STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 1293 - L.D. 1752

An Act Concerning Technical Changes to the Tax Laws

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

Sec. 1. 10 MRSA §1020-C, sub-§1, ¶¶A and B, as enacted by PL 2011, c. 211, §14, are amended to read:

A. "Eligible dealer" means a motor vehicle oil dealer that has ~~reported and paid~~ sold or distributed motor vehicle oil outside the State on which the motor vehicle oil premium was imposed ~~under~~ by section 1020, subsection 6-A ~~on motor vehicle oil sales or distributions~~.

B. "Eligible premium" means a premium that has been reported and paid by ~~an eligible~~ a motor vehicle oil dealer to the State Tax Assessor on motor vehicle oil that was subsequently sold or distributed by ~~that~~ an eligible dealer outside the State during the relevant reimbursement period.

Sec. 2. 10 MRSA §1020-C, sub-§2, as enacted by PL 2011, c. 211, §14, is amended to read:

2. Annual application for reimbursement. An eligible dealer shall submit a claim for reimbursement of eligible premiums on motor vehicle oil sold by that dealer outside the State on a form prescribed by the State Tax Assessor no later than March 31st annually. An application filed in 2011 or 2012 may include a reimbursement request for eligible premiums paid from October 1, 2009 to December 31, 2011. Reimbursement claims submitted beginning in 2013 may be made only for eligible premiums paid in the immediately preceding calendar year. All applications for reimbursement must be made under penalties of perjury. For purposes of this subsection, an application for reimbursement is considered a return, as defined in Title 36, section 111, subsection 4.

Sec. 3. 10 MRSA §1100-Z, sub-§2, as enacted by PL 2011, c. 380, Pt. Q, §1 and affected by §7, is amended to read:

2. Program. The Maine New Markets Capital Investment Program, referred to in this section as "the program," is established to encourage new investment in economically distressed areas of the State. For the purposes of this section, unless otherwise defined in this section, all terms have the same meaning as under Title 36, section ~~5219-GG~~

5219-HH and Section 45D of the United States Internal Revenue Code of 1986, as amended.

Sec. 4. 10 MRSA §1100-Z, sub-§3, ¶G, as enacted by PL 2011, c. 380, Pt. Q, §1 and affected by §7, is amended to read:

G. Upon receipt of notice that a qualified community development entity has issued its qualified equity investments or long-term debt securities, the authority shall certify the entity's qualified equity investments or long-term debt securities as qualified equity investments and eligible for tax credits under Title 36, section ~~5219-GG~~ 5219-HH. The authority shall provide written notice, sent by certified mail or any other means considered feasible by the authority, of the certification to the qualified community development entity, ~~Maine~~ the Department of Administrative and Financial Services, Bureau of Revenue Services and the Commissioner of Administrative and Financial Services. The notice must include the names of persons eligible to claim the tax credits and their respective tax credit amounts. If the names of the persons that are eligible to claim the tax credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to this subchapter, the qualified community development entity shall notify the authority of ~~such~~ that transfer or change.

Sec. 5. 10 MRSA §1100-Z, sub-§4, as enacted by PL 2011, c. 380, Pt. Q, §1 and affected by §7, is amended to read:

4. Limit on amount of tax credits authorized. The maximum aggregate amount of qualified equity investments for which the authority may issue tax credit authority under this section is $250,000,000; a tax credit claim may not exceed $20,000,000 in any one state fiscal year over the 7 years of the tax credit allowance dates as described in Title 36, section ~~5219-GG~~ 5219-HH, subsection 1, paragraph A.

Sec. 6. 10 MRSA §1100-Z, sub-§5, as enacted by PL 2011, c. 380, Pt. Q, §1 and affected by §7, is amended to read:

5. Reporting and disclosure of information. The authority shall require annual reports of a qualified community development entity granted tax credit allocation authority pursuant to subsection 3. Reports may be shared with ~~Maine~~ the Department of Administrative and Financial Services, Bureau of Revenue Services and the Commissioner of Administrative and Financial Services. Notwithstanding section 975-A, the authority may disclose any information to ~~Maine~~ the Department of Administrative and Financial Services, Bureau of Revenue Services and the Commissioner of Administrative and Financial Services that it considers necessary for the administration of the program pursuant to this section, Title 36, section ~~2531~~ 2533 or Title 36, section ~~5219-GG~~ 5219-HH.

