

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOURTEEN

H.P. 1228 - L.D. 1718

An Act To Improve the Job Creation Through Educational Opportunity Program

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

Sec. 1. 20-A MRSA §12541, sub-§2, as amended by PL 2009, c. 553, Pt. A, §2, is repealed.

Sec. 2. 20-A MRSA §12541, sub-§2-A, as enacted by PL 2009, c. 553, Pt. A, §3, is repealed.

Sec. 3. 20-A MRSA §12541, sub-§4-A, as enacted by PL 2009, c. 553, Pt. A, §4, is repealed and the following enacted in its place:

4-A. Financial aid package. "Financial aid package" means financial aid obtained by a student after December 31, 2007 for attendance at an accredited Maine community college, college or university after December 31, 2007. For purposes of a qualified individual claiming an educational opportunity tax credit for tax years beginning on or after January 1, 2013, "financial aid package" may include financial aid obtained for up to 30 credit hours of course work at an accredited non-Maine community college, college or university earned prior to transfer to an accredited Maine community college, college or university, if the 30 credit hours were earned after December 31, 2007 and the transfer occurred after December 31, 2012. For purposes of an employer claiming an educational opportunity tax credit for tax years beginning on or after January 1, 2013, "financial aid package" may include financial aid obtained by a qualified employee after December 31, 2007 for attendance at an accredited non-Maine community college, college or university after December 31, 2007. The financial aid package may include private loans or less than the full amount of loans under federal programs, depending on the practices of the accredited Maine or non-Maine community college, college or university. Loans are includable in the financial aid package only if entered into prior to July 1, 2023.

Sec. 4. 20-A MRSA §12541, sub-§7, as amended by PL 2009, c. 553, Pt. A, §7, is repealed.

Sec. 5. 20-A MRSA §12541, sub-§8 is enacted to read:

8. Qualified employee. "Qualified employee" has the same meaning as in Title 36, section 5217-D, subsection 1, paragraph E.

Sec. 6. 20-A MRSA §12541, sub-§9 is enacted to read:

9. Qualified individual. "Qualified individual" has the same meaning as in Title 36, section 5217-D, subsection 1, paragraph G.

Sec. 7. 20-A MRSA §12542, sub-§1, as enacted by PL 2007, c. 469, Pt. A, §1, is amended to read:

1. Program created; goals. The Job Creation Through Educational Opportunity Program, referred to in this chapter as "the program," is created to ~~reimburse education-related costs for~~ provide an educational opportunity tax credit to Maine residents who obtain an associate degree or a bachelor's degree in this State, and live, work and pay taxes in this State thereafter. The program is designed to achieve the following goals:

- A. Promote economic opportunity for people in this State by ensuring access to the training and higher education that higher-paying jobs require;
- B. Bring more and higher-paying jobs to this State by increasing the skill level of this State's workforce;
- C. Offer educational opportunity and retraining to individuals impacted by job loss, workplace injury, disability or other hardship;
- D. Keep young people in this State through incentives for educational opportunity and creation of more high-paying jobs; and
- E. Accomplish all of the goals in this subsection with as little bureaucracy as possible.

Sec. 8. 20-A MRSA §12542, sub-§2-A, as amended by PL 2011, c. 548, §7, is repealed.

Sec. 9. 20-A MRSA §12542, sub-§3, as amended by PL 2011, c. 665, §§2 and 3, is repealed.

Sec. 10. 20-A MRSA §12542, sub-§3-A, as amended by PL 2011, c. 665, §4, is repealed.

Sec. 11. 20-A MRSA §12542, sub-§4-A, ¶C, as enacted by PL 2009, c. 553, Pt. A, §13, is amended to read:

C. An accredited Maine community college, college or university must document for the student information required for purposes of the educational opportunity tax credit, including, once the student has earned the degree, the total principal of loans the student received as part of that student's financial aid package related to course work completed at the accredited Maine community college, college or university. The accredited Maine community college, college or university shall provide an

original or certified copy to the student and shall retain a copy of the documentation in its files for at least 10 years after the student graduates.

Sec. 12. 20-A MRSA §12542, sub-§4-A, ¶D, as enacted by PL 2009, c. 553, Pt. A, §13, is repealed.

