



MAINE TAX ALERT

A Publication of Maine Revenue Services for Tax Professionals

Volume 22, Issue 2

February, 2012

Public Communications Tel: (207) 626-8478

Maine Revenue Services Rulemaking Activity

Adopted Rule 110, “Requests for Advisory Rulings.” Rule 110, which took effect on August 13, 2011, establishes specific requirements for advisory ruling requests. The rule provides that advisory ruling requests must state in writing the ruling requested (either in paper letter form or by email), and must include the following:

1. A statement of material facts;
2. The legal basis for the requested ruling;
3. A statement of whether the taxpayer is currently under MRS examination, audit, administrative reconsideration or judicial review with respect to the issue(s) raised by the request for an advisory ruling; and
4. A statement by the taxpayer or the taxpayer’s authorized representative that is substantially in the following form:

“I declare that I have examined this request for an advisory ruling and to the best of my knowledge and belief the information presented in support of the requested ruling is true and complete.”

Taxpayers and taxpayer representatives may also submit copies of any relevant supporting documentation. Rule 110 may be seen on the MRS website at www.maine.gov/revenue (select Laws and Rules).

Electronic Filing Requirements for Payroll Tax Returns

Maine Rule 104 (Electronic Filing of Maine Tax Returns) requires certain taxpayers to electronically file quarterly withholding and unemployment insurance tax returns and the annual withholding tax reconciliation form. In 2011, the electronic filing requirement applied to employers who had 5 or more employees, non-wage payers who had 5 or more payees, pass-through entities who had 5 or more members to whom withholding applied, and preparers who filed 5 or more returns on behalf of their clients.

Effective with the first quarter of 2012, the electronic filing requirement will apply to **all** taxpayers who withhold Maine income tax or report state unemployment insurance and all preparers who file returns on behalf of their clients on forms 941ME, 941P-ME, 941/C1-ME and Form W-3ME.

Notices were mailed on January 31st, 2012 to the remaining 12,000 taxpayers who currently file these returns on paper. Employers/payers were previously notified of the electronic filing mandates in instructions for the printed and web versions of the 2012 Maine Withholding Tables for Individual Income Tax. Taxpayers receiving the notice should begin filing electronically or, if electronic filing poses a hardship, request a waiver. Paper forms will be mailed only to those businesses that receive a waiver. Therefore, it is important that any business that wants to continue to receive paper copies of employment tax forms to contact MRS for purposes of obtaining a waiver. The notice includes information about filing electronically and how to request a waiver. Contact information is also included for taxpayer assistance.

Reminder: Filing Procedures Changing for Form 1065ME/1120S-ME (Information Return for Partnerships/S Corporations)

As noted in the January, 2012 issue of the Maine Tax Alert, Maine Form 1065ME/1120S-ME for 2011 is not required to be filed if *all* partners, shareholders or members of the entity are Maine resident individuals, estates, or trusts, determined on the last day of the tax year (December 31 for calendar year filers). Thus, this form and related Schedule PSI is required to be filed only if the entity had Maine business activity during the year; the entity files a federal Form 1065 or Form 1120S; and the entity had one or more owners that were not individuals, estates, or trusts, or one or more owners that were nonresident individuals, estates or trusts.

If you have any questions regarding these changes, please call 207-624-9670 or email partner-scorp.tax@maine.gov.

Reminder: Changes in Procedures for Filing Certain Pass-through Entity Withholding Forms for Nonresident Owners (Form 941P-ME, Form 941E-ME & Form 941LM-ME)

As previously noted in the January, 2012 issue of the Maine Tax Alert, MRS is changing the filing requirements for certain pass-through entity withholding forms to further reduce the administrative burden on businesses.

For calendar years 2012 and after, the quarterly **Form 941P-ME** (Pass-through Entity Withholding Return) will be replaced with an *annual* Form 941P-ME and quarterly *estimated* pass-through entity withholding payments for nonresident partners, shareholders or members.

For calendar years 2012 and after, **Form 941E-ME** (Pass-through Entity Withholding Exemption Form) and **Form 941LM-ME** (List of Participating Members in the Compliant Taxpayer Exemption Request) are discontinued.

The following automatic exemptions from the pass-through entity withholding requirement will continue to apply:

- the nonresident member will have less than \$1,000 in Maine-source income from the entity during the year;
- the nonresident member is a tax-exempt entity; and

- the nonresident member is a pass-through entity that realizes income from another pass-through entity upon which an amount has already been withheld.

Pass-through entities must keep on file for at least 3 years, Form 941AF-ME (Nonresident Member Affidavit and Agreement for Compliance with Maine Income Tax) and Form 941CF-ME (Composite Filing Participation Statement) for each nonresident member for which it is claiming the exemption.

An entity may request other exemptions in writing for unusual circumstances. Such exemptions are valid only for the calendar year for which they are granted. In addition, all exemptions become invalid if the annual Form 941P-ME is not filed timely.

If you have any questions regarding the new procedures, please call 207-626-8475 (press 1, then option 4) or email withholding.tax@maine.gov.

Maine Capital Investment Credit, Part 2: Addition modifications, Pass-through Owners, Asset-by-asset claims, and Composite Returns

Last month, we published an article about the Maine Capital Investment Credit, which applies to businesses that purchase and place in service eligible property in Maine in 2011 or 2012. The credit is equal to 10% of bonus depreciation claimed on the federal return for certain Maine property. This article provides additional information about the credit.

For income tax purposes, all property for which the federal bonus depreciation is claimed is subject to Maine income addition modifications under 36 MRSA §§ 5122 or 5200-A. The addition modification related to property for which the credit is claimed is, however, equal to the *entire* bonus depreciation claimed. The addition modification for all other bonus depreciation property (non-credit property), on the other hand, is the *net increase in depreciation* claimed over the amount that would have been allowed if bonus depreciation had not been claimed. This is the same calculation of the add-back for bonus depreciation that has been used in prior years.

These two addition modifications are entered on separate lines on the relevant Maine income tax returns. The tax credit property addition modification is not eligible for recapture because the credit was designed to approximate the tax benefit of the federal bonus depreciation for most property placed in service in Maine. The bonus depreciation addition modification for non-credit property may still be recaptured as in previous years through subtraction modifications in subsequent years.

The credit is optional and is elected on an asset-by-asset basis, but cannot be claimed on a portion of a single asset.

If property for which a credit was claimed is not used in Maine for the entire 12-month period after the date it was placed in service, the credit must be recaptured. Recapture of the credit is achieved through a tax addition on the Maine income tax return for the tax year during which the property is removed from service in Maine. Also, the return on which the credit was originally claimed should be amended to adjust the bonus depreciation addition modifications.

For pass-through entities, the decision to claim the credit lies with the individual owners rather

than with the entity. Therefore, to be eligible for the credit, an entity must claim bonus depreciation at the federal level and report the bonus depreciation related to property eligible for the tax credit to its owners. The individual owners of that entity then must each decide whether to claim the credit or forego the credit and utilize the bonus depreciation addition modification and subsequent year subtraction modification recapture applicable to non-credit property. Because of the nature of this credit, **a nonresident individual owner of a pass-through entity participating in a composite return cannot claim the credit.** To claim the credit, an individual owner must file a separate Maine income tax return. MRS has revised the tax credit worksheet to clarify the use of the credit by pass-through entity owners.

For more information, see the 2011 Maine Capital Investment Credit worksheet:
www.maine.gov/revenue/forms/credits/2011.htm.

2012 Sales Tax Seminars

The Sales, Fuel and Special Tax Division has announced plans for a number of sales tax seminars during 2012. Director Peter Beaulieu plans on providing monthly seminars across the state focused on specific industry groups in an effort to provide increased education to taxpayers, retailers, accountants and lawyers. The announcement can be seen at www.maine.gov/revenue/salesuse/salessymposiumfuturedates2012.html with dates and locations to be announced soon.

Maine Revenue Services Criminal Tax Cases

Rockland Man Sentenced for Failure to File Maine Income Taxes

Attorney General William J. Schneider announced that Daniel Gargan, Jr., age 43, of Rockland, was sentenced on January 25, 2012, to 30 days in jail for failing to pay his state income taxes. Gargan pled guilty to failing to pay his Maine Income Taxes from 2005 through 2009 and failing to file his Maine Income Tax Returns for 2005 and 2006.

Gargan, a commercial fisherman, earned an annual income of between \$80,000 and \$110,000 from 2005 through 2009 yet paid no state income taxes. Gargan had previously failed to pay his state income taxes from 2000 through 2003.

Knox County Superior Court Justice Jeffrey Hjelm sentenced Gargan to 180 days in jail, with all but 30 days suspended, and one year of administrative release. Gargan also was ordered to pay \$61,111 in restitution, consisting of the tax due from 2000 to the present.

“All Maine taxpayers bear the responsibility for paying their fair share under state tax laws,” said Attorney General Schneider. “We depend on people timely filing and paying their taxes. That is how our system works.”

This case was investigated by the Maine Revenue Services’ Criminal Investigations Unit. Assistant Attorney General Gregg D. Bernstein handled this matter for Attorney General Schneider’s Criminal Division.

<u>Department</u>	<u>Telephone Numbers</u>	<u>FAX Numbers</u>	<u>E-mail Addresses</u>
Taxpayer Service Center	(207) 287-2076	(207) 287-5855	
Appellate	(207) 624-9854	(207) 287-3618	
Audit	(207) 822-0450	(207) 822-0453	
Central Registration	(207) 621-5129	(207) 287-3733	division.uctax@maine.gov
Collections & Compliance	(207) 624-9595	(207) 287-6627	compliance.tax@maine.gov
Corporate Tax	(207) 624-9670	(207) 624-9694	corporate.tax@maine.gov
Economic Research	(207) 624-9789	(207) 287-3618	
E-file Help Desk (1040 ONLY)	(207) 624-9730	(207) 287-6628	efile.helpdesk@maine.gov
Electronic Funds Transfer	(207) 287-8276	(207) 287-6975	efunds.transfer@maine.gov
Estate & Fiduciary Tax	(207) 626-8480	(207) 624-9694	estatetax@maine.gov
Fuel Tax	(207) 624-9609	(207) 287-6628	fuel.tax@maine.gov
Forms Request Line	(207) 624-7894		
Individual Income Tax Assistance	(207) 626-8475	(207) 624-9694	income.tax@maine.gov
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	compliance.tax@maine.gov
Payment Plan/Other	(207) 624-9595	(207) 287-6627	compliance.tax@maine.gov
Practitioners' Hotline	(207) 626-8458	(207) 624-9694	
Property Tax	(207) 287-2013	(207) 287-6396	prop.tax@maine.gov
Public Communications	(207) 626-8478	(207) 624-9694	
Sales Tax	(207) 624-9693	(207) 287-6628	sales.tax@maine.gov
Tax Clearance Letters	(207) 624-9628	(207) 287-6627	
Taxpayer Advocate	(207) 624-9649	(207) 287-3618	taxpayer.advocate@maine.gov
Withholding Tax	(207) 626-8475	(207) 624-9694	withholding.tax@maine.gov
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?

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