

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 14 - L.D. 22

An Act To Improve the Maine Seed Capital Tax Credit

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

Sec. 1. 10 MRSA §1100-T, sub-§1, as amended by PL 1991, c. 854, Pt. A, §7, is further amended to read:

1. Legislative findings; authorization. The Legislature finds that the growth of new and existing small businesses in the State results in increased job opportunities for Maine residents, produces more spending in the State and increases municipal tax bases. Businesses that export their products or services out of the State bring capital into the State and help to develop export markets for Maine products. Small new and existing businesses can provide significant economic benefits to the State if they can obtain sufficient seed equity financing to carry them from start-up through the initial development phases of a business. The jobs created by such businesses tend to pay higher wages and offer more benefits than other businesses; however, the per capita level of private venture capital investment in businesses located in the State is substantially below the national average and the average of the other New England states. In order to encourage the increased availability of risk equity capital to enterprises that have the potential for rapid growth and that bring capital into the State, the authority is authorized to issue certificates of eligibility for the seed capital investment tax credit permitted by Title 36, section 5216-B, subject to the requirements of this section. This program is known as the Maine Seed Capital Tax Credit Program.

Sec. 2. 10 MRSA §1100-T, sub-§1-A is enacted to read:

1-A. Private venture capital fund. As used in this section, "private venture capital fund" means a professionally managed pool of capital organized for a limited life to make equity or equity-like investments in unrelated private companies using capital derived from multiple limited partners or members at least half of which, measured in dollar commitments, are unaffiliated and unrelated, and includes any venture capital fund licensed by the United States Small Business Administration. The authority may require such information as may be necessary or desirable for determining whether an entity qualifies as a private venture capital fund.

Sec. 3. 10 MRSA §1100-T, sub-§2, ¶A, as amended by PL 2003, c. 451, Pt. E, §1, is further amended to read:

A. A For investments made in tax years beginning before January 1, 2012, a tax credit certificate may be issued in an amount not more than 40% of the amount of cash actually invested in an eligible Maine business in any calendar year or in an amount not more than 60% of the amount of cash actually invested in any one calendar year in an eligible Maine business located in a high-unemployment area, as determined by rule by the authority. For investments made in tax years beginning on or after January 1, 2012, a tax credit certificate may be issued to an investor other than a private venture capital fund in an amount not more than 60% of the amount of cash actually invested in an eligible Maine business in any calendar year. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 10 MRSA §1100-T, sub-§2, ¶H, as enacted by PL 1987, c. 854, §§2 and 5, is amended to read:

H. The investors qualifying for the credit must ~~collectively~~ each own less than 1/2 of the business.

Sec. 5. 10 MRSA §1100-T, sub-§2-A, as amended by PL 2009, c. 470, §3, is further amended to read:

2-A. Eligibility of private venture capital funds for tax credit certificate. The authority shall adopt rules in accordance with the Maine Administrative Procedure Act to implement application of the program to investment in a private venture capital fund. ~~Without limitation, the~~ This subsection does not apply to credits claimed for tax years beginning on or after January 1, 2012. The requirements for eligibility for a tax credit certificate for investment in a private venture capital fund include the following.

A. A For investments made in tax years beginning before January 1, 2012, a tax credit certificate may be issued to an individual who invests in a private venture capital fund in an amount that:

(1) Is not more than 40% of the amount of cash actually invested in or unconditionally committed to a private venture capital fund in any calendar year by the individual or entity, except that with respect to fund investments that are made in eligible businesses that are located in a high unemployment area, as determined by rule of the authority under subsection 2, the tax credit certificate may not be more than 60% of the cash actually invested in or unconditionally committed to a private venture capital fund in any calendar year by the individual or entity; and

(2) Does not exceed 40% of the amount of cash invested by the fund in eligible businesses, except that with respect to fund investments that are made in eligible businesses that are located in a high unemployment area, as determined by rule of the authority under subsection 2, a tax credit certificate may not be more than 60% of the cash invested by the fund in any calendar year in such businesses; provided that the authority may issue tax credit certificates in an amount not to

exceed 20% of the amount of cash actually invested in or unconditionally committed to a private venture capital fund in any calendar year if the authority determines that the private venture capital fund is located in this State, is owned and controlled primarily by residents of this State and has designated investing in eligible businesses of this State as a major investment objective. The credit may be revoked to the extent that the private venture capital fund does not make investments eligible for the tax credit in an amount sufficient to qualify for the credits within 3 years after the date of the tax credit certificates. Notwithstanding any revocation pursuant to this subparagraph, each investor remains eligible for tax credit certificates for eligible investments as and when made by the private venture capital fund.

The aggregate amount of credits issued to investors in a fund may not exceed 40% of the amount of cash invested by the fund in eligible businesses, except that with respect to fund investments in eligible businesses that are located in a high unemployment area, the aggregate amount of tax credits issued to investors in a fund may not exceed 60% of the cash invested by the fund in eligible businesses.

B. As used in this subsection, unless the context otherwise indicates, an "eligible business" means a business located in the State that:

- (1) Is a manufacturer;
- (2) Is engaged in the development or application of advanced technologies;
- (3) Provides a service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State;
- (4) Brings capital into the State, as determined by the authority; or
- (5) Is certified as a visual media production company under Title 5, section 13090-L.

C. Aggregate investment eligible for tax credits may not be more than \$5,000,000 for any one business for any one private venture capital fund as of the date of issuance of a tax credit certificate.

D. The investment with respect to which any individual or entity is applying for a tax credit certificate may not be more than an aggregate of \$500,000 in any one eligible business invested in by a private venture capital fund in any 3 consecutive calendar years, except that this paragraph does not limit other investment by any applicant for which that applicant is not applying for a tax credit certificate and except that, if the entity applying for a tax credit certificate is a partnership, limited liability company, S corporation, nontaxable trust or any other entity that is treated as a flow-through entity for tax purposes under the federal Internal Revenue Code, the aggregate limit of \$500,000 or \$200,000, as applicable, applies to each individual partner, member, stockholder, beneficiary or equity owner of the entity and not to the entity itself. This paragraph does not limit other investment by any applicant for which that applicant is not applying for a tax credit certificate.

E. Each business receiving an investment from a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate, must have annual gross sales of \$3,000,000 or less and the operation of the business must be the

full-time professional activity of the principal owner, as determined by the authority. The principal owner and principal owner's spouse, if any, are not eligible for a credit for investment in that business or for an investment by the private venture capital fund in that business. A tax credit certificate may not be issued to a parent, brother, sister or child of a principal owner if the parent, brother, sister or child has any existing ownership interest in that business or for an investment by the private venture capital fund in that business.

F. Each investment received by a business from a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate, must be expended on plant maintenance and construction, equipment, research and development or working capital for the business or on such other business activity as may be approved by the authority.

G. The authority shall establish limits on repayment of the investment by an individual in and the investments made by a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate. The investments must be at risk in the private venture capital fund and the business, respectively.

H. The investors in a private venture capital fund are not entitled to the credit for collective ownership in excess of 50% of any business. An investor in a private venture capital fund determined by the authority to be a principal owner of a business and the principal owner's spouse, if any, are not entitled to a credit with respect to investment in that business, nor are the principal owner's parents, siblings or children entitled to a credit if they have any existing ownership interest in the business.

Sec. 6. 10 MRSA §1100-T, sub-§2-C is enacted to read:

2-C. Eligibility of private venture capital funds for refundable tax credit certificate. This subsection applies to investments by private venture capital funds in eligible businesses made in tax years beginning on or after January 1, 2012. The authority shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement application of the program to investments in eligible businesses by private venture capital funds. The requirements for eligibility for a tax credit certificate for an investment by a private venture capital fund include the following.

A. For investments made in tax years beginning on or after January 1, 2012, a tax credit certificate may be issued to a private venture capital fund in an amount that is not more than 50% of the amount of cash actually invested in an eligible business. The tax credit certificate may be revoked and the credit recaptured pursuant to Title 36, section 5216-B, subsection 5 to the extent that the authority determines that the eligible business for which the tax credit certificate was issued moves substantially all of its operations and assets outside of the State during the period ending 4 years after an investment, except in the case of an arm's length, fair value acquisition approved by the authority. A private venture capital fund that received the 20% credit certificate under subsection 2-A, paragraph A, subparagraph (2) for an investment is not eligible for a tax credit certificate under this subsection for that investment.

B. As used in this subsection, unless the context otherwise indicates, "eligible business" means a business located in the State that:

(1) Is a manufacturer;

(2) Is engaged in the development or application of advanced technologies;

(3) Provides a service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State;

(4) Brings capital into the State, as determined by the authority; or

(5) Is certified as a visual media production company under Title 5, section 13090-L.

C. Aggregate investment eligible for tax credit certificates, including investments under this subsection and under subsection 2, may not be more than \$5,000,000 for any one eligible business.

D. The investment with respect to which any entity is applying for a tax credit certificate may not be more than an aggregate of \$500,000 in any one eligible business invested in by a private venture capital fund in any 3 consecutive calendar years, except that this paragraph does not limit other investment by an applicant for which that applicant is not applying for a tax credit certificate and except that, if the entity applying for a tax credit certificate is a partnership, limited liability company, S corporation, nontaxable trust or any other entity that is treated as a flow-through entity for tax purposes under the federal Internal Revenue Code, the aggregate limit of \$500,000 applies to each individual partner, member, stockholder, beneficiary or equity owner of the entity and not to the entity itself. This paragraph does not limit other investment by an applicant for which that applicant is not applying for a tax credit certificate. A private venture capital fund must certify to the authority that it will be in compliance with these limitations. The tax credit certificate issued to a private venture capital fund may be revoked and any credit taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the fund is not in compliance with this paragraph.

E. An eligible business receiving an investment from a private venture capital fund, which investment is used as the basis for the issuance of a tax credit certificate, may not have annual gross sales of more than \$3,000,000 and the operation of the business must be the full-time professional activity of the principal owner, as determined by the authority. A tax credit certificate may not be issued to a private venture capital fund if an investor in the fund is a principal owner of the eligible business or a spouse, parent, sibling or child of a principal owner and if the spouse, parent, sibling or child has any existing ownership interest in the business. A private venture capital fund must certify to the authority that it will be in compliance with these limitations. The tax credit certificate issued to a private venture capital fund may be revoked and any credit taken recaptured pursuant to Title 36, section 5216-B, subsection 5 if the fund is not in compliance with this paragraph.

F. An investment received by an eligible business from a private venture capital fund for which the investment is used as the basis for the issuance of a tax credit certificate must be expended on plant maintenance and construction, equipment, research and

development or working capital for the business or on such other business activity as may be approved by the authority.

G. The authority shall establish limits on repayment of the investments made by a private venture capital fund for which the investments are used as the basis for the issuance of tax credit certificates. The investments must be at risk in the private venture capital fund and the eligible business, respectively.

H. A private venture capital fund is not entitled to the credit if it owns in excess of 50% of the eligible business, except that, if the private venture capital fund is issued a tax credit certificate and later makes an additional investment that increases its ownership to more than 50%, the existing tax credit certificate remains valid and is not subject to revocation due to the ownership percentage as long as there was no intent to take controlling ownership at the time of the initial qualified investment.

Sec. 7. 10 MRSA §1100-T, sub-§4, as amended by PL 2003, c. 451, Pt. E, §5, is further amended to read:

4. Total of credits authorized. The authority may issue tax credit certificates to investors eligible pursuant to subsections 2 ~~and~~, 2-A and 2-C in an aggregate amount not to exceed \$2,000,000 up to and including calendar year 1996, \$3,000,000 up to and including calendar year 1997, \$5,500,000 up to and including calendar year 1998, \$8,000,000 up to and including calendar year 2001, \$11,000,000 up to and including calendar year 2002, \$14,000,000 up to and including calendar year 2003, \$17,000,000 up to and including calendar year 2004, \$20,000,000 up to and including calendar year 2005, \$23,000,000 up to and including calendar year 2006, \$26,000,000 up to and including calendar year 2007 and \$30,000,000 thereafter. The authority may provide that investors eligible for a tax credit under this section in a year when there is insufficient credit available are entitled to take the credit when it becomes available.

Sec. 8. 10 MRSA §1100-T, sub-§6, as enacted by PL 2001, c. 642, §10 and affected by §12, is amended to read:

6. Reports. Any business eligible to have investors receive a tax credit under this section must report to the authority, in a manner to be determined by the authority, the following information regarding its activities in the State over the calendar year in which the investment occurred and for such additional years as may be required by the authority:

- A. The total amount of private investment received;
- B. The total number of persons employed as of December 31st;
- C. The total numbers of jobs created and retained;
- D. Total annual payroll; and
- E. Total sales revenue.

The authority shall report annually to the joint standing committee of the Legislature having jurisdiction over taxation matters on the activity under this section during the prior calendar year.

Sec. 9. 36 MRSA §5122, sub-§2, ¶HH is enacted to read:

HH. To the extent included in federal adjusted gross income, an amount equal to the distribution from a private venture capital fund of the refundable portion of the credit allowed under section 5216-B.

Sec. 10. 36 MRSA §5200-A, sub-§2, ¶S, as amended by PL 2009, c. 213, Pt. ZZZ, §12 and Pt. BBBB, §14, is further amended to read:

S. An amount equal to the value of any prior year addition modification under subsection 1, paragraph U, but only to the extent that:

- (1) Maine taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carryover of the net operating loss plus one year; and
- (3) The amount has not been previously used as a modification pursuant to this subsection; ~~and~~

Sec. 11. 36 MRSA §5200-A, sub-§2, ¶T, as repealed and replaced by PL 2009, c. 652, Pt. A, §56, is amended to read:

T. An amount equal to the value of any prior year addition modification under subsection 1, paragraph V, but only to the extent that:

- (1) Maine taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carry-over plus the number of years that the net operating loss carry-over adjustment was not deducted as a result of the restriction with respect to tax years beginning in 2009, 2010 and 2011;
- (3) The amount has not been previously used as a modification pursuant to this subsection; and
- (4) The modification under this paragraph is not claimed for any tax year beginning in 2009, 2010 or 2011; ~~and~~

Sec. 12. 36 MRSA §5200-A, sub-§2, ¶U, as enacted by PL 2009, c. 652, Pt. A, §57 and affected by §58, is amended to read:

U. An amount equal to the gross income from discharge of indebtedness previously deferred under the Code, Section 108(i) and included in federal taxable income. The total subtraction for all years under this paragraph may not exceed the amount of the addition modification under subsection 1, paragraph W for the same indebtedness; and

Sec. 13. 36 MRSA §5200-A, sub-§2, ¶V is enacted to read:

V. To the extent included in federal taxable income, an amount equal to the refundable portion of the credit allowed under section 5216-B and an amount equal to the distribution from a private venture capital fund of the refundable portion of the credit allowed under section 5216-B.

Sec. 14. 36 MRSA §5216-B, sub-§1, ¶C, as enacted by PL 1987, c. 854, §§4 and 5, is amended to read:

C. "Investor" means a taxpayer ~~who~~ or private venture capital fund that has received a certificate.

Sec. 15. 36 MRSA §5216-B, sub-§1, ¶D is enacted to read:

D. "Private venture capital fund" has the same meaning as under Title 10, section 1100-T, subsection 1-A.

Sec. 16. 36 MRSA §5216-B, sub-§2, as amended by PL 2003, c. 451, Pt. E, §8, is further amended to read:

2. Credit. An investor is entitled to a credit against the tax otherwise due under this Part equal to the amount of the tax credit certificate issued by the Finance Authority of Maine in accordance with Title 10, section 1100-T and as limited by this section. ~~It~~ Except with respect to tax credit certificates issued under Title 10, section 1100-T, subsection 2-C, in the case of partnerships, limited liability companies, S corporations, nontaxable trusts and any other entities that are treated as flow-through entities for tax purposes under the Code, the individual partners, members, stockholders, beneficiaries or equity owners of such entities must be treated as the investors under this section and are allowed a credit against the tax otherwise due from them under this Part in proportion to their respective interests in those partnerships, limited liability companies, S corporations, trusts or other flow-through entities. Except as limited or authorized by subsection 3 or 4, 25% of the credit must be taken in the taxable year the investment is made and 25% per year must be taken in each of the next 3 taxable years. With respect to tax credit certificates issued under Title 10, section 1100-T, subsection 2-C, the credits are fully refundable.

Sec. 17. 36 MRSA §5216-B, sub-§3, as enacted by PL 1987, c. 854, §§4 and 5, is amended to read:

3. Limitation. ~~The~~ With respect to tax credit certificates issued under Title 10, section 1100-T, subsection 2 or 2-A, the amount of the credit allowed under this section for any one taxable year ~~shall~~ may not exceed 50% of the tax imposed by this Part on the investor for the taxable year before application of the credit.

Sec. 18. 36 MRSA §5216-B, sub-§5, as enacted by PL 1987, c. 854, §§4 and 5, is amended to read:

5. Recapture. In the event that the Finance Authority of Maine revokes a certificate, there ~~shall~~ must be added to the tax imposed on the investor under this Part for the taxable year in which the revocation occurs an amount equal to the ~~excess of the total~~ amount of credit authorized and revoked ~~over~~ minus the amount of credit not yet taken.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor