

SUMMARY: This chapter outlines the procedures and standards governing the Commissioner's review of applications under the Employment Tax Increment Financing Program, the calculation of the employment tax increment, annual reporting requirements and program administration.

SECTION 1. PURPOSE AND DEFINITIONS.

A. PURPOSE

The Employment Tax Increment Financing program is designed to encourage the creation of net new quality jobs in this State, improve and broaden the tax base and improve the general economy of the State. Consistent with the Maine Employment Tax Increment Financing Act, 36 M.R.S.A. §§6751-6761, this chapter sets forth the provisions by which a business may utilize this program, and describes application requirements, state review procedures, state designation procedures, the calculation of employment tax increment, annual reporting requirements, and program administration.

B. DEFINITIONS

Definitions of many of the terms used in this rule are contained in 36 M.R.S.A. §6753. This section also defines certain terms that are used in this rule but that are not defined by Title 36, Chapter 917.

As used in this rule, unless the context otherwise indicates, the following terms have the following meanings:

Act. "Act" means the Maine Employment Tax Increment Financing Act, 36 M.R.S.A. §§6751-6761.

Commissioner. "Commissioner" means the Commissioner of the Department of Economic and Community Development.

Dependent care benefits. When used within the context of "income derived from employment" as defined herein, "dependent care benefits" means dependent care expenses paid by the qualified business on behalf of a participating qualified employee for dependent care assistance offered as part of an employee benefit package.

Earnings. When used within the context of "income derived from employment" as defined herein, "earnings" means base pay paid by the qualified business, plus any overtime, incentives or commissions paid.

Education benefits. When used within the context of "income derived from employment" as defined herein, "education benefits" means education expenses paid by the qualified business on behalf of a participating qualified employee for education assistance offered as part of an employee benefit package.

Financial plan. "Financial plan" means a statement of the costs and sources of revenue required to accomplish the development program. A financial plan shall include a description of facilities to be constructed or modified, equipment to be purchased, employee training requirements, and other significant expenses associated with the project.

Health and welfare benefits. When used within the context of “income derived from employment” as defined herein, “health and welfare benefits” means company-paid contributions to group insurance programs such as health insurance, medical insurance, dental insurance, vision insurance, life insurance, and long-term disability coverage.

Income derived from employment. “Income derived from employment” means the total value of company-paid benefits and compensation provided by a qualified business to a qualified employee, including earnings, education benefits, retirement benefits, health and welfare benefits, and dependent care benefits. For qualified economic development projects where a business creates 250 or more jobs within a two-year period in a Pine Tree Development Zone, “income derived from employment” may include other company-paid benefits and company-offered benefits.

Qualified economic development project. “Qualified economic development project” means a definable business investment project that includes capital or other investments, and the creation of net new jobs associated with those investments that are necessary to improve or retain the applicant’s market position.

Qualified employees. “Qualified employees” means new, full-time employees hired in this State by a qualified business and for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1001-1461, as amended, 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 and whose state income withholding taxes are subject to reimbursement to the qualified business under the Act. “Qualified employees” does not include employees shifted from elsewhere in the State to a qualified business from an affiliated business. For employees in call centers in Aroostook and Washington counties, “qualified Pine Tree Development Zone employees” means new, full-time employees hired in this State by a qualified Pine Tree Development Zone business for work directly in one or more qualified business activities for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461, as amended, and group health insurance are provided and whose income derived from employment within the Pine Tree Development Zone, 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. 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 employees in call centers in Aroostook and Washington counties, 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. "Qualified Pine Tree Development Zone employees" does not include employees shifted to a qualified business activity from a nonqualified activity of the qualified Pine Tree Development Zone business or an affiliated business. The commissioner shall determine whether a shifting of employees has occurred.

Retirement benefits. When used within the context of "income derived from employment" as defined herein, "retirement benefits" means company-paid contributions to a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001 to 1461, as amended.

SECTION 2. APPLICATION REQUIREMENTS

A. GENERAL

Qualified businesses wishing to use employment tax increment financing to seek reimbursement of state income taxes withheld must submit an application to the Department conforming in all material respects to the requirements of Section 2(B) below and providing any additional information the Department may request. The application must be received within the calendar year for which approval is sought.

