



MAINE TAX ALERT

A Publication of Maine Revenue Services for Tax Professionals

Volume 23, Issue 3

January, 2013 - #3

Public Communications Tel: (207) 626-8478

Maine Income Tax Issues Related to Same-Sex Marriages

Background

Beginning December 29, 2012, Maine law permits the marriage of same-sex couples and recognizes same-sex marriages performed in other states. A portion of the enacted statute reads:

Marriage is the legally recognized union of 2 people. Gender-specific terms relating to the marital relationship or familial relationships must be construed to be gender-neutral for all purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law or any other source of civil law. 19-A MRSA § 650-A.

A marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized for all purposes under the laws of this State. 19-A MRSA § 650-B.

Maine Income Tax Filing Status, Dependents, and Pro Forma Federal 1040 Return

For Maine income tax purposes, same-sex couples who are legally married on the last day of tax years ending on or after December 29, 2012, must file their Maine individual income tax returns for those tax years using the filing status of either 'married filing joint return' or 'married filing separate return,' even if they filed a federal return using a filing status of 'single' or 'head-of-household.' In addition, same-sex married couples filing a Maine joint return must combine the number of dependents claimed on each of their federal returns to determine the number of dependents for Maine tax purposes.

To complete their Maine individual income tax return, same-sex married couples must complete a pro forma federal income tax return using the 'married filing jointly' or 'married filing separately' filing status and the exemptions, deductions and credits available for that filing status. The pro forma return determines the federal adjusted gross income which is used as the basis for determining Maine adjusted gross income. For purposes of completing the pro forma federal return, same-sex married couples should read the Internal Revenue Code, regulations, returns and related material as though federal law recognized their marital status.

Effect on Taxability of Certain Employee Benefits

Because of the different legal status of same-sex marriages under federal and state law, the taxability of employee benefits may differ for federal and Maine income tax purposes. Certain employee benefits provided to opposite sex spouses of employees or their dependents which receive preferential tax treatment under federal law are taxable for federal tax purposes when provided to same-sex spouses and their dependents. For example, the value of the following employee benefits included in federal adjusted gross income on the employee's single federal return may be excluded from federal adjusted gross income on the *pro forma* federal return for same-sex married couples:

- Employer provided health insurance and other benefits provided pursuant to I.R.C. §106;
- Benefits provided pursuant to a qualified cafeteria plan under I.R.C. § 125; and
- The value of qualified tuition reduction under I.R.C. § 117(d).

Effect on Maine Income Tax Withholding

Maine withholding for an employee is computed in the same manner regardless of whether the employee is a spouse in a same-sex marriage or in an opposite-sex marriage. As discussed above, because of the treatment of employee benefits provided to an employee's same-sex spouse or children, Maine taxable wages may differ from federal taxable wages. For the purpose of treating a cafeteria plan payment as pre-tax or imputing income from an employer-paid benefit, the federal rules for the payment are applied for Maine withholding purposes in the same manner to all married employees. Therefore, employee benefits that are described above are not subject to Maine withholding when extended to a same-sex spouse or the children of that spouse.

Same-sex married employees should review their Forms W-4ME to ensure that they have selected the appropriate married filing status and number of allowances so that the employer can properly adjust Maine income tax withholding if necessary.

Maine Revenue Services Rule 110 "Requests for Advisory Rulings"

Anyone submitting a request to Maine Revenue Services for an advisory ruling should remember to consult Rule 110. The rule provides that advisory ruling requests must state in writing the ruling requested (either in paper letter form or by email), and must include the following:

1. A statement of material facts;
2. The legal basis for the requested ruling;
3. A statement of whether the taxpayer is currently under MRS examination, audit, administrative reconsideration or judicial review with respect to the issue(s) raised by the request for an advisory ruling; and
4. A statement by the taxpayer or the taxpayer's authorized representative that is substantially in the following form:

“I declare that I have examined this request for an advisory ruling and to the best of my knowledge and belief the information presented in support of the requested ruling is true and complete.”

Taxpayers and taxpayer representatives may also submit copies of any relevant supporting documentation. Rule 110 may be seen on the MRS web site at www.maine.gov/revenue (select Laws and Rules).

<u>Department</u>	<u>Telephone Numbers</u>	<u>FAX Numbers</u>	<u>E-mail Addresses</u>
Taxpayer Service Center	(207) 626-8475	(207) 287-5855	
Audit	(207) 822-0450	(207) 822-0453	
Central Registration	(207) 621-5129	(207) 287-3733	division.uctax@maine.gov
Collections & Compliance	(207) 624-9595	(207) 287-6627	compliance.tax@maine.gov
Corporate Tax	(207) 624-9670	(207) 624-9694	corporate.tax@maine.gov
E-file Help Desk (1040 ONLY)	(207) 624-9730	(207) 287-6628	efile.helpdesk@maine.gov
Electronic Funds Transfer	(207) 624-5625	(207) 287-6975	efunds.transfer@maine.gov
Estate & Fiduciary Tax	(207) 626-8480	(207) 624-9694	estatetax@maine.gov
Fuel Tax	(207) 624-9609	(207) 287-6628	fuel.tax@maine.gov
Forms Request Line	(207) 624-7894		
Individual Income Tax Assistance	(207) 626-8475	(207) 624-9694	income.tax@maine.gov
Insurance Premium Tax	(207) 624-9753	(207) 624-9694	
NexTalk (TTY Service)	(888) 577-6690		
Payment Plan/Income Tax	(207) 621-4300	(207) 621-4328	compliance.tax@maine.gov
Payment Plan/Other	(207) 624-9595	(207) 287-6627	compliance.tax@maine.gov
Practitioners' Hotline	(207) 626-8458	(207) 624-9694	
Property Tax	(207) 624-5600	(207) 287-6396	prop.tax@maine.gov
Public Communications	(207) 626-8478	(207) 624-9694	
Sales Tax	(207) 624-9693	(207) 287-6628	sales.tax@maine.gov
Tax Clearance Letters	(207) 624-9628	(207) 287-6627	
Office of Tax Policy	(207) 624-9789	(207) 287-3618	
Taxpayer Advocate	(207) 624-9649	(207) 287-3618	taxpayer.advocate@maine.gov
Withholding Tax	(207) 626-8475	(207) 624-9694	withholding.tax@maine.gov
Tax Violations Hot Line	(207) 624-9600		

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning Maine tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for Maine tax laws and/or regulations.

Suggestions for the Tax Alert?

Please contact: Public Communications (207) 626-8478
Maine Revenue Services
PO Box 1060
Augusta, Maine 04332-1060