

**Chapter 825: TRIBAL MEMBER INCOME FROM SOURCES ON TRIBAL LAND**

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**SUMMARY:** This rule provides income tax guidance for tribal members and certain estates of tribal members for purposes of calculating the income modifications under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ) and regarding the application of Maine withholding requirements on payments made to tribal members. The guidance includes:

- Determination of when an individual qualifies as a tribal member residing on tribal land; and
  - Determination of when income is derived from or connected with sources on tribal land.
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**.01 Definitions**

- A. **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.
- B. **Houlton Band of Maliseet Indians.** “Houlton Band of Maliseet Indians” has the same meaning as in 30 M.R.S. § 6203(2).

- C. **Houlton Band Trust Land.** “Houlton Band Trust Land” has the same meaning as in the federal Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986, Public Law 99-566, Section 2(2).
- D. **Intangible property.** “Intangible property” means a right or possession of a nonphysical or abstract nature that has value, or a financial asset that has no intrinsic value but that represents value. Intangible property includes but is not limited to copyrights, patents, licenses, bills of exchange, trademarks, business books and records, business goodwill, covenants not to compete, securities, bonds, notes, insurance policies, and accounts receivable.
- E. **Original Cost.** “Original cost” means the basis of the property for federal income tax purposes prior to any federal adjustments at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof by reason of sale, exchange, abandonment, or other disposition.
- F. **Passamaquoddy Indian territory.** “Passamaquoddy Indian territory” has the same meaning as in 36 M.R.S. § 111(2-A). The term as defined by 30 M.R.S. § 6203(6) means the territory as defined by 30 M.R.S. § 6205(1).
- G. **Passamaquoddy Tribe.** “Passamaquoddy Tribe” has the same meaning as in 30 M.R.S. § 6203(7).
- H. **Pass-through entity.** “Pass-through entity” means a corporation that for the applicable tax year is treated as an S corporation under the Internal Revenue Code, or a general partnership, limited partnership, limited liability partnership, limited liability company, trust, or similar entity that for the applicable tax year is not taxed at the entity level for federal income tax purposes. “Pass-through entity” does not, for Maine income tax purposes, include a financial institution subject to tax under 36 M.R.S., chapter 819.
- I. **Payroll factor.** “Payroll factor” means the ratio of compensation paid by the taxpayer to employees during the taxable year whose base of operations is on tribal land to compensation paid by the taxpayer to employees during the taxable year everywhere. The following apply only for purposes of determining the payroll factor:
1. **Effect of accounting method.** If a taxpayer has adopted the accrual method of accounting, all compensation properly accrued will be deemed to have been paid. However, compensation may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under that method for unemployment compensation purposes.
  2. **Base of operations.** “Base of operations” means the taxpayer’s place of business from which an employee customarily begins work or to which the employee customarily returns at some other time to receive instructions, direction and supervision from the taxpayer or communications from customers or other persons, to

- replenish stock or other materials, to repair equipment, or to perform any other function necessary to the exercise of the employee's trade or profession.
- 3. Compensation.** "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made pursuant to a contract to an employee-leasing company for leased employees are included at 85% as compensation or to a temporary service company for temporary employees are included at 100% as compensation. Payments made to an independent contractor, or any other person not properly classifiable as an employee, are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging and other benefits or services furnished to an employee by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code (e.g., those employed in foreign countries), the determination of whether such benefits or services would constitute income to the employees is made as though such employees were subject to the Internal Revenue Code. Employer contributions under a retirement plan, qualified cash or deferred arrangement as defined in Internal Revenue Code § 401(k), and employer contributions to nonqualified deferred compensation plans are generally included in the payroll factor.
  - 4. Employee.** "Employee" means any officer of a corporation or any individual who would be considered an employee under the common law rules governing the employer-employee relationship. Generally, an individual is considered to be an employee if the individual is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act ("FICA"). This presumption may be overcome by evidence provided by a taxpayer that an individual who is included as an employee for purposes of FICA would not be an employee of the taxpayer under the usual common law rules. Generally, an independent contractor is not considered an employee.
  - 5. Independent contractor.** "Independent contractor" means any individual who performs services for a taxpayer, but who is not an employee of the taxpayer, and who is not otherwise subject to the supervision or control of the taxpayer in the performance of the services.
  - 6. Payroll in states in which taxpayer is not taxable.** Compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by 15 U.S.C. § 381 et seq. (P.L. 86-272), is included in the denominator of the payroll factor.
- J. Penobscot Indian territory.** "Penobscot Indian territory" has the same meaning as in 36 M.R.S. § 111(2-C). The term as defined by 30 M.R.S. § 6203(9) means the territory as defined by 30 M.R.S. § 6205(2).
- K. Penobscot Nation.** "Penobscot Nation" has the same meaning as in 30 M.R.S. §

6203(10).

- L. Permanent place of abode.** “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 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.
- M. Property factor.** “Property factor” means the ratio of the average value of the taxpayer’s real and tangible personal property owned or rented and used on tribal land during the taxable year to the average value of all of the taxpayer’s real and tangible personal property owned or rented and used during the taxable year. The following apply only for purposes of determining the property factor:
- 1. Real and tangible personal property.** The term “real and tangible personal property” includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.
  - 2. Property used during the taxable year.** Property is included in the property factor if it is actually used or is available for use or capable of being used during the tax period by the taxpayer. Property held in reserve or standby facilities or property held as a reserve source of materials must be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventorable goods in process) must be excluded from the factor until such property is actually used by the taxpayer. If the property is partially used by the taxpayer while under construction, the value of the property to the extent used must be included in the property factor. Property used by the taxpayer must remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or the lapse of an extended period of time (normally, five years) during which the property is held for sale.
  - 3. Property in transit; mobile property.** Property in transit between locations of the taxpayer to which it belongs is considered to be located at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices must be included in the numerator according to the destination. The value of mobile or movable property, such as construction equipment, trucks or leased electronic equipment, that is located both within and without of tribal land during the taxable year, is determined for purposes of the numerator of the property factor on the basis of total time within tribal land during the taxable year. Automobiles assigned to traveling employees are included in the numerator of the factor to the location to which the employee's compensation is assigned under the payroll factor.

4. **Valuation of owned property.** Property owned by the taxpayer is valued at its original cost. Capitalized intangible drilling and development costs are included in the factor whether or not they have been expensed for either federal or state tax purposes. If the original cost cannot be determined, the property must be included in the factor at its fair market value as of the date acquired by the taxpayer.

Generally, the average value of all property owned by the taxpayer is determined by averaging the values at the beginning and ending of the tax period. However, the assessor may require or allow averaging of monthly values if substantial fluctuations in the values of the property exist during the taxable year or if property is acquired after the beginning of the taxable year or disposed of before the end of the taxable year.

5. **Valuation of rented property.** Property rented by the taxpayer is valued at 8 times the net annual rental rate. Subrentals are not deducted.

If property is used at no charge or rented for a rate other than a reasonable market rate, the property must be included in the property factor on the basis of a reasonable market rental rate.

The “annual rental rate” is the amount paid as rent for the property for a twelve-month period. When property is rented for less than a twelve-month period, the net rent paid for the actual period of rental constitutes the “annual rental rate” for the tax period. However, when a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months, the net rent paid for the short tax period must be annualized. If the rental term is for less than 12 months, the rent must not be annualized beyond its term. Rent will not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

“Rent” is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

- a. Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;
- b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement but does not include amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent must be determined by consideration of the relative values of the rent and the other items.

“Rent” does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. “Rent” does not include

royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental or otherwise.

Leasehold improvements are treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or of whether the improvements revert to the lessor upon expiration of the lease.

- N. Tangible personal property.** “Tangible personal property” means personal property that has physical existence. It can be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include anything that constitutes intangible property as defined in section .01(D) above.
- O. Tribal land.** “Tribal land” means land within the Houlton Band Trust Land, the Passamaquoddy Indian territory, or the Penobscot Indian territory.
- P. Tribal member.** “Tribal member” means an enrolled member of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, or the Penobscot Nation.
- Q. Tribal member residing on tribal land.** "Tribal member residing on tribal land" means an individual who is a tribal member and:
1. Who is domiciled on tribal land, unless:
    - a. The tribal member does not maintain a permanent place of abode on tribal land, maintains a permanent place of abode off of tribal land and spends in the aggregate not more than 30 days of the taxable year on tribal land; or
    - b. Within any period of 548 consecutive days, the tribal member:
      - i. Is present in a foreign country or countries for at least 450 days;
      - ii. Is not present on tribal land for more than 90 days;
      - iii. Does not maintain a permanent place of abode on tribal land at which a minor child of the tribal member or the tribal member's spouse is present for more than 90 days, unless the tribal member and the tribal member's spouse are legally separated; and
      - iv. During the nonresident portion of the taxable year with which, or within which, such period of 548 consecutive days begins and the nonresident portion of the taxable year with which, or within which, such period ends, 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 such portion of the taxable year bears to 548; or

2. Who is not domiciled on tribal land, but maintains a permanent place of abode on tribal land and spends in the aggregate more than 183 days of the taxable year on tribal land, unless the tribal member is in the Armed Forces of the United States (“U.S.”).

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. For purposes of this subsection, "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.

## **.02 Tribal member residing on tribal land**

For purposes of this rule, a tribal member residing on tribal land is a Maine resident individual, as that term is defined by 36 M.R.S. § 5102(5). This section provides guidance to assist in making a determination as to whether an individual is, for the taxable year, a tribal member residing on tribal land.

- A. **Domicile on tribal land.** An individual is considered to be a tribal member residing on tribal land if the member is domiciled on tribal land.

1. **Generally.** The word “domicile” is a common-law term that has been defined by Maine courts. Under Maine common-law, “domicile” means the place (A) where a person resides, and (B) where that person intends to remain and, whenever absent, intends to return. Thus, under Maine law, domicile has two components: residence and the intent to remain or return, if absent. 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.

Maine Revenue Services considers all of an individual’s relevant facts and circumstances allowed by Maine law 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. 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 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.

**2. Factors used in determining an individual's domicile.** All relevant facts and circumstances allowed by Maine law 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.

**a. Where the individual is enrolled as a tribal member.**

**b. Property ownership and residence.**

- i. Location of the individual's principal residence under the Internal Revenue Code;
- ii. Location of the individual's mailing address;
- iii. Where the individual spent the most amount of time; and
- iv. Whether the individual applied for a residential property tax exemption or related benefit for property in Maine on tribal land or a comparable benefit for property located elsewhere.

**c. Family and dependents.**

- i. Whether the individual can be claimed as a dependent on another person's federal income tax return and where that other person is domiciled;
- ii. Where the individual's spouse or dependents reside; and
- iii. Where the individual's dependents attend elementary or secondary school.

**d. Licenses and registrations.**

- i. Where the individual is registered to vote;
- ii. The address listed on the individual's driver's license;

- iii. Where the individual's vehicles are registered; and
- iv. Where the individual maintains professional licenses.

e. **Financial data.**

- i. Where the individual earns wages;
- ii. The address recorded for the individual's insurance policies, deeds, mortgages, or other legal documents; and
- iii. Where the individual's safety deposit boxes are maintained.

f. **Affiliations.**

- i. Where the individual's fraternal, social or athletic memberships are located;
- ii. Where the individual's union memberships are maintained; and
- iii. The location of a church or other house of worship of which the individual is a member.

g. **Other factors.**

- i. Where the individual's personal property is located;
- ii. Where the individual conducts business;
- iii. The address listed for the individual in a telephone directory; and
- iv. Where the individual's pets are located.

h. **Exceptions.** Maine Revenue Services does not consider whether a donation was made to an organization located in or outside of tribal land when making domicile determinations. Also, the geographic location of an individual's professional advisors (such as doctors, lawyers, accountants, financial advisors, and investment advisors) or the geographic location of a financial institution with an active account or loan of an individual is not considered. The geographic location of a political organization or candidate that an individual supports financially is not determinative of the individual's domicile.

3. **Presumption.** 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.

**4. Exceptions to domicile on tribal land.**

- a. **Generally.** Certain individuals domiciled on tribal land are treated as not being domiciled on tribal land as described in sub-paragraphs b and c below:
- b. **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:
  - i. Did not maintain a permanent place of abode on tribal land;
  - ii. Maintained a permanent place of abode outside of tribal land; and
  - iii. Spent no more than 30 days in the aggregate on tribal land (with any portion of a day counted as a full day).
- c. **Foreign exception.** A tribal member domiciled on tribal land will be treated as not residing on tribal land if:
  - i. 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;
  - ii. 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 their spouse are legally separated) or a minor child is present for more than 90 days; and
  - iii. 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.

**B. Statutory residency 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.

**.03 Maine adjusted gross income from sources on tribal land**

**A. General.** For purposes of determining the income modifications under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ), the Maine adjusted gross income of a tribal member derived from or connected with sources on tribal land is the sum of the following amounts:

1. The net amount of items of income, gain, loss and deduction entering into the tribal member's federal adjusted gross income that are derived from or connected with sources on tribal land including:
  - a. The tribal member's distributive share of partnership or limited liability company income and deductions derived from or connected with sources on tribal land determined following the methods for sourcing income to this State under 36 M.R.S. § 5192, except that 36 M.R.S. § 5132(2) - (6) and not 36 M.R.S. § 5142 apply under 36 M.R.S. § 5192(1);
  - b. The tribal member's share of estate or trust income and deductions derived from or connected with sources on tribal land determined following the methods for sourcing income to this State under 36 M.R.S. § 5176, except that 36 M.R.S. § 5132(2) - (6) and not 36 M.R.S. § 5142 apply under 36 M.R.S. § 5176(1); and
  - c. The tribal member's pro rata share of the income of an S corporation derived from or connected with sources on tribal land; and
2. The portion of the modifications described in 36 M.R.S. §§ 5122(1) and (2) that relates to income derived from or connected with sources on tribal land, including any modifications attributable to the tribal member as a partner of a partnership, shareholder of an S corporation, member of a limited liability company, or beneficiary of an estate or trust.

**B. Attribution.** Items of income, gain, loss, and deduction derived from or connected with sources within tribal land are those items attributable to:

1. The ownership or disposition of any interest in real or tangible personal property on tribal land;
2. A business, trade, profession, or occupation carried on within tribal land; and
3. Proceeds from any gambling activity conducted on tribal land or lottery tickets purchased on tribal land, including payments received from a 3rd party for the transfer of the rights to future proceeds related to any such gambling activity or lottery tickets, except that proceeds from Maine State Lottery tickets, including

payments received from a 3rd party for the transfer of the rights to future proceeds related to the lottery tickets, are not derived from or connected with sources on tribal land.

**C. Intangibles.** Income from intangible personal property including annuities, dividends, interest and gains from the disposition of intangible personal property constitutes income derived from sources within tribal land only to the extent that such income is from property employed in a business, trade, profession or occupation carried on within tribal land.

**D. Gain or loss on sale of partnership interest.** Notwithstanding section .03(C) above, the gain or loss on the sale of partnership interest is sourced to tribal land in an amount equal to the gain or loss multiplied by the ratio obtained by dividing the original cost of partnership tangible property located on tribal land by the original cost of partnership tangible property everywhere, determined at the time of the sale. Tangible property includes property owned or rented and is valued in accordance with 36 M.R.S. § 5211(10). If more than 50% of the value of the partnership's assets consists of intangible property, gain or loss from the sale of the partnership interest is sourced to tribal land in accordance with the property and payroll factors of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold. For purposes of this subsection, the property and payroll factors of a partnership are determined in accordance with 36 M.R.S., chapter 821. This subsection does not apply to the sale of a limited partner's interest in an investment partnership where more than 80% of the value of the partnership's total assets consists of intangible personal property held for investment, except that such property cannot include an interest in a partnership unless that partnership is itself an investment partnership.

If the apportionment provisions of this subsection do not fairly represent the extent of the partnership's business activity on tribal land, the taxpayer may petition for, or the State Tax Assessor may require, in respect to all or any part of the partnership's business activity the employment of any other method to effectuate an equitable apportionment to tribal land of the partner's income from the sale of the partnership interest.

**E. Deduction for losses.** Deductions with respect to capital losses, net long-term capital gains and net operating losses must be based solely on income, gains, losses, and deductions derived from or connected with sources on tribal land, under regulations to be prescribed by the assessor, but otherwise must be determined in the same manner as the corresponding federal deductions.

**F. Apportionment.** If a business, trade, profession, or occupation is carried on partly within and partly without tribal land, the items of income and deduction derived from or connected with sources within tribal land must be determined as apportioned to tribal land according to the following methods:

**1. Except as provided in paragraph 2 below of this subsection, according to the methods for apportioning income to this State under 36 M.R.S., chapter 821, except that**

instead of apportioning income to tribal land using the sales factor pursuant to 36 M.R.S. § 5211(8), income is apportioned to tribal land by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor and the denominator of which is 2; or

2. In the case of the rendering of purely personal services by a tribal member, according to the methods established in regulations to be prescribed by the assessor.

**.04 Income attributable to tribal land.** For purposes of subsection .03(B) above the following apply:

- A. **Generally.** Income received by a tribal member is attributable to tribal land when the income is derived from or connected with sources on tribal land. The itemized and standard deductions, credits, income modifications, and personal exemptions apply to tribal members in accordance with Maine law. A loss is sourced to tribal land in the same manner that a gain is sourced to tribal land.
- B. **Compensation for personal services derived from or connected with sources on tribal land.** Personal services compensation derived from or connected with sources on tribal land is the income derived from personal services performed on tribal land. Compensation includes, but is not limited to, wages, salaries, taxable benefits such as annual and sick leave, commissions, fees, and payment in kind. Personal services compensation attributable to tribal land includes sick time and vacation time earned while working on tribal land. Compensation for personal services is includable for purposes of this subsection unless it is excluded from “gross income” under the Internal Revenue Code. For example, amounts withheld by an employer for federal and state income taxes, FICA contributions, medical insurance plans, or other similar payroll deductions must be included in compensation.

Unemployment compensation received by a tribal member that is derived from employment on tribal land is attributable to tribal land.

Generally, incentive stock options, nonstatutory stock options, and employee stock purchase plans are compensation for personal services in the amount that represents the fair market value of the stock on the date exercised (i.e., when the employee has purchased the stock) that exceeds the option price of the stock at the time the option is granted. Income from stock option plans reported as capital gains on the federal income tax return is, for purposes of this paragraph, compensation from personal services. If the period between the grant of a stock option and the exercise of the option straddles employment on and off tribal land, the amount attributable to employment on tribal land must be determined in accordance with section .05(B) below and must be included in Maine adjusted gross income for the same taxable year the income is included in federal adjusted gross income.

- C. **Income from a trade or business.** All income derived from or connected with the carrying on of a trade or business on tribal land is income sourced to tribal land.

Generally, a tribal member has a trade or business if:

1. The tribal member, directly or through agents or employees or through a pass-through entity in which the tribal member is a shareholder, member, or partner, maintains or operates or shares in maintaining or operating a desk, room, office, shop, store, warehouse, factory, or any other place on tribal land where business affairs are systematically and regularly conducted; or
2. The tribal member, directly or through agents or employees or through a pass-through entity in which the tribal member is a shareholder, member, or partner, is present for business on tribal land on other than a systematic or regular basis and earns or derives gross income during the taxable year from contractual or sales-related activities.

**D. Income from ownership of real or tangible personal property.** All income derived from the ownership of real or tangible personal property located on tribal land is income sourced to tribal land; however, unless the property was employed in a business, trade, profession, or occupation carried on within tribal land, interest income earned from the sale of such property is not subject to sourcing to tribal land. Income sourced to tribal land includes rents derived from and gains from a federally taxable sale or exchange of:

1. Real property located on tribal land;
2. Tangible personal property having a situs on tribal land; or
3. Any interest in a time-share or similar arrangement on tribal land.

#### **.05 Special sourcing rules**

**A. Allocation or apportionment required.** When a tribal member earns or derives income, including income from pass-through entities or sole proprietorships, from sources both on tribal land and elsewhere, an allocation or apportionment of the income must be made to determine the amount of income sourced to tribal land. The following provisions set forth the rules for the determination of a tribal member's income sourced to tribal land. For the purpose of this section, the term "income" includes, in the alternative, the term "loss." A tribal member may, with the return for the taxable year, request an alternative method of allocation or apportionment of income with a full explanation of the method. The proposed method is subject to review and modification by the Assessor. Allocation or apportionment of income from the rendering of purely personal services by employees, salespersons, athletes, and entertainers is addressed below.

**B. Employees generally.** When a tribal member employee establishes the exact amount of compensation received for services performed on tribal land, that amount is the amount of income sourced to tribal land. When a tribal member is unable to establish such exact determination of amounts earned on, or derived from, tribal land, the compensation must be apportioned to tribal land. The apportionment is calculated by multiplying the gross compensation wherever earned by a fraction, the numerator of which is the number of

days spent working on tribal land and the denominator of which is the total working days. The result is the amount of the tribal member's compensation sourced to tribal land. Holidays, sick days, vacations, and paid or unpaid leave are included in both the numerator and the denominator. When a working day is spent working partly on tribal land and partly elsewhere, it is treated as one-half of a day spent working on tribal land.

For purposes of this subsection, salaries and wages earned while teleworking or working remotely on tribal land, whether for the convenience of the tribal member employee or the employer, are items of income derived from sources on tribal land. Conversely, salaries and wages earned while teleworking or working remotely off tribal land, whether for the convenience of the tribal member employee or the employer, are not items of income derived from sources on tribal land.

**C. Salespersons.** Tribal land income of a tribal member who is a salesperson or whose compensation is based in whole or in part upon commissions is computed as follows: The gross income earned by the tribal member from sales everywhere is multiplied by a fraction, the numerator of which is the amount of sales made by the tribal member on tribal land and the denominator of which is the amount of sales made by the tribal member everywhere. For the purposes of this calculation, the "amount of sales" is determined under the same method by which the amount of sales is determined for purposes of calculating the tribal member's commissions. Sales are sourced to the location where the tribal member performs the activities in obtaining the order, not to the location of the formal acceptance of the contract.

**D. Professional Athletes.**

**1. Exhibition and regular season games.** A tribal member who is a professional athlete must include in income the entire amount of compensation received for games played on tribal land. In the case of a tribal member athlete not paid specifically for the game played on tribal land, the following apportionment formula must be used: The income earned on tribal land is the total compensation earned during the taxable year, including incentive payments, bonuses, and extras, but excluding signing bonuses and league playoff money. Total compensation is multiplied by a fraction, the numerator of which is the number of exhibition and regular season games the tribal member played (or was available to play for the tribal member's team, as, for example, with substitutes) on tribal land during the taxable year, and the denominator of which is the total number of exhibition and regular season games that the tribal member was obligated to play under contract or otherwise during the taxable year, including games in which the tribal member was excused from playing because of injury or illness.

**2. Playoff games.** For playoff games played on tribal land, the amount of league playoff money earned by the tribal member for playing or being available to play in such games is determined by the following formula: League playoff money earned on tribal land is the total league playoff compensation earned during the taxable year multiplied by a fraction, the numerator of which is the number of playoff games the

- tribal member played or was available to play on tribal land during the taxable year, and the denominator of which is the total number of playoff games which the tribal member's team played during the taxable year, including playoff games in which the tribal member was excused from playing because of injury or illness.
- 3. Signing bonuses.** Any amount received by a tribal member as a signing bonus is excluded from the income subject to apportionment.
- E. Entertainers.** Tribal land income of a tribal member who is an entertainer is the entire amount received by the tribal member for performances, engagements, or events that occurred on tribal land. In the case of a tribal member who is not paid specifically for a performance on tribal land, the following apportionment formula must be used: The income earned on tribal land is the tribal member's total annual compensation multiplied by a fraction, the numerator of which is the number of performances the tribal member performed (or was available to perform, as, for example, with understudies) on tribal land, and the denominator of which is the total number of performances which the tribal member was obligated to perform under contract or otherwise during the taxable year.

#### **.06 Estate of tribal member decedent**

An estate of a decedent who at the time of death was a tribal member residing on tribal land must apply the provisions of this Rule to determine the income modifications under 36 M.R.S. §§ 5122(1)(PP) and 5122(2)(ZZ) to calculate the income of the estate subject to Maine income tax under 36 M.R.S., Part 8.

#### **.07 Maine income tax withholding requirements on payments to tribal members**

See MRS Rule 803 (18-125 C.M.R., ch. 803) for the Maine withholding requirements on wage and non-wage payments to a tribal member.

#### **.08 Application date**

Except where otherwise stated, this Rule applies to taxable years beginning on or after January 1, 2023.

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STATUTORY AUTHORITY: P.L. 2021, c. 681, Part H; 36 M.R.S. § 112(1)

EFFECTIVE DATE: