

MAINE TAX ALERT

A Publication of the Maine Bureau of Taxation for Tax Professionals

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**MAINE TAX INSTITUTE: October 23-24, 1997
PLEASE JOIN US**

The Bureau of Taxation, Thomas College and the Internal Revenue Service are collaborating to produce The Maine Tax Institute. The two-day Institute will be introduced by Governor Angus S. King and George R. Spann, President of Thomas College. Speakers are accounting, legal, economic development and tax policy professionals. The Institute will provide a comprehensive review of current State tax policy and law changes. The Maine Tax Institute will also host an Exhibitors Hall for the benefit of Institute participants. Plan to attend this important event. If you have not received an Institute brochure and application, please call Thomas Largay at (207)873-0771 Ext. 312 for a brochure.

REGISTRATION OF PAYROLL SERVICE PROVIDERS

New legislation requires payroll service providers to register with the Bureau of Taxation each January 31 and to disclose certain information to their clients about the services they provide. Two new forms: The Registration Form and the Disclosure Form will be required. The Bureau of Taxation is drafting the forms and we plan to complete the drafts by the end of August. We will consult with members of the Maine Association of Payroll Processors so that we can make the forms as friendly as possible for those who must use them.

When the forms are completed, we will send a copy of the Payroll Service Providers Registration Form and the Client Disclosure Form to the payroll service providers on our mailing list.

PROPERTY TAX AND RENT REFUNDS

Application booklets for the Maine Property Tax and Rent Refund Program will be mailed beginning August 11. This year, the program is available from August 1, 1997 through January 31, 1998. The details of this year's program were not completed until July, delaying completion of the instructions and application forms for the program and the printing schedule. We trust that by August 25th, those who regularly receive an application in the mail will have them in hand. Applications will also be available in town offices, from area agencies on aging and from the Bureau of Taxation. You may call the Forms Line at (207)624-7894 to order forms for clients who may not be on our mailing list.

ARE THOSE STATE WITHHOLDING ALLOWANCES VALID?

The State is increasing enforcement of the requirements of the 1995 law, 36 MRS Ae5250(2)(c). The law requires that employees who claim a number of state withholding allowances on their federal Form W-4s greater than claimed for federal income tax withholding purposes, provide to their employer(s) an exemption variance certificate. For employees without a variance certificate, employers must use the same number of allowances for state purposes as for federal tax withholding for their employees. The employee may claim

fewer exemptions for state tax withholding than for federal. Audits reveal a number of employees claiming allowances much higher than reflected in their individual tax returns or justified by their marital status and other circumstances. At nine exemptions claimed, whether married or single, the state is likely to ask questions. Some employees are claiming high allowances and are not filing required tax returns. There is a possibility that some of these audits may lead to criminal prosecution of these nonfilers.

When the state tax withholding auditor finds that withholding allowances claimed by an employee are invalid, the employee's W-4 is invalid and the employer is directed to begin withholding for that employee at the "single/zero dependents" rate. The employer receives two copies of the notice, one for the employee. The employee receives another notice at his home address giving instructions for obtaining Bureau approval of more than the minimum specified W-4 allowances.

For an employee meeting the standards for increased state withholding exemptions, the employee must obtain an exemption variance certificate from the Bureau of Taxation. To get an exemption certificate, the employee must certify to the Bureau, at a minimum:

- a) that the taxpayer has not incurred state income tax liability for the current year; and
- b) does not anticipate incurring any liability for state income tax for the current year.

The Bureau will accept a realistic income estimate for calculating state withholding exemptions. Chronic non-filers and debtors who are consistently underwithheld will find it difficult to obtain a variance certificate to support their request for continued inadequate state withholding.

The employee's exemption certificate is valid until the end of the calendar year or when the employee no longer qualifies for the exemption certificate. The employee is responsible for reporting to the Bureau material changes in the circumstances surrounding the information originally submitted for the exemption certificate.

We suggest that when your employees or clients' employees request withholding allowances exceeding federal allowances, you remind them of these requirements to avoid having to reject W-4s submitted by employees. The Withholding Unit has found that in most cases, employers call to request the form for their employees. For any questions or to request the Personal Withholding Exemption Certificate form, please call: (207)626-8475.

PENALTY ACCRUALS DURING APPEALS PROCESS

In most cases, when a taxpayer requests review of a Bureau of Taxation determination, before paying the tax amount in dispute, the penalties associated with the issue have already reached the maximum amount allowable under the law. When a case is appealed before penalties have reached their maximum, penalty accrual is effectively suspended while the case is under appellate review.

However, when the Bureau of Taxation finds that the request for reconsideration was frivolous or filed for purposes of delay, or the taxpayer failed to pursue its request for reconsideration diligently and in good faith, penalties will continue to accrue during the reconsideration period. For tax professionals, this could mean that appeals filed on behalf of the client, but not pursued, may result in additional penalty for the client.

In all cases, penalties resume accruing as appropriate from the date of the reconsideration decision letter, unless the taxpayer timely files in Superior Court for judicial review or pays the total amount due within 30 days of receipt of the reconsideration decision.

BETR PROGRAM

Correction to 1997 Instructions: The BETR application does not require a list of shareholders in the applicant entity. The current BETR Program booklet asks for a list of shareholders. We will correct this in the next booklet. In the meantime, please advise your clients that the Bureau of Taxation does not want a list of their shareholders for this Program.

TIPS ON PREPARING CORPORATE AMENDED RETURNS

Review of amended state corporate tax returns has suggested the following tips for preparing trouble free returns:

- { Write "Amended" on top of all form pages. Although 1120-MEs for some years provided an "amended" check-off box, others do not.
- { The Bureau recognizes that it will be easier for corporate tax filers when the state corporate amended form is ready in early 1998.
- { Attach the federal form, whether an 1120X or a Form 1139, to the amended 1120-ME when the state amended filing is based upon a federal amended corporate filing.
- { When the state corporate amended filing is based on state issues alone, a written explanation of the change must be attached to the "Amended" form 1120-ME.
- { Line 1 must start with amended federal taxable income as shown on the applicable attached federal amended corporate form.
- { The lines on the state corporate tax form must be used as described on the form. Do not attempt to change line descriptions or use the lines for purposes other than as indicated. Refunds may be delayed by return processing problems until you provide explanations for imaginative use of the forms. This type of error results in needless delay and cost for everyone.
- { Schedules that must be amended: complete all lines on the schedule. Write "amended" at the top.
- { Schedules for which there is no change from the originally filed return: Attach a copy of the schedule as originally filed with the "Amended" Maine corporate return.

There are other issues, particularly for combined corporate filers filing in Maine as a single entity. If you have specific questions on these or other issues, please call Sue Smith at (207) 624-7876 or send a fax to (207) 287-4028.

PRACTITIONERS HOTLINE REVISITED

The Practitioners' Hotline is reserved for practitioners' use and for questions on return preparation and special tax issues for which tax professionals need a quick resolution to complete their work. All inquiries on the status of a refund request should go to the automated Refund Line (207) 626-8461.

ENTITY: "CHECK THE BOX" OPTIONS

Maine will conform to the simplified federal income tax classification. The new federal regulations are effective for periods beginning on or after January 1, 1997. Form 8832, Entity Classification Election, a one page form, provides the options outlined in the law and regulations. The election is available to taxpayers once every 5 years, unless there have been some specified substantial changes in ownership of the entity.

Domestic entities may elect to be classified as an association taxable as a corporation, or as a partnership. A domestic eligible entity with a single owner may elect to be disregarded as a separate entity. Foreign eligible

entities may elect to be taxed as one of the same three entity classifications. The electing entity also may choose the date on which the election is to be effective.

Maine generally relies on the Internal Revenue Service to provide the regulations determining entity classification and to determine entity classification for taxpayers. The IRS recent "Check-the-Box" regulations permit unincorporated entities, including limited liability companies, to elect their classification for federal tax purposes. Maine's Limited Liability Company statute specifies that Maine will treat each LLC as classified for Maine tax the way it is classified for federal tax. A corporation is an entity which is registered as a corporation in the Maine Secretary of State's office.

On a related matter, Maine continues to recognize the S-Corporation form including recent revisions in the number of shareholders allowed. S-Corporations doing business in Maine, or having Maine shareholders must file a copy of the federal information return 1120-S with the Maine Bureau of Taxation when the return is filed with the IRS. Nonresident shareholders in a flow-through entity which does business in Maine and reports Maine net income or gain on Schedule K, must file a Maine income tax form. Alternatively, the S-Corporation may file a Maine composite return for eligible nonresident individual shareholders.

1997 TAX ALERT SURVEY

For the third year, the Bureau has asked Tax Alert readers to give us suggestions and comments on a variety of issues. We have tried to improve in areas particularly targeted by our readers. Taken over the three years, the weight of reader opinion on overall performance of the Bureau during the tax season just completed has shifted from average to above average. There is a small reduction in poor ratings and an increase in excellent ratings. We have included some of the results on the next page.

All of the comments will be read by decision makers and people who do customer service. These comments emphasize the difficulty of keeping documents together without staples and pleas for simplification of procedures, forms and instructions. There are compliments and complaints about taxpayer service, the telephone system and direct deposit of refunds. We particularly appreciate suggestions from tax professionals. The Bureau of Taxation has in the past adopted many of your suggestions and will continue to do so in the future.

TAXPAYER ADVOCATE

Bruce R. Livingston has joined the Bureau of Taxation as the new Taxpayer Advocate. He can be reached at (207)287-4562.

YOU COULD WRITE THE TAX ALERT!

Beginning in September, the Bureau of Taxation will need someone to write the monthly Tax Alert and press releases and to perform other similar tax related duties. The successful candidate should have a tax background and an interest in writing about tax developments in a clear and concise style. Of course, Bureau of Taxation employees cannot prepare tax returns or advise clients in a way which would present a conflict of interest. The position will be part time (20 hours a week) and includes some State benefits including health insurance. Please contact Jerome D. Gerard, CPA, Director, Income/Estate Tax Division at (207)287-2076 for more information.

IRS/STATE PRACTITIONERS INSTITUTE

November is the month for the IRS/State Practitioners Institute. Before long, you will receive your brochure. Just in case you happen to be planning your fall calendar now, here are the dates for the four seminars:

November 6	Caribou	Husson College
November 14	Bangor	Jeff's Banquet & Catering Center
November 19	Augusta	Augusta Civic Center
November 21	Portland	Verrillo's Restaurant & Convention Center

SCORE, the Bureau of Taxation and the Internal Revenue Service are working to produce a very useful program for these seminars.

August 5, 1997

Note From the Editor:

This is the last issue of the Maine Tax Alert that I will be writing for you. I am leaving the Bureau of Taxation and my position as Director of Public Communications to work for the State Controller, Carol Whitney.

I have enjoyed writing this newsletter. Many of you have taken the time to pass along suggestions for articles. It has been satisfying to write articles I knew you were expecting. Above all, I thank you for your appreciation for the Tax Alert and for all the work the Bureau is doing to get information to you who need it most.

Elizabeth L. Dodge, CPA