B. EMPLOYMENT TAX INCREMENT FINANCING APPLICATION

An application for employment tax increment financing reimbursement must contain the following:

1. Employment Tax Increment Financing Development Program, including:
 - a. Project Plan:
 - (1) A description of the business, its products and/or services and history of operation;
 - (2) A description of the market(s) and/or competitive environment in which the business operates or expects to operate; and
 - (3) A description of the applicant's employment growth and investment plans for the three (3) years following the date of application.
 - b. Base Level Data:

- (1) Number of employees employed by the applicant as of March 31, June 30, September 30, and December 31 for each of the three years preceding the year of application;
 - (2) Total payroll of the applicant for each of the three calendar years preceding the year of application; and
 - (3) Total state income taxes withheld for employees of the applicant for each of the three years preceding the year of application.
 - c. A statement describing the basis under which it has been determined that the project will not go forward absent Employment Tax Increment Financing.
2. Financial Plan, including:
 - a. A statement of the sources and uses of funds required to accomplish the development program;
 - b. A description of:
 - (1) Facilities to be constructed or modified;
 - (2) Equipment to be purchased;
 - (3) Employee training requirements; and
 - (4) Other expenses associated with the Development Program, and which will be funded through Employment Tax Increment Financing.
3. Qualified employee data, consisting of:
 - a. Number, by job classifications, of qualified employees that the applicant has added or expects to add in the State within a two-year period beginning on the January 1 of the year of application;
 - b. Average annual wage, by job classification, of qualified employees that the applicant has added, or expects to add in the State within a two-year period beginning on the January 1 of the year of application;
 - c. Hiring schedule of qualified employees that the applicant has added or expects to add in the State within a two-year period beginning on the January 1 of the year of application;
 - d. Estimated total annual payroll for all qualified employees for each of the 10 years during which reimbursement may be sought for the development program; and

- e. Estimated total annual State income tax withholdings for all qualified employees for each of the 10 years during which reimbursement may be sought for the development program.
4. Certifications, attested by an officer of the qualified business, consisting of:
 - a. Certification that all qualified employees are offered participation in a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1001-1461; and
 - b. Certification that all qualified employees are offered participation in a group health insurance plan.
5. Employment location data, consisting of:
 - a. All applicant's employment locations within the State; and
 - b. Number of employees at each location within the State.
6. Affiliations and acquired business data, including:
 - a. A listing of all affiliated businesses and affiliated groups within the State;
 - b. For each affiliated businesses and affiliated group located within the State, current data concerning:
 - (1) Number of employees,
 - (2) Payroll, and
 - (3) Total State income taxes withheld; and
7. Any additional information which the Commissioner may reasonably require.

SECTION 3. DEPARTMENT REVIEW

Applications for employment withholding tax reimbursement will be reviewed by the Commissioner, subject to the following provisions:

- A. Completed applications will be reviewed in the order in which they are received;
- B. Completed applications must contain current information as of the submission date;
- C. Prior to issuing a Certificate of Approval, the Commissioner must determine that:
 1. The application is complete;
 2. The program will make a contribution to the economic well-being of the State;

3. The economic development described in the program will not result in a substantial detriment to existing businesses in the State; and
4. The qualified economic development project will not go forward without Employment Tax Increment Financing.
5. The application otherwise conforms to this rule and the Act.

In order to make this determination the Commissioner shall consider, pursuant to 5 M.R.S.A., chapter 375, subchapter II, those factors determined to be necessary to measure and evaluate the effect of the proposed employment tax increment program, including whether any adverse economic effect of the proposed program on existing businesses is outweighed by the program's contribution to the economic well-being of the State. The Department will complete its review of completed applications in a timely manner and issue a Letter of Approval to the applicant detailing the percentage reimbursement and term of the program. Unsuccessful applicants will receive written explanation of the reason for denial and may appeal the decision within 10 days of receiving the rejection letter.

SECTION 4. CALCULATIONS

A. CALCULATION OF EMPLOYMENT TAX INCREMENT

The Commissioner shall:

1. Ensure that the qualified business has hired 5 qualified employees within the first two calendar years of approving a qualified economic development project and shall calculate a tentative employment tax increment once this threshold is met in year one or year two. If a previously qualified business fails to hire the 5 qualified employees within the first two calendar years of becoming certified or has any two consecutive calendar years where the hiring of 5 or more qualified employees is not achieved, the Commissioner shall terminate approval of the qualified economic development project. Any qualified business so terminated may re-apply for employment tax increment financing.
2. Calculate the tentative employment tax increment by first reviewing the employment, payroll and withholding data for all affiliated businesses at the time of application and in the annual reports provided by qualified businesses to determine whether any shifting of employees has occurred, and then removing from the gross employment tax increment any withholdings attributed to employees shifted from affiliated businesses to the qualified business.
3. On or before June 15th of each year, forward the tentative employment tax increment for all qualified businesses to the State Tax Assessor.

