From: Linda Caprara [mailto:lindac@mainechamber.org]
Sent: Tuesday, January 19, 2016 11:10 AM
To: Ashcroft, Beth
Subject: MSCC Comments on OPEGA Draft Tax Expenditure proposal

DT: January 19, 2016

To: Beth Ashcroft, Director, OPEGA,
Legislature's Government Oversight Committee (GOC)

RE: The Maine State Chamber of Commerce (MSCC): Comments on OPEGA's Draft Tax Expenditure Review Proposal

The Maine State Chamber of Commerce appreciates the opportunity to comment on the draft proposal for the Office of Program Evaluation and Government Accountability (OPEGA)'s first tax expenditure review on three tax expenditure programs: Employment Tax Increment Financing (ETIF), the Pine Tree Zone Development Program (PTZ) and the New Markets Capital Investment Program. The Maine State Chamber appeared before the Legislature's Government Oversight Committee (GOC) on Friday, January 8th and provided the following comments to the GOC at that meeting.

The Chamber provided comments focused on three areas. First, the draft proposal contains reference on the front page to a proposed "revenue loss" associated with the tax expenditure and identifies that proposed loss on the front page of the proposal. MSCC argued that these programs should be looked at as revenue gains because the state realizes revenue as a result of the investments made by these companies, who responsible for making the expenditure. Potential revenue, such as income and sales taxes companies pay and economic growth due to any investments the companies make, are not considered when the State calculates revenue losses. The Chamber also argued that dynamic fiscal modeling should be considered to achieve an accurate revenue picture.

Second, MSCC mentioned that the "beneficiaries" of the programs should include "job seekers".

Third, under the "evaluation objectives" section, MSCC argued that in order for OPEGA to properly gage the extent to which the desired behavior (investment or hiring new employees) might have occurred without the tax expenditure, interviews with companies actually taking the programs would need to be made. MSCC argued that just looking at pure financial data related to the amount the companies received, the average tax benefit, and return on investment, would not provide the sufficient insight to make the desired determination. This was one of the key points the MSCC argued for last session when the Taxation Committee considered L.D. 941.

Please consider these comments in your deliberations with the GOC of this proposal. Please feel free to call me if you have any questions or comments, please call Linda Caprara at 623-4568 x106 or lcaprara@mainechamber.org.

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January 19, 2016

To: Joint Standing Committee on Government Oversight

cc: Office of Program Evaluation and Government Accountability
Joint Standing Committee on Taxation
Joint Standing Committee on Labor, Commerce, Research, and Economic Development

Re: Comments Regarding Evaluation Parameters for OPEGA Tax Expenditure Review

Dear Chairman Katz and Chairman Kruger:

My name is Kris Eimicke. I am an attorney with Pierce Atwood LLP in Portland. I am also the chair of the Tax Committee of the Maine State Bar Association and an adjunct professor at the University of Maine School of Law, although my comments are my own and not of the Tax Committee or the University.

A large portion of my practice is devoted to economic development, both in Maine and throughout the country. I regularly work with the federal new markets tax credit program, Maine's new markets capital investment credit program, and similar programs developed by other states. I would be happy to give whatever support I can to the Committee and to OPEGA during this review.

Attached to this letter are specific comments to the document prepared by OPEGA. These comments largely speak for themselves, and I won't delve deeply into them here. Instead, I would like to make the following "high level" points, specifically about the new markets capital investment credit program.

Community Development, not just Economic Development. The new markets program differs from other economic development programs in that it is not just an economic development program. It is a community development program. The program can be used to finance non-profits as well as for-profit companies. For example, the federal new markets program has been used to finance a head-start facility in Waterville. The federal and state new markets programs were used for the Farnsworth Art Museum. Each of these projects aided in economic development, but that was not the primary reason why the projects were selected. These projects were about community development and therefore the typical measures and criteria (*e.g.*, changes in unemployment rates) are insufficient to measure success or failure. Furthermore, evaluating these types of projects solely on economic development measures would discourage the use of new markets for important non-profit projects like these in the future.

Beneficiaries. Each economic development program (or community development program in the case of new markets) should be designed to benefit the community and its members. The businesses that benefit from the programs are simply the tool through which the community benefits.

Viewing the Program on a Portfolio Basis. The new markets program differs significantly from the other programs being reviewed in that it is designed to bring capital to businesses and nonprofits. Most other programs offering tax credits or similar benefits subsidize the operations of the business, for example by providing that the business will not have to pay income taxes for a period of time. The nature of the new markets program, therefore, carries the possibility of failure because the act of providing capital to the business or nonprofit is the tax-credit generating activity (as opposed to the carrying on of the business).

Furthermore, the program is designed to finance programs in low-income communities where failures occur at a greater rate than in safer high-income communities. Therefore, during this review it is important to view the projects financed on a portfolio basis as one would view a loan guarantee program from the Finance Authority of Maine or the Small Business Administration. Failures are expected. The question is whether the benefits *of the program* exceed the costs.

In the future there may be a vitally important, but risky, project (for example because of difficult industry trends) that needs to use the new markets program (or another state program) to survive. If only the "safest" projects are able to use these programs (because investors and regulators fear punitive action due to failure), the programs will fail to meet their stated purpose.

Dynamic Modeling. Each of the tax expenditures up for review has a stated "cost": the amount of forgone direct revenue as a result of the credit or expenditure. That figure is half the story (or less). Each of these programs creates additional revenue for the state through collection of income taxes and sales and use taxes as a result of the business/nonprofit directly, the employees at the business, the businesses in the supply chain and their employees, and all of the businesses and their employees benefitting indirectly (so-called induced jobs). Without determining what those figures are, this Committee will miss the forest for a single tree.

Maine's New Markets Program is New. Many of the projects using this program have only closed the financing recently, and some have not closed at all. To date, approximately

$50,000,000 of the overall $250,000,000 of Maine new markets allocation has not been invested in Maine non-profits and businesses (and thus not certified as eligible for tax credits). Evaluating this program based on measurable effects in the community will be very difficult because of the lack of time in which those effects can be measured. For example, the St. Croix Tissue mill is currently under construction with hundreds of construction workers there currently. St. Croix Tissue has just recently hired approximately 80 new employees and is in the process of training them. These impressive employment numbers will not be reflected in changes to the local unemployment rate. Accordingly, it is appropriate to use information from the businesses and nonprofits receiving financing and from economic impact studies that project the economic impacts of the projects.

Incentives Offered by Other States. As part of GE's very recent decision to move to Massachusetts from Connecticut, Massachusetts gave incentives to GE estimated to be $145 million. That was for just 800 jobs in Boston. Economic development is an extremely competitive environment, both from state-to-state and from country-to-country. I frequently hear from clients that they want to move to, or expand in, Maine, but because other states offer more in the way of incentives or because of Maine's demographic challenges, they have a very hard time choosing Maine. The importance of what other states offer to real world decision making cannot be underestimated.

Thank you for the opportunity to testify before the Committees and to deliver these comments.

Sincerely,

/S/ Kris J. Eimicke

Proposed Parameters for OPEGA's Full Evaluation of the New Markets Capital Investment Program

Enacted	Statute(s)	Type	Category	Est. Revenue Loss
2011	36 MRSA §5219-HH 10 MRSA §1100-Z	Income Credit	Business Incentive, Financial Investment	FY16 $9,205,000 FY17 $13,509,000

Source for Estimate Revenue Loss: Maine State Tax Expenditure Report 2016 - 2017

Program Description

Maine's New Markets Capital Investment Program is a state program modeled after the federal New Markets Tax Credit program. It provides a 39% credit for investors ~~with~~ who make qualified equity investments in ~~low-income community businesses made via~~ a qualified community development entity (CDE)~~,~~ which in turn make investments in qualified active low-income community businesses.

To be considered qualified, a CDE must meet a number of requirements including:

- being certified by the US Treasury, and
- having an existing allocation agreement under the federal New Markets program.

To be considered qualified, a qualified active low-income community business must meet a number of requirements including:

- being located in a qualifying census tract, a municipality with a high unemployment rate, or by employing or serving low-income persons;
- it must be in a qualifying industry, which excludes certain types of businesses including most financial services businesses, liquor stores, and gambling businesses

The credit may be taken over seven years, with 0% allowed in the first two years, 7% in year three and 8% in each of the remaining years. The credit is fully refundable or may be carried forward for up to 20 years. This means credits may be paid out in full if the investor owes no taxes in the state. Credits may also be subject to recapture by the State Tax Assessor pursuant to 36 MRSA §5219-HH.7. Total authorized credits under this program may not exceed $20,000,000 per year. As of the writing of this document, all ~~funds~~ credits available under this program ~~had been allocated~~have been allocated to CDEs, however approximately $50,000,000 of allocation has not been used to make investments in qualified active low income community businesses and thus has not been certified as being eligible for tax credits.

There is a two step application process for the New Markets program. First the Finance Authority of Maine (FAME) reviews each CDE's application for an allocation. If approved, an allocation reserves tax credits to be claimed against future qualified investments and is valid for ~~to~~ up to two years.

The second step occurs once the CDE ~~has a pool of funding~~ receives an investment (from private investors either in equity or issuance of long term debt) ready to invest in a qualified active low-income community business. At that point the CDE must file a certification application with FAME providing details of the proposed investment such as:

- a description of the qualified active low-income community business proposed to receive the investment proceeds; and

- how the qualified business intends to use the investment proceeds.

