



# Maine Real Estate Withholding

Daniel Marquis  
*Senior Tax Examiner  
Maine Revenue Services*

Willow Russell  
*Tax Examiner II  
Maine Revenue Services*

[www.maine.gov/revenue](http://www.maine.gov/revenue)

# Maine Real Estate Withholding – Topics

- Overview
- Exceptions
- Income Tax Return Filing Requirements
- Common Errors



# Maine Real Estate Withholding Overview

- ❑ Enacted in 1991 for sales on or after January 1, 1992 (36 M.R.S. § 5250-A)
- ❑ Applies to sales of Maine real property by nonresident individuals and entities
- ❑ Applies to sales where the consideration is \$100,000 or more
- ❑ Withholding equal to 2.5% of the proceeds from the sale
- ❑ Exceptions or reduced withholding may apply

<https://www.maine.gov/revenue/taxes/income-estate-tax/real-estate-withholding>



# Maine Real Estate Withholding Overview, cont.

- Buyer responsible for remitting withholding to MRS 30 days after closing date
- Buyer becomes personally liable for the withholding if not remitted to MRS
- The withholding is not the tax due on the gain, but a payment applicable against the tax due calculated on the annual income tax return filed by the seller(s)
- Withholding remitted for multiple sellers of the same property is prorated based on each seller's share of the proceeds



# Maine Real Estate Withholding - Exceptions

Real estate withholding not required if:

- The consideration for the property is less than \$100,000
- The seller furnishes to the buyer a Residency Affidavit certifying that, under penalty of perjury, the seller is, as of the date of transfer, a resident of Maine
- Written notification of the withholding requirement has not been provided to the buyer
- The seller or buyer has received from MRS a certificate stating that:
  - No tax is due on the gain from the transfer
  - The seller has provided adequate security to cover the liability



# Maine Real Estate Withholding - Exceptions, cont.

Real estate withholding not required if:

- The seller is:
  - A state or federal government agency or a political subdivision of the state or federal government
  - An organization exempt from income taxes pursuant to Internal Revenue Code, §501(a)
  - An insurance company exempt from Maine income taxes or a subsidiary of an insurance company described in 24-A.M.R.S., §1157 (5)(B)(1) exempt from Maine income taxes
- The sale of the property is at certain foreclosure sales



# Maine Real Estate Withholding - Exceptions, cont.

Real estate withholding may be reduced if:

- The Maine income tax on the gain is estimated to be less than 2.5% of proceeds
  - Withholding required is equal to the anticipated capital gain multiplied by the applicable income tax rate (7.15% for individuals; 8.93% for C corporations)
  - Seller must obtain a certificate from MRS approving the reduction

<http://www.mainelegislature.org/legis/statutes/36/title36sec5250-A.html>



# REW Forms

## 2022 Real Estate Withholding Returns - for sales occurring in 2022

FORM NUMBER	FORM TITLE	INSTRUCTIONS
<a href="#">REW-1-1040 (PDF)</a>	Real Estate Withholding Return for Transfer of Real Property - <b>for Sellers who are Individuals, Sole Proprietors, LLCs, or S Corporations</b>	Included
<a href="#">REW-1-1041 (PDF)</a>	Real Estate Withholding Return for Transfer of Real Property - <b>for Trust or Estate Sellers</b>	Included
<a href="#">REW-1-1120 (PDF)</a>	Real Estate Withholding Return for Transfer of Real Property - <b>for Corporate Sellers</b>	Included

## 2022 Real Estate Withholding Forms - for sales occurring in 2022

FORM NUMBER	FORM TITLE	INSTRUCTIONS
<a href="#">REW-2 (PDF)</a>	Residency Affidavit, Individual Transferor, Maine Exception 3(A)	Included
<a href="#">REW-3 (PDF)</a>	Residency Affidavit, Entity Transferor, Maine Exception 3(A)	Included
<a href="#">REW-4 (PDF)</a>	Notification to Buyer(s) of Withholding Tax Requirement	Included
<a href="#">REW-5 (PDF)</a>	Request for Exemption or Reduction in Withholding of Maine Income Tax on the Disposition of Maine Real Property	Included
<a href="#">Notification to Seller(s) (PDF)</a>	Notification to Seller(s) of Withholding Tax Requirement	Included

