



# MAINE TAX ALERT

**A Publication of Maine Revenue Services for Tax Professionals**

**Volume 15, No. 4**

**April, 2005**

**Public Communications Tel: (207) 626-8478**

## **Maine Taxation of Contributions to Health Savings Accounts (HSA)**

### Federal Tax Treatment of HSA Contributions

For federal tax purposes, individuals who make contributions to a health savings account under Code Sections 106 (related to contributions made by employer on behalf of employees) and 223 (related to contributions made directly by taxpayers) are allowed to deduct, or exclude, from gross income the amount contributed when determining federal adjusted gross income. Health savings accounts may be established beginning in 2004.

Contributions to an HSA may occur in one or more of three different ways. Taxpayers may contribute directly into their HSA and then take a deduction on line 28 of the federal individual income tax return. In addition, the employee and/or the employer may make pretax contributions to an employee's HSA through a section 125 cafeteria plan.

### Maine Tax Treatment of HSA Contributions

Maine law requires taxpayers to add back to income amounts contributed to health savings accounts to the extent the amounts are not included in federal adjusted gross income. 36 M.R.S.A. § 5122(1) (W). A taxpayer who contributed directly to his/her HSA must add back the amount from line 28 of the federal income tax return. Taxpayers must also add back any employee or employer contributions to an employee's HSA made through a section 125 plan.

### Employer Withholding and Year-end Reporting Requirements

Maine income withholding is required for wages that are subject to federal withholding. Since contributions to an HSA made through a sec. 125 plan are excluded from taxable wages, they are not subject to federal withholding requirements. Consequently, the employee and employer contributions are also not subject to Maine withholding even though they will be subject to Maine income tax. However, it generally will be in the best interest of employees for the employer to include the contributions in the wage base when determining the amount subject to Maine withholding.

Both the employee and employer contributions to an HSA made through a section 125 plan will be excluded from Gross Wages reported in box 1 of the employee's W-2. These contributions must be included in the Maine wages reported in box 16. Under federal rules, the employer's contribution is reported in box 12 with a code W. The employer should also provide Maine employees with the amount of each employee's contribution. MRS recommends that this amount also be reported on the W-2, in box 14 with a brief description of the item.

## **Maine Revenue Services Announces Release of New Form 706ME-EZ – Maine Estate Tax Information Return for Lien Discharge**

In prior years Form 706ME, filed for deaths occurring during the calendar year, has not been available until several months after the start of the calendar year. This delay has occasionally been a problem for personal representatives wishing to sell property in estates with no tax liability. Despite the fact that an estate will not generate a tax liability, an automatic lien is placed on all Maine property of an estate at the time of death. In order to release the lien, a personal representative must file a Maine estate tax return. Therefore, in response to the need for a release of a lien against real property prior to the availability of Form 706ME, a new Form 706ME-EZ has been developed for use by estates with no Maine tax liability.

Form 706ME-EZ may be used only if the gross value of the estate plus prior taxable gifts (in excess of the applicable annual exclusion) is less than \$950,000. **If the gross value of the estate plus taxable gifts is \$950,000 or greater, you must file Form 706ME.**

There is no due date for Form 706ME-EZ because, if correctly filed, there is no corresponding tax liability. However, Form 706ME-EZ is considered a return for purposes of the statute of limitations. Form 706ME-EZ return may also be subject to audit after the discharge of a lien. The personal representative is personally liable for any tax due as well as penalties for understatement of tax or fraud if it is later determined that a Maine tax liability exists. The Maine 2005 Form 706ME will be available shortly after the federal 2005 Form 706 has been finalized.

Form 706ME-EZ may be downloaded from the internet at [www.maine.gov/revenue](http://www.maine.gov/revenue) (select Forms/Publications).

### **Income Tax Subtraction Modification for the Federal Empowerment Zone Credit**

Maine Revenue Services has discovered an error in the instructions for the 2004 corporate income tax return, Form 1120ME. The instruction for Form 1120ME, line 2c, work opportunity credit and empowerment zone credit, indicates that the amount to enter on this line related to the empowerment zone credit is taken from federal Form 8844, line 10. In fact, this line of the federal form includes carryover and carryback amounts which should not be included in the Maine subtraction modification. The proper amount from federal Form 8844 to use on Maine Form 1120ME, line 2c is the total of line 6 plus line 7. The downloadable instructions (available at [www.maine.gov/revenue/forms](http://www.maine.gov/revenue/forms)) have been updated to reflect the correct instructions.

This amount also applies to the Maine individual income tax return, Form 1040ME, Schedule 1. No correction was necessary for the 1040ME instructions because specific line numbers from federal Form 8844 are not mentioned.

It should be pointed out that the Renewal Community Employment credit, which is also calculated on federal Form 8844, is included as part of the Empowerment Zone credit modification on the Maine return, because Federal law treats Renewal Communities as Empowerment Zones for purposes of calculating the credit (IRC §1400H).

## Maine Revenue Services Announces New Director Appellate Division

Maine Revenue Services is pleased to announce that Stanley Picuch has joined MRS as the new director of the Appellate Division. Stan has been an attorney in the Maine Attorney General's Office for the past ten years, working a year in the Consumer Protection Division, and for over nine years before that as one of the Tax Assistant AGs, handling tax litigation and legal advice matters for MRS. In that capacity, Stan wrote seven Law Court briefs, and argued five of those cases before the Law Court. Stan's other work experience includes private law practice and working as a manager at the DOL's Maine Job Service.

| <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) 287-8549           | (207) 287-3294     |  |
| Central Registration      | (207) 287-2338           | (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>         |
| E-file Help Desk          | (207) 624-9730           | (207) 624-9740     | <a href="mailto:efile.helpdesk@maine.gov">efile.helpdesk@maine.gov</a>       |
| Economic Research         | (207) 287-6965           | (207) 287-3618     |  |
| Electronic Funds Transfer | (207) 287-8276           | (207) 287-6627     | <a href="mailto:efunds.transfer@maine.gov">efunds.transfer@maine.gov</a>     |
| Estate Tax                | (207) 626-8480           | (207) 624-9694     | <a href="mailto:estatetax@maine.gov">estatetax@maine.gov</a>                 |
| Fuel Tax                  | (207) 624-9745           | (207) 287-6628     | <a href="mailto:fuel.tax@maine.gov">fuel.tax@maine.gov</a>                   |
| Forms Request Line        | (207) 624-7894           | (207) 622-3517     |  |
| 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) 624-7729     |  |
| 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) 287-2011           | (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> |
| TTY Service               | (207) 287-4477           |                    |  |
| 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.

### STATE OF MAINE

John Elias Baldacci, Governor

Rebecca M. Wyke, Commissioner  
Administrative and Financial Services

Jerome D. Gerard, Acting Executive  
Director, Maine Revenue Services

Suggestions for the Tax Alert?

**Please contact: Public Communications (207) 626-8478**

Maine Revenue Services  
24 State House Station  
Augusta, Maine 04333-0024