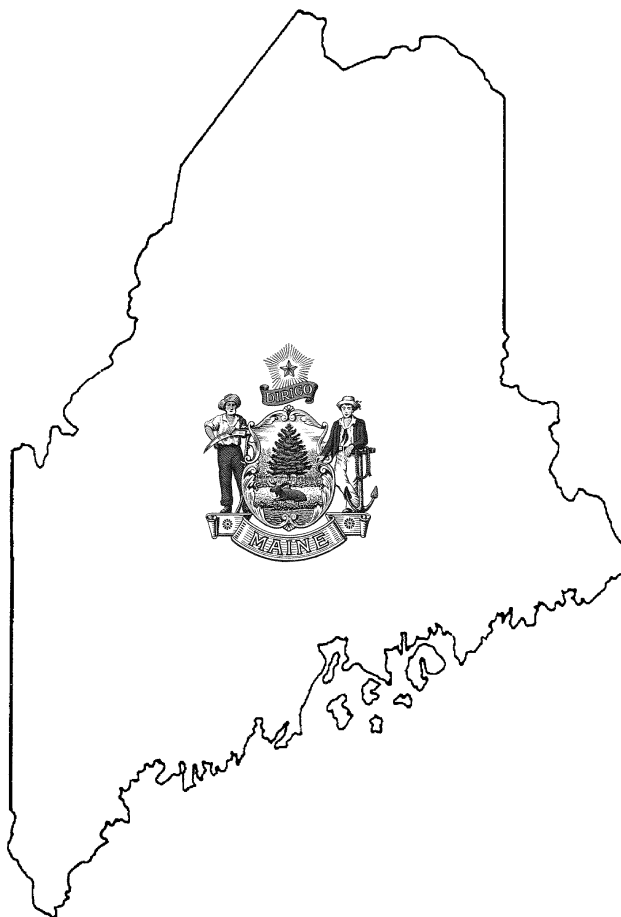


PINE TREE DEVELOPMENT ZONE TAX CREDIT



GUIDANCE DOCUMENT

Maine Revenue Services, Income/Estate Tax Division

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INTRODUCTION

A business that engages in certain activity in Maine and hires at least one additional employee for that activity may be eligible to participate in the Pine Tree Development Zone (“PTDZ”) program. This program is administered by the Department of Economic and Community Development (“DECD”) and Maine Revenue Services (“MRS”) and offers a wide range of benefits, including a reduction in taxes due to the state. This guidance document is intended solely as advice to persons seeking information about the PTDZ program tax credit and provides more information than is available in the filing instructions for the income tax, franchise tax, or insurance premiums tax returns. The applicable statutory and regulatory references, as well as additional informational documents, are listed below.

Statutory: Title 30-A -
chapter 206, subchapters 4, 5 and 6:
<http://mainelegislature.org/legis/statutes/30-A/title30-Ach206sec0-1.html>

Title 36 -
Chapter 357:
<http://mainelegislature.org/legis/statutes/36/title36ch357sec0.html>
Chapter 822:
<http://mainelegislature.org/legis/statutes/36/title36ch822sec0.html>
Chapter 917:
<http://mainelegislature.org/legis/statutes/36/title36ch917sec0.html>

Regulatory: Department of Economic and Community Development Rule 100:
<http://www.maine.gov/sos/cec/rules/19/100/100c100.doc>

Instructional: Maine Revenue Services tax credit worksheets:
<http://www.maine.gov/revenue/forms> (select “Worksheets for Tax Credits”)
Maine Revenue Services income, franchise and insurance premiums tax returns:
<http://www.maine.gov/revenue/forms>

Additional information:
Sales Tax Division bulletins:
<http://www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm>
Department of Economic and Community Development:
http://www.maine.gov/decd/mainebiz/pine_tree_zones

The Pine Tree Development Zone income, franchise (financial institution), and insurance premiums tax credits are available to certified businesses engaged in qualified activity for tax years beginning on or after January 1, 2004. The credit is available to all businesses (corporations, pass-through entities or sole proprietorships) that are certified by DECD. To obtain certification, the business must apply to DECD and satisfy the statutory requirements.

Generally, in order to qualify, a business must be engaged in one of the following activities: manufacturing, financial services, biotechnology, aquaculture and marine technology, composite materials technology, environmental technology, advanced technologies for forestry and

agriculture, information technology or precision manufacturing technology. A business engaged in one of these activities must hire at least one qualified employee for work in one of the areas in Maine designated as a Pine Tree Development Zone. From September 20, 2007, through the end of 2009, certain manufacturers qualified for benefits whether or not the activities occurred in a designated zone. During that time period, the manufacturers had to meet certain expansion requirements in order to qualify for the program, such as a minimum investment of \$225,000 and creation of at least four new quality full-time jobs. For qualified business activity beginning in 2009, the entire state is classified as a Pine Tree Development Zone.

