

Chapter 816: DIRIGO BUSINESS INCENTIVES TAX CREDIT

SUMMARY: This joint rule is coordinated with the Department of Economic and Community Development (“DECD”) and Maine Revenue Services (“MRS”) Joint Rule 300/815 (Dirigo Business Incentives Program) and explains in further detail the Maine Dirigo Business Incentives Tax Credit (“DTC”) established by 36 M.R.S. § 5219-AAA.

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.01 Definitions. The following terms have the following meanings:

- A. Affiliated business.** “Affiliated business,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(A), means a member of a group of 2 or more businesses in which more than 50% of the voting stock of each member corporation or more than 50% of the ownership interest in a business other than a corporation is directly or indirectly owned by a common owner, either corporate or noncorporate.
- B. Beneficiary’s pro rata share of tax credits.** “Beneficiary’s pro rata share of tax credits” means the beneficiary’s share of federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the beneficiary’s pro rata share of tax credits is equal to the proportion of that beneficiary’s share of the estate or trust income for that year, under local law or the terms of the instrument, which is required to be distributed currently, and any other amounts of income distributed in that year.
- C. Catastrophic event.** “Catastrophic event,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(B), means a fire, flood, hurricane, windstorm, earthquake or other similar event or a declared state disaster or emergency within the meaning of 10 M.R.S. § 9902(1) that is not within the control of a business to prevent.

D. Code. “Code” has the same meaning given that term by 36 M.R.S. § 111(1-A).

E. Eligible business property. “Eligible business property” means, as provided by 36 M.R.S. §§ 5219-AAA(1)(E) and (8), business property of the qualified business that is:

1. Tangible personal property or real property (other than land)
2. Purchased on or after the date of the letter of certification issued by the DECD;
3. Placed in service in Maine during the taxable year beginning after December 31, 2024;
4. Used exclusively in the qualified business activity described in the letter of certification; and
5. Subject to an allowance of depreciation of 5 years or more, or would be subject to an allowance of depreciation of 5 years or more if the property had not been expensed under Section 179 of the Code.

Eligible business property does not include:

1. Property purchased or transferred from an affiliated business;
2. Property located at a retail sales facility and used primarily in a retail sales activity;
3. A vehicle upon which an excise tax under 36 M.R.S., chapter 111 has been imposed;
4. A watercraft upon which an excise tax under 36 M.R.S., chapter 112 has been imposed;
5. Property used to calculate the credit for rehabilitation of historic properties under 36 M.R.S. § 5219-BB; or
6. Real property placed in service in Maine prior to the taxable year for which the DTC under 36 M.R.S. § 5219-AAA is sought.

F. Eligible capital investment. “Eligible capital investment,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(F), means the total of business expenditures that exceed \$50,000 incurred by the taxpayer after receiving a letter of certification to purchase eligible business property that was placed into service during the tax year. For example, the eligible capital investment may occur in a year that is different than the year during which the eligible business property is placed in service; however, the credit may only be claimed in the year during which the eligible business property is placed in service.

Lease payments for the use of property do not qualify as an expenditure for the purchase of eligible capital investment.

G. Eligible sector. “Eligible sector,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(G), means one of the following industries only:

1. Agriculture, forestry and fishing;
2. Manufacturing;

3. Long-distance freight transportation;
4. Software publishing, data processing and computer design services; or
5. Engineering, architecture and scientific research and development services.

H. Exclusively. “Exclusively” means 100% use.

I. “Four quarters.” “Four quarters” means the 364 consecutive-day period (365 consecutive-day period in the case of a leap year) that ends on the date immediately preceding the date the layoff occurs. Each quarter during the four-quarter period consists of 91 days (92 days for any quarter during a leap year that includes February).

J. Layoff. “Layoff,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(I), means a reduction in workforce at a qualified business with 20 or more persons employed during any one of the preceding four quarters that results in an employment loss for at least two consecutive months within the same taxable year of at least 20% of the qualified business’s employees in this State. “Layoff” does not mean a reduction in workforce due to a catastrophic event.

The percentage of employment loss must be determined based on the number of employees employed by the taxpayer on the date immediately preceding the date that the reduction in workforce commences. Vacant positions must be excluded when determining the number of employees employed. If a reduction in workforce is phased-in over time, the percentage must be calculated each day that a reduction occurs to establish the date on which the 20% threshold has been reached.

K. Letter of certification. “Letter of certification” means the letter issued by the DECD in accordance with 36 M.R.S. § 5219-AAA(3) and Joint Rule 300/815 that certifies that the business is a qualified business and that describes the qualified business activity of the qualified business.

L. Placed in service. “Placed in service” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(J), means the date the property is placed in service for purposes of depreciation under Sections 167 or 168 of the Code or would be eligible for depreciation if the property had not been expensed under Section 179 of the Code.

M. Primarily. “Primarily,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(K), means more than 50% of the time and, with respect to a building or other structure, more than 50% of the usable space.

N. Pro rata share of the partner or shareholder. “Pro rata share of the partner or shareholder” means, in the case of a partner in a partnership, the partner’s percentage interest in the taxable income or loss of the partnership for federal income tax purposes for the taxable year or, in the case of a shareholder in an S corporation, the shareholder’s percentage share of stock of the S corporation as of the end of the taxable year.

O. Property used exclusively in the qualified business activity. “Property used

exclusively in the qualified business activity” means eligible business property that is used for no activity other than the qualified business activity described in the letter of certification, including property used in direct support of the qualified business activity described in the letter of certification. For example, property purchased and placed in service in Maine during the taxable year by the qualified business in administrative offices, warehouses, production facilities, quality control facilities, cafeterias, employee gyms and locker rooms, and other facilities used exclusively in support of the qualified business activity described in the letter of certification would be considered property used exclusively in the qualified business activity as long as the property also meets the criteria contained in the definition of eligible business property.

- P. Qualified business.** “Qualified business,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(M), means a for-profit business in Maine engaged in an eligible sector that has received a letter of certification as a qualified business.
- Q. Qualified business activity.** “Qualified business activity,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(N), means a business activity carried on primarily in an eligible sector.
- R. Qualified employee.** “Qualified employee,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(O), means an employee who is employed in Maine by a qualified business and works primarily in a qualified business activity in Maine.
- S. Qualified employee training program.** “Qualified employee training program,” which has the same definition as in 36 M.R.S. § 5219-AAA(1)(P), means a qualified business’s training activities for a qualified business activity described in a letter of certification issued by the DECD for a minimum of three qualified employees that provide a minimum of 20 total training hours for each qualified employee and are:
1. An apprenticeship program registered under the Maine Apprenticeship Program pursuant to 26 M.R.S., chapter 37;
 2. An on-the-job training contract pursuant to 26 M.R.S. § 2172;
 3. A training provided by or approved funding from the Maine Community College System; or
 4. Education or training provided by the University of Maine System or other accredited university or college in Maine;

“Qualified employee training program” includes only training hours during which the qualified business pays a participating qualified employee the employee’s regular hourly rate or training hours for which the qualified business pays more than \$2,000 per participant.

- T. Regular hourly rate.** “Regular hourly rate” means, for purposes of a qualified employee training program, the hourly rate of compensation applicable to the employee immediately prior to the employee commencing a qualified employee training program or, if employment commences on the same date as the training program, the hourly rate of compensation that is, or would otherwise be, applicable

on the first date of employment. “Regular hourly rate” does not include any additional or premium rate of compensation, such as an additional rate of compensation applicable to overtime.

- U. Removed from service.** “Removed from service” means, with respect to eligible capital investment property, property no longer used exclusively in the qualified business activity described in the letter of certification. Examples of property removed from service include, but are not limited to, the sale of the property, moving the property to a location outside Maine, repurposing the property for use in an activity other than a qualified business activity, and discontinuing use of the property. “Removed from service” does not include temporarily discontinuing use of the property for maintenance or repair or as a result of a catastrophic event.
- V. Taxable corporation.** “Taxable corporation,” which has the same definition as in 36 M.R.S. § 5102(10), means, for any taxable year, a corporation that has nexus with Maine pursuant to 36 M.R.S. § 5200-B, including any corporation with income subject to federal tax under the Code, Section 1374 or 1375, and that has, at any time during that taxable year, realized Maine net income.
- W. Two consecutive months.** “Two consecutive months” means, for purposes of determining a layoff, any consecutive 60-day period that occurs during the taxable year of the taxpayer.
- X. Unitary business.** “Unitary business,” which has the same definition in 36 M.R.S. § 5102(10-A), means a business activity which is characterized by unity of ownership, functional integration, centralization of management, and economies of scale.

.02 Taxpayers eligible for the DTC. A taxpayer eligible for the DTC is a taxpayer that:

- A.** Received a letter of certification; and
- B.** Made and/or had:
 1. the required eligible capital investment to purchase eligible business property that was placed in service in Maine during the taxable year;
 2. qualified employees that completed a qualified employee training program during the taxable year.

.03 Credit allowed. Subject to sections .04 and .05 below, the amount of DTC allowed is equal to the total of subsections A and B of this section.

- A. Eligible capital investment portion of the credit.** The eligible capital investment portion of the credit is equal to the total of the following:
 1. Ten percent of the eligible capital investment placed in service in Maine during the taxable year by the qualified business outside of Cumberland, Sagadahoc, and York counties; and
 2. Five percent of the eligible capital investment placed in service in Maine

during the taxable year by the qualified business in Cumberland, Sagadahoc, and York counties.

- B. Training portion of the credit.** The training portion of the credit is equal to \$2,000 for each new or existing qualified employee who completed a qualified employee training program during the tax year. The training must commence on or after the date the letter of certification is issued.
- C. Zero credit amount.** Notwithstanding subsections A and B of this section, the DTC for a taxable year is zero if all of the eligible capital investment property forming the basis of the credit for the taxable year under subsection A of this section is removed from service during the same taxable year in which the property was placed in service. This paragraph does not apply if the property was removed from service temporarily for maintenance or repair or as a result of a catastrophic event.

.04 Credit limitation, refundability, carryover

- A. Credit Limitation.** Except as provided by paragraphs 1 through 4 of this subsection, the total credit allowed under section .03 above that may be claimed by the taxpayer in any one taxable year, including the refundable amount determined in accordance with subsection B of this section and the amount of the credit carried over to the taxable year from a prior taxable year determined in accordance with subsection C of this section, is limited to \$2,000,000.
1. In the case of a taxpayer that is a partner in a partnership or a shareholder in an S corporation, the credit may not exceed \$2,000,000 multiplied by the pro rata share of the partner or shareholder.
 2. In the case of a taxpayer that is a beneficiary of an estate or trust that is a partner in a partnership or shareholder in an S corporation, the credit may not exceed \$2,000,000 multiplied by the pro rata share of the partner or shareholder, the result of which is multiplied by each beneficiary's pro rata share of tax credits.
 3. In the case of a taxpayer that is a partner in a partnership or a shareholder in an S corporation that is an affiliated business, the credit may not exceed \$2,000,000 multiplied by the pro rata share of the partner or shareholder, the result of which is multiplied by a ratio, the numerator of which is the eligible capital investment of the affiliated business during the taxable year plus \$2,000 for each qualified employee of the affiliated business engaged in a qualified employee training program completed during the taxable year and the denominator of which is the total eligible capital investment of all members of the affiliated business group during the taxable year plus \$2,000 for each qualified employee of all members of the affiliated business group engaged in a qualified employee training program completed during the taxable year.
 4. In the case of corporations that are members of an affiliated business group engaged in a unitary business, the credit may not exceed \$2,000,000 for the

entire group. The credit limit of \$2,000,000 must be apportioned among the taxable corporations in the affiliated business group in the same proportion that the tax liability of each taxable corporation in the affiliated business group bears to the total tax liability of all the taxable corporations in the affiliated business group.

B. Refundability. Except as provided by paragraphs 1 through 4 of this subsection, the credit for the taxable year determined in accordance with section .03 above is refundable up to \$500,000.

1. In the case of a taxpayer that is a partner in a partnership or a shareholder in an S corporation, the credit is refundable up to an amount equal to \$500,000 multiplied by the pro rata share of the partner or shareholder.
2. In the case of a taxpayer that is a beneficiary of an estate or trust that is a partner in a partnership or shareholder in an S corporation, the credit is refundable up to an amount equal to the amount determined in accordance with paragraph 1 for the estate or trust multiplied by each beneficiary's pro rata share of tax credits.
3. In the case of a taxpayer that is a partner in a partnership or a shareholder in an S corporation that is an affiliated business, the credit is refundable up to an amount equal to \$500,000 multiplied by the pro rata share of the partner or shareholder, the result of which is multiplied by a ratio, the numerator of which is the eligible capital investment of the affiliated business during the taxable year plus \$2,000 for each qualified employee of the affiliated business engaged in a qualified employee training program completed during the taxable year and the denominator of which is the total eligible capital investment of all members of the affiliated business group during the taxable year plus \$2,000 for each qualified employee of all members of the affiliated business group engaged in a qualified employee training program completed during the taxable year.
4. In the case of corporations that are members of an affiliated business group engaged in a unitary business, the credit under this section is refundable up to \$500,000 for the entire group. The credit limit of \$500,000 must be apportioned among the taxable corporations in the affiliated business group in the same proportion that the tax liability of each taxable corporation in the affiliated business group bears to the total tax liability of all the taxable corporations in the affiliated business group.

C. Carryover. Any credit allowed under section .03 above for the taxable year that is unused may be carried over, as reduced from year to year, to the next succeeding 4 taxable years, except as otherwise limited under section .05(B) below.

.05 Recapture and disallowance of the DTC

A. Recapture. The DTC claimed by the qualified business for a taxable year under section .03 above is subject to recapture as follows:

1. **Incidence of recapture.** The DTC for any taxable year is subject to recapture if any portion of the eligible capital investment property forming the basis of the credit is removed from service in Maine prior to the 5th anniversary of the date the property was placed in service in Maine by the qualified business. Recapture of the DTC applies to the taxable year during which the property is removed from service.
2. **Amount of recapture.** The amount of the recapture under paragraph 1 of this subsection is equal to the result of the following:
 - a. The total credit claimed by the taxpayer under section .03 above (as limited by section .04(A) above) for the taxable year during which the property was placed in service in Maine multiplied by a fraction, the numerator of which is the amount of the eligible capital investment of the property removed from service and the denominator of which is the total amount of eligible capital investment for the taxable year during which the property was placed in service in Maine, multiplied by subparagraph b.
 - b. A fraction, the numerator of which is the number of years remaining in the five-year period beginning with the date the property that was removed from service was placed in service in Maine, rounded up to the next whole number, and the denominator of which is 5.
3. **Reporting and paying the recapture amount.** The amount of recapture determined under paragraph 2 of this subsection must be reported as an additional tax amount on, and the recapture amount paid with, the taxpayer's Maine income tax return for the taxable year during which the property is removed from service.
4. **Recapture not applicable.** There is no recapture of the employee training portion of the credit allowed under section .03(B) above unless there is also a recapture of the eligible capital investment portion of the credit claimed for the same taxable year that the taxpayer claimed the employee training portion of the credit.

B. Disallowance

1. **Incidence of disallowance.** Unused credit carryover amounts determined under section .04(C) above are subject to disallowance if:
 - a. Any portion of the eligible capital investment property forming the basis of the credit is removed from service prior to the fifth anniversary of the date the property was placed in service in Maine by the qualified business; or
 - b. A layoff has occurred during the taxable year.
2. **Amount of disallowance.** The amount of the disallowance is determined as provided by this paragraph.

- a. In the case of subparagraph a of paragraph 1 of this subsection, the disallowance is equal to the total credit claimed under section .03 above (as limited by section .04(A) above) for the taxable year during which the property was placed in service in Maine:
 - i. Multiplied by a fraction, the numerator of which is the amount of the eligible capital investment of the property removed from service and the denominator of which is the total amount of eligible capital investment for the taxable year during which the property was placed in service in Maine, multiplied by subparagraph ii below.
 - ii. A fraction, the numerator of which is the number of years remaining in the five-year period beginning with the date the property was placed in service in Maine, rounded up to the next whole number, and the denominator of which is 5.
- b. In the case of subparagraph b of paragraph 1 of this subsection, the total of the unused carryover amounts determined under section .04(C) above with respect to all taxable years prior to the year of the layoff.

.06 Information required when claiming the DTC. In addition to any other information, the State Tax Assessor may require the following information to be provided by the taxpayer claiming the DTC:

- A. The name, municipality in Maine in which the qualified business's primary place of business is located, and business type, including the parent company, if applicable, of the qualified business;
- B. The number of qualified employees engaged in a qualified employee training program completed during the taxable year;
- C. The value of eligible capital investment expenditures by county of eligible capital investment property placed in service in Maine during the taxable year;
- D. The credit claimed with respect to each of the following categories:
 1. Eligible capital investment property placed in service in Maine during the taxable year in Cumberland, Sagadahoc, and York counties;
 2. Eligible capital investment property placed in service in Maine during the taxable year outside of Cumberland, Sagadahoc, and York counties;
 3. Qualified employees completing a qualified employee training program during the taxable year;
- E. The eligible sector of the qualified business as identified in the letter of certification.

.07 Application.

This Rule applies to taxable years beginning on or after January 1, 2025.

STATUTORY AUTHORITY:

36 M.R.S. §§ 112 & 5219-AAA(9)

EFFECTIVE DATE:

Xxxxxx XX, 2024 – filing 2024-XXX