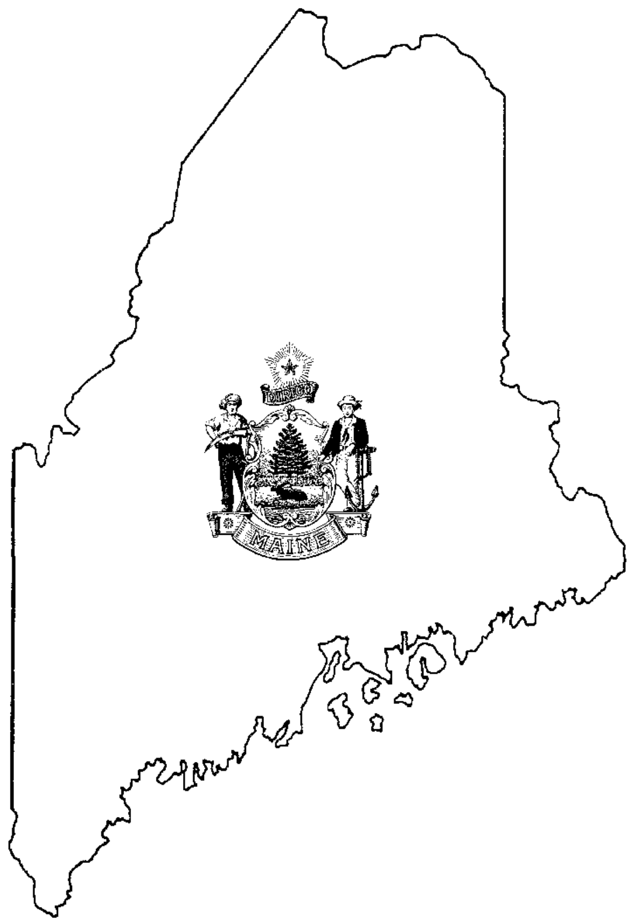
INDIVIDUAL INCOME TAX

Residency Safe Harbors

For Residents Spending Time Outside Maine



GUIDANCE DOCUMENT

Maine Revenue Services, Income/Estate Tax Division

Last Revised: March 2023

As explained in the Maine Revenue Services (MRS) *Determining Residency Status Guidance Document*, an individual who is domiciled in Maine is generally treated as a Maine resident for income tax purposes. However, Maine tax law provides that certain individuals who are absent from Maine for long periods of time are not treated as resident individuals, even though they are domiciled in Maine. These individuals may fall under either the **General Safe Harbor** or the **Foreign Safe Harbor** exception to the normal rule and, for Maine tax purposes, be treated as if the individual were a nonresident.

Unless otherwise indicated in this document, Maine income tax **guidance documents** are available at www.maine.gov/revenue/taxes/income-estate-tax/guidance-documents and Maine **tax forms** are available at www.maine.gov/revenue/tax-return-forms.

GENERAL SAFE HARBOR

An individual who is domiciled in Maine will nevertheless be treated as a safe harbor resident if they satisfy all three of the following requirements:

1. Did not maintain a permanent place of abode in Maine (it is presumed that you maintain a permanent place of abode in Maine if you are married or have minor children and your spouse [unless you are legally separated] and/or minor children reside in a permanent place of abode in Maine);

2. Maintained a permanent place of abode **outside** Maine; and

3. Spent **no more than 30 days** in the aggregate in Maine during the taxable year (with any portion of a day counted as a full day).

A "permanent place of abode" is a house, apartment, residential care facility, dwelling place, or other residence that an individual maintains as his or her home for the entire year, whether or not that individual owns it. The term does not include a seasonal camp or cottage that is used only for vacations, a hotel or motel room, 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 in Maine for the accomplishment of a particular purpose.

In the case an individual who is domiciled in Maine claims that they should be treated as a nonresident individual for a specific taxable year, that individual must demonstrate to the satisfaction of the State Tax Assessor that all three requirements of the general safe harbor have been met.

An individual who is domiciled in Maine that meets all three requirements of the general safe harbor during the taxable year is treated as a nonresident individual for Maine income tax purposes for that taxable year. However, if during the taxable year all three requirements of the general safe harbor are not met, the individual is subject to Maine income tax as a resident individual for that year unless the individual meets the requirements of the foreign safe harbor.

Filing Returns: An individual who meets all three requirements of the general safe harbor during a taxable year may file a Maine income tax return as a safe harbor resident individual for that taxable year. Individuals qualifying under the safe harbor rule will be treated as a nonresident for Maine individual income tax purposes.

