



MAINE TAX ALERT

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2009 Tax Filing Season – Great Strides

MRS, taxpayers and the tax preparer community have made tremendous strides in recent years to improve tax return and payment processing. Not that many years ago, it took up to 12 weeks to process returns, send refunds and deposit money into the bank, nearly all of which was done by paper. We've come a long way since then, with the installation of the Maine Automated Tax System (MATS), Maine Imaging Processing System (MIPS), Electronic Funds Transfer (EFT), automated workflow, real time updates, electronic filing and payment mandates, the MRS website, and now the installation of the Maine Revenue Integrated Tax System (MERITS).

Here are a few of the major accomplishments:

- 59% (363,881) of individual income tax returns filed, to date, (619,997) were filed electronically. This is an increase of 8% over last year.
- 60% (76,044) of 2009 sales tax returns filed (125,798) were filed electronically – a 50% increase! Beginning with February 2009, the number of sales tax returns filed electronically began to exceed the number of paper returns filed. Beginning April 1, monthly sales tax filers were required to file their returns electronically, and during the month of May 87% of the sales tax returns received were filed electronically.
- 54% (54,027) of 2009 withholding returns filed (99,584) were filed electronically – an 11% increase.
- The number of tax payments made via Electronic Funds Transfer (EFT) has increased 6.5% over last year. 61% (429,171) of all payments processed through April (1,068,315) were paid via EFT.
- 1040 refunds processed this year were, on average, issued within 9 days of receipt of the return. This is incredibly fast compared to not so many years ago when it often took 6 to 12 weeks to issue a refund.
- 49.62% (210,121) of all refunds processed (423,462) were processed via Direct Deposit (DDR).

- Notices and assessments are mailed daily and most tax payments are deposited within 24 hours of receipt.
- MRS generally answers more than 99% of all telephone calls made to the agency.
- Timely filed paper 1040 returns were processed by April 30 (2 days earlier than last year and a new record).

All of us at MRS wish to extend a special thanks to all tax practitioners for the work they have done, especially those who utilize MRS E-File systems, to help make these accomplishments possible.

Net Operating Losses

In February, the American Recovery and Reinvestment Act of 2009 (“ARRA”) was enacted which, among other things, allows for a five-year carryback provision for eligible small businesses that have a net operating loss (“NOL”) in 2008. Maine law disallows federal NOL carrybacks through an addition modification in the year of the carryback (*see* 36 MRSA §§ 5122(1)(H) and 5200-A(1)(H)). The increase in the number of carryback years enacted by ARRA does not change Maine law and any 3-, 4- or 5-year carryback for federal income tax purposes will not be allowed for Maine income tax purposes.

Maine does allow, however, a recapture of any previously disallowed carrybacks through a subtraction modification in years subsequent to the loss year (*see* 36 MRSA §§ 5122(2)(H) and 5200-A(2)(H)). The Maine recapture modification may not reduce a taxpayer’s tax to less than zero, but generally any unused portion can be carried over for as long as the related federal carryforward period is open.

Recently enacted legislation, however, does not allow any Maine NOL deduction for tax years beginning in 2009, 2010 and 2011. The NOL not deducted due to this restriction may be deducted in tax years beginning after 2011 as long as the deduction does not reduce the tax to less than zero and the deduction is taken during the federal carryforward period plus the number of years the NOL was not deducted during the 2009-2011 period. [MRS is currently summarizing all tax law changes enacted during this session of the legislature. The summary will be published in a future Maine Tax Alert.]

If a business files a federal amended return to claim an NOL carryback, a Maine amended return must also be filed to show the adjustment. The Maine amended return for a carryback year, even though it will not alter the state liability of the taxpayer, will show the NOL addition modification that will subsequently be recaptured in years after the loss year. An amended Maine return reconciling the federal carryback may also prevent a taxpayer from being selected for audit due to a difference in income between the Maine and federal returns.

Estate Tax

For deaths in 2009, the federal exclusion amount for estates increased to \$3,500,000. The Maine estate tax exclusion amount, however, remains at \$1,000,000. The larger difference between the federal and Maine exclusion amounts is likely to result in more estates falling into the category called “gap estates.” Gap estates are those that are taxable to Maine, but fall below the federal level of taxability. Gap estates must file Form 706ME with MRS, including a pro forma federal Form 706.

Maine Revenue Services would like to remind estate planners and tax practitioners that transferring Maine property into a trust, LLC or other pass-through entity will in many cases not avoid the estate tax on nonresident decedent estates. Maine estate tax law specifically treats any real or tangible personal property transferred to a pass-through entity as real or tangible personal property directly owned by the decedent (*see* 36 MRSA §§ 4064 & 4064-A and MRS Rule 601.07(D)(2)).

The March 2009 issue of *Trusts & Estates* magazine includes an article (The Increased Exemption Creates Opportunity) that claims estates may benefit from transferring property to an LLC due to possible state tax reduction. The article says “Depending on state law, a decedent may be able to avoid the imposition of a particular state’s estate tax by placing real estate located in that state in an entity that is taxed in the state of the decedent’s domicile.” Unless the entity is engaged in a for-profit business, Maine looks beyond the entity to which real or tangible personal property has been transferred and taxes the underlying assets as if the entity did not exist and the property was owned directly by the decedent. MRS Rule 601 states:

If the trust, limited liability company or other pass-through entity in which the decedent has an interest does not actively carry on a business for the purpose of profit and gain, the entity will be disregarded for the purpose of including real and tangible personal property located in Maine in the Maine gross estate of the decedent.

Where a decedent transferred real or tangible personal property situated in Maine to a trust, limited liability company or other pass-through entity, the Assessor will determine whether the transfer was for a valid business purpose by looking at the economic realities of the transfer. Tax avoidance is not considered a valid business purpose.

<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) 287-3294	
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) 624-9740	efile.helpdesk@maine.gov
Electronic Funds Transfer	(207) 287-8276	(207) 287-6975	efunds.transfer@maine.gov
Estate 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		
Income Tax Assistance	(207) 626-8475	(207) 624-9694	income.tax@maine.gov
Insurance Premium Tax	(207) 624-9753	(207) 624-7729	
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.

STATE OF MAINE

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Suggestions for the Tax Alert?

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