

# MAINE TAX ALERT

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## CLARIFICATION OF NOL DEDUCTION

for Corporate Taxpayers  
Filing Consolidated Federal Returns

Maine income tax law does not independently provide for the carryforward or carryback of NOLs. However, because Maine "piggy-backs" federal taxable income ("FTI"), a carryforward or carryback deduction is included in computing Maine (FTI) income whenever an NOL carryforward or carryback is properly taken on a taxpayer's federal income tax return.

A corporate taxpayer that files as part of a federal consolidated group that has taken an NOL carryforward or carryback deduction on line 29 of its federal consolidated Form 1120 (as filed with the IRS for the taxable period in question) may, subject to Maine statutory adjustments, use the portion of that federal NOL carryforward or carryback deduction that pertains to that taxpayer when preparing its pro forma federal Form 1120 to be filed in connection with its Maine Form 1120-ME for that taxable period.

A Maine taxpayer may not claim an NOL carryforward or carryback on its pro forma federal return if there was no NOL carryforward or carryback claimed on the taxpayer's consolidated return for that year.

A Maine taxpayer may not claim an NOL carryforward or carryback on its pro forma federal return if the NOL carryforward or carry back claimed on the taxpayer's federal consolidated return is not attributable in any part to an NOL of the taxpayer.

Further information is available from the Income Tax Division at (207)624-7876.

## COMBINED FORMS Effective January 1, 1997

Please remember that withholding taxes for wages paid during December 1996 or for the 4th Quarter of 1996 will be due on January 21, 1997. The new filing and payment schedules are effective for wages paid beginning January 1, 1997. Payments for monthly payors will be due on the last day of the month following the end of the period. The first return, for all categories of payors, will be the 1st Quarter Combined Return. The 1st Quarter Combined Return will be due on April 30, 1997, the last day of the month following the end of the 3rd month of the quarter. Even monthly and semi-weekly payors will file the Quarterly Combined Return at the end of April, 1997. That Quarterly Combined return is the return for unemployment insurance contributions for the quarter and for withholding tax filing for all three months of the quarter.

For the Combined Form, the State is offering four filing options. The choices among the options available will determine which forms employers will need. As a result, we find that we must provide an order form to

employers. In the January 1997 issue, we will include the Combined Form Order Form. For employers interested in preparing the Quarterly forms on computer, we are providing loose and trac feed "computer friendly" forms.

Withholding table booklets were sent out to employers on December 17. Combined form withholding payment voucher books were mailed December 20. Semi-weekly payors will have their vouchers in hand in time for their first payment due on Wednesday, January 8, 1997.

### GENERAL FORMS ORDERS

Forms Orders for the 1997 Maine 1040 season are now being filled. Please remember that if you need another order form, the form is available on the Taxation webpage. State Tax Code books are the code as amended by the 117th Second Legislative Session which ended in the spring of 1996.

### TIPS FOR THE 1040-ME SEASON

- { Never use red ink - the scanner will see a blank page!
- { Attach all W-2s and the 1099s with withholding
- { Remember, NO STAPLES.
- { Please remind your clients that both pages of the Maine short form must be mailed to the Bureau of Taxation. During the 1996 season, we often received only the second page.
- { For help, call the Practitioners' Hotline at (207) 626-8458

### POLICY REVIEW BOARD DECISIONS

To date, the Policy Review Board has approved and is ready to publish five of the 1995 issues and five of the 1996 issues. More than six other issues are pending full approval. In this issue we have given you a synopsis of each of the five "PRB's" for 1995.

#### PRB-95-1

**Instrumentalities of Interstate Commerce - Utilization time calculation - Sales and Use Tax**

[36 MRS Ae 1761(41)] (Appr. Dec. 4, 1995)

In determining whether a vehicle has been used "not less than 80% of the time" as an instrumentality of interstate commerce, the Bureau will use whole days as the unit of measure. Thus, if a taxpayer uses a vehicle in interstate commerce for any part of a day, the taxpayer will be credited with a full day's utilization for purposes of determining eligibility for exemption.

#### PRB-95-2

**Obsolete Stores and Supplies - Sales and Use Tax**

[36 MRS Ae 1861] (Appr. Dec. 5, 1995)

Unused, obsolete stores and supplies discarded or sold by a taxpayer, whether or not it would otherwise have been used in an exempt fashion, are subject to sales or use tax based upon original cost. Unless circumstances dictate otherwise, sale of such property by the taxpayer should be treated as a casual sale.

#### PRB-95-3

**Inventory Write-Offs - Sales and Use Tax**

[36 MRS Ae 1861] (Appr. Dec. 4, 1995)

For the purposes of sales and use tax, it was decided that inventory write-offs should be deemed taxable or exempt in the same proportion as that established by the historical use of the type of inventory by that

taxpayer. For example, if 85% of a class of inventory has been used for exempt purposes based upon prior practice, it will be assumed that a write-off of such inventory is 85% exempt property. This seems justified in light of the assumption that such inventory, in fact, existed and was, therefore, used in accordance with established practice.

It may be that the taxpayer could, using the historical use percentage, report that percentage as taxable at the time of the inventory acquisition. This approach would avoid the recurrence of the issue in a subsequent audit and may be easier for the taxpayer to administer.

#### **PRB-95-4**

##### **Hog Fuel - Cost Basis**

[36 MRS Ae1861] (Appr. Dec. 4, 1995)

It was decided that hog fuel generated by taxpayer as a by-product of the paper production process should not be the subject of use tax.

#### **PRB-95-5**

##### **Forced Election of Investment Tax Credit or Timing - Income Tax and Business Property**

##### **Business Property Tax Reimbursement - Tax Reimbursement**

[36 MRS Ae5219-E; e6651] (Appr. Jan. 12, 1996)

As a result of the 1996 amendment to e5219-E, there is a forced election between business property tax reimbursement under e6651 and the ITC credit in e5219-E. In calculating when the "no dual benefit" amendment applies, one must keep in mind 1) that local property taxes each year are assessed on property in existence in the locality as of April 1st of each year; 2) that the ITC looks back to property that had a situs in the State in the immediately prior taxable year; and 3) one must determine the taxable year of the taxpayer.

For a calendar year filer, the "no dual benefit" provision has the following effect:

##### **Property acquired situs in Maine in December 1995**

- { Calendar year 1996: Taxpayer may obtain property tax reimbursement on the otherwise qualifying property, and can claim an ITC credit on the 1996 return because the property is "1995 property" and the no dual benefit provision is not yet in effect.

##### **Property acquired situs in Maine in January 1996**

- { Calendar year 1996: Taxpayer may obtain property tax reimbursement on the otherwise qualifying property, but cannot claim an ITC credit on the 1996 return because the property is "1996 property."

##### **Property acquired situs in Maine in May 1996**

- { Calendar year 1996: Taxpayer will not be assessed property tax on this property in 1996, and therefore cannot obtain 1996 reimbursement on the property. The taxpayer cannot claim an ITC credit on the 1996 return because the property is "1996 property."

For all three of the above properties, the result in 1997 is as follows:

- { Calendar year 1997: Forced election. Taxpayer may obtain 1997 property tax reimbursement on the otherwise qualifying property, but cannot also claim an ITC credit on the 1997 return because the property tax would have been reimbursed on the property during the 1997 taxable year.

### **STATE DOMICILE DETERMINATION**

Maine has signed the Cooperative Agreement between NESTOA states on domicile determination.

**This agreement is the result of a study by representatives of the member states seeking to coordinate domicile determination when two or more states are claiming that a taxpayer is domiciled in their states. The cooperative agreement is intended to provide an efficient method to resolve situations of potential double taxation. Representatives of the "domicile" states will sit down with taxpayer and cooperate in finding an equitable solution. The taxpayer will now be able to deal with both states together rather than being caught between the states when there is an overlap in income taxing claims by several states.**

**The agreement also standardizes definitions in domicile determination. The Primary Factors in determining domicile are Home, Time, Items Near and Dear, Active Business Involvement and, where determination is not clear with the first four factors; Family Connections. Each state will use its own "secondary factors" in determining domicile. A few examples of the definitions are: Where are the taxpayer's residences, are they rented or owned, how large, of what value? How much time does the taxpayer spend in each location, taking into account whether the taxpayer is retired or working, overall living pattern of the individual.**

**The agreement states that income which is sourced in a non-domicile state but not taxed by that state can be taxed by the "home" state. Tax revenue associated with "non-sourced" income, such as income from intangible assets, should be available to the taxpayer's state of domicile for state taxation. The agreement does not apply to income from flow-through entities.**

**The members of the North Eastern State Tax Officials Association are Connecticut, Delaware, D.C., Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont.**