Sec. 13. 20-A MRSA §12542, sub-§5, as amended by PL 2009, c. 553, Pt. A, §14, is further amended to read:

5. Effective date; participation by individual already enrolled in degree program. The program must commence for the first semester that begins after the effective date of this chapter. A Maine resident who when the program commences is enrolled in an associate or a bachelor's degree program at an accredited Maine community college, college or university may participate, subject to the same essential terms as other program participants. ~~Such an individual need only meet the eligibility requirements in subsection 3 from January 1, 2008 forward.~~

Sec. 14. 36 MRSA §5122, sub-§2, ¶FF, as amended by PL 2011, c. 138, §1 and affected by §4, is further amended to read:

FF. To the extent included in federal adjusted gross income, student loan payments made by the taxpayer's employer directly to a lender on behalf of a qualified employee in accordance with section 5217-D, whether or not the employer claims, or could claim, the credit provided by section 5217-D, subsection 5;

Sec. 15. 36 MRSA §5217-D, as amended by PL 2011, c. 665, §§7 to 12 and affected by §13, is further amended to read:

§5217-D. Credit for educational opportunity

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

A. "Benchmark loan payment" ~~has the same meaning as in Title 20-A, section 12541, subsection 2~~ means the monthly loan payment for the amount of the principal cap paid over 10 years at the interest rate for federally subsidized Stafford loans under 20 United States Code, Section 1077a applicable during the individual's last year of enrollment at an accredited Maine community college, college or university.

A-1. "Accredited non-Maine community college, college or university" means an institution located outside the State that is accredited by a regional accrediting association or by one of the specialized accrediting agencies recognized by the United States Secretary of Education.

A-2. "Accredited Maine community college, college or university" has the same meaning as in Title 20-A, section 12541, subsection 1.

B. "Employer" has the same meaning as the term "employing unit," as defined in Title 26, section 1043, subsection 10.

B-1. "Financial aid package" means financial aid obtained by a student after December 31, 2007 for attendance at an accredited Maine community college,

college or university after December 31, 2007. For purposes of a qualified individual claiming a credit under this section for tax years beginning on or after January 1, 2013, the financial aid package may include financial aid obtained for up to 30 credit hours of course work at an accredited non-Maine community college, college or university earned prior to transfer to an accredited Maine community college, college or university, if the 30 credit hours were earned after December 31, 2007 and the transfer occurred after December 31, 2012. For purposes of an employer claiming a credit under this section for tax years beginning on or after January 1, 2013, the financial aid package may include financial aid obtained by a qualified employee after December 31, 2007 for attendance at an accredited non-Maine community college, college or university after December 31, 2007. The financial aid package may include private loans or less than the full amount of loans under federal programs, depending on the practices of the accredited Maine or non-Maine community college, college or university. Loans are includable in the financial aid package only if entered into prior to July 1, 2023.

C. "Full time" employment means employment with a normal workweek of 32 hours or more.

D. "Part time" employment means employment with a normal workweek of between 16 and 32 hours.

D-1. "Principal cap" means:

(1) For an individual graduating from an accredited Maine community college, college or university before January 1, 2015, the amount calculated by the State Tax Assessor under Title 20-A, section 12542, former subsection 2-A;

(2) For an individual obtaining a bachelor's degree and graduating from an accredited Maine community college, college or university on or after January 1, 2015, the average in-state tuition and mandatory fees for attendance at the University of Maine System for the academic year ending during the calendar year prior to the year of graduation multiplied by 4; and

(3) For an individual obtaining an associate degree and graduating from an accredited Maine community college, college or university on or after January 1, 2015, the average in-state tuition and mandatory fees for attendance at the Maine Community College System for the academic year ending during the calendar year prior to the year of graduation multiplied by 2.

E. "Qualified employee" means an employee who is employed at least part time and who is ~~eligible for the credit provided in this section~~ a qualified individual or who would be ~~eligible for the credit in this section by meeting all the criteria established under Title 20-A, section 12542~~ a qualified individual except that the employee's associate or bachelor's degree was awarded by an accredited non-Maine community college, college or university.