Sec. 7. 20-A MRSA §12542, sub-§2-A, ¶D, as enacted by PL 2009, c. 553, Pt. A, §9, is amended to read:

D. ~~For an individual whose student loans exceed the principal cap, a~~ A benchmark loan payment must be calculated as described in this paragraph. The State Tax

Assessor shall annually by November 1st calculate what the monthly payment would be on a loan for the amount of the principal cap, to be paid over 10 years, at the interest rate offered for federally subsidized Stafford loans under 20 United States Code, Section 1077a, during the individual's last year of enrollment at an accredited Maine community college, college or university.

Sec. 8. 22 MRSA §1714-C, as enacted by PL 2009, c. 213, Pt. CC, §2, is amended to read:

§1714-C. Critical access hospital staff enhancement reimbursement

Beginning April 1, 2011, the department shall reimburse critical access hospitals from the total allocated from hospital tax revenues under Title 36, chapter ~~375~~ 377 at least $1,000,000 in state and federal funds to be distributed annually among critical access hospitals for staff enhancement payments.

Sec. 9. 32 MRSA §14706, sub-§6, as enacted by PL 2001, c. 324, §12, is amended to read:

6. Seller's certificate. The number of a valid ~~transient seller of consumer merchandise's~~ registration certificate issued to the applicant by the State Tax Assessor pursuant to Title 36, chapter 211 or satisfactory evidence that the applicant is not required to be registered under that ~~Title~~ chapter.

Sec. 10. 36 MRSA §112, sub-§8, as amended by PL 2011, c. 211, §17, is further amended to read:

8. Additional duties. In addition to the duties specified in this Title, the assessor ~~is responsible for~~ has the following duties:

A. Collection of the tax ~~levied~~ on fire insurance companies imposed by Title 25, section 2399;

C. Administration of the spruce budworm excise tax in accordance with Title 12, section 8427; ~~and~~

D. Administration of the premium imposed on motor vehicle oil under Title 10, section 1020~~.~~; and

E. Administration of reports and payments required under Title 32, section 1866-E.

Sec. 11. 36 MRSA §191, sub-§2, ¶SS, as enacted by PL 2011, c. 380, Pt. Q, §4 and affected by §7, is amended to read:

SS. The disclosure of information to the Finance Authority of Maine necessary for the administration of the new markets capital investment credit in sections ~~2531~~ 2533 and ~~5219-GG~~ 5219-HH and to the Commissioner of Administrative and Financial Services as necessary for the execution of the memorandum of agreement pursuant to section ~~5219-GG~~ 5219-HH, subsection 3~~.~~;

Sec. 12. 36 MRSA §191, sub-§2, ¶TT, as reallocated by RR 2011, c. 1, §50, is amended to read:

TT. The disclosure to tax officials of other states, and to clearinghouses and other administrative entities acting on behalf of participating states, of information necessary for the administration of a multistate agreement entered into pursuant to section 2532~~.~~;

Sec. 13. 36 MRSA §844, sub-§2, as amended by PL 1995, c. 262, §7, is further amended to read:

2. Nonresidential property of $1,000,000 or greater. Notwithstanding subsection 1, ~~with regard to nonresidential property or properties with an equalized municipal valuation of $1,000,000 or greater either separately or in the aggregate, either party~~ the applicant may ~~choose to~~ appeal the decision of the assessors or the municipal officers ~~with regard to~~ on a request for abatement with respect to nonresidential property or properties having an equalized municipal valuation of $1,000,000 or greater, either separately or in the aggregate, to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied. If the ~~state board thinks~~ State Board of Property Tax Review determines that the applicant is over-assessed, it shall grant such reasonable abatement as ~~the board thinks~~ it determines proper. For the purposes of this subsection, "nonresidential property" means property that is used primarily for commercial, industrial or business purposes, excluding unimproved land that is not associated with a commercial, industrial or business use.

Sec. 14. 36 MRSA §1752, sub-§1-H, as enacted by PL 2007, c. 240, Pt. WWWW, §1, is repealed.

