

**Chapter 100: PINE TREE DEVELOPMENT ZONE PROGRAM**

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**Summary:** The Pine Tree Development Zone Program is established by the Legislature in PL 2003 Chapter 688, Part D, and amended by PL 2005 Chapters 351 and 451, PL 2009 Chapter 1024, and PL 2018, Chapter 440. The Department of Economic and Community Development administers the program. This rule establishes criteria to determine eligibility for the Pine Tree Development Zone program, the process used by businesses to apply for certification as a Pine Tree Development Zone business and requirements that must be met to claim benefits available to a certified business.

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**Basis Statement:**

The Maine Pine Tree Development Zone ("PTDZ") program, established under 30-A M.R.S. Chapter 206, Sub-chapter 4, is designed to encourage business investment in the state to:

- Provide new employment opportunities;
- Improve existing employment opportunities;
- Improve and broaden the tax base; and
- Improve the general economy of the state.

The PTDZ Program encourages investment and employment expansion by manufacturers, financial service businesses and targeted technology companies for up to ten years through the following benefits:

- Income/Franchise Tax Credit
- Insurance Premiums Tax Credit
- Expanded Employment Tax Increment Financing (ETIF) Income Tax Withholding Reimbursement
- Sales and Use Tax Exemption and Reimbursement
- Discount Electricity Rates

Most PTDZ benefits are determined by the level of net new business activity of a qualified PTDZ business. They are intended to reward investments in property and payroll that would not have occurred but for the program. Relocating business operations from one part of the state to another will not generally qualify for PTDZ benefits.

Rules governing the PTDZ program, adopted pursuant to the Department's rulemaking authority under 30-A M.R.S. §5250-J and §5250-M, establish the requirements and procedures for the certification of Qualified PTDZ Businesses.

## § 1 – Definitions

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

1. **Affiliated Group.** "Affiliated group" means a group of two or more legal entities or individuals in which more than 50% of the voting stock of each member corporation or more than 50% of the ownership interest in any non-corporate member is directly or indirectly owned by one or more common owner or owners, either corporate or non-corporate, or by one or more member legal entities or individuals. For purposes of this rule, ownership means actual ownership.
2. **Base Level of Employment.** Generally, "Base level of employment" means the greater of:
  - a. the total employment in the State of a business as of March 31st, June 30th, September 30th and December 31st of the calendar year immediately preceding the year of the business's application to become a certified Pine Tree Development Zone business divided by 4; or
  - b. the total employment in the State of a business as of March 31st, June 30th, September 30th and December 31st of the three calendar years immediately preceding the year in which the business applies for PTDZ certification divided by 12.

**Adjustment for Significant Business Expansion.** A qualified Pine Tree Development Zone business that has more than one location in the state and creates 250 or more net new jobs in one location may apply for an adjustment of the base level of employment if its total employment in the State is greater than 50% of the number of net new jobs created at the location of expansion and the business has appropriate infrastructure, zoning or other land use regulations as needed. If an adjustment is granted, the base level of employment will be determined on the basis of the location of the significant employment expansion only. The adjustment must be reviewed annually and is not available in any year in which the requirements are not met.

**Transfer of Ownership.** When there is a change of ownership of a certified business, the existing base level of employment will continue to apply to that business regardless of the number of employees located in this State of the acquiring owner, including any affiliated businesses. The base level of employment may be adjusted when there is a transfer of ownership if the Commissioner determines that:

- a. there was a significant risk immediately prior to acquisition by the new owner that the certified business would cease operations due to financial or other hardship beyond the control of that business; or