G. "~~Opportunity program participant~~ Qualified individual" means an individual, including the spouse filing a joint return with the individual under section 5221, who ~~obtains the specified degree and complies with the requirements under Title 20-A, section 12542~~ is eligible for the credit provided in this section. An individual is eligible for the credit if the individual:

(1) Attended, and obtained an associate or a bachelor's degree from, an accredited Maine community college, college or university after December 31, 2007. The individual need not obtain the degree from the institution in which that individual originally enrolled, as long as all course work toward the degree is performed at an accredited Maine community college, college or university, except that an individual who transfers to an accredited Maine community college, college or university after December 31, 2012 from outside the State and earned no more than 30 credit hours of course work toward the degree at an accredited non-Maine community college, college or university after December 31, 2007 and prior to the transfer is eligible for the credit if all other eligibility criteria are met. Program eligibility for such an individual must be determined as if the commencement of course work at the relevant accredited Maine community college, college or university was the commencement of course work for the degree program as a whole;

(2) Was a Maine resident while in attendance at the accredited Maine community college, college or university. For purposes of this subparagraph, "Maine resident" has the same meaning as in Title 20-A, section 12541, subsection 5;

(3) Lived in Maine while pursuing the degree, excepting periods when it was reasonably necessary for the individual to live elsewhere as part of the relevant institution's academic programs or while pursuing course work at an accredited non-Maine community college, college or university as provided in subparagraph (1);

(4) During the taxable year, was a resident individual; and

(5) Worked during the taxable year:

(a) For tax years beginning prior to January 1, 2015, at least part time for an employer located in this State or, for tax years beginning on or after January 1, 2013, was, during the taxable year, deployed for military service in the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces; or

(b) For tax years beginning on or after January 1, 2015, at least part time in this State for an employer or as a self-employed individual or was, during the taxable year, deployed for military service in the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces.

As used in this subparagraph, "deployed for military service" has the same meaning as in Title 26, section 814, subsection 1, paragraph A.

H. "Resident individual" means someone:

(1) Who is domiciled in this State; or

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

I. "Seasonal employment" has the same meaning as in Title 26, section 1251 and in regulations promulgated thereunder.

J. "Term of employment" includes all months when the individual is actually employed. It includes time periods when an individual is on leave or vacation. It extends to the full year for individuals working for employers who customarily operate only during a regularly recurring period of 9 months or more in a calendar year. For individuals working for employers who customarily operate only during regularly recurring periods of less than 9 months in a calendar year, including seasonal employment, the term of employment extends only to ~~time periods when~~ months during which the individual is actually working.

2. Credit allowed. ~~A taxpayer constituting an opportunity program participant~~ qualified individual or an employer of a qualified employee is allowed a credit against the tax imposed by this Part ~~for each taxable year under the terms established in accordance~~ with the provisions of this section. The credit is created to implement the Job Creation Through Educational Opportunity Program established under Title 20-A, chapter 428-C.

A. A taxpayer entitled to the credit for any taxable year may carry over and apply to the tax liability for any one or more of the next succeeding 10 years the portion, as reduced from year to year, of any unused credits.

~~B. More than one~~ A taxpayer may claim a credit based on loan payments actually made to a relevant lender or lenders ~~to benefit a single opportunity program participant, but no 2 taxpayers may claim the credit based on the same payment under this section only with respect to loans that are part of the qualified individual's financial aid package and, for tax years beginning on or after January 1, 2015, only with respect to loan payment amounts paid by the taxpayer during that part of the taxable year that the qualified individual worked in this State. Payment of loan amounts in excess of the amounts due during the taxable year does not qualify for the credit. Refinanced loans that are part of the qualified individual's financial aid package are eligible for the credit under this section if the refinanced loans remain separate from other debt, including debt incurred in an educational program other than the degree program for which a credit is claimed under this section. Forbearance or deferment of loan payments does not affect eligibility for the credit under this section. For tax years beginning on or after January 1, 2015, an individual who worked in this State for any part of a month during the Maine residency period of the taxable year is considered to have worked in this State for the entire month. For tax years beginning on or after January 1, 2015, an individual who worked outside this State for an entire month during the Maine residency period is considered to have worked in this State during that month, except that in no case may this exception exceed 3 months during the Maine residency period of the taxable year.~~