Sec. 15. 36 MRSA §1760, sub-§5, as amended by PL 2009, c. 625, §6, is further amended to read:

5. Medicines. Sales of medicines for human beings sold on a doctor's prescription. This subsection does not apply to the sale of marijuana pursuant to Title 22, chapter 558-C.

Sec. 16. 36 MRSA §1760, sub-§8, as amended by PL 2009, c. 434, §25, is further amended to read:

8. Certain motor fuels. Sales of:

A. Motor fuels upon which a tax at the maximum rate for highway use ~~has been paid~~ pursuant to Part 5 or a comparable tax of ~~any other~~ another state or a province of Canada has been paid; or

B. Internal combustion engine fuel, as defined in section 2902, bought and used for the purpose of propelling jet engine aircraft~~; and~~.

~~D. Diesel internal combustion engine fuel bought and used from July 1, 2007 to June 30, 2008 for the purpose of operating or propelling a commercial groundfishing boat.~~

Sec. 17. 36 MRSA §1764, as amended by PL 2007, c. 375, §2, is further amended to read:

§1764. Tax against certain casual sales

The tax imposed by ~~chapters 211 to 225~~ this Part must be levied upon all casual rentals of living quarters in a hotel, rooming house ~~or,~~ tourist camp or trailer camp and upon all casual sales involving the sale of trailers, truck campers, motor vehicles, special mobile equipment ~~except farm tractors and lumber harvesting vehicles or loaders~~, watercraft or aircraft ~~except those~~ unless the property is sold for resale at retail sale or to a corporation, partnership, limited liability company or limited liability partnership when the seller is the owner of a majority of the common stock of the corporation or of the ownership interests in the partnership, limited liability company or limited liability partnership. This section does not apply to the rental of living quarters rented for a total of fewer than 15 days in the calendar year, except that a person who owns and offers for rental more than one property in the State during the calendar year is liable for collecting sales tax with respect to the rental of each unit regardless of the number of days for which it is rented. For purposes of this section, "special mobile equipment" does not include farm tractors and lumber harvesting vehicles or loaders.

Sec. 18. 36 MRSA §2519, as amended by PL 2011, c. 331, §13 and affected by §§16 and 17, is further amended to read:

§2519. Ratio of tax on foreign insurance companies

~~Any~~ An insurance company incorporated by a state of the United States or province of Canada whose laws impose upon insurance companies chartered by this State ~~any~~ a greater tax than is ~~herein~~ provided in this chapter shall pay the same tax upon business done by it in this State, in place of the tax provided in any other section of this ~~Title~~ chapter. If ~~it is not paid~~ the insurance company fails to pay the tax as provided in section 2521-A, the assessor shall certify that failure to the Superintendent of Insurance, who shall suspend the insurance company's right ~~of said company~~ to do business in this State. ~~Any~~ For purposes of this section, an insurance company incorporated by another country is ~~regarded for the purpose of this section as though~~ deemed to be incorporated by the state where it has elected to make its deposit and establish its principal agency in the United States. For nonadmitted insurance premiums subject to section 2531, the rate applied pursuant to this section must be the highest rate that the state or province applies to nonadmitted insurance premiums taxed in that state or province.

Sec. 19. 36 MRSA §2531, as enacted by PL 2011, c. 331, §14 and affected by §§16 and 17; enacted by c. 380, Pt. Q, §5 and affected by §7; and enacted by c. 453, §4, is repealed and the following enacted in its place:

§2531. Taxation of nonadmitted insurance coverage

1. Generally. All gross direct insurance premiums and annuity considerations paid to insurers that do not have certificates of authority to do business in this State issued by the Superintendent of Insurance pursuant to Title 24-A are subject to taxation in accordance with this section if this State is the insured's home state, as defined in the federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section 527. This section does not apply to reinsurance premiums paid by an authorized domestic insurer.

2. Rate and incidence of tax. Except as otherwise provided in section 2519 or 2532, the rate of taxation is 3% of the premiums subject to tax under this section. For all coverage placed in accordance with Title 24-A, chapter 19, the tax must be paid by the surplus lines producer. For all other nonadmitted insurance, the tax must be paid by the insured.

