Record of Government Oversight Committee Discussions of OPEGA's MCIC Report

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1. Excerpt from GOC Meeting 02/21/2020 Presentation of MCIC Report –

- **Presentation of OPEGA Report on Maine Capital Investment Credit (MCIC)**

Director Fox introduced Ms. Hojara, lead, and Ms. Henderson the OPEGA analysts on the MCIC review.

Director Fox introduced the presentation and stated that the subject matter is quite complex so the presentation will describe the material at a fairly high level. Director Fox and Analyst Kari Hojara presented the report on MCIC. (The report can be found at http://legislature.maine.gov/opega/opega-reports/9149 .) The GOC members' comments and questions included:

Rep. Pierce asked if Maine can be decoupled from the Federal program, but still provide the benefits of being in conformity. Ms. Hojara replied that Maine is decoupled, but chooses to offer MCIC to approximate a portion of the Federal benefits provided by bonus depreciation, and that this would be addressed in more detail later in the presentation.

Sen. Hamper asked how many businesses in Maine claim MCIC. Ms. Hojara answered that understanding how many business claim MCIC is a bit complicated. Maine Revenue Services (MRS) estimate that approximately 4,000 taxpayers per year claim MCIC, but about 90% of these claims are on individual's tax returns in a pass-through manner. Sen Hamper asked if there is a way to determine if it is mostly small or large businesses that are claiming MCIC. Director Fox said that this credit is claimed primarily by those who do their business' taxes through their individual's tax returns, so there is no way for OPEGA to know the business size.

Commenting on the Federal depreciation graphic, Sen. Chenette observed that if a business takes the total depreciation in the first year they cannot claim depreciation in subsequent years for that asset. Director Fox clarified that that is true, at the federal level. Rep. Pierce asked if the business may make that decision themselves and Ms. Hojara confirmed that they may.

Rep. Mastraccio asked if there was a way for Maine to conform and continue to apply the credit only to assets located in Maine. She commented that the current process seems complicated and asked if there is a less complicated way to only provide the credit for assets in Maine, such as conforming without decoupling. Director Fox answered that would be a different response to non-conformity.

Rep. Harnett asked if other states that decouple do so for the same reasons as Maine, or is there a variety of reasons. Ms. Hojara answered that OPEGA cannot speak to the reasons other states decouple, but there are ways other state decouple that are easier on businesses.

Sen. Chenette asked if there was normal depreciation somewhere else in statute that better reflects Maine decoupling that can be modeled in MCIC. Director Fox said that the underlying reason this is done is because Maine taxable income is based on Federal taxable income as the foundation. Maine accepts regular Federal depreciation, but not bonus Federal depreciation, as a factor in Maine taxable income.

Rep. Pierce asked if the 1.2% add-back is in statute. Ms. Hojara said yes, with the 1.2% being set during the 129th Legislature.

Sen. Chenette clarified that the discussion still refers to Maine specific assets being subject to MCIC even when discussing multi-state businesses and equalizing their opportunity, not out of state assets. Rep. Pierce asked if there has been any noticeable decrease in people claiming MCIC due to the effects of the equitability changes. Ms. Hojara answered that the changes will take effect with the 2020 tax year so is too soon to tell

Rep. Harnett asked if it was more valuable to businesses to claim the depreciation all in the first year verses spreading it out. Director Fox said this largely depends on the lifespan of the asset and perhaps other factors unrelated to investment.

Rep. Pierce asked if Maine offers any tax offset to compensate for the extra effort it takes to claim MCIC. Rep. Mastraccio said it is an extra form, or forms, that have to be completed and taxpayers either have to complete them themselves or provide the information to their accountant to handle. She also said based on her understanding, the decision to take the entire depreciation of an asset in the first year or spread it out was dependent in part on other business factors.

Rep. Mastraccio clarified that the low take-up rate referred to Federal bonus depreciation and asked what the reasons might be for the low take-up rate. Director Fox said that the taxpayer's business factors for a particular year might impact whether they claim bonus depreciation, or other factors, such as the lifespan of an asset, may impact that decision.

Sen. Hamper asked if OPEGA interviewed different companies to ask if they were taking advantage of bonus depreciation. Director Fox said the literature is robust at the Federal level and it is OPEGA's understanding that MCIC is designed to approximate the value that a taxpayer would get at the Federal level so, we believe the findings of this literature, is applicable to the MCIC credit in Maine.

Rep. Timberlake asked if Maine did not have MCIC would businesses just write Maine off. Director Fox responded that there isn't really a scenario where Maine wouldn't have anything at all because Maine has to respond to what is offered at the Federal level. Because bonus depreciation is offered at the Federal level, and Maine taxable income is based on Federal taxable income, there has to be something available. There are other methods than what Maine uses, as most states are decoupled from bonus depreciation.

Rep. Pierce asked what percentage of states that decouple provide some sort of compensation to approximate the value of bonus depreciation. Director Fox said that OPEGA does not have that breakdown, but could get that for the Committee. Ms. Hojara responded that Maine is the only state that does this approximation of the value through a credit in combination with decoupling.

Sen. Sanborn asked how much revenue Maine is forgoing through this program. Director Fox provided the MRS estimates of the cost of the credit as \$11.8 million in FY18, \$23.3 million in FY19, \$19.9 million in FY20 and about \$18 million in FY21.

Rep. Mastraccio asked if the same equipment may be subject to both MCIC and BETR & BETE. Director Fox answered that it could be.

Sen. Timberlake commented that he is familiar with BETR & BETE and, based on his experience, it is very hard for a small business to qualify for BETR & BETE. He said it is easier for a small business to qualify for bonus depreciation. Director Fox reiterated that the credit is available based on whether the taxpayer claimed depreciation at the Federal level.

Sen. Chenette asked about the necessity of the taxpayer keeping "two sets of books", and if that was an adjustment an accountant could do with software. Director Fox said she could not speak to what types of software is available to handle this situation, but can say that the tax procedures for depreciation at the Federal and State level are different and separate. OPEGA did not assess the difficulties involved in doing tax preparation.

Rep. Harnett commented that his understanding, at a high level, is there is a Federal program that only about 50% of eligible claimants take advantage of. Of those, only 10% say it has a significant impact on their investment decisions, and Maine has made that even more complicated.

Sen. Chenette commented that since no other states offer a credit like what Maine does, members of the GOC would be interested in what other models look like, or how other New England states handle this situation. Director Fox noted that there are some examples of what other states do on page 10 of the report. Some other states incorporate their response in how they decouple, rather than add on a credit like Maine does. This is what makes Maine's response unique.

Rep. Pierce asked about comparisons to other states, particularly the 80% referenced in relation to North Carolina and Minnesota. Ms. Hojara answered that rather than doing something like MCIC, those two states simply allow a percentage of the Federal bonus as the add back. In Maine, the add back is the difference between what is claimed as Federal bonus depreciation and what the normal depreciation would have been, which is what necessitates keeping two sets of records.

Rep. Pierce asked if there was some advantage to the way Maine designed MCIC. Ms. Hojara answered that Maine is trying to limit depreciation to in-state assets, which results in it being more complicated.

Rep. Mastraccio asked if Maine could just decouple and not offer anything beyond the Federal credit. Ms. Hojara said that the decision about conformity and offering a credit could be separated.

Rep. Pierce commented that OPEGA does a great job of explaining the tax programs.

2. Excerpt from GOC Meeting 02/28/2020 Public Comment on MCIC Report

- **OPEGA Report on Maine Capital Investment Credit (MCIC)**

  - Public Comment Period

Daniel D'Alessandro, Attorney, Office of Tax Policy, Department of Administrative and Financial Services. He presented the testimony of Michael Allen, Associate Commissioner for Tax Policy.

Sen. Chenette referred to the complexity for business and said that OPEGA and others have heard on a repeated basis from businesses that there is added complexity with this process. They are hearing from businesses that the program is complex and MRS is saying it is not. He asked how the GOC would know which path to take. Mr. D'Alessandro said MRS was absolutely in favor of simplifying the tax code whenever possible. Calculating bonus depreciation is complex, and believes Sen. Chenette was on the Taxation Committee when it was last debated of whether to conform to bonus depreciation or not. There are a lot of reasons to conform and there are a lot of reason not to conform and the State chose not to conform. After that choice is made the MCIC is a relatively simple calculation of looking at the adjustment for   and multiply it by a number. That is not too complicated.

Albert DiMillo, Jr., a retired CPA and a former corporate tax director.

Sen. Chenette interrupted Mr. DiMillo's testimony to explain that the GOC directs OPEGA. Neither the Senate President or the Speaker of the House directs OPEGA. He said Mr. DiMillo can state his opinion, but he is not going to be impugning OPEGA staff.

Sen. Chenette said Rep. Tipping put forward a bill based on Mr. DiMillo's suggestion. That bill passed. He understands that Mr. DiMillo wants to go back, but it seems like the corrective action that he is looking for has passed. Mr. DiMillo said it was only fixed for year 2024. Sen. Chenette said from 2024 onward so it is fixing the issue going forward. Mr. DiMillo said he was saying it should have been fixed sooner and they can fix the prior years, plus it does not change the fact that OPEGA's job was to calculate this. Why is there a cover up? Sen. Chenette said Mr. DiMillo was using terminology that is impugning, not only to members here, which he found personally offensive, but also staff. He can attack them on policy, he can disagree with actions of this Legislature, but he is not going to attack their character publicly.

Dwight Hines, Livermore, Maine. Mr. Hines did not provide written testimony.

The Committee thanked those testifying.

The Chair, Sen. Chenette, closed the public comment period on the OPEGA Maine Capital Investment Credit (MCIC) Report.

Other written testimony was received, but not presented at the public hearing. All written testimony can be found on the GOC/OPEGA website at: http://legislature.maine.gov/opega/archive-of-previous-meeting/9181.

Sen. Chenette said in terms of framing up both the BETR/BETE and MCI reports, the GOC had the presentation of the reports at previous meetings and today had the public comment period on both reports. The Committee will have a "work session" on both reports at their March 13th meeting.

Between now and March 13 if Committee members have additional question, or information requests for MRS, OPEGA, DECD, or anyone else, to please send an email to Director Fox.

Rep. Mastraccio said in light of some of the comments the Committee has heard today, thought it would be helpful if MRS were at the March 13th meeting so they could answer some of the issues brought up. Even though the reports have been sent to the TAX Committee, she suggested that Committee also be invited to the meeting.

Rep. Arata asked what the cost would be to be fully compliant with the federal tax code.

Sen. Keim was interested in knowing how much it costs to administer the tax programs, on the State, municipal and business level. She realizes that some of that information would be guesstimates.

Sen. Chenette said if members were not at the meetings for the report presentations, there is a power point version of OPEGA's reports that he found to be helpful. If members have additional questions to send them to Director Fox and the GOC can follow-up on them at the March 13 work sessions.

3. Excerpts from GOC Meeting 03/13/2020 MCIC Work Session

- **OPEGA Report on Maine Capital Investment Credit (MCIC)**
  - **Committee Work Session**

Director Fox referred members to and summarized the worksheet regarding MCIC. (A copy is attached to the Meeting Summary.)

Sen. Chenette referred to the revenue foregone by the projected cost of the MCIC credit, the cost to the State to conform to the federal bonus depreciation, the cost to administer the program to the State and the distribution of MCIC credit among large versus small businesses because a disparity was seen there. If Maine is going to have the MCIC program, what is the most efficient way, to continue that process. He asked Dr. Allen if there were any initial thoughts that jumped out for him if he had a projected cost associated with the credit and how much the State is foregoing in terms of revenue for the current program.

Dr. Allen said what MRS had estimated the original cost of conforming to the Tax Cuts and Jobs Act and how much savings they estimate there will be off of that with the current program that the Legislature enacted last session. It gets a little difficult because of the timing differences, but said essentially when MRS reported to the AFA Committee on February 1, 2018 on the Tax Cut and Jobs Act at the Federal level, they had estimated that conforming to bonus depreciation would result in a revenue loss of $27.5 million in FY19, $21.9 million in FY20, and about $18 million in FY21. That was the original proposal presented to the Legislature in March 2018.

Rep. Mastraccio asked if that was full conformity to the federal revenue code. Dr. Allen said it was.

Dr. Allen said MRS estimates for the current program in the legislation in the final tax conformity bill that was passed in September 2018, the Legislature determined it did not want to conform to federal bonus depreciation. It would rather continue the MCIC consistent with how the program had been running with the 9 and 7% credit rates and piggybacking off the 100% bonus and then the phase out of bonus depreciation at the federal level. That resulted in an estimated revenue loss of $19.9 million in FY19, $16.5 million in FY20, $18.7 million in FY21. The numbers are a little different up front, but a little larger on the backend. MRS did those estimates relative to the law that was in existence at the time and bonus at the federal level had been at that time and prior to the Tax Reform Act was scheduled to phase out and be completely eliminated by around 2020. The bill that passed last session, PL 2019, c. 527, is the current MCIC that OPEGA's report is based on. That is now relative to MCIC and was enacted in the tax reform bill and MRS estimated that would save the State $20.4 million in FY21, $16.8 million in FY22 and $12.8 in FY23. Dr. Allen said the other thing he would point out is that most of those savings are coming on the individual income tax side. Probably about 2/3 on the individual side and 1/3 is on corporate and, as you get out to the later years, it is roughly 50/50, corporate versus individual.

Sen. Chenette asked the cost to taxpayers for MRS to administer the MCIC program. Dr. Allen estimated the program cost about $100,000 or less a year to administer.

Sen. Chenette asked how that compared to other tax expenditure programs MRS administers.

Dr. Allen said it is on the low side. It is piggybacking off of Federal law which is always helpful when they have a Federal tax return to look at first. The more expensive programs for MRS to administer usually are State specific programs and require more resources from MRS.

Sen. Chenette said the Committee was seeing a disparity between large and small businesses taking advantage of the credit and asked if Dr. Allen had any thoughts on why small businesses were not taking advantage of the program as much as larger businesses.

Director Fox noted that OPEGA did not look at individual taxpayer data to differentiate between whether they were small or large businesses taking the credit.

Sen. Chenette said the question to MRS is do they have information regarding a breakdown of large versus small taking the credit or are we running into the same issue that it is hard to break down the differences.

Dr. Allen said on the corporate side MRS certainly knows which companies are taking advantage of MCIC. It gets difficult to talk in terms of large versus small because that has always been a problem. The TAX Committee has often had discussions about who is benefitting, big or small businesses. Then the question is how do you determine a small business. Some say businesses with less than 50 employees qualifies as small and others say it depends on the business' assets. It gets difficult to say big or small.

Sen. Chenette asked Director Fox how OPEGA in BETR/BETE assessed whether a business was big or small and could Dr. Allen use the same parameters to breakdown the large versus small businesses.

Director Fox said OPEGA did not do it by business size. What they did for today's meeting was to give a list of businesses by the reimbursement amount they received. You could see on the size of the reimbursement under BETR and could draw the conclusion that they have significant investments and assets so may be a bigger company. What OPEGA talked about was the small percentage of businesses that got a largest piece of the pie. There was the 8% that had an average BETR reimbursement of $200,000 and the remaining 92% had a reimbursement of about $5,000. She thinks that is what Sen. Chenette was thinking of.

Dr. Allen pointed out another provision in the Federal tax law is called Section 179 and that does allow relatively small businesses to expense capital investments. Most small businesses take advantage of that and we did conform to that expansion in the conformity bill that passed in September 2018. He would say for most small businesses Section 179 is probably the depreciation they would choose and take. Larger businesses cannot take Section 179 and that might be one reason MCIC would be weighted toward larger businesses.

Sen. Chenette said if he has a small business and is trying to figure out how to get the best bang for his buck, would he be choosing between Section 179 and MCIC or could he take both.

Dr. Allen thinks there is a possibility to take both, but he would say in most cases, you have to choose one or the other. It gets complicated, but he thinks most small businesses would chose Section 179 because it is designed for small businesses.

Director Fox noted that for OPEGA's evaluation they did not evaluate the conformity piece that Dr. Allen is talking about because it is not a separate program like MCIC.

