



# MAINE TAX ALERT

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## Maine Tax Treatment of Federal Deferred Foreign Income

(AKA “Deemed Repatriated Income” or “Internal Revenue Code § 965 Income”)

The provisions governing federal treatment of deferred foreign income (“DFI”) were enacted December 22, 2017 as part of the federal *Tax Cuts and Jobs Act* (PL 2015-97). The federal statutory provisions are located in section 965 of the Internal Revenue Code (“IRC”).

Generally, for federal income tax purposes, DFI is the **accumulated post-1986 deferred foreign income** of a **deferred foreign income corporation**, as those terms are defined by IRC § 965. With respect to the last taxable year of the deferred foreign income corporation that begins before January 1, 2018 (for most, this will be the tax year that begins in 2017), each shareholder of the foreign corporation must include in federal taxable income (corporations) or federal adjusted gross income (individuals) their pro rata share of the accumulated post-1986 deferred foreign income (as determined by the foreign corporation on either November 2, 2017 or December 31, 2017, whichever amount is greater) reduced by the shareholder’s applicable participation exemption amount under IRC § 965(c).

In accordance with Internal Revenue Service guidance (*Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns*, updated April 24, 2018), an individual shareholder’s pro rata share of the net DFI (i.e. net of the participation exemption) is reported on Form 1040, line 21 or Form 1041, line 8. For corporations, the gross DFI amount (i.e. prior to application of the participation exemption) is reported on *IRC 965 Transition Tax Statement*, line 1 and the participation exemption amount is reported on line 3 of that statement.

Under Maine tax law, as last amended by PL 2017, c. 474 (LD 1655, “An Act To Conform to the United States Internal Revenue Code of 1986 and Provide Tax Relief to Maine Families”) enacted on September 12, 2018, accumulated post-1986 deferred foreign income *is* subject to Maine income tax. However, the related federal deduction for the participation exemption is not allowed for taxable corporations, but is allowed for individual and fiduciary income tax purposes. For taxable corporations, Maine law allows a deduction equal to 80% of the apportionable DFI, net of the foreign earnings and profits (E&P) deficit deduction (IRC § 965(b)), that is included in federal gross income.

For filing, or amending, your 2017 income tax return to report DFI and related deductions, follow these instructions:

**2017 Form 1120ME (corporate income tax):** See the updated instructions for 2017 Form 1120ME, lines 2e, 2j, 4g and Schedule A, line 1 at the Maine Revenue Services website at <https://www.maine.gov/revenue/forms/corporate/2017.htm>. Generally, the instructions will provide guidance on how to report deferred foreign income and increase Maine income for the federal participation exemption deduction on line 4g, claim deductions for subpart F income and deferred foreign income on line 2j, apply certain restrictions to the Maine foreign dividends received deduction on line 2e, and how to adjust total sales in calculating the Maine apportionment factor on Schedule A, line 1.

**Note: The deduction amount for 80% of deferred foreign income and 50% of subpart F income must be excluded from the sales factor apportionment calculation on Form 1120ME, Schedule A, line 1, or from any other apportionment formula employed to attribute income to Maine.**

**Note: The 50% deduction for apportionable dividends from affiliated corporations not included in the taxpayer's combined report (Form 1120ME, line 2e) may not be taken with respect to DFI or subpart F income as defined by the Code, Section 952.**

**2017 Form 1040ME (individual income tax):** If you properly reported your 2017 tax year deferred foreign income on the 2017 federal Form 1040, line 21 (i.e. the amount net of the federal earnings and profits deficit deduction under IRC § 965(b) and the participation exemption under IRC § 965(c)), it is already included in federal adjusted gross income and, therefore, already included in Maine taxable income. Because the DFI amount includable in federal adjusted gross income is fully taxable to Maine, there are no Maine modifications to, or special reporting requirements for, DFI on the Maine individual income tax return.

**2017 Form 1041ME (fiduciary income tax for estates and trusts):** If the 2017 tax year DFI amount *distributed to beneficiaries* was properly reported on the 2017 federal Form 1041, line 8 and on Forms K-1 issued to beneficiaries, there are no Maine modifications required on the Maine fiduciary income tax return. However, if the 2017 tax year DFI amount *was not* distributed to beneficiaries, enter on the 2017 Maine Form 1041ME, Schedule 1, line 1g the net of federal *IRC 965 Transition Tax Statement*, line 1 less the amount reported on the statement, line 3. See updated instructions for 2017 Maine Form 1041ME, Schedule 1 at the Maine Revenue Services website at <https://www.maine.gov/revenue/forms/fiduciary/2017.htm>.

**Note:** Unlike federal law (IRC §§ 965(h)(1) & 965(i)(1)), Maine law **does not** allow an election to pay the Maine tax liability associated with DFI in annual installments and **does not** allow an election by S corporation shareholders to defer payment of the DFI tax liability.

Generally, Maine tax law (36 M.R.S. § 5227-A) requires an amended return be filed whenever there is a change or correction affecting the taxpayer's Maine income tax liability within 180 days from the date of the change or correction to avoid the assessment of penalties. However, Maine Revenue Services will abate interest and penalties that would otherwise apply to 2017

*amended* Maine income tax returns to the extent that the interest and penalties are associated with the federal tax law changes addressed by the recently enacted Maine tax conformity bill (PL 2017, c. 474) and if the amended return is filed no later than March 11, 2019. To qualify for abatement, affected taxpayers should write “TAX CONFORMITY” across the top of their return.

Maine Revenue Services will also abate interest and penalties that would otherwise apply to 2017 *original* Maine income tax returns to the extent that the interest and penalties are associated with the federal tax law changes addressed by the recently enacted Maine tax conformity bill (PL 2017, c. 474) and if the return is filed no later than October 15, 2018. To qualify for abatement, affected taxpayers should write “TAX CONFORMITY” across the top of their return.

Qualifying taxpayers who may be assessed interest and penalties should contact Maine Revenue Services at 207-626-8475 to request an abatement.

If you have any questions regarding reporting deferred foreign income for Maine income tax purposes, contact Maine Revenue Services at (207) 626-8475 or go to the MRS website at [www.maine.gov/revenue](http://www.maine.gov/revenue) for updated instructions for 2017 Form 1120ME.

Also see the summary of other tax law changes enacted by the Second Regular and Special Sessions of the 128<sup>th</sup> Legislature at [www.maine.gov/revenue](http://www.maine.gov/revenue). The summary includes the federal tax law changes enacted in 2017 and 2018 to which Maine *does not* conform.

## Fraud Alert

If you believe you are a victim of identity theft or that a breach of personally identifiable information has occurred, contact MRS at (207) 626-8475 or email [fraudalert.mrs@maine.gov](mailto:fraudalert.mrs@maine.gov) as soon as possible. Timely notification assists MRS in preventing fraudulent tax refunds.

<u>Department</u>	<u>Telephone Numbers</u>	<u>FAX Numbers</u>	<u>E-mail Addresses</u>
Taxpayer Service Center	(207) 626-8475	(207) 287-5855	
Central Registration	(207) 624-5644	(207) 287-6975	<a href="mailto:taxregistration@maine.gov">taxregistration@maine.gov</a>
Collections & Compliance	(207) 624-9595	(207) 287-6627	<a href="mailto:compliance.tax@maine.gov">compliance.tax@maine.gov</a>
Corporate Tax	(207) 624-9670	(207) 624-9694	<a href="mailto:corporate.tax@maine.gov">corporate.tax@maine.gov</a>
E-file Help Desk (1040 ONLY)	(207) 624-9730	(207) 287-6628	<a href="mailto:efile.helpdesk@maine.gov">efile.helpdesk@maine.gov</a>
Electronic Funds Transfer	(207) 624-5625	(207) 287-3618	<a href="mailto:efunds.transfer@maine.gov">efunds.transfer@maine.gov</a>
Estate & Fiduciary Tax	(207) 626-8480	(207) 624-9694	<a href="mailto:estatetax@maine.gov">estatetax@maine.gov</a>
Fuel & Special Taxes	(207) 624-9609	(207) 287-6628	<a href="mailto:fuel.tax@maine.gov">fuel.tax@maine.gov</a>
Forms Request Line	(207) 624-7894		
Individual Income Tax Assistance	(207) 626-8475	(207) 624-9694	<a href="mailto:income.tax@maine.gov">income.tax@maine.gov</a>
Insurance Premium Tax	(207) 624-9753	(207) 624-9694	
NexTalk (TTY Service)	(888) 577-6690		
Payment Plan/Income Tax	(207) 621-4300	(207) 621-4328	<a href="mailto:compliance.tax@maine.gov">compliance.tax@maine.gov</a>
Payment Plan/Other	(207) 624-9595	(207) 287-6627	<a href="mailto:compliance.tax@maine.gov">compliance.tax@maine.gov</a>
Practitioners' Hotline	(207) 626-8458	(207) 624-9694	
Property Tax	(207) 624-5600	(207) 287-6396	<a href="mailto:prop.tax@maine.gov">prop.tax@maine.gov</a>
Public Communications	(207) 626-8478	(207) 624-9694	
Sales Tax	(207) 624-9693	(207) 287-6628	<a href="mailto:sales.tax@maine.gov">sales.tax@maine.gov</a>
Tax Clearance Letters	(207) 624-9595	(207) 287-6627	
Office of Tax Policy	(207) 624-9677	(207) 287-3618	
Taxpayer Advocate	(207) 624-9649	(207) 287-3618	<a href="mailto:taxpayer.advocate@maine.gov">taxpayer.advocate@maine.gov</a>
Withholding Tax	(207) 626-8475	(207) 624-9694	<a href="mailto:withholding.tax@maine.gov">withholding.tax@maine.gov</a>
Tax Violations Hot Line	(207) 624-9600		

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning Maine tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for Maine tax laws and/or regulations.

Suggestions for the Tax Alert?

**Please contact:**  
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**Augusta, Maine 04332-1060**