



Legal Updates

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Agenda

- Overview Office of General Counsel (OGC)
- Sources of Legal Authority
- Addressing Tax Issues
- Reconsideration Process
- Confidentiality
- 2020-21 Rulemaking Activity
- Careers with MRS



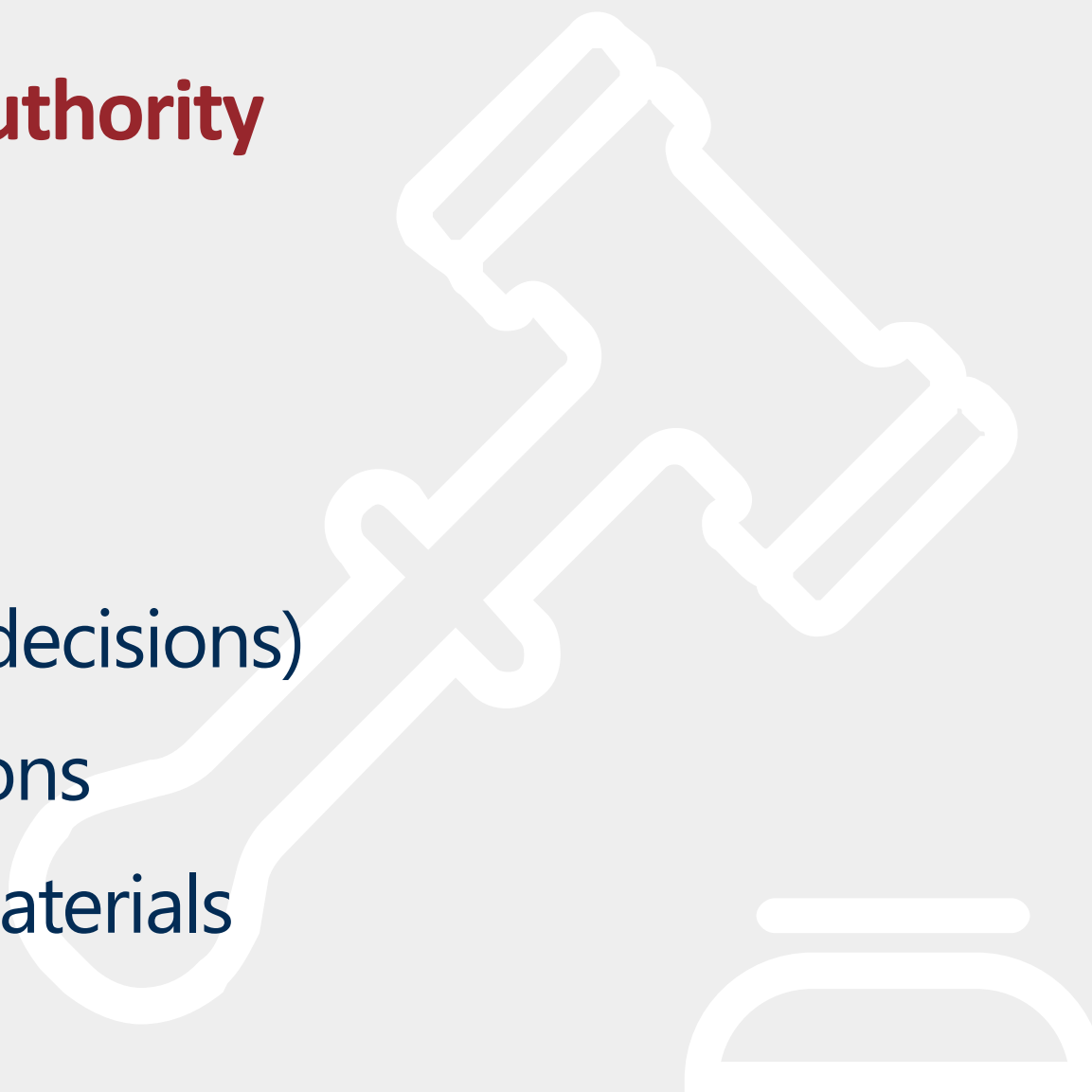
Overview of OGC

- Serve all MRS Divisions
- Oversee reconsideration/appeals process
- Oversee rulemaking process
- Assist with legislation (Office of Tax Policy)
- Litigation?



Sources of Legal Authority

- Constitution
- Statute
- Case Law (court decisions)
- Agency Regulations
- Administrative Materials





Maine Constitution

Non-delegation



**Article IX, Section 9. Power of taxation.
The Legislature shall never, in any manner,
suspend or surrender the power of
taxation.**



Conformity

How a state's income tax laws conform to federal income tax laws

Two types:

- **Rolling Conformity**
- **Static Conformity (fixed date)**





Static Conformity - Maine

36 M.R.S. § 111(1-A)



“Code” means the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2019.



Starting Point for Maine Income Tax

36 M.R.S. § 5121 - The Maine taxable income of a resident individual is equal to the **individual's federal adjusted gross income** with the modifications and less the deductions and personal exemptions provided in this chapter.

36 M.R.S. § 5102(8) – "Maine net income" means, for any taxable year for any corporate taxpayer, **the taxable income of that taxpayer for that taxable year under the laws of the United States** as modified by section 5200-A and apportionable to this State under chapter 821.



Title 36, Maine Revised Statutes

Part I – General Provisions

Chapter 7 – Uniform Administrative Provisions

- Powers and duties of Assessor
- Assessments and Appeals
- Definitions
- Settlements
- Collections
- Set offs
- Tax liens
- Confidentiality

Other Titles?



Statutory Interpretation

"Statutes imposing taxes are **construed most strongly against the government** and in the citizen's favor and may not be extended by implication beyond the clear import of the language used."

Camp Walden v. Johnson, 156 Me. 160, 165, 163 A.2d 356 (1960);
see also Capitol Bank & Tr. Co. v. City of Waterville, 343 A.2d 213,
218 (Me. 1975) ("[T]ax statutes are to be construed strictly against
the taxing authority").



Statutory Interpretation

Exemptions from taxation, however, are **not to be broadly construed** or extended by application to situations not clearly within the scope of the exemption language. They are entitled to a reasonable interpretation.

International Paper Company v. Board of Environmental Protection, et al., 737 A2d 1047, 09/15/1999.



Regulations (Rules)

Regulations are agency drafted rules based on agency expertise.

In general, regulations clarify statutes.

Authority – 36 M.R.S. § 112 and 5 M.R.S. § § 8051 – 8074 (Administrative Procedure Act)



Regulations

MRS currently has 31 rules, which you can view at: www.maine.gov/revenue/rules/

Many MRS rules have been updated during the 2020-21 rulemaking cycle.

We'll provide an overview of those updates later in this presentation.



Administrative Authority

MRS Publications, Tax Bulletins, Tax Alerts,
FAQs, Taxpayer Bill of Rights

www.maine.gov/revenue/publications/index.htm

!

To register for Tax Alerts:

portal.maine.gov/taxalert/requestForm



Addressing Tax Issue

Ask MRS or Visit MRS website

Advisory Rulings

Offer in Compromise

Voluntary Disclosure Agreement

Reconsideration/Appeals Process





FAQs on MRS Website

[Home](#) [Taxes](#) [Electronic Services](#) [Tax Return Forms](#) [Publications](#) [About Us](#) **FAQ**

[Home](#) → [FAQ](#)

1040 FastFile
Audit
Coronavirus (COVID-19)
Corporate Income Tax
Educational Opportunity Tax Credit
Estate Tax
Forms 1099G and 1099-INT
Fuel Tax
Homestead Exemption Program
Income Tax Withholding
Individual Income Tax
Insurance Taxes
Marketplace
Pass-through Entity Withholding
Pine Tree Development Zones
Real Estate Transfer Tax Database (for municipalities)

FAQ

Please select a category:

- [Coronavirus \(COVID-19\)](#)
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- [Pass-through Entity Withholding](#)
- [Pine Tree Development Zones](#)
- [Real Estate Transfer Tax Database \(for municipalities\)](#)
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- [Sales, Use & Service Provider Tax](#)
- [Working Waterfront Tax Law](#)



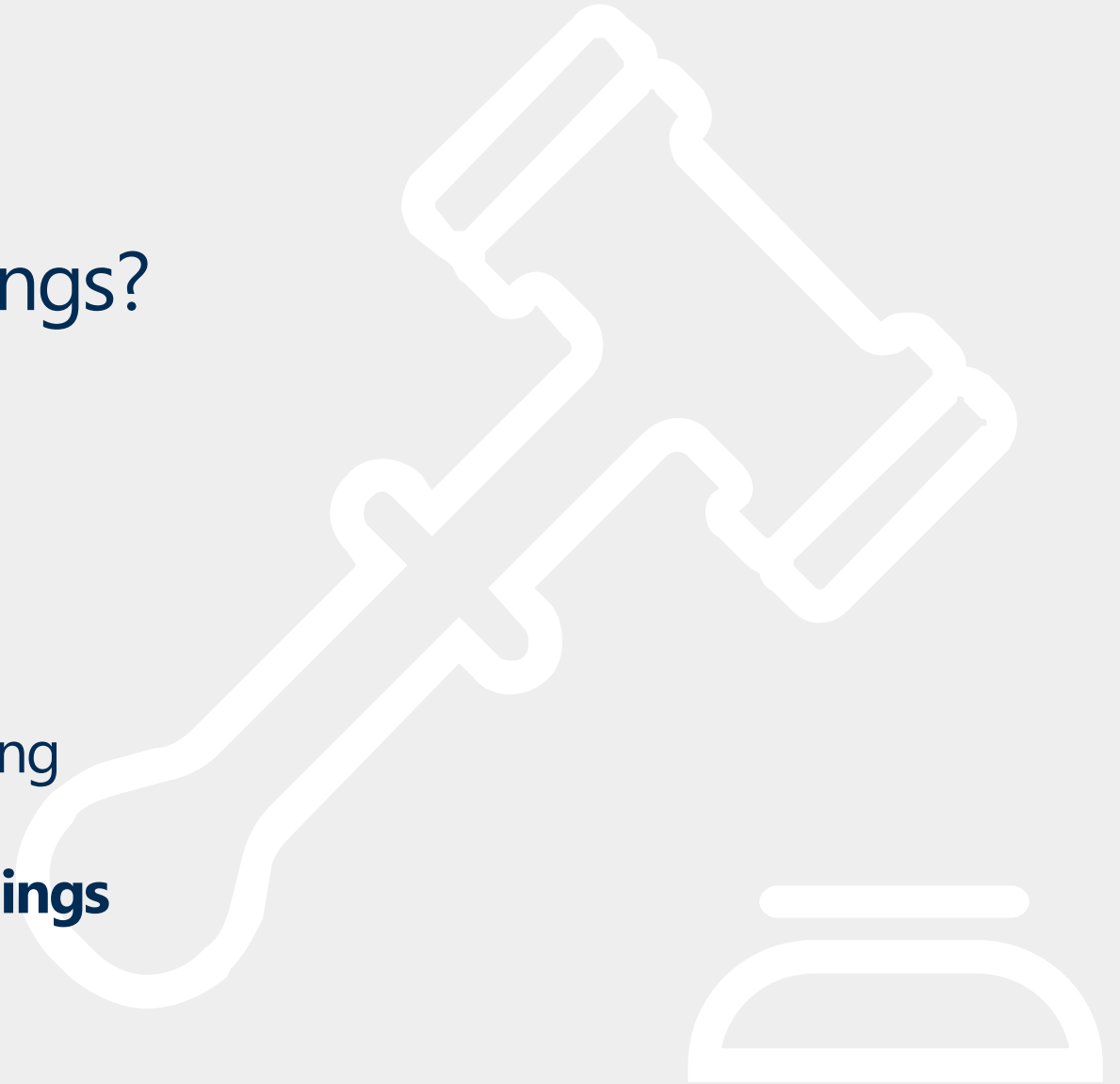
Advisory Rulings

What are advisory rulings?

Authority – 5 M.R.S. § 9001:

1. Written request
2. Rules written
3. Advisory ruling not binding

MRS Rule 110 – Advisory Rulings





Offers in Compromise

36 M.R.S. § 143 – Compromise of Tax Liability

- "...doubt as to liability or doubt as to collectability, or both."
- Upon acceptance by the assessor of an offer in compromise, the liability of the taxpayer in question is conclusively settled and neither the taxpayer nor the assessor may reopen the case except by reason of falsification or concealment of assets by the taxpayer, fraud or mutual mistake of a material fact.
- The decision of the assessor to reject an offer in compromise is not subject to review under section 151.
- The submission of an offer in compromise does not automatically operate to stay the collection of a tax liability, but the assessor may stay collection action if the interests of the State are not jeopardized by that action.



Voluntary Disclosure Agreements

Non-filers and current filers

Benefits

- **Penalty abatement**
- **Limited look-back period**
- **Compliant**
- **Avoid audit roulette**

Applications available at:

www.maine.gov/revenue/forms/general/generalforms.htm



Payment Plans

Call Compliance Division

- **(207) 621-4300 (Income Tax)**
- **(207) 624-9595 (Other Taxes)**

Other questions? Ask MRS:

www.maine.gov/revenue/contact.html





Reconsideration/Appeals Process

36 M.R.S. § 151(1) - Appeals: Petition for reconsideration.



A person who is subject to an assessment by the State Tax Assessor or entitled by law to receive notice of a determination of the assessor and who is aggrieved as a result of that action may request in writing, within 60 days after receipt of notice of the assessment or the determination, reconsideration by the assessor of the assessment or the determination.



Reconsideration Process

1. Notice of Assessment or Certain Other Determination
2. Taxpayer submits written petition (within 60 days)
3. MRS Division review
4. Decision on reconsideration

Timing?

Taxpayer Bill of Rights – Available at:

www.maine.gov/revenue/about/taxpayer-rights



Issues in Reconsideration

- **Can you petition?**
- **Untimely (60 days)**
- **Exhaust administrative remedies**
- **Payment plan or Settlement offer? (interest)**
- **Lack of documentation**
- **Supplemental assessment**
- **Power of Attorney (documentation)**



36 M.R.S. § 186 - Interest

Interest accrues automatically, without being assessed by the assessor, and is recoverable by the assessor in the same manner as if it were a tax assessed under this Title...

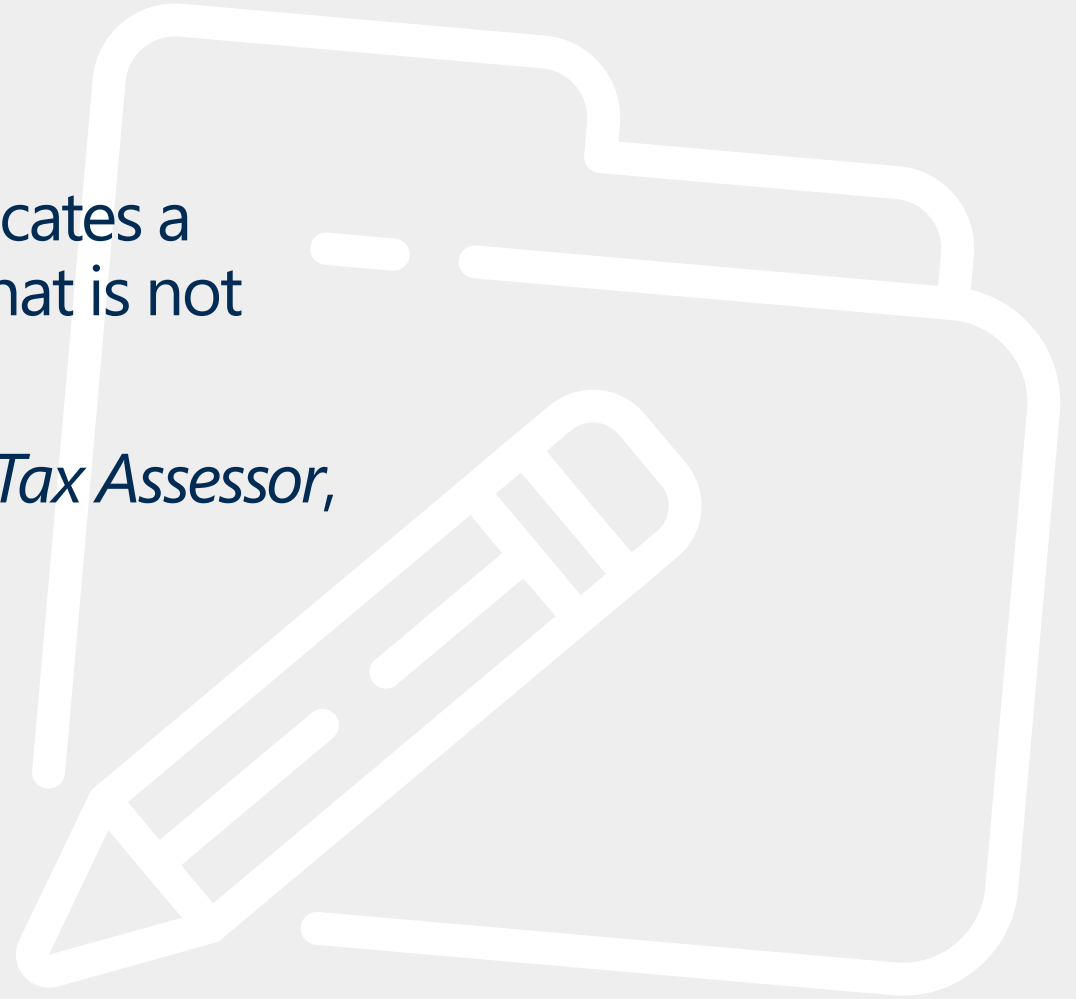
If the failure to pay a tax when required is explained to the satisfaction of the assessor, the assessor **may** abate or waive the payment of all or any part of that interest....



Interest Abatement?

The language of section 186 “indicates a **highly discretionary standard** that is not easily met by the taxpayer.”

Victor Bravo Aviation, LLC v. State Tax Assessor,
2011 ME 50, 17 A3d 1237.





Penalty Abatement?

If a taxpayer makes a timely request, MRS must waive certain penalties (e.g., failure to file or failure to pay penalties) on a showing of reasonable cause or if reasonable cause is otherwise apparent. *See* 36 M.R.S. § 187-B(7).

In addition, underpayment of estimated tax penalties may also be waived for cause. *See* 36 M.R.S. § 5228(5).

However, negligence, fraud, and insufficient funds penalties are not eligible for abatement. *See* 36 M.R.S. § 187-B(7).



Confidentiality

MRS Values available at:
www.maine.gov/revenue/about

Confidentiality: Safeguarding the confidentiality of taxpayer information is of utmost importance at Maine Revenue Services.



Confidentiality

36 M.R.S. § 191 – Confidentiality



Basic Prohibition – It is unlawful for any public official or any employee or agent of the bureau to inspect willfully any return or examine information contained on any return, for any purpose other than the conduct of official duties...



Confidentiality Exemptions

Example:



36 M.R.S. § 191(2) – The delivery to a **taxpayer or the taxpayer's duly authorized representative** of a certified copy of any return, report or other information filed by the taxpayer pursuant to this Title...



Duly Authorized Representative

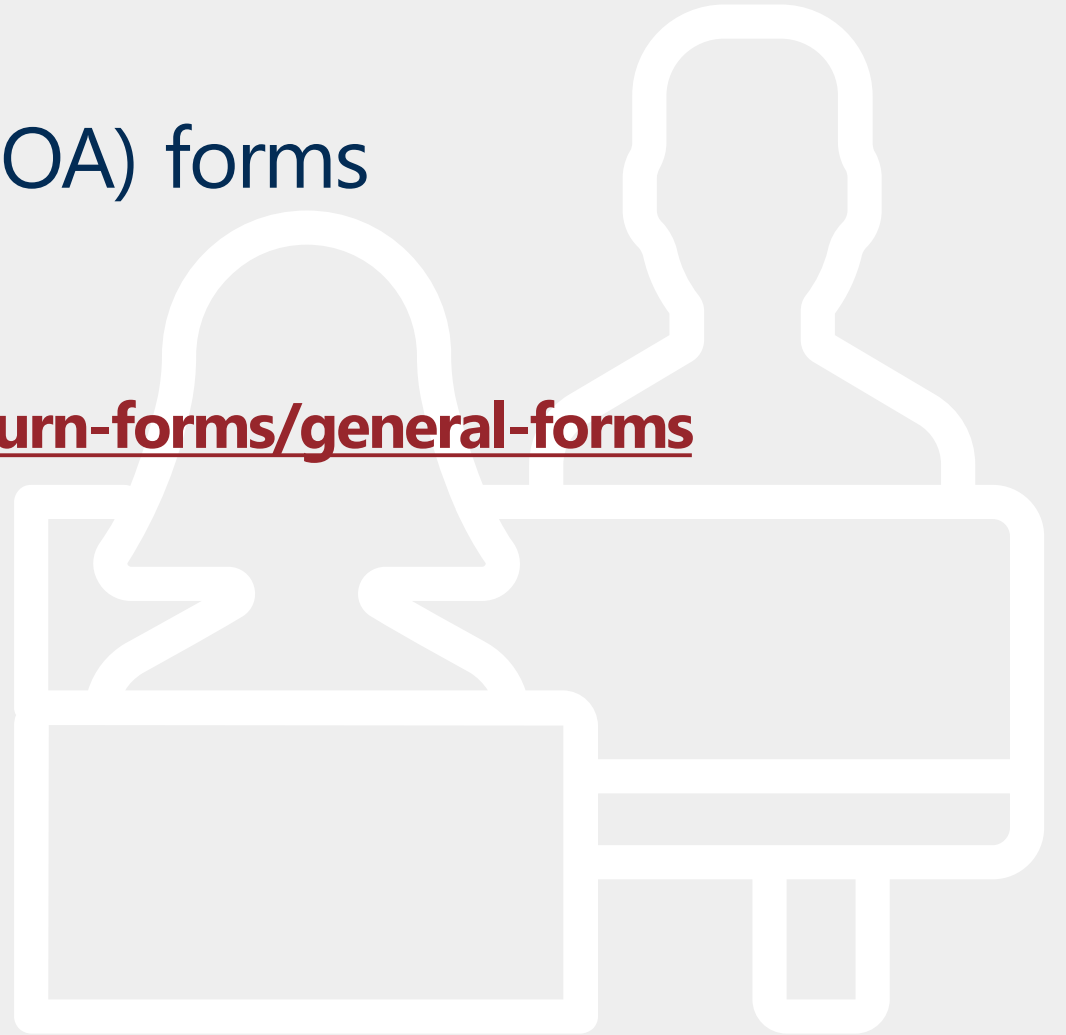
Maine Power of Attorney (POA) forms

- **Form 2848-ME**
- **Form 2848-ME-L (limited)**
- **www.maine.gov/revenue/tax-return-forms/general-forms**

Non-attorney okay?

Issues?

Other representatives?





2020-21 Rulemaking Update

Busy rulemaking cycle

10 of 31 MRS rules were updated

Reasons for changes include evolving technology, form and process changes by the IRS, process changes between MRS and other Maine agencies, and state law changes



2020-21 Rulemaking Update

General Rules updated this cycle:

- **Rule 102, Electronic Funds Transfer (EFT)**
- **Rule 103, Recordkeeping and Retention**
- **Rule 104, Filing of Maine Tax Returns**



2020-21 Rulemaking Update

Rule 102, Electronic Funds Transfer (EFT):

- **Effective January 1, 2022, the requirement to remit by EFT applies automatically once certain conditions have been met.**
- **Payment by EFT now automatically eliminates the necessity of filing estimate, coupon, voucher, or other similar forms otherwise required.**
- **Waiver from mandatory EFT participation if the taxpayer's bank does not participate in ACH in any form was eliminated, as ACH participation is now widespread.**
- **Clarifications were made to better reflect how the waiver/ abatement provisions in Title 36 apply to payment-related penalties.**



2020-21 Rulemaking Update

Rule 103, Recordkeeping and Retention:

- **Minor clarification and formatting changes.**
- **The section of the Rule relating to the time period for records retention was updated to include Title 36, Chapter 577 ("Maine Estate Tax After 2012"), which was enacted after the Rule was last updated.**



2020-21 Rulemaking Update

Rule 104, Filing of Maine Tax Returns:

- **Minor clarification and formatting changes.**
- **Updates were made to the sections covering definitions and mandatory participation to reflect changes in MRS and Maine Department of Labor processes that have occurred since the Rule was last updated.**



2020-21 Rulemaking Update

Property Tax Rules updated this cycle:

- **Rule 201, Procedures Used to Develop State Valuation**
- **Rule 202, Tree Growth Tax Law Valuations – 2021**
- **Rule 205, Certification of Assessors**



2020-21 Rulemaking Update

Rule 201, Procedures Used to Develop State Valuation:

- **Updated to add and amend certain definitions for consistency and to further clarify the process used by the agency in establishing state valuation each year.**



2020-21 Rulemaking Update

Rule 202, Tree Growth Tax Law Valuations – 2021:

- **Rule 202 is updated yearly to provide annual valuation rates for each forest type by region.**
- **These annual updated rates are used to value forest land enrolled in the Tree Growth Tax Law program.**



2020-21 Rulemaking Update

Rule 205, Certification of Assessors:

- **Rule updated to clarify and consistently use the terms “continuing education,” “advanced continuing education,” and “advanced assessor training.”**
- **Removed the limitation on continuing education credit carryovers, which is rarely used and unnecessary.**
- **Other changes made for clarification.**



2020-21 Rulemaking Update

Sales/Use Tax Rules updated this cycle:

- **Rule 301, Sales for Resale and Sales of Packaging Materials**
- **Rule 302, Sales to Government Agencies and Exempt Organizations**



2020-21 Rulemaking Update

Rule 301, Sales for Resale and Sales of Packaging Materials:

- **Amended to reflect that MRS no longer issues a “provisional” resale certificate.**
- **Clarified that a sale for resale is not an “exemption,” but rather an exclusion from retail sale, and, therefore, sales tax need not be collected on such sales, provided the selling retailer receives the appropriate documentation from the purchaser.**



2020-21 Rulemaking Update

Rule 302, Sales to Government Agencies and Exempt Organizations:

- **Amended to specifically address MRS's authority to periodically review exemption certificates and revoke certificates if needed.**



2020-21 Rulemaking Update

Income/Estate Tax Rules updated this cycle:

- **Rule 803, Income Tax Withholding Reports and Payments (formerly entitled Withholding Tax Reports and Payments)**
- **Rule 807, Residency**
- **Rule 812, Credit for Educational Opportunity (both emergency & regular rulemaking)**



2020-21 Rulemaking Update

Rule 803, Income Tax Withholding Reports and Payments (formerly entitled Withholding Tax Reports and Payments):

- **Added a definition of “foreclosure sale” and added a new subsection regarding buyers of real property located in Maine.**
- **Updated the rule to require a payer to electronically file annual Wage and Tax Statements and federal information statements with MRS when required to electronically file them federally.**
- **Made updates necessitated by changes to federal Form W-4.**
- **Made updates to reflect changes in MRS and Maine Department of Labor processes that have occurred since Rule 803 was last updated.**



2020-21 Rulemaking Update

Rule 807, Residency:

- Updated the definition of “statutory resident” to reference 36 M.R.S. § 5102(5)(B) and the definition of “permanent place of abode” to provide that a residence must be maintained by the individual as a household for the entire tax year.
- For tax years beginning on or after January 1, 2020, a new subsection on “Resident and nonresident aliens” provides that an individual’s Maine residency and Maine income tax are determined under Maine law, without regard to federal resident or nonresident alien status.
- Updated the section on “Military personnel” to reflect the federal election for military spouses under 50 U.S.C. § 4001(a)(2) for tax years beginning on or after January 1, 2018.



2020-21 Rulemaking Update

Rule 812, Credit for Educational Opportunity (emergency rulemaking):

- **Added a new section reconciling two provisions in the law governing the Educational Opportunity Tax Credit (EOTC).**
- **36 M.R.S. § 5217-D(2)(B) provides that “Forbearance or deferment of loan payments does not affect eligibility for the credit under this section” but also provides that “Payment of loan amounts in excess of the amounts due during the taxable year does not qualify for the credit.”**
- **The adopted changes permit MRS to consider the payment amount that would be due but for forbearance or deferment when calculating the EOTC. If the that amount cannot be established, the benchmark loan payment is used instead.**



2020-21 Rulemaking Update

Rule 812, Credit for Educational Opportunity (regular rulemaking):

- **Made permanent the emergency rulemaking changes regarding payments made while in forbearance or deferment.**
- **Updated the criteria for determining which degrees will be considered Science, Technology, Engineering, and Mathematics (“STEM”) for EOTC refundability.**
- **Clarified how qualifying taxpayers should apportion tuition and fees to each degree when Bachelor’s and graduate degrees are awarded simultaneously.**
- **Added a new definition of “regional accrediting association.”**



2020-21 Rulemaking Update

Copies of current rules available at:

www.maine.gov/revenue/publications/rules

This is also where MRS posts proposed rules for public review and comment



2020-21 Rulemaking Update

Stay in the know

You can find the anticipated rulemaking activity of MRS (and other State of Maine agencies) on the Regulatory Agendas posted to the Secretary of State's website:

www.maine.gov/sos/cec/rules/agendas.html



2020-21 Rulemaking Update

Maine.gov

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STATE OF MAINE

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State Rulemaking

Rules by Department

Guide to Rulemaking

Weekly Public Notices

Annual Regulatory Agendas

If a Maine state agency plans any changes to its rule chapters during the coming year, it must file with the Secretary of State an "annual regulatory agenda" under the provisions of [5 MRS Section 8060](#). The filing deadline is 100 days after the end of the regular legislative session, so it varies from year to year.

[2020-2021 Regulatory Agendas](#)

[2019-2020 Regulatory Agendas](#)

[2018-2019 Regulatory Agendas](#)

[2017-2018 Regulatory Agendas](#)

[2016-2017 Regulatory Agendas](#)

[2015-2016 Regulatory Agendas](#)

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[2010-2011 Regulatory Agendas](#)

[2009-2010 Regulatory Agendas](#)



2020-21 Rulemaking Update

Stay in the know

In addition, you can sign up for the Maine Tax Alert to receive notification of MRS rulemaking activity (as well as other important MRS updates):

www.maine.gov/revenue/publications/maine-tax-alerts



Careers at MRS

Careers at MRS?

- **Public Service**
- **Federal student loan forgiveness**
- **Challenging work**
- **Continuing education (tuition assistance)**
- **MePERS retirement plan**

Please join the MRS Career Listserv available at:
portal.maine.gov/taxalert/careers



Thank You

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