Rep. Mastraccio referred to the testimony of Mr. DiMillo at the public hearing on OPEGA's report of MCIC and asked, not going backwards to correct, if the unintended tax benefit that was going to multi-state businesses has been changed and does not exist in the current iteration of this tax credit.

Dr. Allen said the program has been changed to address the concern that Mr. DiMillo brought before the Legislature. He would not term it as unintended. The fiscal note that was put on MCIC over the years was consistent with what the Legislature enacted and he did not know of any time the MCIC program has cost the State more, or less, by any significant amount. It was fully understood by MRS and the Office of Tax Policy what the Legislature had done and the fiscal note reflected that.

Rep. Mastraccio said it is possible the Legislature did not understand it and it seems to be more complicated than it needs to be. She gets that Maine has so many companies that have multiple locations than just in Maine and are probably best equipped to take advantage of the tax programs. She thought one thing the Legislature was being clear about is they did not want people to utilize the program on businesses not in Maine.

Dr. Allen agreed and said MCIC certainly addresses that issue. He said, unfortunately, there have been Federal court cases that prevent the State from allowing bonus depreciation itself just for Maine investments. That is what required us to move to MCIC.

Director Fox noted she was not at the GOC meeting for the MCIC public comment period, but she did listen to Mr. DiMillo's testimony and wanted to be clear about the path of OPEGA's report versus the path of Mr. DiMillo's initial review request to the GOC. He did come to OPEGA, found a sponsor and made a request before the GOC to address the issue of equity between businesses who may have a larger bit of their business outside the State rather then in State. The GOC considered Mr. DiMillo's review request and she could refer people to the meeting summaries for those discussions. The GOC decided the matter would be better addressed by the TAX Committee and sent that recommendation forward to them. Director Fox said the MCIC report is on the GOC's regular Schedule of Tax Incentive Reviews that we have to do and are grouped based on what the objective of those incentives are. OPEGA's MCIC report was not triggered, or voted on, by the GOC based on the request that was made by Mr. DiMillo. His request was forwarded to the TAX Committee. Although we are talking about the same tax program, the connection to it was different. Director Fox felt it necessary to make the connection clear and that OPEGA's report was not something that was conducted as a result of Mr. DiMillo's review request.

Sen. Chenette asked if the Committee had any more questions for Dr. Allen. Hearing that there were no further questions, the Committee thanked him for being at the meeting and answering their questions.

- Committee Vote on the MCIC Report

No vote taken, but Sen. Chenette asked if there were any questions, comments or concerns regarding OPEGA's MCIC report that the GOC could use as a follow-up at a future meeting. Hearing none, Sen. Chenette said the Committee's vote on both the BETR/BETE and MCIC reports will be at a future meeting along with further discussion of the Committee's path forward, whether it is at the TAX Committee, on their own, or a combination of certain action on both reports. He asked if there were any other comments, concerns or questions regarding either the BETR/BETE or MCIC report or the process moving forward. Hearing none, Sen. Chenette moved to Report from Director Fox.

4. Excerpt from GOC Meeting 11/20/2020 Committee Vote on MCIC Report

- **OPEGA Report on Maine Capital Investment Credit (MCIC)**

  - Committee Work Session

Director Fox again noted that because the GOC is meeting on the cusp of a new Legislature coming in and by law the GOC is required to move the report forward to the TAX Committee, action by the Committee is required at today's meeting.

- Committee Vote on the MCIC Report

Rep. Mastraccio made the following motion:

Motion: Pursuant to Title 3, section 999, subsection 3, which requires the GOC to assess this report's

objectivity and credibility and submit it to the Taxation Committee for review and consideration, I move that we vote to endorse OPEGA's evaluation of the Maine Capital Investment Credit (MCIC) as credible and objective and submit it to the Joint Standing Committee on Taxation. (Motion by Rep. Mastraccio, second by Sen. Sanborn.)

Discussion: Rep. Arata wanted to make sure that the GOC's endorsement of the MCIC report is not saying that all the members necessarily agree with it 100%, but are willing to move it forward for further study.

Sen. Chenette said what has been done historically on the GOC is basically accept the report from OPEGA and send it to the policy committee for discussion or for making any policy judgments.

Vote: The above motion passed by unanimous vote 7-0.