FAME reviews the proposed investment to determine whether it can be approved as a qualified equity investment under program rules. Upon approval, FAME notifies Maine Revenue Service of the investors (individuals or businesses) deemed eligible for the credit and how much each is entitled to. The investors later claim their credit by filing a credit worksheet along with their State of Maine income tax return with Maine Revenue Services.

The New Markets program requires all CDEs that have been approved for allocations and all those that have received certifications to file annual reports with FAME. Statute also required FAME to report to the Taxation Committee and Appropriations Committee on the New Markets program, including the amount of private investment received and number of jobs created or retained, by January 31, 2015. No further reports from FAME are required under statute.

Evaluation Parameters Subject to Committee Approval

The following parameters are submitted for GOC approval as required by 3 MRSA §999 subsection 1, paragraph A.

(1) Purposes, Intent or Goals
Intent – To promote economic development and community development by encouraging major private capital investments in qualified businesses and ~~developments~~ non-profits located in economically distressed areas of the State; to preserve and create jobs~~.~~, to develop thriving communities, and make the State more competitive in the attraction of investment capital.
Goal – To encourage new investments in qualified businesses and ~~developments~~ non-profits located in economically distressed areas of the State.

(2) Beneficiaries
Primary Intended Beneficiaries – Residents of economically distressed communities
~~Primary~~ Secondary Intended Beneficiaries – Qualified businesses and non-profits in economically distressed areas -of the State
~~Secondary Intended Beneficiaries – Economically distressed communities~~
Credit Recipient – Investors (or others to whom the credits are transferred)

(3) Evaluation Objectives

Below are the objectives the evaluation proposes to address. The objectives are coded to indicate which of the performance measures in section (4) below could potentially be applicable.

Each objective will be explored to the degree possible based on the level of resources required and the availability of necessary data.

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A	**Possibly Applicable Measures**
(a) The fiscal impact of the tax expenditure, including past and estimated future impacts;	C, D, E, F
(b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;	Qualitative
(c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;	A, B, C, D, G, H, ~~I~~L, ~~I~~J, N, O, P, Q Qualitative
(d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;	A, B, C, G, H, I, M, N, O, P, Q Qualitative
(e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;	C, D, I, J, Q, R Qualitative
(f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;	Qualitative
(g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;	Qualitative
(h) The extent to which the tax expenditure is a cost-effective use resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and	E, F, G, H, I, J, K Qualitative
(i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.	Qualitative

(4) Performance Measures

Measures will be calculated to the degree possible based on the level of resources required and the availability of necessary data.

A	# Total businesses receiving qualified investments under the program
B	# Economically distressed communities where businesses received qualified investment under the program and the amount of such investment (on a county-by-county basis)
C	$ ~~Value~~ Amount of tax credits to investors ($ ~~value~~ amount paid in past years and expected in coming years) (taking into account only investments certified by FAME as eligible for tax credits)

D	$ ~~Value~~ Amount of credits available compared to credits taken
E	Total direct program cost (credits plus administrative costs)
F	Net impact on State budget (taking into account tax revenues created as a result of the investments)
G	Total qualified investment received by businesses
H	$ ~~Value~~ Amount of average qualified investment received per business (also min and max)
I	Average ~~value~~ amount of tax credits per investor (also min and max)
J	$ ~~Value~~ Amount of tax credits received by investors per $ of qualified investment
K	Leveraging Ratio, for example [$ of qualified investment]\[Net impact on State budget]
L	Indicators of economic growth in economically distressed areas with businesses that received qualified investments under the program (such as change in # qualifying businesses, # jobs, per capita income, or unemployment rate)
M	Participation Rate (% of economically distressed communities in the State that have benefitted from the program on a county-by-county basis)
~~N~~	~~Jobs created as a results of investments made (direct, indirect and induced)~~
~~O~~	~~Quality of jobs created or retained as a result of investments made~~
~~P~~	~~Additional capital attracted to State as a result of investments made~~
~~Q~~	~~Level of economic distress in communities receiving investment (on a municipality and county basis)~~
~~R~~	~~Economic development programs and other incentives offered by competing states~~

Performance measures would typically be calculated by year to allow for analysis of percentage changes year over year, trends, etc. Further calculations and breakouts would be considered as appropriate. For example:

- per beneficiary,
- per geographic region,
- by new vs. continuing beneficiary,
- by taxpayers' state of residence,
- by reduction of tax liability vs. refunded credit,
- by taxpayer type~~.~~,
- by type of qualifying business.

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Comments Regarding Proposed Evaluation Parameters of Tax Expenditure Programs

Good morning Senator Katz, Representative Kruger, and members of the Government Oversight Committee. I'm Garrett Martin, executive director of the Maine Center for Economic Policy, and I am here today to offer comments regarding proposed evaluation of tax expenditure programs.