- b. the change in ownership is part of an effort to avoid “maintaining” the base employment level or any other PTDZ certification requirements.
3. **Base of Operations.** “Base of operations” means, for the purposes of a qualified PTDZ business, the place: (1) from which employees typically begin work, or to which employees regularly return to receive instructions, direction and supervision from the qualified business or communication from customers or other persons, to replenish stock or other materials, to repair equipment, or to perform any other function necessary to the exercise of the employee’s trade or profession, and (2) where tangible personal property is normally returned for repairs, supplies and storage when it is not in use.
  4. **Certified business.** “Certified business” means a qualified PTDZ business that has received a letter of certification from the Department in accordance with 30-A M.R.S. §5250-O, and §6 of this rule.
  5. **Commissioner.** “Commissioner” means the Commissioner of the Maine Department of Economic and Community Development, or the Commissioner’s designee.
  6. **Department.** “Department” means the Maine Department of Economic and Community Development.
  7. **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.
  8. **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.
  9. **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.
  10. **Financial Services.** “Financial services” means services provided by an insurance company subject to taxation under Title 36, chapter 357; a financial institution subject to taxation under Title 36, chapter 819; or a mutual fund service provider as defined in Title 36, section 5212, subsection 1, paragraph E.
  11. **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.

- 12. 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 development projects where a business creates 250 or more jobs within a two-year period in a PTDZ, "income derived from employment" may include other company-paid benefits and company-offered benefits.
- 13. Qualified Business Activity.** "Qualified business activity" means a business activity that is conducted within a PTDZ and is directly related to financial services, manufacturing or a targeted technology business for which the business receives a letter of certification from the Commissioner pursuant to 30-A M.R.S. §5250-O. Qualified business activity includes otherwise qualified business activity conducted inside and outside the zone through employees or property whose base of operations is in a PTDZ. Business activity directly related to manufacturing, for example, includes: the production areas, warehouses that receive raw material, administrative offices, quality control labs, maintenance shops, cafeterias for employees, warehouses that hold finished products prior to shipment, employee gyms and locker rooms, and research and development facilities. Business activity directly related to manufacturing does not include property and employees used in a retail facility, even if it were located in the same building where the manufacturing took place, or property used in the above facilities if the location of that property is not in a PTDZ.
- 14. Qualified Pine Tree Development Zone Business.** "Qualified Pine Tree Development Zone business" or "qualified business" means any for-profit business in this State engaged in or that will engage in financial services, manufacturing or a targeted technology business that has added or will add at least one qualified PTDZ employee above its base level of employment in this State and that meets the additional criteria set forth in 30-A M.R.S. §5250-I (17).
- 15. Qualified Pine Tree Development Zone Employees.** "Qualified Pine Tree Development Zone Employees" has the same meaning as defined in 30-A M.R.S. §5250-I. The term does not include employees shifted to a qualified business activity from a nonqualified activity of the qualified PTDZ business or an affiliated business.
- 16. 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.
- 17. Single Business Enterprise.** Single Business Enterprise means, collectively, those members of an affiliated group engaged in segments or portions of a business activity which the Commissioner has determined would be Qualified Business Activity if conducted by a single business. Activities of a member of an affiliated group that are unrelated to the qualified business activity are not qualified business activities of a single business enterprise.

- 18. Tangible personal property.** "Tangible personal property" has the same meaning as provided in Title 36, Part 3. Tangible personal property includes personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. Tangible personal property also includes electricity and any computer software that is not a custom computer software program.
- 19. Targeted Technology Business.** "Targeted technology business" means a business primarily involved in a targeted technology as defined in Title 5, section 15301, i.e. biotechnology, aquaculture and marine technology, composite materials technology, environmental technology, advanced technologies for forestry and agriculture, information technology and precision manufacturing technology.
- 20. Tier 1 Location.** "Tier 1 Location" means a location so classified by the Department consistent with the requirements set forth in Title 30-A, section 5250-J, subsection 3-A. Tier 1 Locations include:

  - A. Any unit of local government that is contained in a county other than Cumberland County or York County, as well as a unit of local government that is contained in Cumberland County or York County with a municipal unemployment rate that is 15% higher than its labor market unemployment rate, based upon data published by the Maine Department of Labor from the last completed calendar year.
  - B. A unit of local government designated by the Department as a participating municipality in the PTDZ program prior to January 1, 2009.
  - C. Property within a military redevelopment zone classified by the Department as a PTDZ prior to January 1, 2019.
  - D. The town of Sanford.
  - E. The town of Berwick.
- 21. Tier 2 Location.** "Tier 2 Location" means any unit of local government located in Cumberland County or York County that is not classified as a Tier 1 location. A business located in a Tier 2 Location will not be certified after December 31, 2013.