3. Returns. Except as otherwise provided in accordance with a multistate agreement entered into pursuant to section 2532, every producer holding surplus lines authority in this State shall file a return and pay the tax due in accordance with section 2521-A and every insured subject to tax in accordance with this section shall file a return and pay the tax due subject to the same requirements as provided in section 2521-A. An insurance agency may elect to collect and pay the tax on surplus lines premiums on behalf of all of its employees who are surplus lines producers and file a single return.

Sec. 20. 36 MRSA §2533 is enacted to read:

§2533. New markets capital investment credit

A person that is subject to tax under this chapter, or would be subject to tax under this chapter if it did business or collected premiums or assessments in this State, that holds a qualified equity investment certified by the Finance Authority of Maine pursuant to Title 10, section 1100-Z, subsection 3, paragraph G is allowed a credit equal to the amount determined in accordance with section 5219-HH against the tax otherwise due under this chapter. Section 5219-HH governs the allowance of the credit and limitations on the amount, refundability, carry-over and recapture of the credit.

Sec. 21. 36 MRSA §2534 is enacted to read:

§2534. Credit for rehabilitation of historic properties

A taxpayer is allowed a credit against the tax otherwise due under this chapter as determined under section 5219-BB.

Sec. 22. 36 MRSA §4603, sub-§1, as amended by PL 1995, c. 502, Pt. C, §14, is further amended to read:

1. Establishment. The Maine Potato Board is a body corporate and politic and an incorporated public instrumentality of the State and the exercise of powers conferred by this Part is determined to be the performance of essential government functions. For the purposes of the budget, accounts and control, purchasing or other provisions of Title 5, Part 4, the board may not be construed to be a state agency. The board consists of 11 members who~~, following the transition period provided for in subsection 11,~~ must be elected in accordance with the procedures set forth in this chapter and such additional procedures as the board may prescribe by rulemaking. Subject to such staggered terms as the board may provide by rule, board members shall serve 2-year terms, ~~provided~~ except that a board member may continue to serve until a successor is duly elected and qualified and that board members may not serve more than 3 consecutive terms.

Sec. 23. 36 MRSA §4603, sub-§11, as enacted by PL 1985, c. 753, §§14 and 15, is repealed.

Sec. 24. 36 MRSA §5122, sub-§2, ¶II, as corrected by RR 2011, c. 1, §56, is amended to read:

II. For taxable years beginning on or after January 1, 2012, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2011 or 2012 for which an addition was required under subsection 1, paragraph FF, subparagraph (2) for the taxable year beginning in 2011 or 2012.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal adjusted gross income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph FF, subparagraph (2) related to property placed in service outside the State and the subtraction modifications allowed pursuant to this paragraph.

The total amount of <u>the</u> subtraction <u>modification</u> claimed ~~for property placed in service outside the State~~ under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph FF, subparagraph (2) for the same property; and

Sec. 25. 36 MRSA §5142, sub-§8-B, ¶C, as enacted by PL 2011, c. 380, Pt. CCCC, §2 and affected by §4, is amended to read:

C. Performance of the following personal services for 24 days during a ~~calendar~~ <u>taxable</u> year may not be counted toward the 12-day threshold under paragraph A:

(1) Personal services performed in connection with presenting or receiving employment-related training or education;

(2) Personal services performed in connection with a site inspection, review, analysis of management or any other supervision of a facility, affiliate or subsidiary based in the State by a representative from a company, not headquartered in the State, that owns that facility or is the parent company of the affiliate or subsidiary;

(3) Personal services performed in connection with research and development at a facility based in the State or in connection with the installation of new or upgraded equipment or systems at that facility; or

(4) Personal services performed as part of a project team working on the attraction or implementation of new investment in a facility based in the State.

Sec. 26. 36 MRSA §5164, sub-§1, as amended by PL 2007, c. 539, Pt. CCC, §12, is further amended to read:

1. Fiduciary adjustment defined. The fiduciary adjustment is the net amount of the modifications described in section 5122, including subsection 3 if the estate or trust is a beneficiary of another estate or trust, ~~which~~ that relates to items of income or deduction of an estate or trust. Income taxes imposed by this State or any other taxing jurisdiction~~, mortgage insurance premiums paid or accrued on or after January 1, 2008 and claimed as a deduction pursuant to the Code, Section 163(h)(3)(E)~~ and interest or expenses incurred in the production of income exempt from tax under this Part that were deducted in arriving at federal taxable income must be added back to the fiduciary adjustment. Interest or expenses incurred in the production of income taxable under this Part but exempt from federal income tax must be subtracted from the fiduciary adjustment.