<https://www.maine.gov/revenue/tax-return-forms/real-estate-withholding>



# Maine Real Estate Withholding - Income Tax Return Filing Requirements

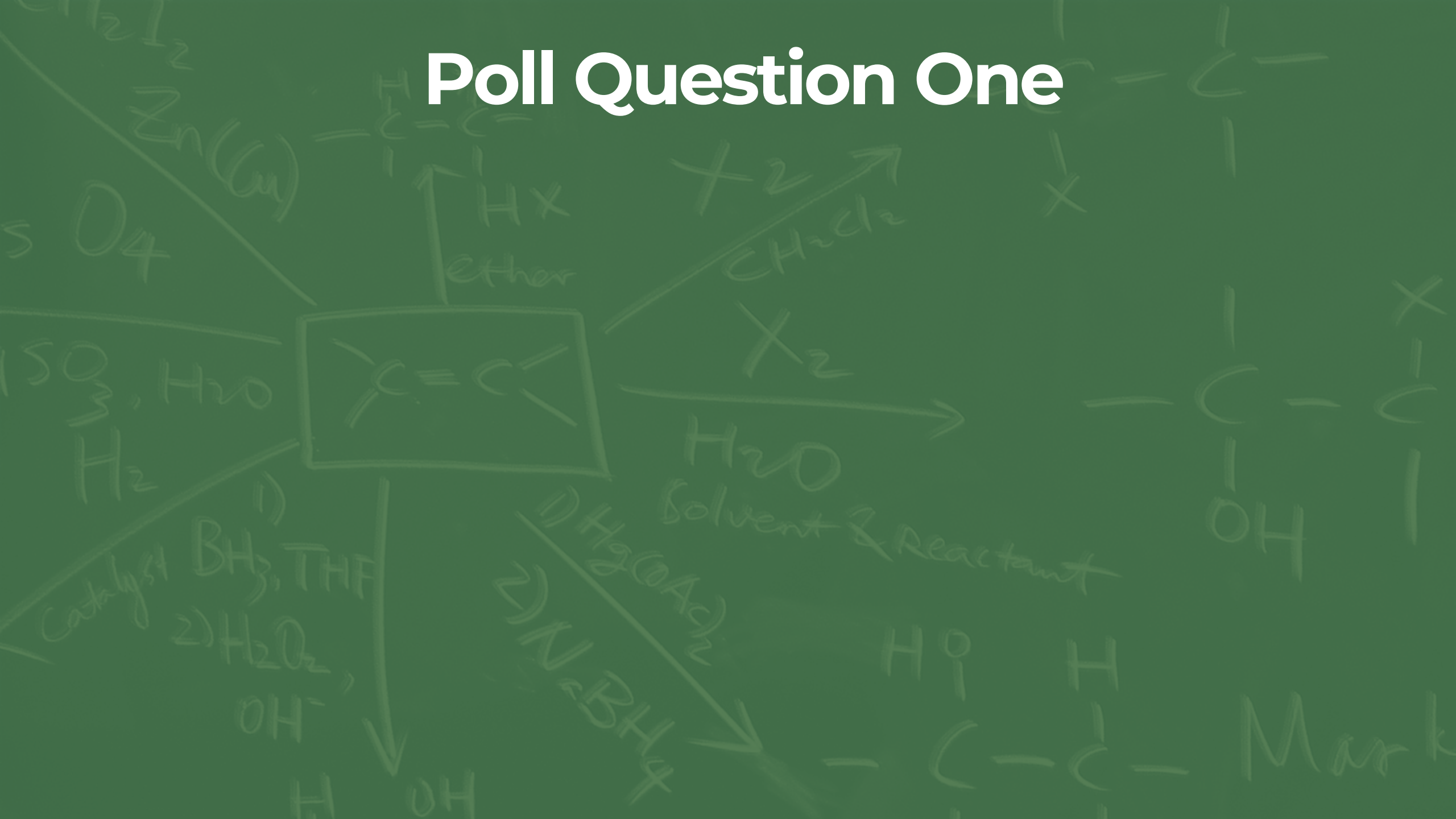
Seller is required to file a Maine income tax return to:

- Report the gain on the sale of Maine real property, or, if no gain
- To receive a refund of Maine real estate withholding

[https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/21\\_1040me\\_book\\_gen\\_instr\\_revMay2022.pdf](https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/21_1040me_book_gen_instr_revMay2022.pdf)

[https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/Residency\\_guidance\\_2021.pdf](https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/Residency_guidance_2021.pdf)

# Poll Question One



# Maine Real Estate Withholding - Common Errors



# Maine Real Estate Withholding - Common Errors

1. Errors in completing and filing Form REW-1
2. Errors related to LLC and S corporation entities
3. Errors in signatures
4. Errors in providing copies of Forms REW-1 to buyers and sellers
5. Errors in claiming withholding payments



# Maine Real Estate Withholding - Common Errors, cont. Real Estate Withholding Forms

FORM NUMBER	FORM TITLE	INSTRUCTIONS
<a href="#">REW-1-1040 (PDF)</a>	Real Estate Withholding Return for Transfer of Real Property - <b>for Sellers who are Individuals, Sole Proprietors, LLCs, or S Corporations</b>	Included
<a href="#">REW-1-1041 (PDF)</a>	Real Estate Withholding Return for Transfer of Real Property - <b>for Trust or Estate Sellers</b>	Included
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# Maine Real Estate Withholding - Common Errors, cont.

## Form REW-1 Errors: It Is Not A Tax Return

- ❑ Form (payment voucher) to remit real estate withholding
- ❑ Describes the details about the sale of Maine real property
- ❑ Verifies the sale of Maine real property on the tax return

### Solution

- ❑ Once the funds have been remitted to Maine Revenue Services, a Maine income tax return must be filed to report the gain and
- ❑ To pay any additional tax due or claim a refund of any overpayment.
- ❑ Report real estate withholding on Form 1040ME line 25b; Form 1041ME line 7b; or Form 1120ME line 7a.



# Maine Real Estate Withholding - Common Errors, cont.

## Form REW-1: Wrong Form Used

- ❑ Real estate withholding payment may post to the wrong tax year
- ❑ May result in a bill, lower refund, or an adjustment notice

### Solution

- ❑ Use forms available on the MRS Website
- ❑ Call to confirm you are using the correct form
- ❑ Match the year and tax type (individual , corporate, etc.) of Form REW-1 to the federal form the seller will file
- ❑ Call or email if taxpayer/client has used a form with the wrong year; adjustments can be made at MRS

<https://www.maine.gov/revenue/tax-return-forms/real-estate-withholding>



# Maine Real Estate Withholding - Common Errors, cont.

## Form REW-1 Errors: Multiple sellers on same form

- Siblings selling property should each have their own Forms REW-5 and REW-1-1040
- May result in erroneous refunds or assessments, including interest and penalties
- May delay issuing refunds

### Solution

- Use separate Forms REW-1 and REW-5 for each seller
- Individuals who are married and who will file a joint income tax return may be included on the same Form REW-1 and/or REW-5



# Maine Real Estate Withholding - Common Errors, cont.

## Form REW-1: Errors related to LLCs or S corporations

- Owners of a LLC or S corporation will bear the income tax liability on the gain from the sale of Maine real property, generally reported on Form K-1
- Payment posting errors will occur if Form REW-1 is filed in the name of the LLC or S corporation

### Solution

- Complete a separate Form REW-1 for each owner of the LLC or S corporation using the owner's name and tax identification number
- If Form REW-1 has been completed and filed incorrectly, contact MRS so that adjustments can be made



# Maine Real Estate Withholding - Common Errors, cont. Signatures are important

- All REW forms must be signed
- Forms REW-1 must be signed by both buyer and seller
- Forms REW-5 cannot be processed if not signed
- TYPED NAMES are not acceptable as signatures



# Maine Real Estate Withholding - Common Errors, cont. Signatures are important, cont.

## Solution

- For virtual closings, initially exclude tax identification numbers so that the buyer and seller sign the form without breaching confidentiality, then verify and enter the social security numbers before sending to MRS
- The seller's name, address, and social security number are necessary to properly post real estate withholding payments to the taxpayer's account
- Digital and handwritten signatures are acceptable



# Maine Real Estate Withholding - Common Errors, cont.

## Copies of redacted Forms REW-1 not provided to buyers and sellers

- Each buyer must be provided with a copy of a redacted Form REW-1 for their records
- Each seller must be provided with two copies of the redacted Form REW-1 for their records
- For confidentiality reasons, MRS is unable to provide copies of Form REW-1

Privacy Policy: <https://www.maine.gov/revenue/about/privacy-policy>

Records Retention:

[https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/Rule\\_103\\_July\\_2021.pdf](https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/Rule_103_July_2021.pdf)

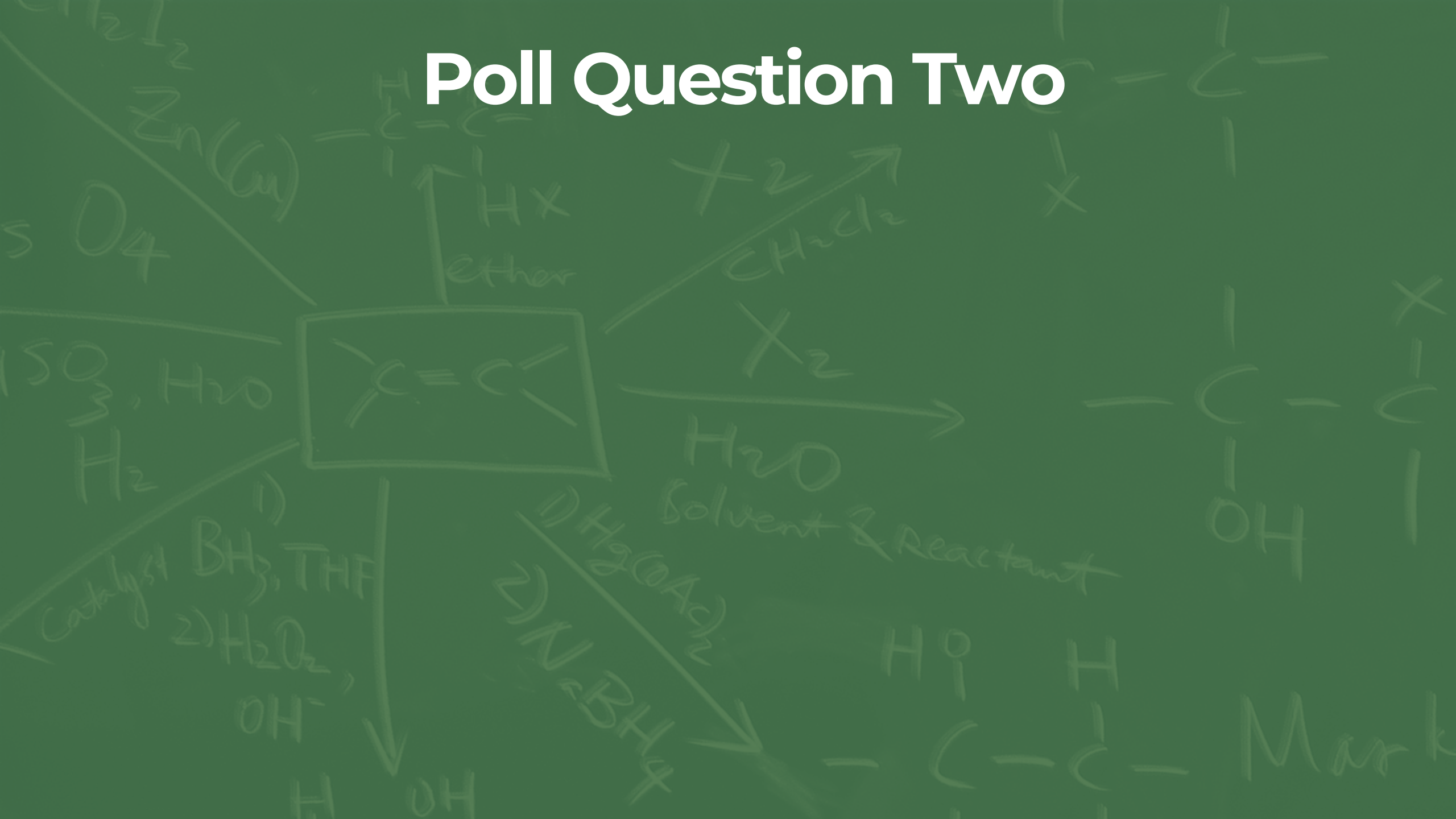


# Maine Real Estate Withholding - Common Errors, cont.

## Not getting credit for withholding payments

- Form REW-1 not included with income tax return
  - Make sure to include a copy of the Form REW-1 with the return.
- Real estate withholding payment by a pass-through entity on behalf of owners
  - Entity may need to provide an allocation list to the REW Team to verify the withholding payment for each owner
  - May need Form K-1 for each owner to verify the Maine pass-through entity income
- The real estate withholding amount not reported on the correct line of the Maine income tax return
  - Payments must be reported on the correct line to offset the tax liability

# Poll Question Two





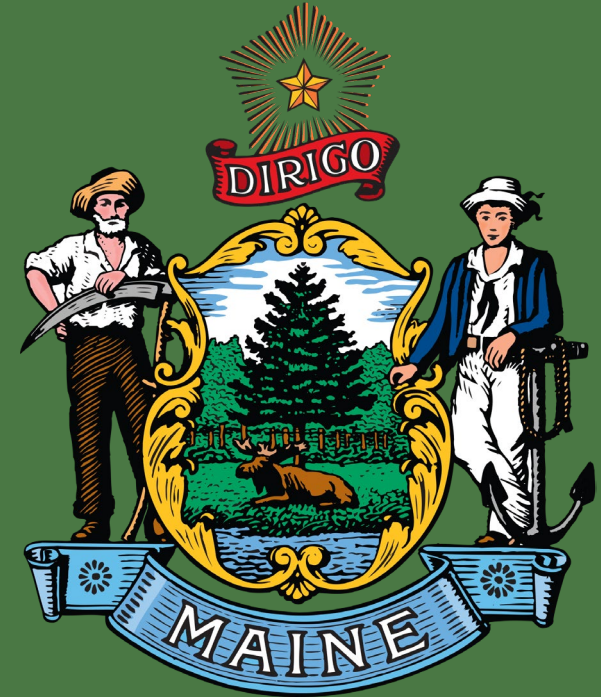
Contact Us

Phone: 207-626-8473

Fax: 207-624-5062

Email: [realestate.withholding@maine.gov](mailto:realestate.withholding@maine.gov)

**Thank you.**



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