B. DETERMINATION OF REIMBURSEMENT PERCENTAGE FOR 2 FIVE YEAR PERIODS

Upon the successful review and as part of the approval of an application for Employment Tax Increment Financing, the Commissioner will establish the percentage of reimbursement to the qualified business that will be in effect for each of the first 5 calendar years beginning with the calendar year of application, using the most recently available Maine Department of Labor data at the time of application, and the Commissioner will establish the percentage of reimbursement to the qualified business for the 6th to 10th years using the most recently available Maine Department of Labor data at the beginning of the sixth year, as follows:

1. For qualified employment where the labor market unemployment rate is less than or equal to the State unemployment rate, the percentage of reimbursement will be 30% of the Employment Tax Increment for withholding taxes.
2. For qualified employment where the labor market unemployment rate is greater than the State unemployment rate, the percentage or reimbursement will be 50% of the Employment Tax Increment for withholding taxes.
3. For qualified employment where the labor market unemployment rate is greater than 150% of the State unemployment rate, the percentage or reimbursement will be 75% of the Employment Tax Increment for withholding taxes.

C. ESTABLISHMENT OF PINE TREE DEVELOPMENT ZONE REIMBURSEMENT PERCENTAGE FOR UP TO TEN-YEAR PERIOD

Within Pine Tree Development Zones, upon the successful review and as part of the approval of an application for Employment Tax Increment Financing, the Commissioner will authorize the percentage of reimbursement to the qualified Pine Tree Development Zone business that will be in effect for a period of no more than 10 years, as follows:

1. For qualified employment, the percentage of reimbursement will be 80% of the Employment Tax Increment for withholding taxes. In no event may reimbursement under this subsection be provided for any calendar years beginning after December 31, 2021.

D. MULTIPLE LABOR MARKET AREAS

A qualified business may employ qualified employees in multiple labor market areas in the State. In those instances, the application process in Section 2(B) of this rule must be followed. A separate reimbursement rate will be established for each labor market area and the qualified business must prepare reimbursement requests for each area. A combined reimbursement request that summarizes job creation for all labor market areas may be filed per Section 5 of this rule.

SECTION 5. PROCEDURE FOR REIMBURSEMENT

A. REPORTING BY QUALIFIED BUSINESS.

On or before April 15th of each year, each qualified business approved by the Commissioner pursuant to this rule must report to the Department of Economic and Community Development, the following:

1. The number of employees employed during the preceding calendar year;
2. The total employee State income tax withholdings for the preceding calendar year;
3. The total wages paid to, and income derived from employment for, each qualified employee during the preceding year; and
4. Certification that the qualified employee data submitted pursuant to Section 2(B)(3) is accurate for the preceding calendar year, or any fraction thereof for which reimbursement is sought under this chapter;
5. If at any time during the calendar year for which reimbursement is sought the qualified business has failed to maintain the minimum qualification criteria described in §6753 of the Act, the business must provide the following:
 - a. Beginning and ending dates of the period or periods during which the business failed to meet the qualification criteria; and
 - b. The amount of state income taxes withheld during the period or periods listed; and
6. Any further information the Department of Economic and Community Development may reasonably require.

B. DETERMINATION BY THE STATE TAX ASSESSOR

On or before June 30th of each year, the State Tax Assessor shall review the tentative employment tax increment received from the Commissioner and determine the employment tax increment of each qualified business for the preceding calendar year. A qualified business may receive up to 80% of the employment tax increment for withholding taxes generated by that business as determined by the State Tax Assessor, subject to the following limitations imposed in 36 M.R.S.A. §6754(2):

1. A previously qualified business may not receive reimbursement for any period of time in which it failed to maintain the minimum requirements for initial approval as a qualified business;
2. Reimbursement expires ten calendar years after the approval date of the employment tax increment financing development program, with the first calendar year being the one in which the development program approval occurred;
3. A business electing to take the jobs and investment tax credit under 36 M.R.S.A. §5215 may not claim employment tax increment financing reimbursement until the full amount of allowable jobs and investment tax credit benefits have been claimed, and the combined use of this

credit and the ETIF program may not exceed the ten-year term limitation;

4. Qualified employee payroll withholding amounts are limited to the standard amount required to be withheld pursuant to 36 M.R.S.A. §5250, et seq. and may not include any excess withholding; and
5. The aggregate annual retained employment tax increment revenues for all employment tax increment financing programs may not exceed \$20,000,000, adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average, from January 1, 1996 to the date of application.

C. PAYMENT FROM THE DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

On or before July 31st of each year, the Commissioner of the Department of Administrative and Financial Services shall pay to each qualified business the employment tax increment for withholding taxes for the preceding calendar year as approved by the State Tax Assessor.

STATUTORY AUTHORITY: 36 M.R.S.A. §6759

AMENDED: December __, 2019

EFFECTIVE DATE: January 1, 2020