Sec. 27. 36 MRSA §5191, sub-§3, as amended by PL 1979, c. 541, Pt. A, §233, is further amended to read:

3. Tax avoidance or evasion. ~~Where~~ If a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by a special provision in the partnership agreement ~~with respect to such item~~, ~~and~~ the principal purpose of ~~such provision~~ which is the avoidance or evasion of tax under this Part, the partner's distributive share of ~~such~~ that item and any modification required with respect ~~thereto shall~~ to that item must be determined in accordance with ~~his~~ the partner's distributive share of the taxable income or loss of the partnership generally ~~(that is~~, exclusive of ~~those~~ items ~~requiring separate computation~~ that must be separately computed under the ~~Internal Revenue~~ Code, Section 702~~, or its equivalent.)~~.

Sec. 28. 36 MRSA §5200-A, sub-§2, ¶V, as corrected by RR 2011, c. 1, §57, is amended to read:

V. For taxable years beginning on or after January 1, 2012, an amount equal to the net increase in the depreciation deduction allowable under the Code, Sections 167 and 168 that would have been applicable to that property had the depreciation deduction under the Code, Section 168(k) not been claimed with respect to such property placed in service during the taxable year beginning in 2011 or 2012 for which an addition was required under subsection 1, paragraph Y, subparagraph (2) for the taxable year beginning in 2011 or 2012.

Upon the taxable disposition of property to which this paragraph applies, the amount of any gain or loss includable in federal ~~adjusted gross~~ taxable income must be adjusted for Maine income tax purposes by an amount equal to the difference between the addition modification for such property under subsection 1, paragraph Y, subparagraph (2) related to property placed in service outside the State and the subtraction modifications allowed pursuant to this paragraph.

The total amount of the subtraction modification claimed ~~for property placed in service outside the State~~ under this paragraph for all tax years may not exceed the addition modification under subsection 1, paragraph Y, subparagraph (2) for the same property; and

Sec. 29. 36 MRSA §5204, as amended by PL 2011, c. 380, Pt. N, §15 and affected by §19, is further amended to read:

§5204. Lump-sum retirement plan distributions

In addition to any other tax imposed by this Part, a tax is hereby imposed for each taxable year on every taxpayer who~~, in accordance with the Code, Section 402(e)(1),~~ elects to compute a separate federal tax on a lump-sum distribution from a retirement plan at the rate of 15% of the separate federal tax imposed on the distribution, except that, for tax years beginning in 2012, the rate is 7.5%. The tax under this section does not apply to tax years beginning on or after January 1, 2013.

Sec. 30. 36 MRSA §5216-D, sub-§§3 and 4, as enacted by PL 2011, c. 380, Pt. HHHH, §3, are amended to read:

3. Limitation. The amount of the credit allowed under this section for any one taxable year may not exceed 50% of the tax imposed by this Part on the investor for the taxable year before application of the credit. The credit allowed under this section may not reduce the tax otherwise due under this Part to less than zero.

4. Carry-forward. A credit under this section not taken because of the ~~limitation~~ limitations in subsection 3 must be taken in the next taxable year in which the credit may be taken, and the ~~limitation~~ limitations of subsection 3 also ~~applies~~ apply to the carry-forward years. In no case may this carry-forward period exceed 15 years.

Sec. 31. 36 MRSA §5219-BB, sub-§4, as amended by PL 2011, c. 453, §9, is further amended to read:

4. Maximum credit. The credit allowed pursuant to this section and section ~~2531~~ 2534 may not exceed $5,000,000 for each certified rehabilitation project under ~~Section 47 of~~ the Code, Section 47, placed into service in the State during the taxable year for which a credit is claimed under this section.

