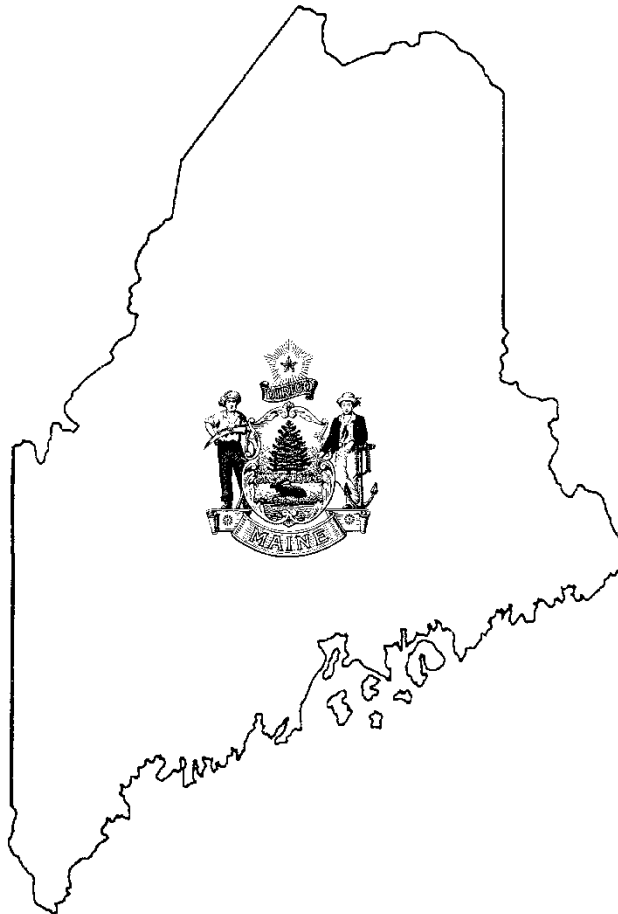


INDIVIDUAL INCOME TAX

Tribal Member Residing on Tribal Land



GUIDANCE DOCUMENT

Maine Revenue Services, Income/Estate Tax Division

Initial Version: April 2024

Tribal Member Residing on Tribal Land

General Information

Maine law provides that an enrolled tribal member residing on tribal land in Maine may, for taxable years beginning on or after January 1, 2023, reduce Maine taxable income by income derived from or connected with sources on tribal land. A tribal member may also be subject to an income addition modification if the amount derived from or connected with sources on tribal land is a loss. Both the income subtraction modification and the income addition modification are calculated on Maine Form 1040ME, Schedule ETM. See the Guidance Document for *Form 1040ME, Schedule ETM* for additional information in calculating the Maine individual income tax modifications for enrolled tribal members residing on tribal land.

The purpose of this guidance document is to assist taxpayers in determining whether they are a tribal member residing on tribal land, as defined by 36 M.R.S. § 5102(5-A). An individual is not eligible to claim the income subtraction modification, and is not subject to the income addition modification, unless that individual is a tribal member residing on tribal land in Maine.

This document does *not* provide guidance:

- On whether income or loss is derived from or connected with sources on tribal land.
- On how to calculate the income modifications under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ).
- On how to determine whether you are a Maine resident.

For information regarding what constitutes **income or loss derived from or connected with sources on tribal land** and on how to calculate the **Maine income tax modifications for enrolled tribal members in Maine**, see 36 M.R.S. §§ 5122(1)(PP), 5122(2)(ZZ), and 5132; Maine Revenue Services (“MRS”) Rule 825; the Guidance Document for *Form 1040ME, Schedule ETM*; and Maine Form 1040ME, Schedule ETM and related instructions.

For information on making a **Maine residency determination**, see 36 M.R.S. §§ 5102, sub-§ (3) and 5102 sub-§ (5); MRS Rule 807; and the Guidance Document for *Determining Residency Status*.