Beginning in 2010, the state is divided into two-tiers. Tier 1 is comprised of municipalities in all counties of the state except Cumberland and York counties, plus the municipalities in Cumberland and York counties that have an unemployment rate that is at least 15% higher than the local labor market unemployment rate for the calendar year. Tier 2 locations are all municipalities that do not qualify for Tier 1 designation. Income tax, franchise tax, insurance premiums tax, sales tax and the Employment Tax Increment Financing (“ETIF”) benefits of Tier 2 PTDZ businesses are limited to five years. Qualified businesses located in Tier 1 locations are eligible for tax benefits for up to ten years.

To gain certification, the business must apply to DECD and satisfy the statutory requirements. Applications are available online at: http://www.maine.gov/decd/mainebiz/pine_tree_zones/to_apply.shtml. This address also provides links to the statute, the DECD Pine Tree Development Zone Rule and other useful information.

Certified businesses must file an annual report with DECD, which will review these reports and any other required information and determine whether the business continues to meet the requirements for a qualified Pine Tree Development Zone business.

PART 1 – DETERMINATION OF CREDIT AMOUNT

The income tax credit is based on the Maine tax liability on income from qualified PTDZ business activity. The franchise tax credit is based on Maine tax liability on income from qualified business activity and assets used in a qualified business activity. The insurance premiums tax credit is based on Maine tax liability on premiums sold through a qualified business activity. Qualified business activity (“QBA”) is determined by DECD (See 30-A MRSA chapter 206, subchapter 4 and DECD Rule 19-100, Chapter 100). For the first five years, the credit for QBA in a Tier 1 location is equal to 100% of the tax liability; for the next five years it is equal to 50% of the tax liability. Businesses located in Tier 2 locations are eligible for benefits only in the first five years. Certified business entities that have both qualified and non-qualified business activity are allowed a credit for only a portion of the total tax liability. To determine the percentage of tax that is allowed as a credit (the apportionment percentage), the business must divide the value of property used and payroll paid during the year that was related to QBA (the numerator) by the total value of all Maine property used and Maine payroll paid in the year (the denominator). This process is called apportionment and is described in detail in Part 3. The apportionment percentage is then applied against the total tax liability prior to the use of any tax credits to determine the dollar amount available for the credit. (See credit worksheet at maine.gov/revenue/forms).

The program is not intended to provide tax benefits for simply shifting already existing Maine business activity from one in-state location to another. Therefore, property and payroll that have been shifted within Maine cannot be used in QBA and must be eliminated from the numerator of the apportionment calculation. (See Part 3 for an explanation of the apportionment calculation.) Likewise, property and payroll associated with business activity in years prior to certification must not be included in the numerator of the apportionment calculation. Payroll for employees hired during the year of certification, but prior to the actual certification date, is included in the numerator of the apportionment calculation. This is true for all “net new” employees (as determined by DECD), whether or not they are qualified for PTDZ or ETIF purposes.

If the apportionment calculation does not fairly reflect the fraction of business activity that is QBA, the business may request, or the state tax assessor may require, an alternate method of calculating the tax credit (see Part 3).

PART 2 – PRIORITY OF PTDZ CREDIT

Because the credit is based on a percentage of tax liability in a given tax year, there is no provision for carrying the credit forward to future years. Taxpayers, however, may apply the PTDZ credit against tax liability before utilizing any other available credit. For example, if a taxpayer has current year Maine tax liability of \$100,000, a PTDZ credit of 75% of liability (\$75,000), and a high-technology investment tax credit of \$50,000 (which may be carried forward 5 years), the taxpayer can first reduce its tax liability by \$75,000 with the PTDZ credit, and then reduce its remaining tax liability to zero by applying \$25,000 of the \$50,000 high-technology investment tax credit. The remaining \$25,000 in high-technology investment tax credit may be carried forward.

PART 3 – APPORTIONMENT PERCENTAGE

The apportionment statute for the income and franchise tax appears in Title 36, § 5219-W and in § 2529 for the insurance premiums tax.

Qualified business activity means only the activity associated with the expansion or initial business creation for which the entity has been certified by DECD (*see* 30-A MRSA §§ 5250-I(16) & (17)). Therefore, a taxpayer that has income from both qualified and non-qualified business activity is allowed a tax credit only for the tax associated with the income generated by the QBA. To ensure that the tax credit is based only on the expansion activity, the numerator of the apportionment percentage may not include shifted property, employees and positions. Likewise, the value of Maine property that is sold must be subtracted from the property value in the numerator. The shifting of Maine property through sale and replacement of non-PTDZ Maine property with PTDZ property must be discounted from the calculation of the tax credit. The determination of property values and payroll generally follows the methods and definitions that are used for multistate corporate income tax apportionment under 36 MRSA §§ 5210 & 5211 and MRS Rule 801.09 and.10.