Sec. 32. 36 MRSA §5219-GG, as enacted by PL 2011, c. 380, Pt. O, §17 and affected by §18 and enacted by Pt. Q, §6 and affected by §7, is repealed and the following enacted in its place:

§5219-GG. Maine capital investment credit

1. Credit allowed. A taxpayer that claims a depreciation deduction under the Code, Section 168(k) for property placed in service in the State during the taxable year beginning in 2011 or 2012 is allowed a credit against the taxes imposed by this Part in an amount equal to 10% of the amount claimed for the taxable year under the Code, Section 168(k) with respect to that property, except for excluded property under subsection 2.

2. Certain property excluded. The following property is not eligible for the credit under this section:

A. Property owned by a public utility as defined by Title 35-A, section 102;

B. Property owned by a person that provides radio paging services as defined by Title 35-A, section 102;

C. Property owned by a person that provides mobile telecommunications services as defined by Title 35-A, section 102;

D. Property owned by a cable television company as defined by Title 30-A, section 2001;

E. Property owned by a person that provides satellite-based direct television broadcast services;

F. Property owned by a person that provides multichannel, multipoint television distribution services; and

G. Property that is not in service in the State for the entire 12-month period following the date it is placed in service in the State.

3. Limitations; carry-forward. The credit allowed under subsection 1 may not reduce the tax otherwise due under this Part to less than zero. Any unused portion of the credit may be carried forward to the following year or years for a period not to exceed 20 years.

4. Recapture. The credit allowed under this section must be fully recaptured to the extent claimed by the taxpayer if the property forming the basis of the credit is not used in the State for the entire 12-month period following the date it is placed in service in the State. The credit must be recaptured by filing an amended return in accordance with section 5227-A for the tax year in which that property was used to calculate the credit under this section. The amended return must reflect the credit disallowed and the income modifications required by section 5122, subsection 1, paragraph FF and section 5200-A, subsection 1, paragraph Y with respect to that property.

Sec. 33. 36 MRSA §5219-HH is enacted to read:

§5219-HH. New markets capital investment credit

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicable percentage" means 0% for each of the first 2 credit allowance dates, 7% for the 3rd credit allowance date and 8% for the next 4 credit allowance dates.

B. "Authority" means the Finance Authority of Maine.

C. "Commissioner" means the Commissioner of Administrative and Financial Services.

D. "Credit allowance date" means, with respect to any qualified equity investment, the date on which the investment is initially made and each of the 6 anniversary dates of the date thereafter.

E. "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least 7 years from the date of its issuance, with no acceleration of repayment, amortization or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not

make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the cumulative operating income, as defined in the regulations adopted pursuant to the Code, Section 45D, of the qualified community development entity for the same period prior to giving effect to interest expense on such debt instrument. This paragraph does not limit the holder's ability to accelerate payments on the debt instrument in situations when the qualified community development entity has defaulted on covenants designed to ensure compliance with this section; section 191, subsection 2, paragraph SS; section 2533; and Title 10, section 1100-Z or the Code, Section 45D.

F. "Purchase price" means the amount of the investment in the qualified community development entity for the qualified equity investment.

G. "Qualified active low-income community business" has the same meaning as in the Code, Section 45D.

H. "Qualified community development entity" has the same meaning as in the Code, Section 45D, except that the entity must have entered into or be controlled by or under common control of an entity that has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by the Code, Section 45D.

I. "Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(1) Has at least 85% of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in the State by the 2nd anniversary of the initial credit allowance date;

(2) Is acquired after December 31, 2011 at its original issuance solely in exchange for cash; and

(3) Is designated by the issuer as a qualified equity investment and is certified by the authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G. "Qualified equity investment" includes any qualified equity investment that does not meet the provisions of Title 10, section 1100-Z, subsection 3, paragraph G if the investment was a qualified equity investment in the hands of a prior holder. The qualified community development entity shall keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community investments in qualified active low-income community businesses in the State.

J. "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after September 28, 2011. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified

under Title 10, section 1100-Z, subsection 3, paragraph G is $10,000,000 whether made by one or several qualified community development entities.

