

An Act To Reduce Errors in Employment Tax Increment Financing Benefits

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

Sec. 1. 36 MRSA §6753, sub-§5-B is enacted to read:

5-B. Benefit base. "Benefit base" means the total incremental gross wages paid during the calendar year by a qualified business to qualified employees multiplied by ~~the benefit percentage~~ **4.5%.**

Sec. 2. 36 MRSA §6753, sub-§5-C is enacted to read:

5-C. Benefit percentage. "Benefit percentage" means the percentage calculated by the commissioner by dividing the total amount of benefits paid to all qualified businesses under this chapter in fiscal year 2020-21 by the total gross income paid to all qualified employees during that fiscal year.

Sec. 23. 36 MRSA §6753, sub-§7, as amended by PL 2005, c. 351, §22 and affected by §26, is further amended to read:

7. Employment tax increment. "Employment tax increment" means that level of employment, payroll and state income withholding taxes attributed to qualified employees employed by a qualified business above the base level for the qualified business, adjusted pursuant to subsection 12 for shifts in employment by affiliated businesses. For reimbursement based on calendar years prior to 2022, "employment tax increment" means that level of employment, payroll and state income withholding taxes attributed to qualified employees employed by a qualified business above the base level for the qualified business, adjusted pursuant to subsection 12 for shifts in employment by affiliated businesses. For reimbursement based on calendar years beginning in 2022 and after, "employment tax increment" means the total gross wages paid by a qualified business to qualified employees above the base level of employment for the qualified business.

Sec. 34. 36 MRSA §6753, sub-§9, as enacted by PL 1995, c. 669, §5, is amended to read:

9. Gross employment tax increment. "Gross employment tax increment" means that level of employment, payroll and State state income tax withholding taxes attributed to qualified employees employed by a qualified business that is greater than the base level for the qualified business. For reimbursement based on calendar years beginning in 2022 and after, "gross employment tax increment" means the total gross wages paid by a qualified business to qualified employees above the base level of employment for the qualified business.

Sec. 4. 36 MRSA §6753, sub-§9-B is enacted to read:

9-B. Gross Wages. "Gross Wages" means taxable wages, tips and other compensation included on the wage and tax statement for services performed in this state during the calendar year.

Sec. 5. 36 MRSA §6753, sub-§12, as amended by PL 2015, c. 368, §5, is further amended to read:

12. Qualified employee. Except for an employee in a call center in Aroostook County or Washington County, "qualified employee" means a new, full-time employee hired in this State by a qualified business, for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Chapter 18 and group health insurance are provided, and whose income derived from employment with the applicant, calculated on a calendar year basis, is greater than the most recent annual per capita personal income in the county in which the qualified employee is employed, as long as Maine income tax withholding attributed to the qualified employee is subject to reimbursement to the qualified business under this chapter for calendar years beginning before 2022 and, for calendar years beginning in

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2022 and after, the gross wages paid to the qualified employee is subject to reimbursement under this chapter. "Qualified employee" does not include an employee who is shifted to a qualified business from an affiliated business. The commissioner shall determine whether a shifting of employees has occurred.

For an employee in a call center in Aroostook County or Washington County, "qualified employee" means a new, full-time employee hired in this State by a qualified business, for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Chapter 18 and group health insurance are provided, and whose income derived from employment with the applicant, calculated on a weekly basis, is greater than the average weekly wage for the most recent available calendar year as derived from the quarterly census of employment and wages and provided annually by the Department of Labor, as long as Maine income tax withholding attributed to the qualified employee is subject to reimbursement to the qualified business under this chapter for calendar years beginning before 2022 and, for tax calendar years beginning in 2022 and after, the gross wages paid to the qualified employee is subject to reimbursement under this chapter. "Qualified employee" does not include an employee who is shifted to a qualified business from an affiliated business. The commissioner shall determine whether a shifting of employees has occurred. The calculation of the average weekly wage must include data from the counties of Androscoggin, Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo and Washington. Notwithstanding this subsection, with respect to a call center in Aroostook or Washington county, in a county in which the average annual unemployment rate at the time of certification for the most recent calendar year is greater than the state average for the same year, the wage threshold is 90% of the average weekly wage as derived from the quarterly census of employment and wages. Notwithstanding this subsection, with respect to a call center in Aroostook or Washington county and upon approval of the commissioner, a qualified business located in a county in which the average annual unemployment rate at the time of certification for the most recent calendar year is greater than the state average for that same year qualifies for a phase-in of salary threshold requirements. A qualified business under this provision must meet 70% of the average weekly wage as derived from the quarterly census of employment and wages in the first year of certification, 80% of the average weekly wage as derived from the quarterly census of employment and wages in the 2nd year of certification and 90% of the average weekly wage as derived from the quarterly census of employment and wages in all following years of certification. Failure to meet any of these requirements results in automatic revocation of certification.

Sec. 6. 36 MRSA §6754, sub-§ 1 as amended by PL 2021, c. 398, Pt. IIII, §7, is further amended to read:

1. Generally. Subject to the provisions of subsection 2, a qualified business is entitled to reimbursement of Maine income tax withheld gross wages paid during the calendar year for which reimbursement is requested and attributed to qualified employees after July 1, 1996 in the following amounts.

A. For qualified employees employed by a qualified business in labor market areas in this State in which the labor market unemployment rate is at or below the State's unemployment rate at the time of application, the reimbursement is equal to 30% of Maine income tax withheld the benefit base during each of the first 5 calendar years for which reimbursement is requested and attributed to those qualified employees. The percentage of reimbursement for the 6th to 10th years of the employment tax increment financing development program is established based upon the labor market unemployment rate at the beginning of the 6th year. [PL 2009, c. 496, §29 (RPR).]

B. For qualified employees employed by a qualified business in labor market areas in this State in which the labor market unemployment rate is greater than the State's unemployment rate at the time of application, the reimbursement is equal to 50% of Maine income tax withheld the benefit base during each of the first 5 calendar years for which reimbursement is requested and attributed to those qualified employees. The

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percentage of reimbursement for the 6th to 10th years of the employment tax increment financing development program is established based upon the labor market unemployment rate at the beginning of the 6th year. [PL 2009, c. 496, §29 (RPR).]

C. For qualified employees employed by a qualified business in labor market areas in this State in which the labor market unemployment rate is greater than 150% of the State's unemployment rate at the time of application, the reimbursement is equal to 75% of ~~Maine income tax withheld~~ the benefit base during each of the first 5 calendar years for which reimbursement is requested and attributed to those qualified employees. The percentage of reimbursement for the 6th to 10th years of the employment tax increment financing development program is established based upon the labor market unemployment rate at the beginning of the 6th year. [PL 2009, c. 496, §29 (RPR).]

D. For qualified Pine Tree Development Zone employees, as defined in Title 30-A, section 5250-I, subsection 18, employed directly in the qualified business activity of a qualified Pine Tree Development Zone business, as defined in Title 30-A, section 5250-I, subsection 17, for whom a certificate of qualification has been issued in accordance with Title 30-A, section 5250-O, the reimbursement under this subsection is equal to 80% of ~~Maine income tax withheld~~ the benefit base each year for which reimbursement is requested and attributed to those qualified employees for a period of no more than 10 years for a tier 1 location as defined in Title 30-A, section 5250-I, subsection 21-A and no more than 5 years for a tier 2 location as defined in Title 30-A, section 5250-I, subsection 21-B. Reimbursement under this paragraph may not be paid for years beginning after December 31, 2033. [PL 2021, c. 398, Pt. IIII, §7 (AMD).]

Sec. 76. **36 MRSA §6762** is enacted to read:

§6762. Benefit calculation for calendar years beginning with 2022

Notwithstanding any provision of this chapter to the contrary, for requests for reimbursement under this chapter for calendar years beginning ~~with 2022~~ after December 31, 2021, the amount of reimbursement must be based on the benefit base for a qualified employer rather than on the amount of income tax withheld for qualified employees. The commissioner and the State Tax Assessor shall take whatever action is necessary to implement this subsection, including the adoption of routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

~~**Sec. 87. Authority to submit legislation.**—The Commissioner of Economic and Community Development and the State Tax Assessor shall submit legislation by December 1, 2021 to the Second Regular Session of the 130th Legislature if necessary to implement the provisions of this Act.~~

SUMMARY

This bill improves the employment tax increment financing program for calendar years beginning with 2022 by basing benefits on the gross wages of qualified employees rather than on income tax withholding for those employees. The bill directs the Commissioner of Economic and Community Development and the State Tax Assessor to take actions, including the adoption of routine technical rules, to implement the change.