

**STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
MAINE REVENUE SERVICES  
OFFICE OF TAX POLICY**

**Date:**           **May 18, 2021**

**To:**               **Senator Chip Curry, Chair  
Representative Tiffany Roberts, Chair  
Members of the Joint Committee on Innovation, Development, Economic  
Advancement and Business**

**From:**           **Michael J. Allen, Associate Commissioner, Office of Tax Policy**

**Subject:**       **LD 1650- An Act To Create the Small Business Capital Savings Account  
Program**

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Maine Revenue Services offers the following information and concerns related to LD 1650 - An Act To Create the Small Business Capital Savings Account Program sponsored by Sen. Stewart of Aroostook.

This bill is similar to LD 1156 proposed during the 129th Legislature.

Please note that Administration opposes the bill because the proposed tax program is overly generous and complicated for a program that will have no more than 30 businesses that qualify.

The analysis that follows is limited to the bill as it affects Maine Revenue Services (MRS).

The preliminary fiscal impact estimate is not available at this time. The preliminary administrative cost of the bill is estimated to be \$66,000 during FY 2021-22 for computer programming related to modifying income tax returns. Because the program is limited to 30 businesses, other administrative costs are nominal and can be absorbed within current budgetary allotments.

The bill establishes the Small Business Capital Savings Account Program administered by the Department of Economic and Community Development (DECD) for businesses operating in commercial agricultural production, commercial fishing, and commercial wood harvesting. DECD may certify up to 10 eligible small businesses in each industry category that make contributions to a small business savings account, which is used for the purpose of making capital expenditures. The balance of a small business savings account may not exceed \$250,000.

For tax years beginning on or after January 1, 2021 and before January 1, 2025, amounts contributed by a certified business to a small business savings account may be claimed as a deduction from Maine taxable income in the tax year during which the contribution was made,

up to \$250,000. Withdrawals from the savings account not used for capital expenditures must be added to Maine taxable income.

DECD must provide annual notification to MRS of businesses certified during the calendar year, eligible and ineligible withdrawals, and any other information necessary to determine the taxpayer's eligibility for the income tax deduction. DECD, in consultation with MRS, must adopt routine technical rules to implement the Program. The program is repealed December 31, 2024.

There are no existing tax benefits for establishing business savings accounts.

MRS notes the following:

- The bill provides multiple benefits to certified businesses for certain capital assets purchased with funds deposited to a capital savings account. As proposed, a certified business could receive a Maine income tax deduction for capital expenditures and a Maine tax deduction through depreciation, bonus recapture or a section 179 deduction related to those assets. In addition, the assets may qualify for the Maine Capital Investment Credit.
- The proposed deduction may also overlap with other Maine tax benefits that are based on business expenditures, such as the Research and Development Credit, Pine Tree Development Zone Credit, the Visual Media Production Credit, Credit for Rehabilitation of Historic Properties, and the Credit for Wellness Programs.
- The definition of financial institution is tied to the definition for purposes of the Maine franchise tax, which is somewhat exclusive.

The following are technical concerns identified by MRS:

- The bill applies to C corporations, S corporations and sole proprietorships, but not to other business types, such as partnerships.
- Clarification of important timing issues: As currently written, the bill does not allow a deduction for contributions made to a small business savings account unless the contribution has been *used* for capital expenditures.
- Clarify intent for multiple-tax benefit treatment (see above).
- The definition of an eligible small business should be amended to:
  - Define the term “full-time equivalent” in relation to employees of the business; and
  - Clarify that the business must be *taxed as* a C corporation, S corporation or sole proprietor *for federal income tax purposes*.
- The bill does not require withdrawals made after December 31, 2024 from a small business savings account that are not used for capital expenditures to be added back to Maine taxable income. The application and repeal dates in Sections 2 and 4 should be deleted.
- For clarity, the repeal dates in Sections 3 and 5 should be deleted and the application dates should be changed to apply to tax years beginning on or after January 1, 2021 and before January 1, 2025. The application date in Section 1 (5 M.R.S. § 13100-A(9)) should be similarly changed and the repeal date (5 M.R.S. §

13100-A(10)) should be replaced with the following: No contributions may be made to a small business capital savings account after December 31, 2024.

- It may be necessary to enact an exception to Maine’s confidentiality provision in 36 M.R.S. § 191 to allow MRS to share taxpayer information with DECD for purposes of administering the program.
- The definition of capital expenditure should be amended to specifically refer to sections 167 and 168 of the Internal Revenue Code.
- Also, proposed section 13100-A(7) should be amended to allow rulemaking rather than require rulemaking.

cc (by email): Office of Fiscal & Program Review  
Office of DAFS Commissioner  
Office of the Attorney General  
Office of Policy & Legal Analysis  
Joint Standing Committee on Taxation  
Sen. Stewart of Aroostook

State Budget Office  
Office of the Governor  
Office of the Revisor