The apportionment percentage is a fraction used to calculate the ratio of qualified to non-qualified business activity. The numerator of the apportionment percentage is the value of the taxpayer's property attributed to QBA during the taxable year plus the payroll attributed to QBA during the tax year. The denominator of the apportionment percentage is the total value of all the taxpayer's property used during the tax year in Maine plus the total payroll in Maine during the tax year. A business may not include in the numerator property or payroll related to the shifting of those amounts from elsewhere in Maine (*see* 30-A MRSA §§ 5250-J(3)(C) & (D)). For more information, see MRS Rule 801.09.

PART 4 – MEMBERS OF PASS-THROUGH ENTITIES

For shareholders of S corporations and partners of partnerships, including members of LLCs that are treated as disregarded entities for federal tax purposes, tax credits attributable to PTDZ qualified businesses are determined at the individual taxpayer level (or at the corporate level for corporations that are partners in a partnership). That is, the tax credit amount for a shareholder, partner or member (“member”) is based on the tax liability that is attributed to PTDZ income earned by, or distributed to, the member by the business entity.

The business entity first determines the income that is distributable to each of the members. The entity next calculates the PTDZ credit percentage through the PTDZ apportionment process, which divides the property and payroll attributable to QBA by the total Maine property and payroll for the business. The business entity then passes the share of income and the PTDZ credit percentage to each of the members. Each member will calculate the ratio of income from the business entity to total income for that member from all sources. The member then multiplies the entity income ratio by the PTDZ credit percentage and then multiplies the result by that member’s total Maine income tax liability. The result is the dollar value of the PTDZ credit for that member. See example #3 below and the PTDZ worksheets at: maine.gov/revenue/forms for more information.

PART 5 – EXAMPLES OF APPORTIONMENT

In all the following examples, it is assumed that all expansion property and payroll is 100% qualified. The following examples illustrate the available tax credit under varying circumstances.

Example #1 – A new business conducting qualified business activity

Corporation A: startup business conducting qualified business activity

Corporation A applies for and receives certification as a PTDZ business and then commences qualified business activities. Since all of Corporation A's business activity is qualified, it receives an income tax credit equal to 100% of its tax liability prior to the use of any other tax credits.

Example #2 – An existing Maine business expands to conduct qualified business.

Corporation B: exists prior to PTDZ certification, then expands to conduct qualified business activity

Existing facilities: \$1,000,000 property; \$1,000,000 payroll

Corporation B applies for and receives certification for an expansion to conduct qualified business activity. The expansion includes \$200,000 of property and \$200,000 of payroll for total Maine property of \$1,200,000 and Maine payroll of \$1,200,000. Since Corporation B already operates in Maine in a non-qualified business activity the income tax credit must be apportioned as follows:

$$\begin{aligned} & (\text{QBA property} + \text{QBA payroll}) / (\text{All Maine property} + \text{All Maine payroll}) \\ & = (\$200,000 + \$200,000) / (\$1,200,000 + \$1,200,000) = 16.67\% \end{aligned}$$

Corporation B's PTDZ tax credit equals 16.67% of its total Maine tax liability prior to the use of any other tax credit, which reflects the tax liability associated with the income from QBA.

Example #3 – Individual member of a pass-through entity

Individual A is a 50% owner of S corporation #1 that qualifies for a 50% PTDZ credit. Individual A has \$30,000 of income from S corporation #1 and \$40,000 of income from other sources. S corporation #1 passes taxable income and the income tax credit to its shareholders, including Individual A. Individual A's total Maine income tax liability is \$3,500. Individual A then calculates the apportionment percentage and tax credit as follows:

$$\begin{aligned} \text{Entity income ratio} & = (\text{S corporation \#1 income to Individual A}) / (\text{Individual A total income from all sources}) \\ & = \$30,000 / (\$30,000 + \$40,000) = \$30,000 / \$70,000 = 0.428571 \text{ or } 42.8571\% \end{aligned}$$

PTDZ credit percentage = 0.50 or 50%

$$\begin{aligned} \text{Apportionment percentage} &= \text{Entity income ratio} * \text{PTDZ credit percentage} \\ &= 0.428571 * 0.50 = 0.214286 \text{ or } 21.4286\% \end{aligned}$$

$$\begin{aligned} \text{Total credit} &= \text{Apportionment percentage} * \text{Total Maine income tax liability} \\ &= 0.428571 * 0.50 * \$3,500 = 0.214286 * \$3,500 = \$750 \end{aligned}$$

Individual A may claim a PTDZ credit of \$750 prior to the use of any other tax credit.