



# MAINE TAX ALERT

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## Maine Revenue Services Rulemaking Activity

**Adopted Rule 110, “Requests for Advisory Rulings.”** Rule 110, which took effect on August 13, 2011, establishes specific requirements for advisory ruling requests. 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 website at [www.maine.gov/revenue](http://www.maine.gov/revenue) (select Laws and Rules).

**Repeal of Rule 101, “Standard Interest Rate.”** Rule 101 is no longer necessary because the standard interest rate charged on overdue tax payments is established pursuant to statute. Title 36, Section 186 provides that the rate of interest for any calendar year equals the prime rate rounded up to the next whole percent, plus 3 percentage points. MRS can adequately establish this rate each year, and provide timely and effective notice to taxpayers and taxpayer representatives, without going through the formal rulemaking process. Rule 101 was repealed effective January 14, 2012.

**Repeal of Rule 313, “Classified Permits.”** Rule 313 is no longer necessary because Title 36 Section 1951-A has been amended to repeal the authority of the State Tax Assessor to issue classified permits (whereby certain small retailers were granted a waiver of the requirement to report all of their nontaxable sales, and instead allowed to establish a “default” percentage of taxable vs. exempt sales on their sales tax returns); see Chapter 285, PL 2011, Chapter 285, effective September 28, 2011. The handful of remaining classified permit holders have been

administratively “grandfathered” and these permits will continue to be honored. Rule 313 was repealed effective January 14, 2012.

## Changes in Procedures for Filing Form 1065ME/1120S-ME (Information Return for Partnerships/S Corporations)

To reduce the burden on businesses, Maine Revenue Services (MRS) is simplifying the filing requirements for Form 1065ME/1120S-ME (Information return for partnerships and S corporations). As a result, many partnerships and S corporations will no longer be required to file Maine Form 1065ME/1120S-ME.

**Beginning with returns due for 2011, Maine Form 1065ME/1120S-ME is not required to be filed if *all* partners, shareholders or members of the entity are Maine resident individuals, estates, or trusts, determined on the last day of the tax year (December 31 for calendar year filers).**

Previously, partnerships, S corporations and LLCs were required to file Maine Form 1065ME/1120S-ME if the entity was required to file federal Form 1065 or Form 1120S and had Maine business activity, or if the entity had Maine resident partners, shareholders or members.

**Now, partnerships, S corporations and LLCs must file Form 1065ME/1120S-ME and related Schedule PSI only if all of the following apply:**

- the entity had business activity in Maine during the year;
- the entity files federal Form 1065 or Form 1120S; and
- the entity had: a) one or more owners that were not individuals, estates, or trusts; or b) one or more owners that were nonresident individuals, estates or trusts.

Finally, as in prior years, Schedule PSI is not required to be filed if the number of non-individual owners or the number of owners who are nonresident individuals, estates or trusts is more than 100.

If you have any questions regarding these changes, please call 207-624-9670 or email [partner-scorp.tax@maine.gov](mailto:partner-scorp.tax@maine.gov).

## Changes in Procedures for Filing Certain Pass-through Entity Withholding Forms for Nonresident Owners (Form 941P-ME, Form 941E-ME & Form 941LM-ME)

MRS is changing the filing requirements for certain pass-through entity withholding forms to further reduce the administrative burden on businesses.

For calendar years 2012 and after, **Form 941P-ME** (Pass-through Entity Withholding Return) previously required to be filed quarterly will be replaced with an *annual* Form 941P-ME and quarterly *estimated* pass-through entity withholding payments for nonresident partners,

shareholders or members. The new annual Form 941P-ME will be due January 31 following the calendar year for which it is filed. Thus, the annual Form 941P-ME for 2012 will be due January 31, 2013.

As under prior procedures, each quarterly estimated pass-through entity withholding payment must, in order to avoid interest and penalty charges, equal the nonresident partners', shareholders' or members' share of the annual Maine-source income of the pass-through entity for the prior year (or 90% of the estimated annual Maine-source income of the entity for the current year) multiplied by 8.5% (8.93% if the partner, shareholder or member is a C corporation) and the result divided by 4. The due dates for the quarterly payments will remain unchanged (i.e., the last day of the month following the end of the quarter). For example, the 2012 first quarter payment will be due April 30, 2012. The estimated payments must be made electronically or by using Form 900ME payment vouchers.

For calendar years 2012 and after, **Form 941E-ME** (Pass-through Entity Withholding Exemption Form) and **Form 941LM-ME** (List of Participating Members in the Compliant Taxpayer Exemption Request) are discontinued. Thus, the forms generally due January 31, 2012 are not required to be filed in order to take advantage of the applicable pass-through entity withholding exemptions.

The following automatic exemptions from the pass-through entity withholding requirement will continue to apply:

- the nonresident member will have less than \$1,000 in Maine-source income from the entity during the year;
- the nonresident member is a tax-exempt entity; and
- the nonresident member is a pass-through entity that realizes income from another pass-through entity upon which an amount has already been withheld.

In order to take advantage of the compliant taxpayer exemption and composite filing exemption under these new procedures, pass-through entities must keep on file Form 941AF-ME (Nonresident Member Affidavit and Agreement for Compliance with Maine Income Tax) and Form 941CF-ME (Composite Filing Participation Statement) for each nonresident member for which it is claiming the exemption. The forms must be kept on file for at least 3 years.

An entity may request other exemptions in writing for unusual circumstances. Such exemptions are valid only for the calendar year for which they are granted. In addition, all exemptions become invalid if the annual Form 941P-ME is not filed timely.

**Note:** These new filing and payment procedures take effect for calendar years 2012 and thereafter. Thus, Form 941P-ME for the 4<sup>th</sup> quarter 2011 is still due January 31, 2012 along with the required withholding payment. The reconciliation Form W-3ME for 2011 is due February 28, 2012. These procedures also do not change the due date and requirement to issue Maine Form 1099ME to partners, shareholders and members affected by pass-through entity withholding.

If you have any questions regarding the new procedures, please call 207-626-8475 (press 1, then option 4) or email [withholding.tax@maine.gov](mailto:withholding.tax@maine.gov).

## Maine Capital Investment Credit

Last year, the Legislature passed several new income tax credits. Among the new credits is the Maine Capital Investment Credit, which applies to businesses that purchase and place in service property in Maine in 2011 or 2012. The credit is equal to 10% of the federal bonus depreciation claimed on the federal return for Maine property.

All property for which the federal bonus depreciation is claimed is still subject to the Maine income addition modification for bonus depreciation. The addition related to property for which the credit is claimed is equal to the entire bonus depreciation claimed under the Code, Section 168(k). The addition for all other property remains the same, which is the net increase in depreciation claimed over the amount that would have been allowed if bonus depreciation had not been claimed. The addition modification related to property for which the credit is claimed is not subject to recapture. The new credit is claimed in lieu of the modification recapture in future years. The bonus depreciation addition modification for all other property may still be recaptured as in previous years.

The credit is optional. For each qualified investment, a taxpayer may weigh the pros and cons and decide which is more beneficial, claiming the 10% credit in the first year or claiming recapture subtraction modifications in future years.

For pass-through entities, the decision to claim the credit lies with the individual owners rather than with the entity. To be eligible for the credit, the entity must have claimed bonus depreciation at the federal level and the owner must claim the addition modification for Maine tax purposes.

For more information, see the 2011 Maine Capital Investment Credit worksheet:

[www.maine.gov/revenue/forms/credits/2011.htm](http://www.maine.gov/revenue/forms/credits/2011.htm).

## Maine Qualified Terminable Interest Property Election For A Qualified Domestic Trust

Can the personal representative of a decedent's estate make a Maine Qualified Terminable Interest Property ("QTIP") election if the surviving spouse is not a U.S. citizen? Yes, through the use of a qualified domestic trust ("QDOT").

