MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
SALES TAX INSTRUCTIONAL BULLETIN NO. 52

PINE TREE DEVELOPMENT ZONES

The Maine Pine Tree Development Zone (PTDZ) Program offers manufacturers, financial service businesses and targeted technology companies the chance to greatly reduce or, in some cases, virtually eliminate state taxes for a period of time that may be up to ten years. Depending on the level of net new certified economic activity conducted in the PTDZ, the tax burden of qualified businesses may be reduced through the following exemptions, reimbursements, and credits:

1. **Income/Franchise Tax Credit** (100%, Years 1-5; 50%, Years 6-10).
2. **Insurance Premiums Tax Credit** (100%, Years 1-5; 50%, Years 6-10).
3. **Employment Tax Increment Financing (ETIF) Income Tax Reimbursement** (80%, Years 1-10).
4. **Sales and Use Tax** (100% Personal Property Exemption, Years 1-10).
5. **Sales and Use Tax** (100% Real Property Reimbursement, Years 1-10).

The PTDZ Program is intended to encourage and reward the creation of new qualified business activity, with its accompanying employment and investment in property, in economically distressed areas of Maine. The tax benefits are tied to the qualified business activity ("QBA") of a qualified PTDZ business occurring at the PTDZ location—i.e., investments in property and payroll that would not have occurred <u>but for</u> the Program <u>and</u> that represent a <u>net gain</u> to the business and the Maine economy. *The Program is not intended to provide tax benefits for simply shifting already existing business activity—either from outside a PTDZ location to inside a PTDZ location, or within the PTDZ from existing business activity to the new certified facility in the PTDZ.* When an existing Maine business moves part or all of its operations to a PTDZ location, or expands its operations within a PTDZ location, it may not be immediately clear how to determine what benefits are available to the business. This Guidance Bulletin provides guidance to assist business and tax planners in determining the scope of tax benefits available in such situations.

<u>This Bulletin addresses the sales and use tax exemption and reimbursement benefits only</u>.

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Selected relevant portions of the sales and use tax law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Questions not addressed in this Guidance Bulletin should be directed to the Sales, Fuel & Special Tax Division.

1. APPLICATION FOR DECD CERTIFICATION – Standards and Requirements.

The PTDZ tax credits and benefits are available to certified businesses engaged in qualified activity for tax years beginning on or after January 1, 2004. To obtain certification, the business must apply to the Department of Economic and Community Development ("DECD") and meet the requirements for qualified business activity. The specific requirements for the Application for Certification are set forth in DECD Rule 19-100. In general, in order to be certified, a business must be engaged in a targeted business sector (manufacturing, financial services, selected technologies); must intend to expand the base level of employment with qualified employees; and the qualified employees must be new fulltime employees who are hired by a Pine Tree Development Zone business for work directly in one or more qualified business activities. For the application and more information regarding the PTDZ application process, please visit the DECD web site at www.mainebiz.org.

2. AVAILABILITY OF SALES AND USE TAX BENEFITS

Once certified, a business may be able to claim the benefits for the periods of time listed on page 1 of this Guidance Bulletin. Sales and use tax benefits apply to purchases made on or after July 1, 2005 or the date of certification, whichever is later. However, PTDZ tax benefits are available only if the business remains certified and continues to have qualified PTDZ employees above its base level of employment in Maine. "Base level of employment" means the greater of either 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 PTDZ business divided by 4 or its average employment during the 3 calendar years prior to its application for certification.

3. DETERMINATION OF SALES AND USE TAX EXEMPTION

The sales and use tax exemption set forth in 36 M.R.S.A. § 1760(87) applies to sales of tangible personal property made on or after July 1, 2005, to a certified PTDZ business "for use directly and primarily in one or more qualified business activities."

A. Qualified vs. nonqualified business activity. The exemption is for property used directly and primarily in the qualified business activity; it does not include property simply used by the certified business generally. Qualified business activity is new business activity conducted in the Pine Tree Development Zone that exceeds prior business activity and that is certified by DECD.

B. Directly and primarily. Directly means that the tangible personal property must be used in the activity for which the business has been certified as opposed to used in non-qualifying activities either within the Zone or outside of the Zone.

