

18                    **DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

125                   **BUREAU OF REVENUE SERVICES  
INCOME/ESTATE TAX DIVISION**

**Chapter 805: COMPOSITE FILING**

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**SUMMARY:** This rule establishes procedures for filing of composite returns of income by partnerships, estates, trusts, and S corporations on behalf of partners, beneficiaries, or shareholders.

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**.01 DEFINITIONS**

- A.     **Code.** “Code” has the same meaning as in 36 M.R.S. § 111(1-A).
- B.     **Composite return.** “Composite return” means the Maine income tax return filed by an entity in accordance with this rule on behalf of some or all of its partners, beneficiaries or shareholders who are “eligible persons,” as defined in Section .01(D) below.
- C.     **Electing small business trust.** “Electing small business trust” (“ESBT”) has the same meaning as given to that term by the Code § 1361(e).
- D.     **Eligible person.** “Eligible person” means a person electing to participate in a composite filing by completing the required Nonresident Member Affidavit and Agreement to Participate in a Composite Filing of Maine Income Tax (Form 941CF-ME) that is:
  - 1.     an individual who is a nonresident individual for the entire taxable year, and whose entire Maine adjusted gross income, including a

spouse's income in the case of married individuals filing a joint federal return, is from one or more entities and the individual elects to participate in the composite return filed by each entity;

2. that portion of a federally recognized ESBT or Qualified subchapter S trust that consists of holdings of stock in an S corporation; or
  3. a nonresident trust or nonresident estate that has its entire Maine-source income for the taxable year from one or more entities, would have included such income as Maine taxable income if it were to file an income tax return for that year, and has not distributed any of its Maine-source income for the taxable year to its beneficiaries as distributable net income.
- E. **Entity.** “Entity” means a partnership, limited partnership, limited liability partnership, estate, trust, or S corporation. “Entity” also includes a limited liability company classified as a partnership or S corporation for federal income tax purposes.
- F. **Entity income.** “Entity income” means an eligible person's distributive share of the net income of an entity, apportioned to Maine in accordance with 36 M.R.S., Chapter 821.
- “Entity income” for an ESBT means the ESBT’s distributive share of net income of an S corporation taxable pursuant to the Code § 641(c), and apportioned to Maine in accordance with 36 M.R.S., Chapter 821. If an ESBT holds stock in more than one S corporation, the entity income of each holding must be determined separately for purposes of this rule.
- G. **Qualified subchapter S trust.** “Qualified subchapter S trust” (“QSST”) has the same meaning as given to that term by the Code § 1361(d)(3).
- H. **Tiered entity structure.** “Tiered entity structure” means an arrangement in which some or all of the interests in one entity (“lower tier entity”) are held by another entity (“upper tier entity”). A tiered entity structure may have two or more tiers.

## **.02 FILING OF RETURNS**

- A. **Generally.** An entity may file a composite return on behalf of its partners, beneficiaries, or shareholders who are eligible persons and who elect to participate in the composite filing by completing the required Nonresident Member Affidavit and Agreement to Participate in a Composite Filing of Maine Income Tax (Form 941CF-ME). Form 941CF-ME must be retained by the pass-through entity for at least six years after the filing of

the composite return for the taxable year. A new affidavit must be submitted each year by each eligible person electing to participate in the composite return for the taxable year.

Additionally, upon request and approval, the State Tax Assessor (“Assessor”) may allow an entity to file a composite return on behalf of its partners, beneficiaries, or shareholders who elect to participate in the composite filing but would not otherwise qualify to file such a return under this rule.

Eligible persons who are included in the composite filing will be deemed to have filed a Maine income tax return for the period covered by the composite return. Eligible persons who participate in the composite filing are personally liable for the tax amount reported on their behalf in the composite return and any tax, interest, or penalty that may be assessed for that period in the same way as if a composite return had not been filed. The Assessor reserves the right to require the filing of a Maine nonresident individual income tax return by any of the eligible persons included in the composite return. Eligible persons are not jointly and severally liable for the tax, interest, or penalty imposed on any other unrelated eligible person or the entity solely because of that eligible person’s membership interest in the entity.

- B. **Information required.** The composite return’s supporting information must include, at a minimum, the name and taxpayer identification number of each eligible person included in the return, the amount of each eligible person’s distributive share of taxable entity income and the tax thereon, the amount of each eligible person’s share of any business tax credit claimed under 36 M.R.S. § 5219-G, the amount of any payments previously made and applied to each eligible person’s tax liability, and the amount of payment included with the return and applied to each eligible person’s tax liability. The composite return filing must be complete and include all information and schedules required by law including, without limitation, Form 1040ME and Schedule 1040C-ME.
- C. **ESBTs and QSSTs.** To be an eligible person, an ESBT must be a nonresident trust for Maine income tax purposes, in accordance with 36 M.R.S., Chapter 813. A beneficiary of a QSST must be a nonresident for Maine income tax purposes for the QSST to qualify as an eligible person. If an ESBT holds stock in more than one S corporation, each stock holding must be considered separately for determining eligibility and must be treated as a separate eligible person for the purposes of this rule.
- D. **Composite returns for tiered entity structure.** An upper tier entity may file a single composite return on behalf of the non-resident members (including members, partners, shareholders, or beneficiaries) in a tiered

entity structure, where the nonresident members are eligible persons. The following additional requirements must be met:

1. Each of the lower tier entities (including any related pass-through entity) with individual members that elect to participate must agree to have its electing members included in the composite return and each lower tier entity must not file a separate return;
2. A schedule must be attached to the composite return indicating each member's distributive share of Maine-source income from each tiered entity, and the total amount of Maine-source income received by each member from all tiered entities in the tiered entity structure; and
3. A statement must be attached to the composite return, including an organizational chart, disclosing the structure and identity, including the names, addresses and federal identification numbers, of all the related entities from which participating nonresident members directly or indirectly derived Maine-source income.

- E. **Pass-through entity withholding return.** An entity that files a composite return must also file an annual pass-through entity return (Form 941P-ME) for the year pursuant to 36 M.R.S. § 5250-B and MRS Rule 803 (18-125 C.M.R., ch. 803). Form 941P-ME must include information required regarding eligible persons participating in the composite return by attaching a completed Schedule 3P.
- F. **Partnership audits; federal adjustment report.** An original composite return cannot be filed as the result of an administrative adjustment request ("AAR") or final federal adjustment ("FFA") report issued by the Internal Revenue Service ("IRS") after audit. If an original composite return was filed prior to the AAR or FFA, see Section .07(B) below for the process to amend the composite return.

### **.03 ELECTION TO PARTICIPATE IN COMPOSITE FILING**

An entity filing a composite return must obtain written authorization, on Form 941CF-ME, from those eligible persons included in the composite return to file a Maine individual income tax return on their behalf. The filed composite return constitutes a statement that authorization has been obtained from each included eligible person. By granting such authorization, an eligible person agrees to be subject to the taxing jurisdiction of the State of Maine and its agencies and courts for the purposes of determining and collecting Maine income tax, interest, and penalties; authorizes the entity to receive notices from MRS on behalf of the eligible person; waives any right to claim income modifications, deductions, exemptions, and credits allowable as a nonresident individual under the Maine

Income Tax Law, other than business credits specified in 36 M.R.S. § 5219-G for which no income modification or election is required; and waives any right to file an amended return to amend the reporting of any item reported by the entity, except through an amended composite return filed by the entity, for any taxable year for which a composite filing has been made on the eligible person's behalf.

#### **.04 COMPUTATION OF TAX**

The Maine income tax liability of each eligible person who elects to be included in a composite return is equal to the person's entity income multiplied by the highest marginal rate provided in 36 M.R.S. § 5111 for the applicable tax year.

#### **.05 BUSINESS CREDITS**

Each participating eligible person may claim the person's share of the business credits to which the eligible entity is entitled provided that the credit is one for which no income modification or election is required. 36 M.R.S. § 5219-G.

#### **.06 PAYMENT OF TAX**

An entity must make estimated payments of Maine income tax on behalf of participating members pursuant to 36 M.R.S. § 5228 if the aggregate liability of the participating eligible persons is greater than \$1,000.00 for the tax year.

#### **.07 AMENDED RETURNS**

- A. A composite return may not be changed or corrected except by an amended composite return filed by the entity that filed the original composite return.
- B. **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, participated in a composite filing in accordance with this rule must, within 180 days of the final determination date of the partnership-level audit, file an amended composite return for the reviewed year to report the additional income tax due with respect to those partners determined in accordance with the provisions of 36 M.R.S., Part 8 and this rule as they were in effect for the reviewed year. For purposes of this subsection, the final determination date is the date on which the partnership submits a request to the IRS, for any relevant partner, for a modification pursuant to the Code § 6225(c)(2)(A) or (B).

#### **.08 TAXABLE YEAR AND MAINE ADJUSTED GROSS INCOME**

Notwithstanding the provisions of 36 M.R.S. § 5102(1-C) and (11), the taxable year of an eligible person included in a composite return is the taxable year of the entity filing the composite return, and the Maine adjusted gross income of an

eligible person included in a composite return is that person's entity income for that taxable year.

**.09 DUE DATE**

The due date of the composite return is the fifteenth day of the fourth month following the close of the taxable year of the entity filing the composite return.

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STATUTORY AUTHORITY: 36 M.R.S. §§ 112, 5192(5)

EFFECTIVE DATE:

September 21, 1987

EFFECTIVE DATE (ELECTRONIC CONVERSION):

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AMENDED:

February 14, 2000

NON-SUBSTANTIVE CORRECTIONS:

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AMENDED:

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October 14, 2008

August 19, 2012 – filing 2012-228

April 5, 2015 – filing 2015-058

February 12, 2017 – filing 2017-013

December 17, 2018 – filing 2018-267

April 6, 2022 – filing 2022-052

May 3, 2023 – filing 2023-063