



MAINE TAX ALERT

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Public Communications Tel: (207) 626-8478

MRS Rulemaking Activity

Rule 104 Adopted. Maine Revenue Services recently adopted Rule 104, “Electronic Filing of Maine Tax Returns.” The rule is effective February 11, 2008. The new rule, available at www.maine.gov/revenue/rules, mandates electronic filing (E-file, I-file, etc) for the following Maine tax returns:

Individual Income Tax Returns

For individual income tax returns filed in calendar year 2008, a tax return preparer must file by electronic data submission all original Maine tax returns that are eligible for electronic filing, except:

- Where for calendar year 2007 the tax return preparer prepared less than 200 original Maine tax returns for individual income tax that were eligible for electronic filing;
- Where the taxpayer refuses to allow the return to be filed by electronic data submission and the tax return preparer notes the refusal in the taxpayer’s records; or
- Where the tax return preparer has been granted a waiver from mandatory electronic filing. **The process for requesting waivers is described below.**

Beginning January 1, 2009, the electronic filing requirement threshold is 100 returns prepared in 2008 and, for years after 2009, the threshold is 50 returns prepared in the previous calendar year.

For questions on filing individual income tax returns electronically, call 626-8458 or e-mail income.tax@maine.gov.

Income Tax Withholding Returns

Mandatory electronic filing of all original Maine tax returns of quarterly and annual reconciliation for Maine income tax withholding for 2008 applies to:

- Employers with 75 or more employees in 2008 that are subject to Maine income tax withholding;
- Third party filers or payroll processors, as defined in 10 M.R.S.A., chapter 222,

preparing withholding returns for an employer with 75 or more employees in 2008 that are subject to Maine income tax withholding;

- Third party filers or payroll processors, as defined in 10 M.R.S.A., chapter 222, with 75 or more client employers in 2008 that are required to file Maine income tax withholding returns under 36 M.R.S.A., chapter 827, or make competitive skills scholarship fund or unemployment compensation insurance payments under 26 M.R.S.A., chapter 13, subchapters 5 and 7;
- Non-wage payers with 75 or more payees in 2008 that are subject to Maine income tax withholding under 36 M.R.S.A. § 5255-B.

For returns filed for withholding in calendar years after 2008, the threshold that triggers the electronic filing requirement in each case is 50 or more employees, payees or client/employers, whichever applies.

For questions on filing income tax withholding returns electronically, call 626-8475, press 1, option 4 or e-mail withholding.tax@maine.gov.

Sales, Use and Service Provider Tax Returns

For returns filed in calendar year 2008, sales, use or service provider tax returns must be filed electronically if the tax liability for the related tax was \$200,000 or more for the 12-month period ending September 30, 2007. For 2009 the threshold is \$100,000 of tax paid during the lookback period and, for years after 2009, the threshold is \$25,000.

For questions on filing sales, use and service provider tax returns electronically, call 626-9693 or e-mail sales.tax@maine.gov.

Penalty

The penalty is \$50 and applies when two or more returns are not filed electronically as required within a 6-month period and the person has been notified of noncompliance and that the penalty may be imposed. The penalty applies monthly. For example, if a preparer fails to file returns electronically in April as required, then fails to do so again in August of the same year (regardless of the number of days the failure occurs), the preparer will be subject to a penalty of \$50. If the failure occurs again in September of the same year, another \$50 penalty applies.

Waiver

Rule 104 includes a provision for a waiver of the requirement to file by electronic submission when the State Tax Assessor determines that the requirement causes undue hardship. Generally, a one-year waiver for undue hardship will be granted if the tax return preparer does not currently have electronic filing capability, does not have Internet access, or has other existing factors, such as prolonged illness or disability, that prevent the electronic filing of returns in 2008. For individual income tax returns, Maine Revenue Services will readily approve waivers in this transition year. Requests for waivers relating to individual income tax returns should be directed to Christina Ward via email to income.tax@maine.gov. Requests for waivers relating to income

tax withholding returns should be directed to Richard Truman via email to withholding.tax@maine.gov. Requests for waivers relating to sales, use and service provider tax returns should be directed to Peter Beaulieu via email to peter.b.beaulieu@maine.gov.

Rule 803 Revised, “Withholding Tax Reports and Payments.” The revised rule, available at www.maine.gov/revenue/rules, includes technical changes to accommodate new Rule 104 and recent amendments to Rule 102. These changes to Rule 803 are effective February 11, 2008.

Rule 901 Revised, “Maine Residents Property Tax Program.” The revised rule, available at www.maine.gov/revenue/rules, provides comprehensive definitions and explanations of statutory terms and procedures for claiming benefits under the Maine Residents Property Tax Program. The amendments clarify the definition of “property taxes accrued” where a claimant owned and occupied two or more different homesteads during the relevant period. This change to Rule 901 is effective February 11, 2008.

Economic Nexus – Maine’s Position

Recent court cases from other States have raised the profile of the concept of “economic nexus” for income tax purposes. See *Tax Comm’r of W. Va. v. MBNA America Bank, N.A.*, 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (US 2007) and *Lanco, Inc. v. Dir. Div. of Taxation*, 908 A.2d 176 (NJ 2006), cert. denied, 127 S.Ct. 2974 (US 2007). Economic nexus is a short-hand term for the principle that a taxpayer’s purposefully directed business activity in a State (other than solicitation of sales activity protected by P.L. 86-272) may be sufficient to subject that taxpayer to income tax in that State regardless of the level – or absence – of physical presence in that State.

Maine Revenue Services (“MRS”) Rule 808 “Corporate Income Tax Nexus,” first issued in 1994, clearly states that “[t]he State Tax Assessor construes Maine law to assert the tax jurisdiction of Maine to the full extent permitted by the Constitution and laws of the United States.” Although physical presence nexus and economic nexus commonly occur together, MRS considers taxpayers with economic nexus alone to be subject to Maine’s income tax laws. All open periods may be subject to review. For more information, contact the MRS Business Tax Unit at 207-624-9670.

Maine Revenue Services Criminal Tax Cases

The following tax cases were recently prosecuted by the Attorney General's Office with assistance by the Maine Revenue Services' Criminal Investigations Unit:

August-December 2007 Criminal Tax Convictions:

On August 1, 2007, Michael D. Cowett of Presque Isle, Maine appeared in Aroostook County Superior Court and was convicted of five (5) Class D counts of Failure to Collect, Account For and Pay Over Trust Fund Taxes (2001–2003) and one count of Failure to Make and File a Maine

Income Tax Return (2002). Mr. Cowett was sentenced to serve seven (7) concurrent days in the Aroostook County Jail, to pay restitution in the amount of \$44,148 on or before August 17, 2007, and to serve 100 hours of community service work.

On August 4, 2007, James Spivey of South Portland, Maine appeared in Kennebec County Superior Court and pled guilty to six (6) counts of Failure to Make and File Maine Income Tax Returns regarding tax years 1999 through 2004. Mr. Spivey was sentenced to 45 days incarceration and \$1,000 in fines. No period of probation was ordered because Mr. Spivey paid his \$9,199 restitution in full prior to his sentencing.

On August 17, 2007, Shawn Asselin of Warren, Maine appeared in Knox County Superior Court and pled guilty to one (1) count of Class C Theft regarding the tax year 2003 for receiving a fraudulent income tax refund for this year. Mr. Asselin was arrested in New Jersey and extradited to Maine on an outstanding warrant for Failure to Appear at arraignment for the theft charge. Mr. Asselin was sentenced to 45 days in the Knox County Jail with credit for time served, and was ordered to pay \$1,036 of restitution to the State of Maine within six (6) months.

On August 16, 2007, Allison Rowland of Turner, Maine appeared in Androscoggin County Superior Court and pled guilty to Class D charges of Failure to Make and File Maine Income Tax Returns regarding tax years 2000 through 2005. The matter was continued for six months for sentencing under the Deferred Disposition provisions of Title 17-A Chapter 54-F. Ms. Rowland was also ordered to pay restitution in the amount of \$4,173 during the period of deferral.

On August 27, 2007, James Connors of Portland, Maine appeared in Portland District Court and pled guilty to six (6) Class D counts of failure to Make and File Maine Income Tax returns, in respect to the tax years 2001-2005. Mr. Connors was sentenced in October, 2007 to serve a 30-day jail sentence. Mr. Connors was also ordered to pay restitution in the amount of \$7,586, which must be paid within one (1) year.

On August 29, 2007, Darel Albin of Portland, Maine appeared in Cumberland County District Court and pled guilty to six (6) counts of Failure to Make and File Maine Income Tax Returns, regarding the tax years 2000 through 2005. Mr. Albin was sentenced to six (6) months in jail, with all but 10 days suspended and one (1) year of probation on count I, and a consecutive six-month sentence, all suspended and one (1) year probation on count II. On the remaining four counts, Mr. Albin must pay a \$200 fine on each. Mr. Albin was also ordered to pay \$27,256 in restitution, with one half of that amount being due during the first 11 months of each year of probation. Mr. Albin served his jail sentence on October 22nd.

On September 11, 2007, Stephanie Amergian of Portland, Maine appeared in Portland District Court and was convicted of six (6) Class D counts of Failure to Make and File Maine Income Tax Returns regarding tax years 2000 through 2005. Ms. Amergian was sentenced to six (6) days incarceration and a two-year period of probation. Ms. Amergian was also ordered to pay restitution in the amount of \$10,871 during the period of probation.

On September 24, 2007, David Cox of Biddeford, Maine appeared in Knox County Superior

Court and pled guilty to one (1) misdemeanor count of Theft regarding the tax year 2003 for receiving a fraudulent income tax refund for this year. Ms. Cox was sentenced to a \$500 fine and restitution of \$707 to be paid within 90 days of the date of conviction.

On September 24, 2007, Stephen Rowland of Turner, Maine appeared in Androscoggin County District Court and pled guilty to Class D charges of Failure to Make and File Maine Income Tax Returns regarding tax years 2000 through 2005. The matter was continued six months for sentencing under the Deferred Disposition provisions of Title 17-A Chapter 54-F. Mr. Rowland was also ordered to pay restitution in the amount of \$4,173 during the period of deferral.

On November 8, 2007, Gregory McClure of Kittery, Maine appeared in York County Superior Court and pled guilty to one (1) Class C charge of Failure to Make and File Maine income tax returns and three (3) Class D charges of Failure to Pay Maine income tax regarding the tax years 2003 through 2006. Mr. McClure was given a deferred disposition to run for a period of 18 months. However, if Mr. McClure does not successfully complete his deferred disposition, the State will be free to move for sentencing at any time and argue for up to five (5) years of imprisonment. Mr. McClure's deferred disposition includes full restitution of \$21,145, which must be paid within the 18 months. Mr. McClure must also provide Maine Revenue Services with the names, social security numbers and addresses of all persons he has paid as day-labor and claimed as labor expenses on his tax returns for the years 2003 through 2006.

On December 4, 2007, the Maine Law Court affirmed a judgment in the matter of Joy Metcalf, who was found guilty by a jury trial on August 30, 2006 for two (2) counts of Class C Evasion of Income Tax; two (2) Class D counts of Evasion of Income Tax and five (5) counts of Class D Making and Subscribing a False Statement in an Income Tax Return. Ms. Metcalf was to begin her six-month jail sentence on December 31, 2007.

On December 19, 2007, Michael O'Donal of Lewiston appeared in Androscoggin County District Court and pled guilty to five (5) counts of Class D Failure to Make and File Maine Income Tax Returns. Mr. O'Donal was sentenced to 90 days in jail with all but seven days suspended and one year probation on the first count, and received a \$250 fine on each of the remaining four counts. It was also ordered as part of the sentence and as a special condition of probation that Mr. O'Donal must pay restitution to the State of Maine in an amount not to exceed \$20,000; that restitution must be paid during the first 11 months of his probationary period.

Probation Violations:

On September 25, 2007, Randall Robinson of Cushing, Maine appeared in Knox County Superior Court and was sentenced to 45 days in jail, in respect to his failure to pay restitution while he was on probation. Mr. Robison was convicted on 01/28/2002 for Failure to Make and File Maine income taxes, in regards to the years 1994-1999.

On November 26, 2007, James McGeoghgan of Corinna, Maine appeared in Penobscot County Court for being in violation of his probation. A warrant for Mr. McGeoghgan's arrest was issued

back on 01/16/06 because Mr. McGeoghgan failed to make restitution payments for his court-ordered restitution of \$60,000. After Mr. McGeoghgan was arrested on the warrant he posted bail, which consisted of his house in Corinna for \$36,000 surety. Mr. McGeoghgan was originally convicted on 1/07/2002 for Failure to Make and File Maine income tax returns for the years 1995-2000.

Motions to Enforce Restitution:

On December 4, 2007, Edward Lord of Auburn, Maine appeared in Androscoggin Superior Court for a hearing, pertaining to a motion to enforce restitution in his 2001 conviction. Mr. Lord posted bail in the amount of \$1,200 after being arrested on a warrant for failure to appear for his original court date of 10/25/2007. It was agreed that Mr. Lord would be given until February 15, 2008 to pay the remaining balance of his restitution, totaling \$13,734.57, or he will begin serving a 45-day jail sentence. Mr. Lord was previously convicted twice- once in 1997 for Failure to Make and File Maine income tax returns for the years 1991-1996 and again in 2001 for Failure to Make and File Maine income tax returns for the years 1997-1999. Mr. Lord had been ordered to pay restitution in the amount of \$32,000.

<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	(207) 622-3517	
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?

Please contact: Public Communications (207) 626-8478

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