As background, I served on the Tax Expenditure Review Task Force in 2013 and have worked previously as an evaluator of economic development programs both domestically and abroad. It is these experiences that inform my comments to you today.

I commend the Office of Program Evaluation and Government Accountability for their efforts to date. Their task is a daunting one made even more so by the ***limited data available on tax expenditures in Maine***. This is a flaw in program design and accountability that has been noted before by OPEGA staff, members of the Tax Expenditure Review Task Force, and, more recently, Investment Consulting Associates (ICA) who completed an evaluation of state investment in economic development for the Department of Economic and Community Development in 2014.

Of the evaluation objectives recommended in PL 2015 Chapter 344, An Act To Improve Tax Expenditure Transparency and Accountability, the most difficult one to assess is objective (e) ***"the extent to which…the desired behavior might have occurred without the tax expenditure."*** To answer this question, one must first ascertain whether the desired behavior actually occurred. This is represented by evaluation objective (c) ***"the extent to which the tax expenditure is achieving its purposes…taking into consideration the economic context…"***

Taken together these are the most important and challenging objectives to pursue. They represent the gold standard of any evaluation. For each of the programs identified, I encourage you to take more time to consider additional indicators and performance measures relevant to these evaluation objectives. ***Of particular importance is clarifying the need to collect certain indicators consistently over time, determining the most reliable source of data, and identifying company and industry specific indicators that will aid in analyzing evaluation results and putting them in context***.

For programs that are based on ***job creation***, evaluators must assess whether or not the jobs were created and, if so, were they permanent or temporary in nature. This corresponds with evaluation objective (c) for the ETIF and Pine Tree Development Zone programs and ***should be considered as part of the criteria for the New Markets Capital Investment Program***. The performance measures most closely associated with this criteria are total payroll and employment figures. In most instances these can be derived from information provided to Maine Revenue Services and/or the Maine Department of Labor and ***they should be compared to payroll and employment figures prior to receipt of the loan, credit, or reimbursement and at annual intervals thereafter***.

Ideally these same figures should be benchmarked against broader trends in the same industry or geographic region as suggested by performance measure (i) to assess relative performance. This is an important evaluation activity since sometimes it is the absence of a negative event, such as a drop in employment when that is the trend, that can validate program activities.

Concerning evaluation objective (e), ***additional business indicators may be helpful in answering the question of whether or not the program influenced business outcomes and behavior***. In addition to firm size, collecting information on the number of years of operation in Maine; profitability, asset holdings, and valuation; executive compensation and residency; and whether or not owners are aware that they are taking advantage of the program in question may be instructive. These do not need to be made public and can be reported in aggregate, but like demographic data in any survey may lend additional insight.

Of the remaining evaluation objectives, ***there are clear standards in place for effective tax expenditure programs that should be considered as performance measures for evaluation objective (f)*** "the extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective." For evaluation objective (d) "the extent to which those actually benefiting from the tax expenditure are the intended beneficiaries" ***it is important to consider who is eligible but not benefiting***. This can be done ***by broadening performance measure (b) participation rate to consider*** not only the percentage of Maine businesses certified for the program but also ***the percentage of Maine businesses with employment increases above the program threshold that are not certified for the program***. Relative to this evaluation objective, I believe it is reasonable to ask in what ways are businesses benefiting? Are the incentive effects of the program being realized or is it simply an entitlement that helps the bottomline?

Concerning the ***purposes, intent or goals***, the justification for many of these programs is that they not only aid in the creation or retention of jobs in Maine but also in the ***creation or retention of businesses*** here. While I suspect it may be beyond the scope of the evaluation, I encourage you to consider whether or not it makes sense to broaden the purposes section to include the intent of business creation and retention. I also believe that a fundamental challenge of this process is that OPEGA has had to rely on the legislative record to develop its evaluation parameters. I believe these may not capture some of the underlying assumptions associated with these programs as it relates to their purpose, outcomes, and connection to specific interventions. In short, there is no explicit theory of change upon which to base the evaluation. This is a gap that I fear cannot be addressed without giving OPEGA greater latitude.

Finally, I recommend including ***taxpayers as an intended beneficiary***. In many respects that is implicit to the evaluation process, but it may make sense to make it explicit. Doing so also raises questions about whether or not it is reasonable to consider performance measures that account for potential hidden costs to taxpayers of these programs in the calculation of costs and benefits. For example, does it make sense to evaluate whether the employees at businesses receiving subsidies are relying on public assistance, whether a corporate "means test" based on business tenure, ownership, profitability, or asset holdings should be evaluated, and whether other public investments in education for example are being compromised as a result of these tax expenditures?

This is a very important task and I commend your efforts. Promoting the transparency, accountability, and effectiveness of tax expenditures in Maine is an important objective for all of us.