## § 2 – Certification of Qualified PTDZ Businesses

**Summary:** This section establishes the certification process and establishes requirements for applications for certification as a qualified PTDZ business pursuant to 30-A M.R.S. §5250(O).

## 1. Eligibility

In general, to be certified, a business must be engaged in a qualified business activity as defined above and must intend to hire at least one qualified employee above its base level of employment to work directly in one or more qualified business activities. A business establishing or expanding operations in a PTDZ must be certified by the Commissioner as a Qualified PTDZ business prior to applying for, or receiving PTDZ benefits through any agency or other source.

## 2. Application Requirements

A business seeking certification shall submit for the Commissioner's review one original, signed application that satisfies the requirements of this section. The application must be received by December 31<sup>st</sup> of the calendar year for which approval is sought. Certification under this section fulfills the application requirements for, and approval of, Employment Tax Increment Financing (ETIF) benefits for the business under 36 M.R.S. Chapter 917.

A business applying for certification as a qualified PTDZ business must submit a signed, notarized statement describing the basis under which it has determined that the proposed business establishment or expansion would not go forward absent the benefits provided by the PTDZ program. The statement must be included within the text of the But For letter submitted in advance of filing the application for certification, or it may be included with the application. In no case, will an application for PTDZ certification be reviewed absent the required notarized statement.

An application for certification as a qualified PTDZ business shall contain the following information for the applicant business, as well as certain base level information for any affiliated business within the state:

- A. Descriptive data for the proposed development project, including a summary of the qualified business activity, and:
  - (1) A description of the existing business in Maine, its products and/or services and history of operation;
  - (2) A description of the qualified business operations or activities that will be conducted within the PTDZ, a description of the non-qualified business activities, if any, that will be conducted within the PTDZ, and a description of the employees, positions, and property, if any, that will be transferred from an affiliate or a non-qualified business activity to a qualified business activity;
  - (3) A description of the market(s) and/or competitive environment in which the business operates or expects to operate; and
  - (4) A description of the business operations that will be established or expanded, including employment expansion and investment plans,

for the qualified business within a PTDZ within the two-year period beginning on the date of certification, including:

- a. Real property to be constructed or modified and its cost;
  - b. Tangible personal property to be purchased and its estimated cost;
  - c. Employee training required;
  - d. Qualified employees to be hired, and their annual payroll and ETIF reimbursement estimates; and
  - e. Any other employees to be hired, and their estimated annual payroll;
- B. Base level data for the applicant business:
- (1) Complete employment/payroll data, including the total number of employees at the end of each calendar quarter for the three calendar years immediately preceding the year of application;
  - (2) Total payroll of the business within the state for each of the three calendar years preceding its application;
  - (3) Total Maine state income taxes withheld for employees of the business for each of the three calendar years preceding its application;
  - (4) All company locations in Maine, including street and municipality;
- C. If not previously submitted, a signed, notarized statement describing the basis under which the applicant has determined that the proposed business establishment or expansion would not go forward absent the benefits provided by the PTDZ program; and
- D. Written attestation that qualified employees employed, or to be employed, at the location for which the business received its PTDZ certification will be:
- (1) Paid an income derived from employment that, when calculated on a calendar year basis, exceeds the annual per capita personal income in the county in which employed;
  - (2) Offered participation in a retirement program subject to the *Employee Retirement Income Security Act of 1974*, 29 U.S.C. §§ 1001 – 1461; and

- (3) Offered participation in a group health insurance plan;
- E. Base level data for any affiliated business or group, including:
  - (1) Name and location of affiliate business or group; and
  - (2) Total employment at year end, annual payroll and related income tax withholdings of affiliate business or group.
- F. Applications must be signed by an authorized official of the applicant business certifying that the applicant will not seek PTDZ tax benefits for any existing property, employees or positions transferred to the qualified PTDZ business activity described on the letter of certification from an affiliate business or from any nonqualified activity.
- G. Any other information as determined necessary by the Department.

### **3. Review by Commissioner**

Applications for certification of qualified PTDZ businesses will be reviewed and acted upon by the Commissioner, subject to the following provisions:

- A. Information contained within completed applications must be current as of the application date;
- B. Prior to issuing a letter of certification, the Commissioner must determine that:
  - (1) The application is complete;
  - (2) The business is a for-profit business engaged, or to be engaged, in financial services, manufacturing or targeted technology qualified business activities within a PTDZ, as each such business category is defined in 30-A M.R.S. §5250-I;
  - (3) The business has added, or will add one or more qualified employees above its base level of employment; and
  - (4) The business establishment or expansion would not go forward but for the benefits available within the PTDZ Program.
  - (5) The business activity will not result in a substantial detriment to existing businesses in the State.
- D. The Commissioner will make the final determination whether an affiliated group constitutes a single business enterprise.



- E. Upon review of the application, the Commissioner will either certify the business or deny the request as follows:
- (1) Issue a letter of certification to the applicant business that includes: the determination that the business is a qualified PTDZ business, the base level of employment, a description of the qualified business establishment or expansion activities to be undertaken by the business and eligible for support from the PTDZ benefits, the location of such activity, and notice that the term of participation in program benefits may not exceed ten years; and
  - (2) Issue a Certificate of Qualification to the certified PTDZ business upon verification that at least one qualified net new employee has been added above the base level of employment; or
  - (3) Notify the applicant that the business cannot be certified as a qualified PTDZ business, including a brief explanation for such determination. An applicant may request, within 10 days of the date of receipt of the notice, that the Commissioner reconsider the decision to deny certification.

### § 3 – Pine Tree Development Zone Tax Benefits; tier classifications; application of Anti-Shifting Provisions

**Summary:** This section explains the tax benefits available to certified businesses, and sets forth guidelines to ensure that PTDZ tax benefits are not provided for the transfer of property, employees or positions.

#### 1. Tax Benefits Generally

When a business is certified as a qualified PTDZ business, the tax benefits described in 30-A M.R.S. §5250-I (14) become effective and available to that business at the certified location as of the earliest date permitted by the applicable tax program statute. Generally, Maine income tax, franchise tax, and insurance premiums tax credits are available in the year in which the business commences qualified business activity, i.e. first implements its approved development program by placing property in service in an activity identified in the letter of certification or hiring employees; sales and use tax exemptions and reimbursements are available to certified businesses after the business hires at least one net new employee above its base level of employment and receives a certificate of qualification from the Commissioner; and employment tax increment financing is available in the calendar year that the business hires at least five net new employees as required under Title 36, Chapter 917.

PTDZ tax benefits are available to all businesses certified by the Commissioner, regardless of their form of ownership (subchapter "C" or "S" corporations, pass-through entity, or sole proprietorship).

PTDZ tax benefits are available only if the certified business hires at least one qualified employee above its base level of employment within the first two calendar years of certification. Upon written request, the Commissioner may grant an extension of up to 12 months to the two-year hiring period. An extension request must include information sufficient to establish to the satisfaction of the Commissioner that the hiring requirement was not met within the required period due to unforeseeable circumstances which were beyond the control of the business. If a certified business fails to hire one qualified employee above its base level within the required period, including any extension, the letter of certification will be terminated.

A certified business must maintain at least one qualified employee above its base level of employment beginning on the date that the first qualified employee was added. If a certified business fails to maintain one qualified employee above its base employment level for more than 30 consecutive days, the letter of certification and certificate of qualification will be terminated. Upon written request, the Commissioner may allow a reasonable amount of additional time for a certified business to return to its required level of employment. A request for additional time must identify why the required employment level was not maintained and must include information sufficient to establish to the satisfaction of the Commissioner that the required employment level cannot be met within the 30-day period due to unforeseeable circumstances which are beyond the control of the business.