General Safe Harbor – Examples (all examples assume the taxpayer is domiciled in Maine)

Example 1: Paul, single, is a member of the U.S. armed forces stationed in Arizona. He lived in military housing in Arizona during the entire tax year. He did not maintain a permanent place of abode in Maine at any time during the tax year. While on leave, he stayed with relatives in Maine for 15 days. Because Paul has met all three requirements of the general safe harbor, he may file a Maine tax return as a safe harbor resident for that tax year.

Example 2: Same as Example 1 above, except that Paul owned a home in Maine for the entire tax year. He did not rent the Maine home to anyone during the tax year. Because Paul maintained a permanent place of abode in Maine, he did not meet the requirements of the general safe harbor. He must file a Maine return as a resident for that tax year.

Example 3: Lindsey is a student attending college full-time in Massachusetts. Because Lindsey's parents are domiciled in Maine and claim her as a dependent on their Maine income tax return, Lindsey is also considered to be domiciled in Maine. During the tax year, Lindsey did not maintain a permanent place of abode in Maine. Lindsey was in a summer intern program and lived in a dormitory room on her college campus for the entire year. She did not spend more than 30 days in Maine during the year. Because Lindsey did not maintain a permanent place of abode outside Maine for the entire year (a dormitory may not be considered a permanent place of abode), she did not meet the requirements of the general safe harbor. She must file a Maine return as a resident for that tax year.

FOREIGN SAFE HARBOR

An individual who is domiciled in Maine will nevertheless be treated as a safe harbor resident if they satisfy all three of the following requirements:

1. Within any period of 548 consecutive days (the "548-day period"), the individual was present in a foreign country (or countries) for at least 450 days;

   An individual may choose any period of 548 days in order to meet the requirements of the foreign safe harbor. Each 548-day period will only apply to the tax years included either partially or fully in the 548-day period. An individual cannot satisfy all three requirements of the foreign safe harbor until the 548-day period has concluded.

2. During the 548-day period, the individual was not present in Maine for more than 90 days and did not maintain a permanent place of abode in Maine at which the individual's spouse (unless the spouse is legally separated) or minor children were present for more than 90 days; and

3. During the portion of the 548-day period included in the taxable year during which the 548-day period began and during the portion of the 548-day period included in the taxable year during which the 548-day period ends, the individual is, for each period, present in Maine for a number of days that does not exceed the result of the following calculation:

   Step 1: Divide the number of days in the taxable year that are also included in the 548-day period by 548 to calculate the percentage to use in Step 2.

   Step 2: Multiply 90 by the percentage computed in Step 1. If the number you calculate, as determined for each period, is equal to or greater than the number of days spent in Maine for each period, you have met this requirement.

Rounding Days: Round down to the next lowest whole number all decimals that include .01 through .50. Round up to the next highest whole number all decimals that include .51 through .99 (for example 10.47 is rounded down to 10 while 10.51 is rounded up to 11),

Rounding Percentages: Round decimals to 4 places to calculate percentages (for example .109489 is rounded to .1095 or 10.95%).

Example: *Taxpayer A's 548-day period begins September 1, 2020 and ends March 2, 2022. Taxpayer A's taxable year is based on a calendar year. The number of days in each taxable year included in the 548-day period is 122 days during 2020, 365 days during 2021 and 61 days during 2022. Taxpayer A spent less than 90 days in Maine during the 548-day period, including 15 days between September 1, 2020 and December 31, 2020 and 10 days between January 1, 2022 and March 2, 2022. Taxpayer A must make the following calculations for 2020 and 2022.*

Calculation:

1) Compute the percentage of days in each taxable year included in the 548-day period.
   2020: 122 days of the taxable year included in the 548-day period.
   2022: 61 days of the taxable year included in the 548-day period.

   The percentages are computed as follows:
   2020: 122 ÷ 548 = 22.26% *[.2226]*
   2022: 61 ÷ 548 = 11.13% *[.1113]*

2) For each period, multiply 90 by the percentage calculated in Step 1. Compare the result determined for each period with the actual number of days spent in Maine during the portion of the taxable year included in the 548-day period.

   2020: 90 x 22.26% = 20 days *(days spent in Maine during the portion of the 548-day period included in 2020 was 15)*

   2022: 90 x 11.13% = 10 days *(days spent in Maine during the portion of the 548-day period included in 2022 was 10)*

Because the number of days actually spent in Maine during the portion of the 548-day period included in 2020 (15 days) is not more than the number allowable for that period (20) and because the number of days actually spent in Maine during the portion of the 548-day period included in 2022 (10 days) is not more than the number allowable for that period (10), Taxpayer A has met this requirement. If, for either 2020 or 2022, Taxpayer A had spent more days in Maine than the number allowable for either period, Taxpayer A would not have met this requirement. For additional examples, see below.

