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No. 1164

S.P. 352

In Senate, March 7, 2019

An Act To Improve the Educational Opportunity Tax Credit

Reference to the Committee on Innovation, Development, Economic Advancement and Business suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator POULIOT of Kennebec.
Cosponsored by Representative TIPPING of Orono and
Senators: DOW of Lincoln, LIBBY of Androscoggin, WOODSOME of York, Representatives:
DAUGHTRY of Brunswick, FECTEAU of Biddeford, STEWART of Presque Isle.

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

2 **Sec. 1. 20-A MRSA §12541, sub-§4**, as enacted by PL 2007, c. 469, Pt. A, §1, is
3 amended to read:

4 **4. Educational opportunity tax credit.** "Educational opportunity tax credit" means
5 the tax credit provided for in Title 36, section 5217-D, except that, for tax years
6 beginning on or after January 1, 2020, "educational opportunity tax credit" means the tax
7 credit provided for in Title 36, section 5217-E.

8 **Sec. 2. 20-A MRSA §12541, sub-§8**, as enacted by PL 2013, c. 525, §5, is
9 amended to read:

10 **8. Qualified employee.** "Qualified employee" has the same meaning as in Title 36,
11 section 5217-D, subsection 1, paragraph E, except that, for tax years beginning on or after
12 January 1, 2020, "qualified employee" has the same meaning as in Title 36, section
13 5217-E, subsection 1, paragraph G.

14 **Sec. 3. 20-A MRSA §12541, sub-§9**, as enacted by PL 2013, c. 525, §6, is
15 amended to read:

16 **9. Qualified individual.** "Qualified individual" has the same meaning as in Title 36,
17 section 5217-D, subsection 1, paragraph G, except that, for tax years beginning on or
18 after January 1, 2020, "qualified individual" has the same meaning as in Title 36, section
19 5217-E, subsection 1, paragraph H.

20 **Sec. 4. 36 MRSA §199-C, sub-§3**, as amended by PL 2015, c. 328, §2, is further
21 amended to read:

22 **3. Specific tax expenditure review.** By June 1, ~~2021~~ 2022, the committee shall
23 review the income tax credit under ~~section~~ sections 5217-D and 5217-E to determine
24 whether the credit should be retained, repealed or modified. The committee shall consider
25 information provided by the Office of Tax Policy within the bureau and the Department
26 of Education pursuant to Title 20-A, section 12545.

27 **Sec. 5. 36 MRSA §2535**, as enacted by PL 2017, c. 211, Pt. C, §1, is amended to
28 read:

29 **§2535. Credit for educational opportunity**

30 A taxpayer is allowed a credit against the tax otherwise due under this chapter as
31 determined under section 5217-D or 5217-E.

32 **Sec. 6. 36 MRSA §5122, sub-§2, ¶FF**, as amended by PL 2013, c. 525, §14, is
33 further amended to read:

34 FF. To the extent included in federal adjusted gross income, student loan payments
35 made by the taxpayer's employer directly to a lender on behalf of a qualified
36 employee in accordance with section 5217-D or 5217-E, whether or not the employer

1 claims, or could claim, the credit provided by section 5217-D, subsection 5 or section
2 5217-E, subsection 4;

3 **Sec. 7. 36 MRSA §5122, sub-§2, ¶QQ** is enacted to read:

4 QQ. To the extent included in federal adjusted gross income, student loan payments
5 made directly to a lender on behalf of the taxpayer by a student loan repayment
6 program funded by a nonprofit foundation and administered by the Finance Authority
7 of Maine for residents of the State employed by a business located in the State.

8 **Sec. 8. 36 MRSA §5217-D, sub-§6** is enacted to read:

9 **6. Application.** Except for the credit allowed with respect to the carry-over of
10 unused credit amounts pursuant to subsection 2, paragraph A, the credit allowed under
11 this section does not apply to tax years beginning on or after January 1, 2020.

12 **Sec. 9. 36 MRSA §5217-E** is enacted to read:

13 **§5217-E. Credit for student loan repayment**

14 For tax years beginning on or after January 1, 2020, a qualified individual or the
15 employer of a qualified employee is allowed a credit for education loan payments as
16 computed under this section against the taxes imposed under this Part.

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

19 A. "Accredited Maine community college, college or university" has the same
20 meaning as in Title 20-A, section 12541, subsection 1.

21 B. "Accredited non-Maine community college, college or university" means an
22 institution located outside the State that is accredited by a regional accrediting
23 association or by one of the specialized accrediting agencies recognized by the
24 United States Secretary of Education.

25 C. "Education loan payment" means a loan payment paid during the taxable year for
26 eligible education loans.

27 D. "Eligible education loan" means a loan obtained by a qualified individual for
28 attendance by that qualified individual at an accredited Maine community college,
29 college or university or accredited non-Maine community college, college or
30 university to obtain an associate, bachelor's or graduate degree after 2007. "Eligible
31 education loan" includes a refinanced loan or consolidated loan if the refinanced loan
32 or consolidated loan remains separate from other debt, except for debt incurred in an
33 educational program, but only in proportion to the portion of the education loan
34 payment that is otherwise eligible under this section. "Eligible education loan" does
35 not include a loan obtained from a person related to the qualified individual or from
36 any person by reason of a loan under any qualified employer plan or under a contract
37 referred to in the Code, Section 72(p)(5). For purposes of this paragraph, a person is
38 considered related to the qualified individual if that person meets the criteria listed in

1 the Code, Section 267(b) or Section 707(b)(1). As used in this paragraph, "qualified
2 employer plan" has the same meaning as in the Code, Section 72(p)(4)(A).

3 E. "Employer" has the same meaning as "employing unit" as defined in Title 26,
4 section 1043, subsection 10.

5 F. "Part time," as that term refers to employment, means employment that on average
6 during the taxable year consists of a workweek of at least 16 hours but less than 32
7 hours.

8 G. "Qualified employee" means an employee who is employed at least part time and
9 who is a qualified individual.

10 H. "Qualified individual" means an individual, including the spouse filing a joint
11 return with the individual under section 5221, who is eligible for the credit provided
12 in this section. An individual is eligible for the credit if the individual:

13 (1) Attended and obtained an associate, bachelor's or graduate degree from an
14 accredited Maine community college, college or university or an accredited non-
15 Maine community college, college or university after 2007;

16 (2) Was a resident individual for the entire taxable year; and

17 (3) Meets one of the following conditions:

18 (a) The individual worked during the taxable year:

19 (i) At least part time in this State for an employer or as a self-employed
20 individual; or

21 (ii) At least part time in a position on a vessel at sea;

22 (b) The individual was deployed for military service in the United States
23 Armed Forces, including the National Guard and the Reserves of the United
24 States Armed Forces. As used in this division, "deployed for military
25 service" has the same meaning as in Title 26, section 814, subsection 1,
26 paragraph A; or

27 (c) The individual was a spouse of an individual who meets the requirements
28 of either division (a) or division (b).

29 I. "Resident individual" means an individual:

30 (1) Who is domiciled in this State; or

31 (2) Who is not domiciled in this State, but maintains a permanent place of abode
32 in this State and spends in the aggregate more than 183 days of the taxable year
33 in this State, unless the individual is a member of the Armed Forces of the United
34 States.

35 J. "Seasonal employment" has the same meaning as in Title 26, section 1251 and in
36 rules adopted pursuant to that section.

37 K. "Term of employment" includes all months when the individual is actually
38 employed and includes time periods when the individual is on leave or vacation. A
39 term of employment extends to the full year for an individual working for an

1 employer that customarily operates only during a regularly recurring period of 9
2 months or more during the taxable year. For an individual working for an employer
3 that customarily operates only during a regularly recurring period of less than 9
4 months during the taxable year, including seasonal employment, a term of
5 employment extends only to months during which the individual is actually working.

6 **2. Credit allowed.** A qualified individual or an employer of a qualified employee is
7 allowed a credit against the tax imposed by this Part in accordance with the provisions of
8 this section. The credit is created to implement the Job Creation Through Educational
9 Opportunity Program established under Title 20-A, chapter 428-C.

10 A. A taxpayer may claim a credit based on education loan payments actually made to
11 a relevant lender or lenders under this section only with respect to education loan
12 payment amounts paid by the taxpayer during that part of the taxable year that the
13 qualified individual worked in this State. Forbearance or deferment of education loan
14 payments does not affect eligibility for the credit under this section. An individual
15 who worked in this State for any part of a month of the taxable year is considered to
16 have worked in this State for the entire month.

17 B. The credit under this section may not reduce the tax otherwise due under this Part
18 to less than zero.

19 C. A taxpayer entitled to a credit for any taxable year may carry over and apply to
20 tax liability for any one or more of the next succeeding 5 years the portion, as
21 reduced from year to year, of any unused credits.

22 **3. Calculation of the credit; qualified individuals.** Subject to subsection 2, the
23 credit with respect to a qualified individual is equal to the lesser of:

24 A. The amount paid on eligible education loans during the taxable year; and

25 B. Fifteen percent of the outstanding eligible education loan debt determined on the
26 date the first education loan payment is made after the degree is earned.

27 **4. Calculation of the credit; employers.** Subject to subsection 2, the credit with
28 respect to a taxpayer that is an employer making education loan payments directly to a
29 lender during the taxable year on behalf of a qualified employee is equal to the lesser of:

30 A. The amount paid by the employer on behalf of the qualified employee on eligible
31 education loans during the taxable year during the term of employment; and

32 B. Twenty percent of the outstanding eligible education loan debt determined on the
33 date of the first education loan payment made after December 31, 2019.

34 If the qualified employee is employed on a part-time basis during the taxable year, the
35 credit with respect to that employee is limited to 50% of the credit otherwise determined
36 under this subsection.

37 **Sec. 10. Application.** Those sections of this Act that amend the Maine Revised
38 Statutes, Title 36, section 5122, subsection 2, paragraph FF and that enact Title 36,
39 section 5122, subsection 2, paragraph QQ apply to tax years beginning on or after
40 January 1, 2020.

1 8. The annual credit may include loan amounts paid in excess of the amount due
2 during a taxable year. The amendment also provides that credits in excess of those that
3 may be used during a taxable year may be carried over for the next succeeding 5 years.