

Chapter 803: INCOME TAX WITHHOLDING REPORTS AND PAYMENTS

SUMMARY: This rule identifies income subject to Maine income tax withholding, prescribes the methods for determining the amount of Maine tax to be withheld, and otherwise clarifies the requirements under Maine law for withholding from wages, non-wage payments, consideration from real property sales, and pass-through entity income. It also explains the related reporting requirements, including mandated electronic filing.

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.01 Definitions

A. Code. “Code” has the same meaning as in 36 M.R.S. § 111(1-A).

~~A.B.~~ Enrolled member. “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.

~~A-1C.~~ Foreclosure sale. For purposes of 36 M.R.S. § 5250-A, “foreclosure sale” means a sale of real property incident to a foreclosure and includes a mortgagee’s sale of real estate owned property of which the mortgagee, or third-party entity,

retained or took ownership as the result of an unsuccessful attempt to sell the property at the time of a previous foreclosure auction.

~~A-2D.~~ Income. For purposes of calculating quarterly withholding amounts under Section .06(A) below, “income” means the actual income of the payee for a particular quarter or 25% of the payee’s annual income.

~~BE.~~ Maine-source member income. “Maine-source member income” means a member’s or owner’s share of net income of a pass-through entity apportioned to Maine in accordance with 36 M.R.S., chapter 821.

~~CE.~~ Net income of the entity. For purposes of Section .06 below, “net income of the entity” means the items of income, loss, and deduction of a partnership, limited liability company, or similar entity reported on federal Form 1065, or the items of income, loss, and deduction of an S corporation reported on federal Form 1120S.

~~DG.~~ Nonresident. For the purposes of Section .06 below, “nonresident” means:

1. For individuals, a natural person who is not a “resident individual,” as that term is defined by 36 M.R.S. § 5102(5). “Nonresident individual” is defined under 36 M.R.S. § 5102(3);
2. For business entities, including C corporations and pass-through entities, an entity whose commercial domicile is not in Maine. For purposes of this paragraph, “commercial domicile” means the principal place from which the business activities of a taxpayer are directed or managed. If it is not possible to determine the principal place from which the business activities of a taxpayer are directed or managed, the state of the taxpayer’s incorporation (or similar registration, if not a corporation) is considered its commercial domicile; and
3. For trusts and estates, a trust or estate that is not a “resident estate or trust” as that term is defined by 36 M.R.S. § 5102(4). “Nonresident estate or trust” is defined under 36 M.R.S. § 5102(2).

~~EH.~~ Pass-through entity. For purposes of Sections .03 and .06 below, “pass-through entity” means an entity that is treated as a partnership pursuant to subchapter K of the Code or an entity that has elected to be an S corporation under subchapter S of the Code. The term does not include financial institutions as defined in 36 M.R.S. § 5206-D(8).

~~FI.~~ Payer. “Payer” means any employer, entity, or other person required to withhold Maine income tax from certain payments.

~~GJ.~~ Payee. “Payee” means any employee or other person receiving wages or other payment from a payer.

~~HK.~~ Person. “Person” has the same meaning as in 36 M.R.S. § 111(3).

L. Tribal land. “Tribal land” means land within the Houlton Band Trust Land as defined by 36 M.R.S. § 111(1-E), the Passamaquoddy Indian territory as defined by 36 M.R.S. § 111(2-A), or the Penobscot Indian territory as defined by 36 M.R.S. § 111(2-C).

M. Tribal member. “Tribal member” means an enrolled member of the Houlton Band of Maliseet Indians as defined by 36 M.R.S. § 111(1-D), the Passamaquoddy Tribe as defined by 36 M.R.S. § 111(2-B), or the Penobscot Nation as defined by 36 M.R.S. § 111(2-D).

.02 General withholding requirements

Maine law requires payers to withhold money from certain payments and remit that money to the State Tax Assessor (“Assessor”) for application against the Maine income tax liability of payees. The amount of withholding must be calculated according to the provisions of this rule and must constitute a reasonable estimate of the Maine income tax to be due on the payment. Amounts withheld must be paid over to Maine Revenue Services (“MRS”) on a periodic basis as provided by Maine law and this rule. Forms prescribed by the Assessor must be used for this purpose.

.03 Persons required to withhold Maine income tax

- A. Generally.** Any person who maintains an office or transacts business in Maine and who is required to withhold federal income tax from a payment must also withhold Maine income tax, unless the payment constitutes income that is excluded from taxation under Maine law.
- B. Pass-through entities.** A pass-through entity doing business in Maine must withhold Maine income tax for nonresident members based on Maine-source member income.
- C. Voluntary withholding.** A payer who is not otherwise required to withhold Maine income tax may register solely for the purpose of withholding Maine income tax if the payer and the payee agree to have Maine income tax withheld from payments to the payee. Once registered, the payer will be treated as a person required to withhold Maine income tax and must comply with the reporting and payment requirements set forth in this rule.
- D. Buyers of real property.** A buyer of real property located in Maine must withhold Maine tax from the consideration paid that is attributable to sellers of the property, in accordance with 36 M.R.S. § 5250-A and instructions or other

guidance published by MRS. A buyer that withholds Maine income tax from a seller must file a withholding statement on forms prescribed by the Assessor identifying the seller, the amount withheld, and any other information required on the statement. In the case of multiple sellers of a single property, the buyer must complete a separate withholding statement for each seller subject to withholding.

.04 Withholding from wage payments

- A. Wage methods.** Any of the following methods may be used by persons responsible for withholding to determine the amount of Maine income tax to be withheld from payments subject to the federal wage method of withholding. Generally, the amount of withholding is determined based on the information provided on the Maine Employee's Withholding Allowance Certificate (Form W-4ME). The payroll period used to determine Maine income tax withholding is the same period used to determine federal income tax withholding or, if federal withholding is not required, the period that would be required to be used if federal income tax withholding were required.
- 1. Percentage method.** The amount of tax to be deducted and withheld under the percentage method of withholding is determined using the applicable percentage method tax rate schedule and related instructions contained in the current year's "Withholding Tables for Individual Income Tax" booklet prepared by the Assessor.
 - 2. Wage bracket tables method.** The amount of tax to be deducted and withheld under the wage bracket tables method is determined using the applicable wage bracket withholding table contained in the current year's "Withholding Tables for Individual Income Tax" booklet with respect to the period in which such wages are paid. Each table consists of wage brackets that establish the tax to be withheld by number of withholding allowances.
 - 3. Other methods.** If neither the percentage method nor the wage bracket tables method of withholding properly reflects an amount substantially equivalent to the tax reasonably estimated to be due from an employee's wages, either the person responsible for withholding or the payee may request permission from the Assessor to use an alternate method acceptable to both the payee and payer. As provided in Section .08 below, claiming a larger number of withholding allowances for Maine purposes than that calculated under this rule is not allowed unless a Personal Withholding Allowance Variance Certificate has been filed with, and approved by, the Assessor.
- B. Wages paid to Maine residents working outside of Maine.** If, for any payroll period, a payer is required to deduct and withhold income taxes of another state or

other states from the wages paid to a resident of Maine, the payer shall deduct and withhold Maine income taxes in accordance with 36 M.R.S., chapter 827. For that payroll period, the Maine income tax withholding amount must be calculated on the basis of all of that person's wages in all states and the result reduced by the amount required to be deducted and withheld from the wages under the laws, rules, or regulations of the other state or states. For the purposes of this subsection, "state" means a state of the United States, a political subdivision of any such state, the District of Columbia, or any political subdivision of a foreign country that is analogous to a state of the United States.

C. Exemptions from wage withholding are available as follows:

1. **Withholding from payments to nonresidents.** Generally, employers who are required to withhold federal income tax from wages to a nonresident employee must also withhold Maine income tax from those wages if the wages constitute Maine-source income that is not excluded from taxation under Maine law. A nonresident employee is not subject to Maine withholding unless that employee exceeds the minimum taxability thresholds in 36 M.R.S. § 5142(8-B) by performing personal services in Maine for more than 12 days and earning more than \$3,000 in Maine during the taxable year. Performing certain personal services for up to 24 days during the taxable year, however, may not be counted toward the 12-day threshold. 36 M.R.S. § 5142(8-B)(C) and MRS Rule 806.02(G) and (H) (18-125 C.M.R., ch. 806.02(G) and (H)).

A nonresident employee who initially ~~treated as is~~ exempt from Maine income tax withholding due to the nonresident taxability thresholds becomes subject to Maine income tax withholding immediately upon exceeding both the 12-day and \$3,000 thresholds at any time during the taxable year. Because income earned by the employee in Maine prior to exceeding the thresholds becomes taxable once the thresholds are exceeded, employers should consult with employees in this situation to ensure that Maine withholding is adequate to cover Maine income tax liability for the tax year. This consultation may involve completion and submission of an amended ~~Maine Employee's Withholding Allowance Certificate~~ (Form W-4ME) pursuant to Section .08 below.

2. **Federal exemption from withholding.** An employee who is exempt from federal income tax withholding is also exempt from Maine income tax withholding.
3. **Election to be exempt from withholding.** A resident employee who is subject to federal income tax withholding may elect to be exempt from Maine income tax withholding if the employee had no Maine tax liability for the prior calendar year and reasonably expects to have no Maine tax liability for the current year. The election must be made on Form W-4ME

and expires at the end of the year in which it is made. If an employee who elected to be exempt from withholding fails to submit a Form W-4ME for the next calendar year, the employer must begin withholding for the next year as required above.

4. **Tribal member.** An employer is not required to withhold Maine income tax from wages paid to a tribal member who resides on tribal land if such wages are derived from or connected with sources on tribal land, as determined by 36 M.R.S. § 5132 and MRS Rule 825. This income does not constitute Maine taxable income under 36 M.R.S. § 5122(2)(ZZ). An employee must utilize Maine Form W-4ME to declare that they are a tribal member residing on, and earning wages derived from or connected with sources on, tribal land as determined by 36 M.R.S. § 5132 and MRS Rule 825. In the absence of such a declaration made by a tribal member on Maine Form W-4ME, the employer must withhold Maine income tax on the wages earned by the tribal member, whether derived from or connected with sources on or off tribal land, in accordance with 36 M.R.S. § 5250 and this rule.

.05 Withholding from non-wage payments

- A. **Generally.** Except for income paid to a tribal member who resides on tribal land that is derived from or connected with sources on tribal land, as determined by 36 M.R.S. § 5132 and MRS Rule 825, withholding from non-wage payments is determined in accordance with subsections B through F of this section.
- AB. **Flat rate withholding.** Non-wage payments subject to flat-rate federal withholding are subject to Maine withholding at a flat rate of five percent. Payments subject to flat-rate withholding include, but are not limited to, the following:
 1. Reportable payments that are subject to federal backup withholding pursuant to Code § 3406;
 2. Wages, interest, dividends, rent, and other payments to nonresident aliens of the United States that are subject to federal withholding under Code § 1441;
 3. Payments to foreign corporations that are subject to federal withholding under Code § 1442;
 4. ~~Payments of certain gambling winnings when subject to federal withholding under Code § 3402(q);~~

- 45.** Effectively connected income of a foreign partner when subject to federal withholding under Code § 1446;
- 56.** Amounts received on the disposition of a Maine real property interest by a foreign person when subject to withholding under Code § 1445; and
- 67.** Non-periodic distributions from certain retirement plans, including Individual Retirement Accounts (IRAs), employer-sponsored deferred compensation plans, and self-employed pension plans when subject to federal withholding.

- BC. Withholding from periodic retirement payments.** Maine income tax withholding from periodic retirement payments that are treated as wages for federal income tax withholding purposes pursuant to Code § 3405(a) is calculated in the same manner as Maine income tax withholding from wages using the methods described in Section .04(A) above.
- CD. Federal exemption from withholding.** Recipients of periodic retirement payments who elect to be exempt from federal income tax withholding are exempt from Maine income tax withholding.
- DE. Election to be exempt from withholding.** Even if the periodic payments are subject to federal income tax withholding, recipients may elect to be exempt from Maine income tax withholding, provided the recipient certifies that the recipient had no Maine income tax liability for the prior calendar year and reasonably expects to have no Maine income tax liability for the current calendar year. The election must be made on Form W-4ME and remains in effect until the recipient generates a Maine income tax liability.
- F. Withholding from gambling winnings.** Payments of certain gambling winnings when subject to federal withholding under Code § 3402(q) are subject to Maine withholding at the highest marginal tax rate under 36 M.R.S. § 5111 applicable to the calendar year during which the winnings are paid plus any other tax applicable to the winnings under 36 M.R.S. Part 8 (Income Taxes). For calendar year 2023, the withholding rate is 7.15%.

.06 Pass-through entity withholding for nonresident members

A. Withholding and filing requirements.

- 1. Annual filing.** A pass-through entity that has nonresident members that realize Maine-source member income shall file an annual return reporting information about the entity, nonresident members subject to withholding, nonresident members exempt from withholding, and any other information required by the Assessor. The return is due no later than March 15

following the end of the calendar year. If an entity has no income tax withholding liability for the period and has been granted an extension for filing its federal information return (such as Form 1065 or Form 1120S), the due date for filing under this section is extended for an equivalent period of time.

2. **Withholding amount.** Unless modified pursuant to this rule or by the Assessor, either by ruling on a specific request or in published instructions, a pass-through entity must withhold Maine income tax from nonresident members' Maine-source member income at the rate of 8.93% in the case of a nonresident member taxed as a corporation. For all other nonresident members, the withholding rate is 7.15%.
3. **Quarterly payments.** An entity that is required to withhold more than \$1,000 for the calendar year shall for each calendar quarter make estimated payments equal to 25% of the lesser of the following:
 - (a) 90% of the amount required to be withheld for the year, and
 - (b) The tax required to have been withheld for the prior calendar year, except that this subparagraph does not apply if the entity had a tax year of less than 12 months that ended during the preceding calendar year, the entity was not required to withhold for the prior calendar year, or the entity did not file a return under Section .06(A)(1), above, for the prior year.

The estimated payments for each calendar quarter are due on or before the following dates: April 30, July 31, October 31, and January 31 of the following year.

The Assessor shall prescribe the voucher required to be filed with the quarterly payments. Any remaining tax due must be paid by the due date of the annual return required in paragraph 1, without regard to any extension for filing. In the case of any underpayment of estimated tax, interest shall accrue at the rate provided in 36 M.R.S. § 186 on the amount of the underpayment beginning with the due date of the installment and ending on the due date of the annual return or the date of payment, whichever is earlier. Interest and penalties also apply with respect to payments made after the due date of the annual return in accordance with the provisions of Title 36 of the Maine Revised Statutes.

B. Tiered pass-through entity structures.

1. A tiered-entity structure is one in which some or all of the ownership interest in one pass-through entity (lower-tier entity) is held by a second

pass-through entity (upper-tier entity). A tiered-entity structure may have two or more tiers.

2. Unless exempt pursuant to this rule or by the Assessor, either by ruling on a specific request or in published instructions, a pass-through entity must withhold for its nonresident members, including members who are pass-through entities. To prevent multiple withholding on the same income, an upper-tier entity that recognizes distributive income is not required to withhold from nonresident member income generated by a lower-tier entity if the lower-tier entity has already withheld from that income. The upper-tier entity, however, must separately report to its members on Form 1099ME their proportionate distributive share of amounts withheld by the lower-tier entity.
3. Upon written application, and with the approval of the Assessor, a lower-tier entity may meet its withholding obligation for an upper-tier entity by directly withholding from the distributive income of the nonresident members of the upper-tier entity. If approval is granted, the lower-tier entity is required to report on Form 1099ME directly to the nonresident members the amounts withheld.

C. Exemptions.

1. **Automatic exemptions.** A pass-through entity is not required to withhold tax for a nonresident member if any of the following applies:
 - (a) The nonresident member's Maine-source member income from the entity will be less than \$1,000 for the current year.
 - (b) The nonresident member is a tax-exempt entity under either Maine law or federal law (including IRAs, Keoghs, pension and profit-sharing plans, and other such organizations), unless the Maine-source member income of the tax-exempt entity is unrelated business income.
 - (c) The nonresident upper-tier pass-through entity realizes income from a lower-tier entity and the lower-tier entity has already withheld from that income.
 - (d) The entity is a publicly traded partnership that is treated as a partnership under Code § 7704.
 - (e) The nonresident member is a publicly traded partnership that is treated as a partnership under Code § 7704.
 - (f) The entity is prohibited under federal or state law from making

distributions to members; the exemption applies only for years in which distributions are prohibited under federal or state law. Contractual restrictions on distributions, such as loan covenants or organizational documents, do not qualify an entity for this exemption.

- (g) The entity is an out-of-state supplier of spirits sold to the Bureau of Alcoholic Beverages and Lottery Operations (BABLO) and its Maine business activities are limited to the activities described in 36 M.R.S. § 5202-D(2).

2. **Compliant taxpayer exemption.** To be exempt under the compliant taxpayer exemption, each nonresident member must sign and submit to the entity a Nonresident Member Affidavit and Agreement to Comply with Maine Income Tax (Form 941AF-ME). The exempt status of each nonresident member submitting an affidavit must be reported on the Pass-through Entity Withholding Form 941P-ME filed for the calendar year. The nonresident member must not have been previously disqualified from this exemption and must continue to stay in compliance by submitting required returns.
3. **Composite filing exemption.** A composite filing is a simplified group income tax return filed by a pass-through entity on behalf of two or more participating eligible persons as defined in MRS Rule 805.01(€D) (18-125 C.M.R., ch. 805.01(€D)) that are nonresident members of such pass-through entity. To be allowed a composite filing exemption, the entity must collect a Nonresident Member Affidavit and Agreement to Participate in a Composite Filing of Maine Income Tax (Form 941CF-ME) from each nonresident member that is participating in the composite filing. The exempt status of each nonresident member participating in a composite filing must be reported on the Pass-through Entity Withholding Form 941P-ME filed for the calendar year. The entity must also make estimated payments on behalf of the composite filing group. The entity must file the composite return, including Schedule 1040C-ME, even if there is no tax liability for the group. Composite return requirements are outlined in MRS Rule 805 (18-125 C.M.R., ch. 805).
4. **Requested exemptions.** An exemption applies if the Assessor has determined in writing, and subject to any conditions that may be imposed, that the nonresident member's Maine-source member income is exempt from withholding.
5. **Revocation of exemptions.** The Assessor may revoke an exemption at any time. If an exemption is revoked, the entity will be notified in writing and must begin withholding immediately.

- D. Partnership audits; federal adjustments report.** A partnership with partners required to file a federal adjustments report under 36 M.R.S. § 5196(1) and, in the reviewed year of the audit, with Maine-source member income of those partners subject to withholding in accordance with 36 M.R.S. § 5250-B and this rule, must, within 180 days of the final determination date of the partnership-level audit, file an amended return for the reviewed year to report the additional pass-through entity withholding due determined in accordance with the provisions of 36 M.R.S. § 5250-B and this rule as they were in effect for the reviewed year. The amended return under this subsection must exclude partners included in the amended composite return required by MRS Rule 805.07(B) (18-125 C.M.R., ch. 805.07(B)) for the same reviewed year. For purposes of this subsection, the final determination date is the date on which the partnership submits a request, for any relevant partner, for a modification pursuant to the Code § 6225(c)(2)(A) or (B).

.07 Reporting

- A. Generally.** Every person that deducts and withholds Maine income tax under 36 M.R.S. §§ 5250, 5250-B, ~~and 5255-B~~, and 5255-C must, for each calendar quarter, on or before the last day of the month following the close of the calendar quarter or such other reporting period as the Assessor may require, file a withholding return and remit payments as prescribed by the Assessor. The Assessor shall prescribe the voucher required to be filed with the payments. Separate withholding accounts must be separately maintained for pass-through entity withholding and for employee wage withholding. Separate reporting is required using different returns and forms for each withholding type. A withholding agent for a person required to remit withholding may remit and report withholding on behalf of the person if authorized in writing to do so by the person.
- B. Quarterly return.** In general, every person required to make a return of income tax withheld pursuant to 36 M.R.S. §§ 5250, ~~and 5255-B~~, and 5255-C must make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not income subject to withholding is earned or payments subject to withholding are made therein, until the person is no longer required to make such returns and has so notified the Assessor. The quarterly return must include the name, identification number, and amount withheld from each payee subject to withholding during the calendar quarter.
- C. Annual reconciliation.** Payers who withhold Maine tax during the calendar year must file an annual reconciliation (Form W-3ME) on or before February 28 of the following year. The annual reconciliation must list the total amount withheld as shown on the payee statements and the total amount of withholding reported on the quarterly returns filed for the year.
- D. Payee or member information statement.** Pursuant to 36 M.R.S. § 5251, payers

are required to furnish to the payee a copy of the federal Wage and Tax Statement (Form W-2) in the case of an employee or the appropriate federal information statement (such as Form 1099 series) for payments other than wages. In the case of a member of a pass-through entity, the information statement is Maine Form 1099ME.

For Maine purposes, a statement must be furnished to a payee on or before the date that the related federal statement must be furnished to the payee. Under 36 M.R.S. § 5251-A, a person who willfully fails to furnish a statement by the due date, or who willfully furnishes a false or fraudulent statement, commits a civil violation and is subject to a fine of \$50 for each such failure or each such furnishing.

Copies of Forms W-2 provided to nonresident employees working in Maine must separately identify Maine-source income and Maine withholding in the boxes provided for state information. Public employers who participate in the Maine Public Employees Retirement System (MEPERS) must enter the employee's share of MEPERS contributions in Box 14 of Form W-2 with the designation MEPERS. Employers must maintain sufficient records to identify the Maine-source wages paid to each of their employees during the year and to document the number of days worked by each employee in Maine, even if the employee is exempt from Maine income tax or Maine withholding. In addition to following all federal legal requirements for filing Wage and Income Information Statements (such as Forms W-2, W-2G and 1099), the information filed with the Assessor must include Maine-source income and withholding information.

E. Filing employee and other payee or member information statements.

- 1. Generally.** A payer is required to file annual Wage and Tax Statements and federal information statements with the Assessor electronically in accordance with electronic filing specifications issued by MRS under the following circumstances.
 - (a)** An employer or payroll processor required to electronically file Forms W-2 with the Social Security Administration must report Forms W-2 information to MRS for all employees who are Maine residents and for all employees who have Maine-source income.
 - (b)** A payer required to electronically file with the IRS any type of 1099 form (such as 1099-DIV, 1099-B, 1099-G, 1099-INT, 1099-MISC, 1099- OID, 1099-PATR or 1099-R) must report such form information to MRS for Maine residents and recipients of payments sourced to Maine.
 - (c)** A payer who is licensed to conduct pari-mutuel wagering pursuant to 8 M.R.S. §§ 271 or 275-D, or who is licensed to operate a slot

machine pursuant to 8 M.R.S., chapter 31, subchapter 2, must report Form W-2G information to MRS for each payee for whom a statement is required to be provided to the payee under federal law or regulation.

- (d) Any payer who withheld Maine income tax from any payee during the year and did not report the amount of Maine withholding for each of those employees or payees on Form 941-ME, Schedule 2 must report annual payee statement information (Forms W-2 and 1099 series) with MRS for all payees who are Maine residents or who received Maine-source income.

- 2. **Penalty.** A person who is required by the ~~a~~Assessor to ~~furnish~~ file a return of information on or after January 31, 2022, in accordance with 36 M.R.S. § 5242 and this rule and who fails to do so, or willfully ~~furnishes~~ files a false or fraudulent return of information, is subject to a penalty of \$50 for each such failure or each such ~~furnishing~~ filing.

- F. **More frequent reporting.** The Assessor may require more frequent reporting if the Assessor believes that the collection of withheld taxes is in jeopardy or if the Assessor determines that any person required to deduct and withhold Maine income tax has failed to collect, truthfully account for, or pay over such tax or has failed to file returns in a timely manner.

- G. **Adjustment of overpayments**

- 1. **Within a reporting period.** If a payer deducts and withholds more than the correct amount of tax required by 36 M.R.S., chapter 827 from a payee but repays the amount of the overcollection to the payee before the return for the period is filed with the Assessor and obtains a written receipt from the payee, the employer or other payer need not report on the return, or pay to the Assessor, the amount of the overcollection. Any overcollection not repaid to and receipted in writing by the payee must be reported and paid to the Assessor with the return for the return period in which the overcollection was made.
- 2. **Within a calendar year.** If, in any return period in a calendar year, a payer deducts and withholds more than the correct amount of tax required by 36 M.R.S., chapter 827 from a payee and the amount of such overcollection is paid to the Assessor, the payer may reimburse the payee in any subsequent return period within the calendar year. If the amount of the overcollection is repaid to the payee, the payer must retain a written receipt showing the date and amount of the repayment. The payer may then file an amended return with the Assessor for the period in which the overcollection was made, reporting the correct amount of withholding for the period. The amended return must contain such information as is

required by the instructions relating to the form. If the payer does not repay the amount of the overcollection, the payer may, within the same calendar year of the overcollection, reduce the Maine withholding amount otherwise required for that calendar year by the amount of the overcollection. In this case, no amended return is required. For information regarding claiming a refund of an overpayment of withheld income taxes, see Section .09(E), below.

.08 Form W-4ME

A. Maine Employees's wWithholding allowance eCertificate (Form W-4ME).

A payee must furnish the payer with a signed Maine Employee's Withholding Allowance Certificate (Form W-4ME) on the same date as the payee furnishes the payer with the required federal Employee's Withholding Certificate (Form W-4 or W-4P). The payee must indicate on the Maine certificate the same marital status claimed on the federal certificate, except that a married payee may elect withholding at the higher single rate on the Maine certificate by indicating-checking the "married, but ~~withhold~~-withholding at higher single rate" option box. The Maine certificate must also list the number of withholding allowances the payee claims for Maine withholding, as determined in accordance with this rule.

If the payee is required to provide the payer with a revised federal Form W-4 or W-4P because of a change in status and that change also affects information contained on the payee's Form W-4ME, the payee must complete a new Form W-4ME on the same date to reflect the same change. The revised Form W-4ME takes effect on the same date as the revised federal Form W-4 or W-4P.

For individuals who do not qualify for a Maine exemption from withholding, the maximum number of Maine withholding allowances is calculated as follows:

1. An individual is allowed an allowance if they cannot be claimed as a dependent by another taxpayer;
2. An individual is allowed an additional allowance for their spouse if they will file as married filing jointly and the spouse cannot be claimed as a dependent by another taxpayer;
3. An individual is allowed an additional allowance if they will be filing as Head of Household; and
4. An individual is allowed an additional allowance for each child and dependent for whom they will be able to claim the federal child tax credit or the federal credit for other dependents.

An individual may claim fewer allowances than the individual is entitled to claim

without seeking approval. An individual who wants to claim more allowances than would be calculated for that individual under this rule must file a Personal Withholding Allowance Variance Certificate to obtain permission from the Assessor.

B. Submission by employer of certain Maine Forms W-4ME. An employer/payer is required to submit a copy of Form W-4ME, along with a copy of any supporting information provided by the employee/payee, to MRS if ~~either of the circumstances in this subsection applies:~~

1. The employer is required to submit a copy of federal Form W-4 to the Internal Revenue Service either by written notice or by published guidance as required by federal regulation 26 C.F.R. 31.3402(f)(2)-1(g); or
2. An employee performing personal services in Maine furnishes a Form W-4ME to the employer containing a non-Maine address and, for any reason, claims no Maine income tax is to be withheld. Submission of a Form W-4ME is not required if the employer reasonably expects that the employee will earn annual Maine-source income of less than \$5,000.

The copies of Form W-4ME required by this subsection must be submitted directly to the Withholding Unit at MRS separately from any other tax filings.

C. Missing or invalid Form W-4ME. In any of the circumstances described in this subsection, a payer must withhold as if the payee is single and claiming no allowances. Maine income tax must be withheld at this rate until such time that the payee provides a valid Form W-4ME. ~~The circumstances are that~~ This subsection applies when:

1. The payee has not provided a valid, signed Form W-4ME;
2. The Assessor notifies the payer that the payee's Form W-4ME is invalid; or
3. The payee's Personal Withholding Allowance Variance Certificate has expired, a new variance certificate has not been approved and submitted to the payee, and the payee has not provided the payer with a valid Form W-4ME.

If at any time the Assessor determines that the amount being withheld is inadequate, the Assessor may notify the payer of that determination and inform the payer of the appropriate withholding rate. The withholding rate specified by the Assessor will then remain in effect until the Assessor notifies the payer is- ~~notified that the payer no longer is required to use that withholding rate is no-~~

~~longer fixed.~~ At that time, the payee may complete a new Form W-4ME and submit it to the payer.

D. Electronic Form W-4ME. A payer may establish a system for its payees to ~~file~~ submit Form W-4ME to the payer electronically. Such a system must include the following:

1. The electronic system must ensure that the information received by the payer reflects the information furnished by the payee and must document all occasions of payee access that result in the filing of a Form W-4ME. In addition, the design and operation of the electronic system, including access procedures, must ensure with reasonable certainty that the person accessing the system and filing the Form W-4ME is the payee identified in the form.
2. The electronic system must provide the payer with exactly the same information as the paper Form W-4ME.
3. The electronic filing must be signed by the payee under penalties of perjury.
 - (a) The jurat (i.e., the perjury statement) must contain the language that appears on the paper Form W-4ME. The electronic program must inform the payee that the payee must make the declaration contained in the jurat and that the declaration is made by signing the Form W-4ME. The instructions and the language of the jurat must immediately follow the payee's income tax withholding selections and immediately precede the payee's electronic signature.
 - (b) The electronic signature must identify the payee ~~filing~~ filing-submitting the electronic Form W-4ME and authenticate and verify the ~~filing~~ submission. The terms "authenticate" and "verify" have the same meaning that they do when applied to a written signature on a paper Form W-4ME. An electronic signature can be in any form that satisfies the requirements of the Assessor. The electronic signature must be the final entry in the payee's Form W-4ME submission.
4. Upon request by the Assessor, the payer must supply to the Assessor a paper copy of the electronic Form W-4ME and a statement that, to the best of the payer's knowledge, the named payee is the person who filed the electronic Form W-4ME. The paper copy of the electronic Form W-4ME must provide exactly the same information as (but need not be a facsimile of) the paper Form W-4ME.

5. The electronic system must not allow the payee to modify or file an electronic Form W-4ME that does not comply with a notice as described in Section .08(C) above, specifying the amount or rate of withholding.
- E. **Requests for increased withholding.** A payee may request that the payer deduct and withhold an additional amount from wages or other periodic payments. The payer must comply with the payee's request, except that the amount deducted and withheld cannot exceed the payment amount that remains after the payer has deducted and withheld all amounts otherwise required to be deducted and withheld by federal and state law. The payee must make the request for the additional withholding amount on a Form W-4ME.
 - F. **Personal Withholding Allowance Variance Certificate.** A payee may not claim a number of Maine withholding allowances that exceeds the number of allowances that would be calculated for that individual under this rule without furnishing to the payer a Personal Withholding Allowance Variance Certificate approved by the Assessor. The payee must complete the Personal Withholding Allowance Variance Certificate according to the instructions and ~~return~~ submit it to the Assessor for approval. If approved by the Assessor, the payee may then submit the approved variance certificate to the payer along with an otherwise properly completed Form W-4ME to support the number of allowances claimed.

An approved variance certificate is valid only until December 31 of the year issued. Upon expiration of a variance certificate, the payer must withhold pursuant to Section .08(C) above, until such time the payee provides the payer a new variance certificate approved by the Assessor or submits a valid Form W-4ME.

.09 Payment

- A. **Payment schedule.** A payer must remit the withheld tax in accordance with one of two schedules based on an annual determination pursuant to Section .09(C) below. The two remittance schedules are semi-weekly and quarterly. Pass-through entity withholding under Section .06 above must be remitted quarterly.
- B. **Lookback period defined.** The lookback period for each calendar year is the 12-month period ending on the preceding June 30. For example, the lookback period for calendar year 2021 is July 1, 2019 through June 30, 2020.
- C. **Determination of status.** Excluding pass-through entity withholding under Section .06 above, the determination of a payer's remittance schedule for a calendar year is based on the aggregate amount of withheld taxes reported by the withholder for the lookback period. New payers are treated as having an income tax withholding liability of zero for any calendar quarter within the lookback period during which the withholder did not exist.

1. **Semi-weekly remitters.** A payer must remit on a semi-weekly basis for the entire calendar year if the aggregate amount of withholding reported for the lookback period was \$18,000 or more. A semi-weekly remitter must remit according to the following schedule:

Day Wages Paid:

Wednesday, Thursday, Friday
 Saturday, Sunday, Monday, Tuesday

Remittance Due:

On or before the following Wednesday
 On or before the following Friday

If a quarterly reporting period ends within a semi-weekly period, and if wages are paid on payment dates that fall in each of the two quarters, separate remittances must be made for each quarter in a manner that clearly identifies the correct quarterly reporting period for each remittance. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, tax withheld from payments made on Wednesday and Thursday is subject to one remittance requirement and tax withheld from payments made on Friday is subject to a separate remittance requirement.

2. **Quarterly remitters.** A payer is a quarterly remitter for the entire calendar year if the aggregate amount of withholding reported for the lookback period was less than \$18,000. The quarterly remitter must remit the amount withheld from payments made during a calendar quarter on or before the last day of the month following the close of the calendar quarter. If paying by check, the payment must accompany the quarterly return.

- D. **Interest and penalty.** If a required return is filed late or a required payment is paid late, interest and penalties as provided in Title 36 of the Maine Revised Statutes may apply.
- E. **Refund of income tax withheld.** A payer who pays to the Assessor more than the correct amount of income tax withheld may file a claim for refund of the overpayment by filing an amended return in accordance with this subsection and Section .07(G)(2) above for the period for which the overpayment is made. The amended return must be filed within the statute of limitations period for requesting a refund. 36 M.R.S. § 5278. Overpayments of withheld income tax remitted for periods occurring in a prior calendar year will be refunded only to the extent that the overpayment is not attributable to tax actually deducted and withheld from the payee and only to the extent that the payee has not already filed a tax return claiming the overpaid withholding amount. Any amount actually withheld from a payee during a prior calendar year, even if in error, must be claimed as a credit by the payee on that individual's personal income tax return.

.10 Electronic filing and payment

- A. Electronic filing of returns.** Payers and payroll processors that meet any one of the thresholds specified in MRS Rule 104 (18-125 C.M.R., ch. 104) must electronically file original quarterly returns for Maine income tax withholding (Form 941ME) and annual reconciliation of Maine income tax withheld (Form W-3ME).
- B. Electronic funds transfer (EFT).** The Assessor accepts payments by EFT. Generally, a person with an annual Maine income tax withholding liability that meets the threshold specified in MRS Rule 102 (18-125 C.M.R., ch. 102) must remit the required amounts electronically. Payroll processors, however, must remit all Maine income tax withholding payments electronically, regardless of annual liability. Others may participate in EFT voluntarily. The payment voucher, Form 900ME, must not be filed when remitting by EFT. Withholders that remit by EFT must still file the quarterly return to report withholding information.

.11 Registration

- A. Registration by persons required to withhold income tax.** Persons required by Maine law to withhold or who voluntarily withhold Maine income tax must register with the MRS Central Registration Unit or via the Maine Tax Portal as a withholder. Registration is accomplished by completing the application form provided by the Assessor and submitting it according to the instructions on the form or via electronic registration.
- B. Cancellation of withholding registration.** A person who is registered to withhold Maine income tax but who no longer has a withholding obligation must notify the Assessor that withholding is no longer required and ask that the withholder's account be canceled. The notification must be submitted on the cancellation form provided by the Assessor or via the Maine Tax Portal and must include the reason that Maine income tax withholding is no longer required and the date the withholding obligation ceased. If the business has been sold or otherwise transferred to another person, the name and address of that other person and the date of the sale or transfer must be included. If no such sale or transfer occurred, or the employer or other payer does not know the name of the person to whom the business was sold or transferred, that fact must be included in the notification.

.12 Application date

Except where otherwise stated, this rule applies to tax periods beginning on or after

January 1, ~~2021~~2023.

STATUTORY AUTHORITY: 36 M.R.S. § 112 EFFECTIVE DATE:

January 1, 1982

AMENDED:

February 3, 1987

February 17, 1991

June 28, 1992

January 1, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 1, 1996

AMENDED:

March 23, 1996

January 1, 1997

February 11, 1998

January 1, 1999

October 15, 2003 - filing 2003-358

REPEALED AND REPLACED:

September 19, 2006 – filing 2006-409 AMENDED:

February 11, 2008 – filing 2008-69

October 14, 2008 – filing 2008-479

REPEALED AND REPLACED:

April 3, 2010 – filing 2010-109

AMENDED:

September 12, 2010

August 29, 2012

April 5, 2015 – filing 2015-057

October 8, 2016 – filing 2016-165

April 6, 2022 – filing 2022-051