

§1100-T. Tax credit certificates

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.

[PL 2011, c. 454, §1 (AMD).]

1-A. Private venture capital fund. As used in this section, "private venture capital fund" means a professionally managed pool of capital organized 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. An entity that otherwise qualifies as a private venture capital fund may elect not to be treated as a private venture capital fund for purposes of this section with respect to any investment.

[PL 2013, c. 438, §2 (AMD).]

2. Eligibility for tax credit certificate for individuals and entities other than venture capital funds. The authority shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to implement the program. Without limitation, the requirements for eligibility for a tax credit certificate include the following.

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. For investments made in tax years beginning on or after January 1, 2014, a tax credit certificate may be issued to an investor other than a private venture capital fund in an amount not more than 50% of the amount of cash actually invested in an eligible Maine business in any calendar year. For investments made on or after April 1, 2020, a tax credit certificate may be issued to an investor other than a private venture capital fund in an amount not more than 40% 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. [PL 2019, c. 616, Pt. LL, §1 (AMD).]

B. The Maine business must be determined by the authority to be a manufacturer or a value-added natural resource enterprise; must provide a product or service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State; must be engaged in the development or

application of advanced technologies; or must be certified as a visual media production company under Title 5, section 13090-L. The business must certify that the amount of the investment is necessary to allow the business to create or retain jobs in the State. [PL 2013, c. 438, §3 (AMD).]

C. Aggregate investment eligible for tax credits may not be more than \$5,000,000 for any one business as of the date of issuance of a tax credit certificate. Beginning with investments made on or after April 1, 2020, aggregate investment eligible for tax credits may not be more than \$3,500,000 for any one business as of the date of issuance of a tax credit certificate and not more than \$2,000,000 for any calendar year. Notwithstanding the other provisions of this paragraph, with respect to a business that was approved by the authority as an eligible business under this subsection before April 1, 2020, the aggregate investment eligible for tax credits may not be more than \$5,000,000 for that business as of the date of the issuance of the tax credit certificate, and the \$2,000,000 annual limitation does not apply. [PL 2021, c. 412, §1 (AMD).]

D. The investment with respect to which any individual is applying for a tax credit certificate may not be more than an aggregate of \$500,000 in any one business 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 but not as a private venture capital fund, 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. [PL 2013, c. 438, §3 (AMD).]

E. For investments made in tax years beginning before January 1, 2014, the business receiving the investment must have annual gross sales of \$3,000,000 or less. For investments made in tax years beginning on or after January 1, 2014, the business receiving the investment must have annual gross sales of \$5,000,000 or less. The operation of the business must be a substantial professional activity of at least one of the principal owners, as determined by the authority. The principal owner and the principal owner's spouse are not eligible for a credit for investment in that business. A tax credit certificate may not be issued to a parent, sibling or child of a principal owner if the parent, sibling or child has any existing ownership interest in the business. [RR 2023, c. 2, Pt. C, §11 (COR).]

F. The investment must be expended on plant, equipment, research and development, or working capital for the business or such other business activity as may be approved by the authority. [PL 1987, c. 854, §§2, 5 (NEW).]

G. The authority shall establish limits on repayment of the investment. The investment must be at risk in the business. [PL 1991, c. 854, Pt. A, §10 (AMD).]

H. The investors qualifying for the credit must each own less than 1/2 of the business. [PL 2011, c. 454, §4 (AMD).]

I. The business receiving the investment may not be in violation of the requirements of subsection 7. [PL 2019, c. 616, Pt. LL, §3 (AMD).]

[RR 2023, c. 2, Pt. C, §11 (COR).]

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. 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. 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. [PL 2011, c. 454, §5 (AMD).]

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 product or 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. [PL 2019, c. 616, Pt. LL, §4 (AMD).]

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. [PL 2003, c. 451, Pt. E, §4 (AMD).]

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. [PL 2003, c. 451, Pt. E, §4 (AMD).]

E. Each business receiving an investment from a private venture capital fund, if the 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, sibling or child of a principal owner if the parent, sibling or child has any existing ownership interest in that business or for an investment by the private venture capital fund in that business. [RR 2023, c. 2, Pt. C, §12 (COR).]

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. [PL 1997, c. 774, §1 (AMD).]

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. [PL 1997, c. 774, §1 (AMD).]

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. [PL 2001, c. 446, §2 (AMD); PL 2001, c. 446, §6 (AFF).]
[RR 2023, c. 2, Pt. C, §12 (COR).]

2-B. Eligibility of private venture capital funds for tax credit certificate until July 1, 2001. [PL 1999, c. 752, §2 (NEW); PL 1999, c. 752, §6 (AFF); MRSA T. 10 §1100-T, sub-§2-B (RP).]

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. For investments made on or after April 1, 2020, a tax credit certificate may be issued to a private venture capital fund in an amount that is not more than 40% 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. [PL 2019, c. 616, Pt. LL, §5 (AMD).]

B. As used in this subsection, unless the context otherwise indicates, "eligible business" means a business located in the State that has certified that the amount of the investment is necessary to allow the business to create or retain jobs in the State and that, as determined by the authority:

- (1) Is a manufacturer or a value-added natural resource enterprise;
- (2) Is engaged in the development or application of advanced technologies;
- (3) Provides a product or service that is sold or rendered, or is projected to be sold or rendered, predominantly outside of the State; or
- (5) Is certified as a visual media production company under Title 5, section 13090-L. [PL 2019, c. 616, Pt. LL, §6 (AMD).]

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. Beginning with investments made on or after April 1, 2020, aggregate investment eligible for tax credit certificates, including investments under this subsection and under subsection 2, may not be more than \$3,500,000 for any one eligible business in total and not more than \$2,000,000 for any calendar year. Notwithstanding the other provisions of this paragraph, with respect to a business that was approved by the authority as an eligible business under this subsection before April 1, 2020, the aggregate investment eligible for tax credits may not be more than \$5,000,000 for that business as of the date of the issuance of the tax credit certificate, and the \$2,000,000 annual limitation does not apply. [PL 2021, c. 412, §2 (AMD).]

D. The investment with respect to which any private venture capital fund is applying for a tax credit certificate may not be more than the lesser of an amount equal to \$500,000 times the number of investors in the private venture capital fund and an aggregate of \$4,000,000 in any one eligible business invested in by a private venture capital fund in any 3 consecutive calendar years. For investments made on or after April 1, 2020, the investment with respect to which any private venture capital fund is applying for a tax credit certificate may not be more than the lesser of an amount equal to \$500,000 times the number of investors in the private venture capital fund and an aggregate of \$3,500,000 in any one eligible business invested in by a private venture capital fund, but investments in a business that was approved by the authority as an eligible business under this subsection before April 1, 2020 with respect to which any private venture capital fund is applying for a tax credit certificate may not be more than the lesser of an amount equal to \$500,000 times the number of investors in the private venture capital fund and an aggregate of \$4,000,000 for that eligible business. 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. [PL 2021, c. 412, §3 (AMD).]

E. For investments made in tax years beginning before January 1, 2014, 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. For investments made in tax years beginning on or after January 1, 2014, 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 \$5,000,000. The operation of the business must be a substantial professional activity of one or more individuals who are not managers of the private venture capital fund, as determined by the authority. A tax credit certificate may not be issued to a private venture capital fund if a manager of 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. [PL 2013, c. 438, §4 (AMD).]

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. [PL 2011, c. 454, §6 (NEW).]

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. [PL 2011, c. 454, §6 (NEW).]

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. [PL 2011, c. 454, §6 (NEW).]

[PL 2021, c. 412, §§2, 3 (AMD).]

3. Priority. The authority may reserve \$500,000 in tax credit authorization for "natural resource enterprises," as defined in section 963-A, subsection 41. [PL 1995, c. 462, Pt. A, §19 (AMD).]

4. Total of credits authorized. The authority may issue tax credit certificates to investors eligible pursuant to subsections 2, 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 up to and including calendar year 2013, in addition to which, the authority may issue tax credit certificates to investors eligible pursuant to subsections 2, 2-A and 2-C in an annual amount not to exceed \$675,000 for investments made between January 1, 2014 and December 31, 2014, \$4,000,000 for investments made in calendar year 2015, \$5,000,000 for investments made in calendar years 2016 to 2019, \$15,000,000 for investments made in calendar year 2020, \$13,500,000 for investments made in calendar years 2021 and 2022, \$15,000,000 for investments made in calendar years 2023 to 2026 and \$5,000,000 each year for investments made in calendar years beginning with 2027. 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 subject to limitations established by the authority by rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 412, §4 (AMD).]

5. Revocation of tax credit certificate. The authority may revoke a tax credit certificate if any representation to the authority in connection with the application for the certificate proves to have been false when made or if the applicant violates any conditions established by the authority and stated in the tax credit certificate. The revocation may be in full or in part as the authority may determine. The authority shall specify the amount of credit being revoked and shall send notice of the revocation to the investor and to the State Tax Assessor.

[PL 1987, c. 854, §§2, 5 (NEW).]

6. Reports.

[PL 2019, c. 616, Pt. LL, §10 (RP).]

7. Reports. The following reports are required regarding activities under this section.

A. A business eligible to have investors receive a tax credit under this section shall report to the authority, in a manner determined by the authority, the following information regarding that business's activities in the State over the calendar year in which the investment occurred and for each additional year for which a credit is claimed:

- (1) The total amount of private investment received by the eligible business from each investor eligible to receive a tax credit;
 - (2) The total number of persons employed by the eligible business as of December 31st;
 - (3) The total number and geographic location of jobs created and retained by the eligible business stated separately for all jobs in the State and for those jobs that would not have been created or retained in the absence of the credit;
 - (4) Total annual payroll of the eligible business stated separately for all employees in the State and for those employees who would not have been employed in the absence of the credit; and
 - (5) Total sales revenue of the eligible business stated separately within and outside the State.
- [PL 2019, c. 616, Pt. LL, §11 (NEW).]

B. An investor eligible for a tax credit under this section shall notify the authority when a business that received an investment from that investor eligible for a credit under this section ceases operations and the likely reasons for the cessation of business. [PL 2019, c. 616, Pt. LL, §11 (NEW).]

C. The authority shall report annually to the joint standing committee of the Legislature having jurisdiction over taxation matters and to the Office of Program Evaluation and Government Accountability on all activity under this section during the prior calendar year. The authority shall identify in its report businesses receiving investments eligible for a credit under this section and the authority's determination as to whether the investments would have been made in the absence of the credit. [PL 2019, c. 616, Pt. LL, §11 (NEW).]

[PL 2019, c. 616, Pt. LL, §11 (NEW).]

SECTION HISTORY

PL 1987, c. 854, §§2,5 (NEW). PL 1989, c. 502, §A28 (AMD). PL 1989, c. 765, §4 (AMD). PL 1991, c. 854, §§A7-11 (AMD). PL 1995, c. 424, §§2-4 (AMD). PL 1995, c. 462, §A19 (AMD). PL 1995, c. 658, §§3,4 (AMD). PL 1997, c. 774, §1 (AMD). PL 1997, c. 782, §§1-4 (AMD). PL 1999, c. 504, §10 (AMD). PL 1999, c. 752, §§1-3 (AMD). PL 2001, c. 446, §§1-3 (AMD). PL 2001, c. 446, §6 (AFF). PL 2001, c. 642, §§4-10 (AMD). PL 2001, c. 642, §12 (AFF). PL 2003, c. 20, §§X1-5 (AMD). PL 2003, c. 451, §§E1-5 (AMD). PL 2009, c. 470, §§2, 3 (AMD). PL 2011, c. 454, §§1-8 (AMD). PL 2013, c. 438, §§2-5 (AMD). PL 2019, c. 616, Pt. LL, §§1-11 (AMD). PL 2021, c. 412, §§1-4 (AMD). RR 2023, c. 2, Pt. C, §§11, 12 (COR).

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