The term "primarily" means more than 50% of the time during the period that begins on the date on which the tangible property is first placed in service by the PTDZ business and ends two years from that date or at the time the property is sold, scrapped, destroyed or otherwise permanently removed from service, whichever occurs first. The "primarily" requirement is an all or nothing condition. Purchased property that is otherwise qualified for the exemption, but used 50% or less of the time directly in qualified business activity is completely taxable … and property so used more than 50% of the time is eligible for exemption subject to any reduction in benefits as explained in “E” below. NOTE: An apportionment procedure may be used to separate out bulk purchases of supplies a portion of which will be *used directly and primarily in QBA*. See section 5 below.

C. Intent vs. actual use. If the property was properly purchased tax-free with the intent to use the property directly and primarily in a qualified business activity, but is not in fact used more than 50% of the time directly and primarily in the qualified business activity, the business must accrue and pay use tax on the item. On audit, taxable items will be assessed tax, interest and penalties.

D. Documentation to vendors. Upon notification from DECD that a PTDZ business has been certified and is eligible to qualify for sales and use tax exemption under 36 M.R.S.A. §1760(87), MRS will issue a certificate of exemption to be used by the PTDZ business in making qualified purchases. Certificates are valid for a period of up to 10 years, unless the PTDZ business is later determined by DECD to no longer qualify. Vendors are relieved from liability with respect to sales of tangible personal property to certified PTDZ businesses only if a copy of the certificate of exemption is presented by the PTDZ business with respect to each particular sale and if the certificate of exemption is taken in good faith by the vendor that the sales are for items to be directly and primarily used in QBA by the PTDZ business.

E. Reduction in sales tax benefits due to transferred property, employees or positions. Maine Law [see 30-A M.R.S.A. 5250-J (3)(C-D)] provides that:

(1) Pine Tree Development Zone tax benefits may not be used to encourage or facilitate the transfer of existing positions or property of a qualified business or any affiliated business to a qualified business activity from a nonqualified activity elsewhere in the State; and

(2) Pine Tree Development Zone tax benefits may not be provided based upon any property, employees or positions transferred by the qualified business or any affiliated business to a qualified business activity from a nonqualified activity.

The sales tax exemption is either disallowed or adjusted for purchases related to qualified business activity that is attributable to transferred property, employees or positions. If a particular purchase is used by qualified business activity that is comprised of transferred and non-transferred property, employees, or positions, the amount of the exemption must be reduced proportionately. The reduction may be calculated by an apportionment fraction, the numerator of which is the total of fully-qualified and partially-qualified employees and denominator of which is the total of all employees in the Pine Tree Development Zone. Excluded from this reduction requirement is the purchase of construction materials for the construction of a new building, or portion of a new building.

If the reduction provisions of this subsection do not fairly reflect the proper reduction of the sales tax exemption associated with the taxpayer's transferred property, employees or positions, the taxpayer may petition for, or the State Tax Assessor may require, the employment of another reasonable method to effectuate an equitable reduction of the sales tax exemption.

4. DETERMINATION OF SALES AND USE TAX REIMBURSEMENT

For qualified purchases occurring on or after July 1, 2005, 36 M.R.S.A. § 2016 provides for a reimbursement to a contractor or subcontractor of sales tax paid on items that are physically incorporated in, and become a permanent part of, real property that is owned by or sold to a qualified PTDZ business and that is *used directly and primarily in QBA.*

A. Qualified vs. nonqualified business activity; directly and primarily; intent vs. actual use. These terms have the same definition as explained above for purposes of the sales/use tax exemption. One significant difference, however, is that for purposes of the reimbursement, all new construction within a zone is considered "net new" property and is eligible for reimbursement provided the property will be used directly in the QBA during the period that begins on the date on which the real property is first placed in service by the PTDZ business and ends two years from that date or at the time the property is sold, scrapped, destroyed or otherwise permanently removed from service, whichever occurs first. All reimbursement claims are subject to audit review by the State Tax Assessor.

B. Claim forms; deadline. Reimbursement claims must be filed within 3 years from the date on which the tangible personal property was incorporated into real property. Claims must be submitted on Maine Revenue Services form "STR-PTDZ", which requires the claimant to certify under penalties of perjury that the materials on which tax was paid were incorporated into real property that has been placed into use directly and primarily in a qualified Pine Tree Development Zone business activity.

C. Supporting documentation required. Every reimbursement claim must be accompanied by Maine Revenue Services form "STR-PTDZ-Supp" which provides additional information to support the refund claim, including, but not limited to,

i. Who the project was constructed for
ii. What property is included in the claim
iii. Where the property was constructed
iv. When the property was constructed
v. Copy of the PTDZ business' certificate from DECD
vi. Supporting documentation for sales tax paid purchases.

D. Records. The contractor or subcontractor that initially purchases the materials, and the Pine Tree Zone business that ultimately purchases the real property into which the materials are incorporated, must both retain all relevant records for at least 6 years. In the case of the contractor or subcontractor, this includes all documentation concerning the purchase transactions in question, including detail on the amount of tax paid. In the case of the Pine Tree Zone business, it includes all documentation concerning the use to which the improved real property in question is put. In a case where the improved real property is owned by a third party prior to transferring the property to a Pine Tree Zone business, that third party must also retain any relevant documentation.

E. Release and assignment of claim. A contractor and a Pine Tree Zone business may enter into a contractual agreement whereby the contractor assigns its right to claim and receive reimbursement to the Pine Tree Zone business. Maine Revenue Services will honor such agreements, but no reimbursement will be issued to a Pine Tree Zone business unless the contractor or subcontractor has previously submitted to Maine Revenue Services a certificate, signed by the contractor, releasing the contractor's claim to the reimbursement. The certificate must be in a form approved by Maine Revenue Services.

F. Exclusions. Reimbursement will not be made of taxes paid in connection with the sale of tangible personal property subsequently attached to real property that has been owned by more than one person prior to its acquisition by the qualified Pine Tree Zone business whose certification accompanies the reimbursement claim; or that has been used for a business purpose by a person other than the qualified Pine Tree Zone business whose certification accompanies the reimbursement claim. For example, the construction of a building sold to and used by a non-qualifying business is sold 8 months later to a qualifying Pine Tree Zone business. The original construction of the building does not qualify for sales tax reimbursement.

G. Sunset provision. The law provides that the reimbursement entitlement applies only with respect to purchases made prior to the expiration of the 10-year period beginning on the date on which the Pine Tree Zone business that ultimately receives and uses the property in question is certified by DECD, or until December 31, 2018, whichever occurs first. Reimbursement will not be made for tax paid on purchases made prior to July 1, 2005.

5. EXAMPLES & APPORTIONMENT

For purposes of the *sales/use tax exemption*, apportionment of the exemption benefit may be used for bulk purchases of items if it is not possible to separate out the materials that are used directly and primarily in QBA. An example is bulk purchases of paper used both in QBA and non-QBA.

EXAMPLE #1 – A new business opens in a PTDZ, engaged only in QBA.

Corporation A applies for and receives certification as a PTDZ business and then commences QBA.

<u>Sales/use tax exemption benefit -- PTDZ business</u>

Because *all* of Corporation A's business activity is QBA, it receives a 100% sales tax exemption for otherwise qualifying property.

<u>Sales/use tax reimbursement benefit -- Contractor</u>

Because all of Corporation A's business activity is QBA, it receives a 100% sales tax reimbursement for otherwise qualifying property.

EXAMPLE #2 – A Maine business located outside a PTDZ expands to a PTDZ.

Corporation B is an existing business located in Maine. Corporation B applies for and receives DECD certification for building a facility in a PTDZ and engaging only in QBA at the new facility.

Sales/use tax exemption benefit -- PTDZ business

Because all of Corporation B's business activity at the new facility is QBA, tangible personal property purchased *separately* for the new PTDZ facility receives a 100% sales tax exemption for otherwise qualifying property.

Sales/use tax reimbursement benefit -- Contractor

Because *all* of Corporation B's business activity at the new facility is QBA, the contractor receives a 100% sales tax reimbursement for otherwise qualifying property.

EXAMPLE #3 – A Maine business already located inside a PTDZ expands inside the PTDZ.

Corporation C is an existing business located at a designated PTDZ. At its existing PTDZ facility it has 30 employees. Corporation C applies for and receives DECD certification for building a wing on its facility in the PTDZ in which it will engage only in QBA. The new wing includes 10 employees.

Sales/use tax exemption benefit -- PTDZ business

Only the purchases used directly and primarily in QBA are exempt. If it can be determined that specific items purchased are directly and primarily used in QBA, the purchase of each such item is 100% exempt. Because *all* of Corporation C's business activity in the new wing is QBA, tangible personal property purchased *separately* for the new PTDZ wing would receive a 100% sales tax exemption for otherwise qualifying property.

For bulk purchases, it may not be possible to determine whether specific property is or is not used directly and primarily in QBA. In example #3, paper supplies may be purchased in bulk and used in the original facility (non-QBA) and the new wing (QBA). In such situations, the business must apportion the exemption by using a ratio of the current number of PTDZ employees as follows:

$$\frac{\text{QBA employees in PTDZ}}{\text{All employees in PTDZ}} \rightarrow \frac{10}{40} = 25\%$$

For purchases used by a qualified business activity that is comprised of transferred and non-transferred property, employees or positions, the sales tax benefit must be reduced proportionately using the example above.

If apportionment of the exemption is required, the taxpayer must pay the full sales tax to the vendor and timely file a claim with MRS for refund of the apportioned tax-free amount. Taxpayers with a significant amount of apportioned purchases may petition MRS for an alternate reporting method, such as using the exemption certificate to purchase items exempt and then accruing and paying use tax on its next sales/use tax return on the taxable portion of the purchases, making an appropriate notation on the return.

Sales/use tax reimbursement benefit -- Contractor

Because *all* of Corporation C's business activity in the new wing is QBA, the contractor receives a 100% sales tax reimbursement for otherwise qualifying property.

EXAMPLE #4 – A Maine business located outside a PTDZ expands to a PTDZ and also transfers property and payroll into the PTDZ.

This is example #2 above, but with a transfer of employees to the PTDZ from elsewhere in Maine. Corporation D is an existing business located in Maine. At its existing facility it has 40 employees. Corporation D applies for and receives DECD certification for building a facility in a PTDZ and engaging in QBA. Corporation D hires 10 new employees to work in the new facility in the PTDZ and also transfers 20 employees from its existing location into the PTDZ.

Sales/use tax exemption benefit – PTDZ business

If it can be determined that specific items purchased are directly and primarily used in QBA (used by the new QBA employees), the purchase of each such item is 100% exempt. As explained in example #3, if apportionment is required, the PTDZ business should apportion the taxable and tax-free amounts by using a ratio of PTDZ employees as follows:

$$\frac{\text{QBA employees in PTDZ}}{\text{All employees in PTDZ}} \rightarrow \frac{10}{30} = 33.33\%$$

Sales/use tax reimbursement benefit -- Contractor

Because Corporation D is engaged in QBA and construction within a zone for a qualified PTDZ business is "net new" property, the contractor receives a 100% sales tax reimbursement for otherwise qualifying property.

NOTE: If the apportionment provisions in the examples listed above do not fairly reflect the sale price of the property used by the PTDZ business directly and primarily in QBA, or the income from QBA, the business may petition for, or the State Tax Assessor may require, the use of an alternative apportionment method.

6. ANNUAL REPORTING REQUIREMENTS

A certified PTDZ business must submit to DECD by March 31st of each year an annual report as provided by DECD Rule 19-100 §7(2). See DECD web site at www.econdevmaine.com.

7. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: (207) 287-4477

Or visit our website at www.maine.gov/revenue

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ATTACHMENT #1

36 MRSA §1760(87)

Subject to the provisions of section 1760-C, no tax on sales, storage or use may be collected upon or in connection with:

87. Sales of tangible personal property to qualified development zone businesses. Beginning July 1, 2005, sales of tangible personal property to a qualified Pine Tree Development Zone business, as defined in Title 30-A, section 5250-I, subsection 17, for use directly and primarily in one or more qualified business activities, as defined in Title 30-A, section 5250-I, subsection 16. The exemption provided by this subsection is limited for each qualified Pine Tree Development Zone business to sales occurring within a period of 10 years from the date the business is certified pursuant to Title 30-A, section 5250-O or until December 31, 2018, whichever occurs first. As used in this subsection, "primarily" means more than 50% of the time during the period that begins on the date on which the property is first placed in service by the purchaser and ends 2 years from that date or at the time the property is sold, scrapped, destroyed or otherwise permanently removed from service by the purchaser, whichever occurs first.

36 MRSA §2016

§2016. Pine Tree Development Zone businesses; reimbursement of certain taxes

1. Terms defined. As used in this section, the terms "qualified Pine Tree Development Zone business" and "qualified business activity" have the meanings given to them in Title 30-A, section 5250-I. For the purposes of this section, "primarily" means more than 50% of the time during the period that begins on the date on which the property is first placed in service by the purchaser and ends 2 years from that date or at the time the property is sold, destroyed or otherwise permanently removed from service by the purchaser, whichever occurs first.

2. Reimbursement allowed. A reimbursement is allowed as provided in this section for a tax paid pursuant to this Part with respect to the sale or use of tangible personal property that is physically incorporated in and becomes a permanent part of real property that is owned by or sold to a qualified Pine Tree Development Zone business and that is used directly and primarily by that business in one or more qualified business activities.

3. Claim for reimbursement. Claims under this section for reimbursement of taxes are controlled by this subsection.

> A. A claim for reimbursement under this section must be filed by the contractor or subcontractor with the State Tax Assessor within 3 years from the date on which the tangible personal property was incorporated into real property. The reimbursement claim must be submitted on a form prescribed by the assessor and must be accompanied by a statement from a qualified Pine Tree Development Zone business certifying, under penalties of perjury, that the personal property with respect to which the tax was paid by the claimant has been placed in use directly and primarily in a qualified business activity. All records pertaining to such certification and to the transactions in question must be

retained for at least 6 years by the contractor or subcontractor, by the qualified Pine Tree Development Zone business and by the person, if any, that sold the real property in question to that business. The reimbursement claim must be accompanied by such additional information as the assessor may require. If a sales or use tax is included in the contractor's or subcontractor's contract price, the contractor or subcontractor shall file, at the request of the qualified Pine Tree Development Zone business, a claim for reimbursement in accordance with this section and pay the reimbursement to the qualified Pine Tree Development Zone business.

B. If, by agreement between the contractor or subcontractor and the qualified Pine Tree Development Zone business, the contractor or subcontractor assigns its right to claim and receive reimbursement, the qualified Pine Tree Development Zone business must file a claim for reimbursement in accordance with this subsection. A reimbursement may not be issued to a qualified Pine Tree Development Zone business under this paragraph unless the contractor or subcontractor has previously submitted to the bureau a certificate, signed by the contractor or subcontractor, releasing the contractor's or subcontractor's claim to the reimbursement. The certificate must be in a format prescribed by the assessor.

4. Limitations. The following are the limitations on reimbursements made pursuant to this section.

A. Reimbursements made by the assessor pursuant to this section are limited to taxes paid in connection with sales of tangible personal property that occur within a period of 10 years from the date the qualified Pine Tree Development Zone business receiving the property is certified pursuant to Title 30-A, section 5250-O or by December 31, 2018, whichever occurs first.

B. Reimbursement pursuant to this section of taxes paid in connection with the sale of tangible personal property subsequently attached to real property may not be made when those real property improvements:

(1) Are owned by more than one person prior to their acquisition by the qualified Pine Tree Development Zone business whose certification accompanies the reimbursement claim pursuant to subsection 3; or

(2) Have been used for a business purpose by a person other than the qualified Pine Tree Development Zone business whose certification accompanies the reimbursement claim pursuant to subsection 3.

5. Audit. The assessor has the authority to audit any claim filed under this section. If the assessor determines that the amount of the claimed reimbursement is incorrect, the assessor shall redetermine the claim and notify the claimant in writing of the redetermination. If the claimant has received reimbursement of an amount that the assessor concludes should not have been reimbursed, the assessor may issue an assessment for that amount within 3 years from the date the reimbursement claim was filed or at any time if a fraudulent reimbursement claim was filed.

The claimant may seek reconsideration, pursuant to section 151, of the redetermination or assessment.

6. Payment of claims. The State Tax Assessor shall determine the benefit for each claimant under this section and certify to the State Controller the amount to be transferred to the Pine Tree Development Zone reimbursement reserve account established, maintained and administered by the State Controller from General Fund undedicated revenue within the sales tax category. The assessor shall pay the certified amounts to each approved applicant qualifying for the benefit under this section within 30 days after receipt of a properly completed claim. Interest is not allowed on any payment made to a claimant pursuant to this section.