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STATE OF MAINE
SENATE
127TH LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT " " to COMMITTEE AMENDMENT "B" to S.P. 112, L.D. 297, Bill, "An Act To Increase Allowed Investments under the Maine New Markets Capital Investment Program"

Amend the amendment by inserting after section 3 the following:

'Sec. 4. 36 MRSA §5219-HH, sub-§1, ¶B-1 is enacted to read:

B-1. "Capital at risk" means the estimated amount of a qualified low-income community investment in a qualified active low-income community business, excluding any fees charged to an investor, lender or borrower, that does not include any related transactions or ownership interests that reduce, mitigate or offset the comprehensive risk to a person eligible to claim a tax credit under this section for a qualified equity investment under Title 10, section 1100-Z.'

Amend the amendment by inserting after section 4 the following:

'Sec. 5. 36 MRSA §5219-HH, sub-§1, ¶K is enacted to read:

K. "Sham transaction" means any business transactions by an entity that invested under this section, or by a person eligible to claim a tax credit under this section for a qualified equity investment under Title 10, section 1100-Z, if the business transactions giving rise to the investment and the corresponding tax credits authorized under this section are determined by the State Tax Assessor to have achieved a result that is inconsistent with the purpose of the Maine New Markets Capital Investment Program under Title 10, section 1100-Z and its implementing rules or of the credit authorized under this section and rules adopted under this section.

Sec. 6. 36 MRSA §5219-HH, sub-§8 is enacted to read:

8. Recapture of credits associated with sham transaction. Notwithstanding the federal recapture provisions under the Code, Section 45D or any other provisions of this section, the State Tax Assessor shall recapture any tax credits issued under this section that the State Tax Assessor determines to be connected with a sham transaction, including but not limited to any fees charged by a qualified community development entity to an investor, lender or borrower under the Maine New Markets Capital Investment Program under Title 10, section 1100-Z using the tax credit under this section. The State Tax

1 Assessor shall consider the following factors when making the determination of a sham
2 transaction under this section:

3 A. Whether the qualified low-income community investment had sufficient capital at
4 risk as demonstrated by either a qualified equity investment or a loan with a 7-year
5 maturity date that is equal to or greater than the amount of the claimed investment;

6 B. Whether the capital at risk in the qualified low-income community investment
7 was used to purchase ownership interests from existing investors instead of directly
8 from the qualified active low-income community business through the issuance of
9 new stock; and

10 C. Whether the capital at risk in the qualified low-income community investment
11 was used to refinance existing loans of the qualified active low-income community
12 business instead of providing new capital to the business to support its operations.'

13 Amend the amendment by inserting after section 5 the following:

14 '**Sec. 6. Appropriations and allocations.** The following appropriations and
15 allocations are made.

16 **FINANCE AUTHORITY OF MAINE**

17 **Finance Authority of Maine 0582**

18 Initiative: Provides funds for the additional costs associated with the State Tax Assessor
19 review of sham transactions.

20	GENERAL FUND	2015-16	2016-17
21	All Other	\$10,000	\$10,000
22			
23	GENERAL FUND TOTAL	\$10,000	\$10,000
24			

25 Amend the amendment by relettering or renumbering any nonconsecutive Part letter
26 or section number to read consecutively.

27 **SUMMARY**

28 1. This amendment adds new definitions of "sham transaction" and "capital at risk."

29 2. It requires the State Tax Assessor to recapture new markets capital investment
30 credits issued that are determined to be connected with a sham transaction, including fees
31 charged by an entity to an investor, lender or borrower under the Maine New Markets
32 Capital Investment Program under the Maine Revised Statutes, Title 10, section 1100-Z
33 using the tax credit.

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