes and Chief Tax Officer of Bath Iron Works. I then worked in senior management positions with two international corporations headquartered in Massachusetts including 7 years managing all federal and state taxes as the Director of Income Taxes and Audits for Raytheon Company ($20 billion in sales). I am not a paid lobbyist and have testified before the taxation committee for sound tax policies over the past eight years.

MCIC CALCULATIONS FOR OUT OF STATE CORPORATIONS

In February of 2016, I contacted Beth Ashcroft about my concerns that the Maine Capital Investment Credit (MCIC) calculations for corporations that had less than 100% of their sales apportioned to Maine were receiving unintended tax benefits under the MCIC. I was told at that time, I as an individual could not request a review by OPEGA and that I had to have a legislator sponsor my request for a review. After meeting my state representative and my state senator, I was told that they would sponsor my review request. I had asked that my issue be a separate issue from the overall review of the MCIC, but they decided to have both issues combined. **Attachment A** is the letter to this committee noting my concern with the "nature of the Credit, its calculation and the benefits accruing to out of state corporations."

Yesterday, I e-mailed to all members of this committee several files which I believe clearly illustrate the problems with the administration of the credit that could have resulting in as much as $20 million in unintended credits going to less than 100% apportioned corporations. If not fixed by a technical corrections change to the Maine tax laws, another $20 million in unintended credits may go to these less than 100% Maine corporations.

The magnitude of the problem could be in the millions just on the corporation side alone. To estimate the problem you would need to request from Maine Revenue Services a distribution analysis that breaks down the Maine capital investment credit by corporations by "apportionment" for the years 2011 through 2015. A significant amount of the Maine capital investment credits are claimed by corporations that have an apportionment factor of 10% or less. What a 10% apportionment factor means is that the corporation has 90% of its sales (revenues) outside of Maine and only 10% in Maine.

Companies like Walmart have more than 99% of their sales outside of Maine. But many businesses that you think of as Maine businesses are likely less than 10% in Maine. For example, BIW and Hannaford's probably were less than 10% apportioned to Maine in 2014. In the past, before mergers with other companies many Maine businesses were mostly Maine companies with high apportionment to Maine.

SUGGESTED CHANGES TO THE OPEGA PARAMETERS FOR MCIC REVIEW

1). OPEGA should immediately review the calculation of the MCIC for less than 100% apportioned corporations. I believe my concerns over the calculation could be confirmed with Maine Revenue Services in less than a day. Once this is confirmed, I believe corrective action could be immediately developed and emergency technical corrections tax legislation could be acted on by the taxation committee and the legislature before end of this legislative session. In addition to the problem with corporations, there may be a problem with non corporate businesses that operate both in Maine and outside of Maine. Partnerships, S-corps and other pass through entities also have to apportion their income between Maine and other states. It is unclear if these less than 100% Maine apportioned businesses are also incorrectly receiving unintended tax benefits. The analysis of these businesses should also be undertaken immediately. However, that processes I believe will take significant more time to investigate.

2). The parameters should be expanded to provide information on the percentage of these credits utilized by manufactures vs. retailers and by the size of the businesses (for each year 2011 – 2015). Finally, Maine Revenue Services should provide a distribution analysis of the credits based on their Maine apportionment factor (sales in Maine vs. sales out of Maine).

AHachment A

Michael D. Thibodeau
President of the Senate

State of Maine
127th Maine Legislature

Mark Westwood Eves
Speaker of the House

April 14, 2016

Senator Roger Katz, Chair
Representative Kruger, Chair
Government Oversight Committee
Cross State Office Building, Room 220
Augusta, ME 04333

Dear Senator Katz and Representative Krueger,

In March, the legislature voted to fully fund the Maine Capital Investment Credit. We write to ask that the Government Oversight Committee and the Office of Program Evaluation and Government Accountability expedite a review of the efficacy of the Maine Capital Investment Credit. A full review of this program in the 2017 cycle is a responsible way to ensure we are proper stewards of tax payer dollars.

We have heard that OPEGA is already in possession of a review request pertaining to the nature of the Credit, its calculation and the benefits accruing to out of state corporations.

We urge you to consider this matter as part of the efficacy review.

Sincerely,

Michael D. Thibodeau
Michael D. Thibodeau
President of the Senate

Mark W. Eves
Speaker of the House

ATTACHMENT B

COMPARISON OF MAINE CAPITAL INVESTMENT CREDITS ON MULTI-STATE CORPORATIONS WITH 10% / 20% MAINE APPORTIONMENT TO 100% MAINE CORPORATION

ASSUMING A CORPORATION MADE $2,000,000 IN MAINE INVESTMENTS IN 2014 (ASSUMED ALL 7 YEAR PROPERTY)

MAINE APPORTIONMENT - 100%

MAINE TAX DECREASE (INCREASE) - CORPORATION 100% APPORTIONED TO MAINE

		2014	2015	2016	2017	2018	2019	2020	2021	TOTAL 2014-2021
MAINE CAPITAL INVESTMENT CREDIT	(A)	77,139								77,139
ME CAPITAL INVESTMENT BONUS DEPR ADD-BACK		0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
APPORTIONMENT FACTOR	(1)	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	
APPORTIONED TO MAINE		0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
MAINE TAX INCREASE AT 8.93%	(B)	0	(21,870)	(15,619)	(11,154)	(7,974)	(7,966)	(7,974)	(3,983)	(76,539)
NET TAX DECREASE (INCREASE)	(A)+(B)	77,139	(21,870)	(15,619)	(11,154)	(7,974)	(7,966)	(7,974)	(3,983)	600 (C)

MAINE APPORTIONMENT - 10%

MAINE TAX DECREASE (INCREASE) - CORPORATION 10% APPORTIONED TO MAINE

		2014	2015	2016	2017	2018	2019	2020	2021	TOTAL 2014-2021
MAINE CAPITAL INVESTMENT CREDIT	(A)	77,139								77,139
ME CAPITAL INVESTMENT BONUS DEPR ADD-BACK		0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
APPORTIONMENT FACTOR	(F) (1)	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	
APPORTIONED TO MAINE		0	(24,490)	(17,490)	(12,490)	(8,930)	(8,920)	(8,930)	(4,460)	(85,710)
MAINE TAX (INCREASE) AT 8.93%	(B)	0	(2,187)	(1,562)	(1,115)	(797)	(797)	(797)	(398)	(7,654)
NET TAX DECREASE (INCREASE)	(A)+(B)	77,139	(2,187)	(1,562)	(1,115)	(797)	(797)	(797)	(398)	69,485

MAINE APPORTIONMENT - 20%

MAINE TAX DECREASE (INCREASE) - CORPORATION 20% APPORTIONED TO MAINE

		2014	2015	2016	2017	2018	2019	2020	2021	TOTAL 2014-2021
MAINE CAPITAL INVESTMENT CREDIT	(A)	77,139								77,139
ME CAPITAL INVESTMENT BONUS DEPR ADD-BACK		0	(244,900)	(174,900)	(124,900)	(89,300)	(89,200)	(89,300)	(44,600)	(857,100)
APPORTIONMENT FACTOR	(1)	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	
APPORTIONED TO MAINE		0	(48,980)	(34,980)	(24,980)	(17,860)	(17,840)	(17,860)	(8,920)	(171,420)
MAINE TAX (INCREASE) AT 8.93%	(B)	0	(4,374)	(3,124)	(2,231)	(1,595)	(1,593)	(1,595)	(797)	(15,308)
NET TAX DECREASE (INCREASE)	(A)+(B)	77,139	(4,374)	(3,124)	(2,231)	(1,595)	(1,593)	(1,595)	(797)	61,831

(A) - INVESTMENT CREDIT IS 9% X 857,100. The 857,100, EQUALS $1.0 MILLION - 142,900, WHICH IS THE FIRST YEAR MACRS DEPRECIATION ON $1.0 MILLION OF 7 YEAR PROPERTY.
(1) - UNDER MAINE CORPORATE LAW THE CREDITS ARE APPLIED AFTER APPORTIONMENT, BUT DEPRECIATION ADD-BACKS ARE APPLIED BEFORE APPORTIONMENT.
(F) - A SIGNIFICANT AMOUNT OF CORPORATE INCOME TAXES AND ME CAPITAL INVESTMENT CREDITS RELATE TO CORPORATIONS WITH LESS THAN 10% MAINE APPORTIONMENT.
(C) - THIS NUMBER WOULD BE ZERO IF THE TAX CREDIT WAS AT 8.93% (CORPORATE TAX RATE) INSTEAD OF THE 9.0% TAX CREDIT RATE.