See the following for Maine tax laws, rules, and forms:

- Maine tax laws (Title 36) are available at: legislature.maine.gov/legis/statutes/36/title36ch0sec0.html
- **MRS Rules** are available at: www.maine.gov/revenue/publications/rules
- Maine income tax **guidance documents** are available at: www.maine.gov/revenue/taxes/income-estate-tax/guidance-documents
- Maine **tax forms** are available at: www.maine.gov/revenue/tax-return-forms.

For additional assistance, email MRS, Income/Estate Tax Division at income.tax@maine.gov.

For purposes of this guidance document, the following terms have the following meanings:

“Enrolled member” means an individual who is enrolled with, and appears on the tribal membership roll of, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, or the Penobscot Nation. Membership rolls of enrolled members are in the possession of, and maintained by, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation.

“Permanent place of abode” means a house, apartment, residential care facility, dwelling place, or other residence that an individual maintains as a household for the entire tax year, whether or not that individual

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owns it. The term does not include a seasonal camp or cottage that is used only for vacations or a dormitory room used by a student during the school year. A place of abode is not considered “permanent” if it is maintained only during a temporary stay on tribal land for the accomplishment of a particular purpose.

“**Tribal land**” means land within the Houlton Band Trust Land, the Passamaquoddy Indian territory, or the Penobscot Indian territory.

“**Tribal member**” means an enrolled member of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, or the Penobscot Nation.

“**Tribal member residing on tribal land**” means, in general terms, a tribal member who is domiciled on tribal land, even if domiciled on tribal land of a tribe of which the tribal member is not a member. A tribal member residing on tribal land also includes a tribal member who is not domiciled on tribal land but who maintains a “permanent place of abode” (see explanation below) on tribal land and spends more than 183 days during the taxable year on tribal land. Certain exceptions apply, such as, for example, a tribal member that spends significant time during the taxable year outside tribal land. Other criteria may also apply. See the “Tribal Member Residing on Tribal Land” section below for a detailed description and 36 M.R.S. § 5102(5-A) for the statutory definition of the term.

Certain provisions contained in 36 M.R.S. §§ 111 and 5102, as well as in MRS Rule 825, provide more complete definitions for the terms listed above and also provide definitions for other relevant terms (e.g., “Houlton Band of Maliseet Indians,” “Houlton Band Trust Land,” “Passamaquoddy Indian territory,” “Passamaquoddy Tribe,” “Penobscot Indian territory,” Penobscot Nation,” etc.).

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Determination of tribal member status: See the definition for “tribal member” above. Note that if married and filing a joint income tax return for the taxable year, each spouse must separately determine whether they are a tribal member. Only tribal members qualify for, or are subject to, the income modifications for enrolled tribal members under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ). If you are a tribal member as defined above, you may then proceed in determining whether you are tribal member residing on tribal land.

Generally, with some exceptions explained later, a tribal member residing on tribal land is an individual who is a tribal member:

- domiciled on tribal land belonging to any of the three tribes listed in the definition of “tribal member” above; or
- not domiciled on tribal land but maintains a permanent place of abode on tribal land and spends in the aggregate more than 183 days during the taxable year on tribal land (also known as a tribal member who is a “statutory resident” [see below] on tribal land).

What does domicile mean? “Domicile” means the place (A) where a person resides, and (B) where that person intends to remain and, whenever absent, intends to return. Thus, domicile has two components: residence and the intent to remain or return, if absent. It is sometimes described as the place where you make your home, the center of your domestic, social, and civic life. An individual can only have one domicile at a time; thus, if you

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are domiciled in Maine, you cannot at the same time be domiciled in another state or country – even if you spend significant time in the other state or country. Once an individual’s domicile is established, it continues until domicile is established elsewhere. An individual alleging a change in domicile has the burden to prove that domicile has been established elsewhere. The intent to move in the future is not sufficient to establish a change in domicile.

Married individuals: If an individual is married, both that individual and the individual’s spouse are presumed to have the same domicile, even though they may live apart for a portion of the year. This presumption can be overcome if the facts clearly demonstrate that the spouses are domiciled in different locations.

Military service members: Under the federal Servicemembers Civil Relief Act (“SCRA”), a service member and (if married) the service member’s spouse may, for state tax purposes, elect to use any of the following:

- The residence or domicile of the service member
- The residence or domicile of the service member’s spouse
- The permanent duty station of the service member

The domicile elected by a tribal member under the SCRA is presumed to be the domicile of the tribal member for purposes of the income modifications for enrolled tribal members under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ). Thus, for example, a service member who is a tribal member and who under SCRA elects a state other than Maine as their state of domicile will, for purposes of the income modifications for enrolled tribal members, be presumed to *not* be domiciled in Maine and, therefore, not domiciled on tribal land in Maine. This presumption can be overcome if the tribal member can demonstrate that they are domiciled in Maine on tribal land.

(Note that, under 36 M.R.S. § 5122(2)(LL), active duty military pay earned by a Maine resident service member for service performed outside of Maine under written military orders is not subject to Maine individual income tax.)

For purposes of SCRA, “service member” means an active-duty member of the United States Army, Marine Corps, Navy, Air Force, and Coast Guard; members of the Reserve component when serving on active duty; members of the National Guard mobilized under federal orders for more than 30 consecutive days; or active duty commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration.

Domiciled on tribal land for part of the year: Unless it is determined that the tribal member is a statutory resident on tribal land for the tax year, it is possible for a tribal member to be domiciled on tribal land for only part of the year, in which case the enrolled tribal member income modification calculated on Form 1040ME, Schedule ETM must be limited to the tribal member’s income or loss derived from or connected with sources on tribal land during that part of the tax year the tribal member was domiciled on tribal land.

Factors in determining domicile. MRS considers all of an individual’s relevant facts and circumstances to determine the domicile of an individual. Although an individual’s intent to remain or return is a critical factor in determining domicile, an individual’s statement as to intent is not necessarily determinative. Evidence of an individual’s intent may be found in many decisions made by the individual. An individual may retain the right to make decisions that determine his or her domicile, even though that individual is considered incapable of making, or chooses not to make, other decisions, such as health care choices or financial decisions. However, actions by a person responsible for an incapacitated individual’s affairs may be considered when determining the incapacitated individual’s intent to remain. When a guardian has been appointed and chooses the incapacitated

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individual's place of abode pursuant to authority as a guardian, the intent of the guardian for the individual to remain or return to a particular location becomes a factor in the determination of the incapacitated person's domicile. Evidence of the guardian's intent may be found in relevant statements and actions.

Although many factors are considered in determining whether a tribal member is an individual domiciled on tribal land, the following limitations apply:

- The geographic location of a political organization or political candidate that receives one or more contributions from the tribal member is not in and of itself determinative on the question of whether the tribal member is domiciled on tribal land.
- The geographic location of a professional advisor retained by a tribal member or the geographic location of a financial institution with an active account or loan of a tribal member may not be used to determine whether or not a tribal member is domiciled on tribal land. A "professional advisor" includes, but is not limited to, a person that renders medical, financial, legal, accounting, insurance, fiduciary, or investment services.
- Charitable contributions may not be used to determine whether or not a tribal member is domiciled on tribal land.

Subject to the limitations cited above, all relevant facts and circumstances are considered in determining where an individual is domiciled. The following factors, while not exclusive or of equal weight, may be used as evidence of domicile:

- Where the individual is enrolled as a tribal member.
- Property ownership and residence:
 - Location of the individual's principal residence under the Internal Revenue Code;
 - Location of the individual's mailing address;
 - Location where the individual spent the most amount of time; and
 - Whether the individual applied for a residential property tax exemption or related benefit for property on tribal land or a comparable benefit for property located elsewhere.
- Family and dependents:
 - Whether the individual can be claimed as a dependent on another person's federal income tax return and where that other person is domiciled;
 - Where the individual's spouse or dependents reside; and
 - Where the individual's dependents attend elementary or secondary school.
- Licenses and registrations:
 - Where the individual is registered to vote;
 - The address listed on the individual's drivers license;
 - Where the individual's vehicles are registered; and
 - Where the individual maintains professional licenses.

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- Financial data:
 - Where the individual earns wages;
 - The address recorded for the individual's insurance policies, deeds, mortgages, or other legal documents; and
 - Where the individual's safety deposit boxes are maintained.
- Affiliations:
 - Where the individual's fraternal, social, or athletic memberships are located;
 - Where the individual's union memberships are maintained; and
- Other factors:
 - Where the individual's personal property is located;
 - Where the individual conducts business;
 - The address listed for the individual in a telephone directory; and
 - Where the individual's pets are located.

Exceptions to domicile on tribal land. Certain individuals domiciled on tribal land are treated as not residing on tribal land as follows:

General exception: A tribal member domiciled on tribal land will be treated as not residing on tribal land if, during the taxable year, the tribal member meets *all* of the following:

- Did not maintain a permanent place of abode on tribal land;
- Maintained a permanent place of abode outside of tribal land; and
- Spent no more than 30 days in the aggregate on tribal land (with any portion of a day counted as a full day).

Foreign exception. A tribal member domiciled on tribal land will be treated as not residing on tribal land if the tribal member meets *all* of the following:

- Within any period of 548 consecutive days (the "548-day period"), the tribal member is present in a foreign country (or countries) for at least 450 days;
- During the 548-day period, the tribal member is not present on tribal land for more than 90 days and does not maintain a permanent place of abode on tribal land at which the tribal member's spouse (unless the tribal member and spouse are legally separated) or a minor child is present for more than 90 days; and
- During that period of the taxable year the tribal member did not reside on tribal land with which or within which the 548-day period begins and during that period of the taxable year the tribal member did not reside on tribal land with which or within which the 548-day period ends, the tribal member is present on tribal land for a number of days that does not exceed an amount that bears the same ratio to 90 as the number of days contained in the period not residing on tribal land during the relevant taxable year bears to 548.

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Tribal member who is a statutory resident on tribal land. Even if a tribal member is not domiciled on tribal land, he or she will be considered to be residing on tribal land if the tribal member maintained a permanent place of abode on tribal land and was present on tribal land for more than 183 days during the taxable year, unless the tribal member is in the Armed Forces of the United States. Tribal members who are not domiciled on tribal land but who claim to be a statutory resident on tribal land should be prepared to produce documentation – such as planners, calendars, plane tickets, canceled checks, and credit card and other receipts – to support the claim that more than 183 days of the taxable year was spent on tribal land.

EXAMPLES

Example 1 - Domiciled on tribal land for the entire tax year. Ben and Jennifer are tribal members who are retired. They own a home on tribal land at which they reside from May 1 to October 1 (153 days) each year. Ben and Jennifer have Maine driver's licenses, car registrations, and bank accounts – all of which reflect their home address on tribal land. They are active in community affairs on tribal land, registered to vote with an address on tribal lands, and consider the property on the tribal land to be their home. Ben and Jennifer spend the rest of the year at their condominium in Florida. Based on these facts, Ben and Jennifer are, for each tax year, considered to be domiciled on tribal land for the entire year. Thus, as tribal members residing on tribal land, their income derived from or connected with sources on tribal land during the tax year qualify for the income modification calculated on Maine Form 1040ME, Schedule ETM.

Example 2 - Domiciled on tribal land for the entire tax year. Stan and Susan are tribal members who own a home on tribal land. Their three children are enrolled in the school system on tribal land, they register vehicles and register to vote with an address on tribal land, and use their tribal land home address on their insurance policies and mortgage documents. Stan is a merchant seaman who works for a company based in Texas. His assignments take him out to sea for four to five months at a time, but he always returns to his home on tribal land to be with his family between trips. He and four co-workers split the rent on a small apartment in Texas to use as a place to stay immediately before and after each trip and to provide an address for mail delivery. Based on these facts, Stan is domiciled on tribal land together with his family, even though he spends a significant amount of time each year away from his home. Thus, as tribal members residing on tribal land, Stan and Susan's income derived from or connected with sources on tribal land during the tax year qualify for the income modification calculated on Maine Form 1040ME, Schedule ETM.

Example 3 – Not Domiciled on tribal land. David is a tribal member domiciled in New York. He is transferred to his employer's Maine office on tribal land for a temporary assignment from March 1 to November 30 (274 days), after which he returns to New York. Although David takes an apartment on tribal land during the temporary assignment period and spends more than 183 days of the taxable year on tribal land, he is not a statutory resident on tribal land because he did not have a permanent place of abode on tribal land for the entire tax year. Based on these facts, David is not eligible for, or subject to, the ETM income modifications under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ).

Example 4 – Not domiciled on tribal land; statutory resident on tribal land. Pete and Pam, tribal members, were domiciled on tribal land until, in 2022, they retired from their jobs with the State of Maine and bought a home in Port Charlotte, Florida. They moved to Florida on the date they bought the home in Port Charlotte and obtained Florida drivers licenses, registered to vote in Port Charlotte, and took other steps to establish domicile in Florida. Thus, as of the move in 2022, Pete and Pam are considered domiciled in Florida. However, after the move, Pete and Pam continued to own and maintain a home in Maine located on tribal land and, in 2023, spent

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200 days at the home from mid-April through October to visit with family. Based on these facts, Pete and Pam are statutory residents on tribal land in 2023 because they maintained a permanent place of abode on tribal land for the entire year and spent more than 183 days at the home. As tribal members residing on tribal land, their 2023 income derived from or connected with sources on tribal land would qualify for the income modification calculated on Maine Form 1040ME, Schedule ETM.

Example 5 – Not domiciled on tribal land; statutory resident on tribal land. Sarah is a tribal member domiciled in Kennebunk, Maine. She was transferred temporarily to her employer’s office on tribal land for an assignment from June 1, 2022 to August 1, 2023. For the period of January 1, 2023 through August 1, 2023, Sarah resided in an apartment on tribal land. Although she spent more than 183 days on tribal land in 2023, she was not a statutory resident on tribal land because her apartment was not maintained for the entire tax year. In that Sarah was, for 2023, neither domiciled on tribal land nor a statutory resident on tribal land, she would not qualify for, or be subject to, the ETM income modifications under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ). However, if Sarah’s assignment had been extended in 2023 to the end of the year and she maintained the apartment as a residence for all of 2023, she would be a statutory resident on tribal land and her 2023 income derived from or connected with sources on tribal land would qualify for the ETM income modification calculated on Maine Form 1040ME, Schedule ETM.

Example 6 – Statutory resident on tribal land; domiciled resident on tribal land. Assume the same facts in example 5 above, except that, if Sarah changed her domicile (moved) on August 1, 2023 from Kennebunk, Maine to the apartment on tribal land, she would be considered a tribal member residing on tribal land for the entire 2023 tax year and, on that basis, all her income in 2023 derived from or connected with sources on tribal land would qualify for the ETM income modification calculated on Maine Form 1040ME, Schedule ETM.

Example 7 – Residing on tribal land for part of the year. Susan and Sam, tribal members, have been domiciled on tribal land for five years. Susan received notice in 2023 from her employer that she is being transferred to the company’s office in New York. On September 1, 2023, Susan and Sam move to a new home in Connecticut with the intent to make Connecticut their new state of domicile and took all the necessary steps to make that happen. Prior to leaving, they put their house located on tribal land on the market for sale with a local real estate office. An offer was made for the house on October 1, 2023 and the house was sold on December 1, 2023. Based on these facts, Susan and Sam were domiciled on tribal land from January 2023 through August 2023, after which, on September 1, 2023, they established domicile in Connecticut. Accordingly, only the income derived from or connected with sources on tribal land during the period of January 2023 through August 2023 qualify for the income modification calculated on Maine Form 1040ME, Schedule ETM. Any gain from the sale of their home on December 1, 2023 would not qualify for the modification because Susan and Sam did not reside on tribal land at the time the gain was realized.