The Maine QTIP generally allows an estate with a surviving spouse to take advantage of the full federal estate tax exclusion while postponing the tax on the difference between the federal exclusion and the Maine exclusion amounts. This method is available even if the surviving spouse does not live in the United States.

Maine qualified terminable interest property must be "eligible to be treated as qualified terminable interest property under the Code, Section 2056(b)(7)." Further, there must be no federal QTIP election made for that property and a Maine QTIP election must be made with regard to the property. In order to be eligible to be treated as QTIP property at the federal level, property must be includible in the federal marital deduction.

Where the surviving spouse of a decedent is not a citizen of the United States, the marital deduction is allowed only through the operation of a QDOT. Where property passes from the

decedent into a QDOT, federal regulations require that the trust qualify for the marital deduction or qualify as an estate trust. Property in the estate of a decedent with a non-citizen surviving spouse must be placed in a QDOT in order to be eligible for the federal QTIP election and, likewise, a Maine QTIP election. For property placed in a QDOT to be allowed as Maine QTIP property, the property must be eligible for federal QTIP election, no federal QTIP election must have been made for the property, and Maine QTIP treatment for the property must be elected on a timely filed Maine estate tax return.

Therefore, if property is placed in a QDOT, that property may be eligible for a Maine QTIP election. Maine law does not allow for a separate Maine QDOT. If a qualified domestic trust is created, it must be created at the federal level and be subject to all federal requirements.

## 2012 Individual Income Tax Estimated Tax Payment Vouchers

As previously announced in the December, 2011 issue of the Maine Tax Alert, Maine Revenue Services will not be mailing 2012 individual income tax estimated tax payment vouchers (Form 1040ES-ME) directly to taxpayers.

Postcards will be mailed to taxpayers in late January or early February to remind them of the options available for submitting estimated tax payments.

Vouchers may be downloaded from the Maine Revenue Services website at [www.maine.gov/revenue/forms](http://www.maine.gov/revenue/forms) and submitted with mailed payments. Taxpayers that want to continue using printed forms may call the forms line (207) 624-9694 to order the forms.

## Internal Revenue Service Nonfiler Outreach Links

The Internal Revenue Service has reported that significant dollars go unclaimed due to non-filing and that taxpayers should file their returns to claim refunds and available credits they may be entitled to. Following is a list of resources available on the IRS web site to assist taxpayers who need to file prior year returns.

- **Publication 4742, “Let’s Talk – Haven’t Filed a Tax Return in a while?”**  
<http://www.irs.gov/pub/irs-pdf/p4742esp.pdf>
- **Publication 4750, “Let’s Talk”** <http://www.irs.gov/pub/irs-pdf/p4750esp.pdf>
- YouTube video titled “Haven’t Filed a Tax Return in Years?” available on the IRS video channel [http://www.youtube.com/watch?v=Sz4AJBWE\\_Ac](http://www.youtube.com/watch?v=Sz4AJBWE_Ac)

## Maine Sales Tax Bulletins

Maine Revenue Services Sales Tax Division has recently made revisions to the following sales tax bulletins which can be viewed at [www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm](http://www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm):

IB 32 - Rentals of Living Quarters

IB 39 – Sale Price Upon Which Tax is Based

## Maine Revenue Services Criminal Tax Cases

### **Bangor Man Sentenced for Tax Fraud**

Attorney General William J. Schneider announced that Andrew Murphy, Sr., 49, of Bangor, was sentenced to serve five months in jail for 14 counts of tax fraud, including theft of withholding tax, intentional tax evasion, failure to pay over withholding tax, and making false statements in tax returns.

Murphy committed the crimes in connection with the operation of his fuel oil and trucking delivery businesses, under the names of A.J. Murphy, Inc., Hudson Road Holding Company, and Heaten Oil Company. He pleaded guilty in August of this year following an investigation covering 2005 through 2010. During this time period Murphy repeatedly reported to Maine Revenue Services that he had no employees, when in fact he had several. Moreover, Murphy stole the withholding taxes that he withheld from his employees' wages, rather than pay over the taxes to Maine Revenue Services.