A business that is terminated must return any PTDZ benefits received based on business activity occurring after the date it failed to maintain one qualified employee above its base level.

## 2. PTDZ Benefit Limitations

The following limitations will be applied to ensure that PTDZ tax benefits provided to a business are based only on net new jobs and investments in property:

- (1) **Income Tax/Insurance Premiums Tax Credits.** In the case of businesses that engage in both qualified and non-qualified business activities in this State, the tax credit is limited only to that portion attributable to the qualified business activity described in the letter of certification. The limitation is calculated by an apportionment fraction, the numerator of which is the property value plus the payroll for the taxable year which is attributed to the qualified business activity of the business and denominator of which is the statewide property value plus the payroll for the taxable year. See 36 MRSA sections 2529 and 5219-W.

The numerator of the apportionment fraction may not include property, employees and positions transferred from a non-qualifying activity or from an affiliated business. This ensures that the dollar values used to

gauge the level of qualified business activity are determined by net new investment in the zone. Therefore, transferred employees and positions may not be reflected in the numerator of the payroll portion of the apportionment fraction, and the value of transferred property may not be reflected in the property portion of the apportionment fraction. The value of property that has been transferred physically to the zone may not be included in the numerator of the apportionment fraction. The value of property that has been sold or otherwise disposed of as part of the development project must be subtracted from the value of the property investments in the zone to determine the net new property value.

- (2) **Sales Tax Exemptions and Reimbursements.** The sales tax exemption/ reimbursement is allowed only for sales of tangible personal property directly and primarily related to the qualified business activity described in the letter of certification. See 36 M.R.S. sections 1760(87) and 2016. Adjustments may be necessary with respect to certain purchases, such as bulk purchases, to determine the portion of the purchase that qualifies for the PTDZ sales tax exemption or related refund. Such adjustments must be made consistent with guidance issued by the Maine Bureau of Revenue Services.
- (3) **Employment Tax Increment Financing (ETIF).** In the case of businesses that engage in both qualified and non-qualified business activities in this State, the ETIF reimbursement is limited to those employees attributable to the qualified business activity described in the letter of certification. See 36 M.R.S. sections 6751-6761. For a discussion of ETIF qualification requirements and limitations, see Me. Dep't of Economic and Community Development 19-100 C.M.R. 400.

#### § 4 – Annual Reporting Requirements

**Summary:** This section establishes the reporting requirements for certified businesses conducting business activities within Pine Tree Development Zones.

For calendar years beginning on or after January 1, 2019, all certified PTDZ businesses must file an annual report with the Department by April 15<sup>th</sup> of the following year that provides the following information:

- The total number of Maine employees and total salary and wages for those employees for the report year;
- The total number of qualified PTDZ employees and total salary and wages for those employees for the report year;
- The number of qualified PTDZ employees hired within the report year;
- The amount of investments made during the report year at the qualified PTDZ business location or directly related to the qualified business activity; and
- In aggregate, the estimated or total value of PTDZ benefits received or claimed in the report year.

A certified business that fails to file the required annual report by the April 15<sup>th</sup> deadline, or submits an annual report and fails to meet program requirements, will be terminated from the program effective December 31<sup>st</sup> of the calendar year for which the reporting was required.

**1. Certified Business Information Required**

A certified PTDZ business shall submit information requested by the Department as part of the annual comprehensive economic development evaluation as defined by PL 2009 Chapter 337.

**§ 5 – Termination**

All PTDZ benefits are terminated on December 31, 2031.

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STATUTORY AUTHORITY: 30-A M.R.S.A. §5250-J and §5250-M

EFFECTIVE DATE:

February 4, 2004 - filing 2004-43

AMENDED:

November 19, 2005 – filing 2005-470

February 10, 2010 – filing 2010-26

June 17, 2019 - filing 2019-097

December \_\_, 2019