If you meet all of the foreign safe harbor requirements, the portion of the 548-day period included in each taxable year is known as the "**safe harbor nonresident portion**" of that taxable year. For purposes of determining the number of days present in Maine, count any part of a day spent in Maine as a whole day present in Maine, except for partial days you were in Maine solely in transit to a destination outside Maine.

Filing Returns: If you meet all three requirements of the foreign safe harbor, you will be:

- A **part-year resident** for the taxable year in which the 548-day period begins. This assumes that you were a resident of Maine for the period of the taxable year prior to the beginning of the 548-day period and also assumes that the 548-day period does not begin on the first day of the taxable year (see nonresident discussion below);

- A **part-year resident** for the taxable year in which the 548-day period ends. This assumes that you were a resident of Maine for the period of the taxable year after the end of the 548-day period and also assumes that the 548-day period does not end on the last day of the taxable year (see nonresident discussion below). See Example 2 below; and

- A **safe harbor resident** treated as a nonresident for Maine tax purposes for any taxable year fully covered by the 548-day period. See Example 1 below. This will include the taxable year where the 548-day period begins on the first day of the taxable year or ends on the last day of the taxable year.

  If the due date for filing your return is prior to the end of the 548-day period, you may, if you believe that you will ultimately meet all the requirements of the foreign safe harbor, either:

  1. File Maine income tax returns as a full-year resident of Maine for all taxable years included either partially or fully in the 548-day period and, if you ultimately meet all the requirements of the foreign safe harbor, file timely amended Maine income tax returns using the appropriate residency status for each tax year as discussed above; or

  2. If an extension is needed beyond the automatic 6-month extension for filing each return, apply for an extension of time to file each Maine income tax return affected by the 548-day period by submitting a letter explaining why additional time is being requested.

Note: An extension of time to file the Maine income tax return does not extend the time to pay the income tax due. To avoid or minimize the interest or penalty for late payment that might otherwise be owed if you do not ultimately meet all of the requirements of the foreign safe harbor, pay, on or before the original due date of the return, at least 90% of the tax amount owed as a resident individual.

Foreign Safe Harbor - Examples

Example 1: Abe is domiciled in Maine. He is single. His taxable year is the calendar year. During the period November 1, 2020 through May 2, 2022 (a period of 548 consecutive days), he is present in a foreign country 480 days.

During the 548-day period, Abe was present in Maine a total of 65 days: 9 days during the period November 1, 2020 through December 31, 2020, 41 days during 2021 and 15 days during the period January 1, 2022 through May 2, 2022.

Because Abe was present in a foreign country 480 days, he meets the first requirement. Abe also meets the second requirement because he was present in Maine not more than 90 days during the 548-day period.

To find out whether Abe meets the third requirement, he must determine if the number of days present in Maine during the period November 1, 2020 through December 31, 2020 (9 days) exceeds the maximum number of days allowed for that period. The total number of days in the period November 1, 2020 through December 31, 2020 is 61.

The maximum number of days Abe may be present in Maine during the period November 1, 2020 through December 31, 2020 is 10, determined as follows:

Step 1: *61 days (November 1 - December 31) ÷ 548 = 11.13% [.1113]*
Step 2: *90 x 11.13% =* **10** *days allowed in Maine for this period*

Because Abe was present in Maine 9 days during the period November 1, 2020 through December 31, 2020, he did not exceed the maximum 10 days allowed for this period.

Abe must also determine if the number of days he was present in Maine during the period January 1, 2022 through May 2, 2022 (15 days) exceeds the maximum allowed for that period. The total number of days for the period January 1, 2022 through May 2, 2022 is 122.

The maximum number of days he may be present in Maine during the period January 1, 2022 through May 1, 2022 is 20, determined as follows:

Step 1: *122 days (January 1 - May 2) ÷ 548 = 22.26% [.2226]*
Step 2: *90 x 22.26% =* **20** *days allowed in Maine for this period*

Because Abe was present in Maine 15 days during the period January 1, 2022 through May 2, 2022, he did not exceed the maximum 20 days allowed for this period.

Abe meets all the requirements of the foreign safe harbor. Therefore, he may file as a **part-year resident** for the 2020 and 2022 tax year's (assuming that Abe was a resident of Maine for the remaining portion of each year) and as a **safe harbor resident** individual for the 2021 tax year.

Example 2: Belinda is domiciled in Maine. Belinda is married and has two children. Her taxable year is the calendar year. Belinda is in the military and during the period July 2, 2021 through December 31, 2022 (a period of 548 consecutive days) she and her family were present in a foreign country 488 days.

During the 548-day period, Belinda and her family were present in Maine a total of 60 days: 20 days during the period July 2, 2021 through December 31, 2021 and 40 days during 2022.

Because Belinda was present in a foreign country 488 days, she meets the first requirement. Belinda and her family also meet the second requirement because they were present in Maine not more than 90 days during the 548-day period.

Belinda must also determine if the number of days she was present in Maine during the period of July 2, 2021 through December 31, 2021 (20 days) exceeds the maximum allowed for that period. The total number of days in the period July 2, 2021 through December 31, 2021 is 183 days.

The maximum number of days she may be present in Maine during the period July 2, 2021 through December 31, 2021 is 30, determined as follows:

Step 1: *183 days (July 2 - December 31) ÷ 548 = 33.39% [.3339]*
Step 2: *90 x 33.39% =* **30** days allowed in Maine for this period

Because Belinda was present in Maine 20 days during the period July 2, 2021 through December 31, 2021, she did not exceed the maximum 30 days allowed for this period.

Belinda must also determine if the number of days she was present in Maine during the period January 1, 2022 through December 31, 2022 (40 days) exceeds the maximum allowed for that period. The total number of days for the period January 1, 2022 through December 31, 2022 is 365.

The maximum number of days Belinda may be present in Maine during the period January 1, 2022 through December 31, 2022 is 60, determined as follows:

Step 1: *365 days (January 1 - December 31) ÷ 548 = 66.61% [.6661]*
Step 2: *90 x 66.61% =* **60** *days allowed in Maine for this period*

Because Belinda was present in Maine 40 days during the period January 1, 2022 through December 31, 2022, she did not exceed the maximum of 60 days allowed for this period.

Belinda meets all the requirements of the foreign safe harbor. Therefore, she may file as a **part-year resident** for the 2021 tax year (assuming that she was a resident of Maine for the remaining portion of the year) and as a **safe harbor resident** individual for the 2022 tax year.

If Belinda spent more than 90 days in Maine during the 548-day period or if Belinda's spouse or children spent more than 90 days in Maine during the 548-day period at a home she maintained as a permanent place of abode, she would not have met the requirements of the foreign safe harbor. If this were the case, Belinda would be required to file as a **resident** individual for all tax years involved.

Example 3: Chad is domiciled in Maine. Chad is single. His taxable year is the calendar year. During the period August 1, 2020 through January 30, 2022 (a period of 548 consecutive days), he was present in a foreign country 470 days.

During the 548-day period, Chad was present in Maine a total of 54 days: 15 days during the period August 1, 2020 through December 31, 2020, 33 days during 2021 and 6 days during the period January 1, 2022 through January 30, 2022.

Because Chad was present in a foreign country 470 days, he meets the first requirement. Chad also meets the second requirement because he was present in Maine not more than 90 days during the 548-day period.

Chad must determine if the number of days he was present in Maine during the period August 1, 2020 through December 31, 2020 (15 days) exceeds the maximum allowed for that period. The total number of days in the period August 1, 2020 through December 31, 2020 is 153.

The maximum number of days Chad may be present in Maine during the period August 1, 2020 through December 31, 2020 is 25, determined as follows:

Step 1: *153 days (August 1 - December 31) ÷ 548 = 27.92% [.2792]*
Step 2: *90 x 27.92% =* **25** *days allowed in Maine for this period*

Because Chad was present in Maine 15 days during the period August 1, 2020 through December 31, 2020, he did not exceed the maximum of 25 days allowed for this period.

Chad must also determine if the number of days he was present in Maine during the period January 1, 2022 through January 30, 2022 (6 days) exceeds the maximum allowed for that period. The total number of days for the period January 1, 2022 through January 30, 2020 is 30.

The maximum number of days Chad may be present in Maine during the period January 1, 2022 through January 30, 2022 is 5, determined as follows:

Step 1: *30 days (January 1 - January 30) ÷ 548 = 5.47% [.0547]*
Step 2: *90 x 5.47% =* **5** *days allowed in Maine for this period*

Because Chad was present in Maine for 6 days during the period January 1, 2022 through January 30, 2022, he exceeds the maximum of 5 days allowed for this period and fails to meet the third requirement of the foreign safe harbor. Therefore, he must file as a **resident** individual for each of the 2020, 2021, and 2022 tax years.