Penobscot County District Court Judge Bruce Jordan sentenced Murphy to three years of incarceration with all but five months suspended, and three years of probation. Murphy was ordered to pay back \$65,713 in restitution, which represents the withholding taxes which were stolen, along with unpaid corporate, sales, and personal income tax.

"Businesses are entrusted with the collection of state taxes and must not divert these taxes for personal enrichment," said Attorney General Schneider. "Maine citizens rely upon businesses to be honest collectors of their tax monies. We will continue to work with Maine Revenue Services to pursue and prosecute anyone who attempts to steal tax money or defraud the state."

This case was investigated by the Maine Revenue Services' Criminal Investigations Unit. Assistant Attorney General Gregg D. Bernstein handled this matter for Attorney General Schneider's Financial Crimes and Civil Rights Division.

<u>Department</u>	<u>Telephone Numbers</u>	<u>FAX Numbers</u>	<u>E-mail Addresses</u>
Taxpayer Service Center	(207) 287-2076	(207) 287-5855	
Appellate	(207) 624-9854	(207) 287-3618	
Audit	(207) 822-0450	(207) 822-0453	
Central Registration	(207) 621-5129	(207) 287-3733	<a href="mailto:division.uctax@maine.gov">division.uctax@maine.gov</a>
Collections & Compliance	(207) 624-9595	(207) 287-6627	<a href="mailto:compliance.tax@maine.gov">compliance.tax@maine.gov</a>
Corporate Tax	(207) 624-9670	(207) 624-9694	<a href="mailto:corporate.tax@maine.gov">corporate.tax@maine.gov</a>
Economic Research	(207) 624-9789	(207) 287-3618	
E-file Help Desk (1040 ONLY)	(207) 624-9730	(207) 287-6628	<a href="mailto:efile.helpdesk@maine.gov">efile.helpdesk@maine.gov</a>
Electronic Funds Transfer	(207) 287-8276	(207) 287-6975	<a href="mailto:efunds.transfer@maine.gov">efunds.transfer@maine.gov</a>
Estate & Fiduciary Tax	(207) 626-8480	(207) 624-9694	<a href="mailto:estatetax@maine.gov">estatetax@maine.gov</a>
Fuel Tax	(207) 624-9609	(207) 287-6628	<a href="mailto:fuel.tax@maine.gov">fuel.tax@maine.gov</a>
Forms Request Line	(207) 624-7894		
Individual Income Tax Assistance	(207) 626-8475	(207) 624-9694	<a href="mailto:income.tax@maine.gov">income.tax@maine.gov</a>
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	<a href="mailto:compliance.tax@maine.gov">compliance.tax@maine.gov</a>
Payment Plan/Other	(207) 624-9595	(207) 287-6627	<a href="mailto:compliance.tax@maine.gov">compliance.tax@maine.gov</a>
Practitioners' Hotline	(207) 626-8458	(207) 624-9694	
Property Tax	(207) 287-2013	(207) 287-6396	<a href="mailto:prop.tax@maine.gov">prop.tax@maine.gov</a>
Public Communications	(207) 626-8478	(207) 624-9694	
Sales Tax	(207) 624-9693	(207) 287-6628	<a href="mailto:sales.tax@maine.gov">sales.tax@maine.gov</a>
Tax Clearance Letters	(207) 624-9628	(207) 287-6627	
Taxpayer Advocate	(207) 624-9649	(207) 287-3618	<a href="mailto:taxpayer.advocate@maine.gov">taxpayer.advocate@maine.gov</a>
Withholding Tax	(207) 626-8475	(207) 624-9694	<a href="mailto:withholding.tax@maine.gov">withholding.tax@maine.gov</a>
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?

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