~~C. Except as provided in paragraph D subsection 3, the credit under this section may not reduce the tax otherwise due under this Part to less than zero. The credit allowed to an employer of a qualified employee may not reduce the tax otherwise due under this Part to less than zero.~~

~~D. Notwithstanding paragraph C, the credit allowed to an opportunity program participant is refundable if the opportunity program participant obtains an associate degree or bachelor's degree in science, technology, engineering or mathematics.~~

3. Calculation of the credit; qualified individuals. ~~The Subject to subsection 2 and except as provided in this subsection, the credit in this section with respect to a qualified individual is equal to the amount determined on the basis of the amount under paragraph A or paragraph B, whichever is less, multiplied by the proration factor. For purposes of this subsection, the proration factor is the amount derived by dividing the total number of academic credit hours earned for a bachelor's or associate degree after December 31, 2007 by the total number of academic credit hours earned for the bachelor's or associate degree.;~~

~~A. If the The benchmark loan payment is less than the actual monthly amount, then the credit claimed may not exceed the product of the benchmark loan payment and multiplied by the number of months during the taxable year in which the taxpayer made loan payments; or~~

~~B. If the opportunity program participant's actual The monthly loan payment amount is less than the benchmark loan payment, the credit must be based on the actual multiplied by the number of months during the taxable year in which the taxpayer made loan payments made during the taxable year.~~

The credit under this subsection for an individual who transferred to an accredited Maine community college, college or university from an accredited non-Maine community college, college or university after December 31, 2012 and who earned no more than 30 credit hours of course work toward the degree at an accredited non-Maine community college, college or university is equal to 50% of the amount otherwise determined under this section in the case of an associate degree and equal to 75% of the amount otherwise determined under this section in the case of a bachelor's degree.

Notwithstanding subsection 2, paragraph C, the credit under this subsection is refundable to the extent the credit is based on loans included in the financial aid package acquired to obtain a bachelor's degree or associate degree in science, technology, engineering or mathematics.

For purposes of this subsection, the proration factor is the amount derived by dividing the total number of academic credit hours earned for a bachelor's or associate degree after December 31, 2007 by the total number of academic credit hours earned for the bachelor's or associate degree.

~~**4. Conditions for an opportunity program participant claiming the credit.** An opportunity program participant may claim the credit only if the participant is a resident individual. The participant may claim the credit based only on regular payments made during months in which the individual was working for an employer located in this State or was deployed for military service in the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces. As used in this subsection, "deployed for military service" has the same meaning as in Title 26, section 814, subsection 1, paragraph A. A married couple filing jointly under Title 36, section 5221 may claim the credit only to the extent that the spouse on whose behalf the credit is claimed meets these requirements.~~

5. Calculation of the credit; employers. ~~A Subject to subsection 2, a taxpayer constituting an employer making loan payments directly to a lender during the taxable year on loans included in a qualified employee's financial aid package may claim the a credit under this section under the following circumstances equal to the benchmark loan payment or the actual monthly loan payment made by the employer on the loans, whichever is less, multiplied by the number of months during the taxable year the employer made loan payments on behalf of the qualified employee during the term of employment. The credit under this subsection may not be claimed with respect to months of the taxable year during which the employee was not a qualified employee. The employer may undertake to make partial or full loan payments directly to the relevant lender or lenders on behalf of a qualified employee, having taken reasonable steps to ascertain that the employee is in fact a qualified employee, and may claim a credit based on amounts that came due and were paid by the employer during the term of employment. To receive the credit, the employer must retain for 5 years any proof of eligibility that the employee or independent contractor provides.~~

~~The employer may claim a credit for the amount that the qualified employee could have claimed during any months when the qualified employee was employed, had the qualified employee made the partial or full loan payments instead, under conditions where the qualified employee had sufficient income to claim the full credit for the taxable year. If the qualified employee is employed only on a part-time basis during the taxable year, the employer may claim a credit only up with respect to that employee is limited to half of the total that the qualified employee could have claimed had the qualified employee made all payments and earned sufficient income to claim the full credit for the taxable year, but the amount the employer claims must still be based on amounts actually paid. An employer is not disqualified under this section if the qualified employee is not eligible to claim the credit solely because the employee's associate degree or bachelor's degree was awarded by an accredited non Maine community college, college or university 50% of the credit otherwise determined under this subsection.~~