2. Credit allowed. A person that holds a qualified equity investment certified by the authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G on a credit allowance date that falls within the taxable year is allowed a credit equal to the applicable percentage that applies to the credit allowance date multiplied by the purchase price paid for the qualified equity investment. Notwithstanding any other provision of law, other than the recapture provisions of subsection 7, the person, and any subsequent person, that is the holder of the credit certificate issued by the authority for a qualified equity investment is entitled, in the aggregate, to the entire 39% credit amount computed with respect to the 7 credit allowance dates. In no event may the credit amount in the aggregate exceed 39% for any single qualified equity investment certified by the authority.

3. Memorandum of agreement. Upon receipt of the authority's written notice of the certification of a qualified equity investment's tax credit eligibility, the commissioner shall enter into an agreement on behalf of the State with the person eligible to claim the credit pursuant to Title 10, section 1100-Z, subsection 3, paragraph G. That agreement must provide that the State shall, with the exception of recapture pursuant to subsection 7, allow the tax credit as provided for in subsection 2 and recognize that the person named as eligible for tax credit pursuant to Title 10, section 1100-Z, subsection 3, paragraph G is entitled to claim the tax credits and the respective tax credit amounts in the aggregate, to the entire 39% credit amount computed with respect to the 7 credit allowance dates.

4. Carry-over to succeeding year. Any unused portion of the credit may be carried over to the following taxable year or years, except that the carry-over period for unused credit amounts may not exceed 20 years.

5. Pass-through entity; allocation of the credit. Credits allowed pursuant to this section to a partnership, limited liability company, S corporation or other similar pass-through entity must be allocated to the partners, members, shareholders or other owners in accordance with section 5219-G or pursuant to an executed agreement among the partners, members or shareholders or other owners documenting an alternate allocation method.

6. Credit refundable. The credit allowed under this section is fully refundable.

7. Recapture of credits. The State Tax Assessor may recapture all of the credit allowed under this section if:

A. Any amount of federal tax credits available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under the Code, Section 45D. In such a case, the recapture must be proportionate to the federal recapture with respect to the qualified equity investment;

B. The qualified community development entity redeems or makes a principal repayment with respect to the qualified equity investment that generated the tax credit prior to the final credit allowance date of the qualified equity investment. In such a

case, the recapture must be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or

C. The qualified community development entity fails to invest at least 85% of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the State within 24 months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the State until the last credit allowance date for the qualified equity investment. For purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment is considered held by the qualified community development entity even if the investment has been sold or repaid as long as the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this State within 12 months of the receipt of the capital. A qualified community development entity may not be required to reinvest capital returned from qualified low-income community investments after the 6th anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment is considered to be held by the issuer through the qualified equity investment's final credit allowance date.

The qualified community development entity must be provided 90 days to cure any deficiency indicated in the authority's original recapture notice and avoid such recapture. If the entity fails or is unable to cure the deficiency within the 90-day period, the assessor shall provide the qualified community development entity and the person from whom the credit is to be recaptured with a final order of recapture. Any amount of tax credits for which a final recapture order has been issued must be recaptured from the person that actually claimed the tax credit.

Sec. 34. 38 MRSA §2138, sub-§3, as enacted by PL 1989, c. 585, Pt. A, §7, is repealed.

Sec. 35. Application. Those sections of this Act that enact the Maine Revised Statutes, Title 36, section 2533 and section 5219-HH apply to tax years beginning on or after January 1, 2012. That section of this Act that amends Title 36, section 5164, subsection 1 applies to tax years beginning on or after January 1, 2012.

Sec. 36. Retroactivity. Those sections of this Act that amend the Maine Revised Statutes, Title 10, section 1020-C apply retroactively to June 3, 2011. That section of this Act that repeals and replaces Title 36, section 2531 applies retroactively to taxes on all premiums received on or after July 1, 2011. That section of this Act that enacts Title 36, section 2534 applies retroactively to September 28, 2011. That section of this Act that amends Title 36, section 5216-D, subsections 3 and 4 applies retroactively to June 20, 2011. Those sections of this Act that amend Title 36, section 5122, subsection 2, paragraph II; section 5142, subsection 8-B, paragraph C; and section 5200-A, subsection 2, paragraph V apply retroactively to tax years beginning on or after January 1, 2011.

That section of this Act that repeals and replaces Title 36, section 5219-GG applies retroactively to tax years beginning on or after January 1, 2011.

In House of Representatives, ... 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, ... 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor