



# MAINE TAX ALERT

A Publication of Maine Revenue Services for Tax Professionals

Volume 21, No. 8

November, 2011

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](http://www.maine.gov/revenue) (select Laws and Rules).

**Amendments to Rule 601, “Estate Tax.”** This Rule, last amended in 2010, explains in detail the estate tax laws of Maine. The following changes are being made to the proposed Rule. The definition of “Maine exclusion” in section .01(H) is amended to reflect the legislative change that raised the exclusion to \$2,000,000 for estates of decedents dying after December 31, 2012. Other references throughout the Rule are updated to include that change and the new estate tax chapter in Title 36. Additionally, wording throughout the Rule is revised to be more precise. The deadline for filing an amended return in .03(D) is extended to reflect the passage of a recent law that changed that date from 90 to 180 days. The domicile discussion in section .07(B) is edited to more closely follow the language in Rule 807 –Residency. Section .07(D)(1) is amended to remove the inclusion of proceeds from the sale of Maine property in response to a law change. Section .07(D)(2) is changed to more closely follow the language of the statute that was recently amended. New language reflecting the change in the law to the calculation of the Maine QTIP for decedents dying on or after January 1, 2011 is included in section .08. Various

other editorial changes are made.

Proposed Rule 601 can be found on the MRS website at [www.maine.gov/revenue](http://www.maine.gov/revenue) (select Laws & Rules). Comments are due by December 28, 2011 and should be directed to Nanette Ardry, Esq., Maine Revenue Services, 24 State House Station, Augusta, Maine 04333, (207) 624-9725, [nanette.m.ardry@maine.gov](mailto:nanette.m.ardry@maine.gov).

**Amendments to Rule 806, “Nonresident Individual Income Tax.”** This rule, which has been in place since 1987 and last amended in 2006, provides income tax guidance for nonresidents of Maine, including guidance on minimum taxability thresholds that were the subject of recent legislation.

The following changes are being made to the proposed Rule. The Rule is edited to change headings, remove examples, correct references, and renumber provisions to be consistent with the format used in connection with other Bureau of Revenue Services Rules. New definitions of “permanent business presence,” “research and development,” and “temporary business presence” are added in section .01 to clarify the use of these terms elsewhere in the Rule. In section .02(E), the meaning of “original cost” as used in that subsection is clarified by reference to Rule 801. In section .02(G) and (H), discussion of the minimum taxability thresholds is revised to reflect the recent legislative changes to the thresholds. Section .03 is revised to reflect recent changes to federal and state law impacting respectively, military spouses and nonresident employees subject to interlocal agreements. Section .04 is updated to include discussion of the existing law applicable to net operating losses that began in 2009. An application date is added at the end of the Rule. Various other editorial changes are made, including revision of wording throughout the Rule to be more precise.

Proposed Rule 806 can be found on the MRS website at [www.maine.gov/revenue](http://www.maine.gov/revenue) (select Laws & Rules). Comments are due by December 28, 2011 and should be directed to Nanette Ardry, Esq., Maine Revenue Services, 24 State House Station, Augusta, Maine 04333, (207) 624-9725, [nanette.m.ardry@maine.gov](mailto:nanette.m.ardry@maine.gov).

**Amendments to Rule 807, “Residency.”** This rule adopted last year explains standards for determining Maine residency for income tax purposes. The following changes are being made to the proposed Rule. In section .04(D) and (G), the geographic location of an individual’s financial institution is deleted as a factor and is instead listed as an exception from consideration consistent with the recent law change. A reference to the Internal Revenue Code is added the factor related to the individual’s principal residence. In section .06(B)(3), how a portion of a day is counted is clarified. An application date is added in section .10. Various other editorial changes are made, particularly related to format.

Proposed Rule 807 can be found on the MRS website at [www.maine.gov/revenue](http://www.maine.gov/revenue) (select Laws & Rules). Comments are due by December 28, 2011 and should be directed to Nanette Ardry, Esq., Maine Revenue Services, 24 State House Station, Augusta, Maine 04333, (207) 624-9725, [nanette.m.ardry@maine.gov](mailto:nanette.m.ardry@maine.gov).

## Maine Revenue Services Reorganization

Maine Revenue Services is pleased to announce a major reorganization related to bureau audit activities. To improve the efficient use of staff resources and to enhance the effectiveness

of audits across all tax types, the audit activities that have been conducted by the audit units in the Income/Estate Tax Division and the Sales, Fuel and Special Tax Division will now be the responsibility of a single new Audit Division. The Audit Division began operation in mid-September and will be directed by John Lewandowski with Judy Methot serving as Tax Division Assistant Director. Louis Mandeville will be joining Jason Pinkham as a District Tax Audit Manager within the division. Duties, areas of responsibility and staffing are being analyzed for assignment among this management team. The new Audit Division's contact number will be 207-822-0450, Fax: 207-822-0453. Alternatively, John Lewandowski can be reached at 207-699-6847 and Judy Methot at 207-699-6473

The Sales, Fuel and Special Tax Division and Income/Estate Tax Division will continue to provide taxpayer assistance and forms/instructions for all tax types that they administer and will continue to be responsible for legislative work and developing agency policies for those taxes. These two divisions will also assist the Audit Division and State Tax Assessor on reconsideration of assessments made by the Audit Division.

## 15th Annual Maine Tax Forum

The 15<sup>th</sup> Annual Maine Tax Forum, hosted by Maine Revenue Services, the Internal Revenue Service and Thomas College, was held November 2nd at the Augusta Civic Center. 676 individuals registered to attend this year's forum. The Keynote Speaker was Governor Paul R. LePage. Other sessions included Federal and Maine Income Tax Developments, IRS initiatives and an update from the Internal Revenue Service Return Preparer Office. A number of vendors were also present to make tax products available to attendees. In addition, Maine Revenue Services provided a computer lab to demonstrate the MRS electronic filing and payment services.

The 16th Annual Maine Tax Forum is **tentatively** scheduled for November 7th and 8th, 2012. Registration material for next year's forum is scheduled to be available in August or September 2012.

## Changes in Procedures for Filing Form 1065ME/1120S-ME (Information Return for Partnerships/S Corporations)

To reduce the burden on businesses, Maine Revenue Services (MRS) is simplifying the filing requirements for Form 1065ME/1120S-ME (Information return for partnerships and S corporations). As a result, many partnerships and S corporations will no longer be required to file Maine Form 1065ME/1120S-ME.

**Beginning with returns due for 2011, Maine Form 1065ME/1120S-ME 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).**

Previously, partnerships, S corporations and LLCs were required to file Maine Form

1065ME/1120S-ME if the entity was required to file federal Form 1065 or Form 1120S and had Maine business activity, or if the entity had Maine resident partners, shareholders or members.

**Now, partnerships, S corporations and LLCs must file Form 1065ME/1120S-ME and related Schedule PSI only if all of the following apply:**

- the entity had business activity in Maine during the year;
- the entity files federal Form 1065 or Form 1120S; and
- the entity had: a) one or more owners that were not individuals, estates, or trusts; or b) one or more owners that were nonresident individuals, estates or trusts.

Finally, as in prior years, Schedule PSI is not required to be filed if the number of non-individual owners or the number of owners who are nonresident individuals, estates or trusts is more than 100.

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

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

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, **Form 941P-ME** (Pass-through Entity Withholding Return) previously required to be filed quarterly will be replaced with an *annual* Form 941P-ME and quarterly *estimated* pass-through entity withholding payments for nonresident partners, shareholders or members. The new annual Form 941P-ME will be due January 31 following the calendar year for which it is filed. Thus, the annual Form 941P-ME for 2012 will be due January 31, 2013.

As under prior procedures, each quarterly estimated pass-through entity withholding payment must, in order to avoid interest and penalty charges, equal the nonresident partners', shareholders' or members' share of the annual Maine-source income of the pass-through entity for the prior year (or 90% of the estimated annual Maine-source income of the entity for the current year) multiplied by 8.5% (8.93% if the partner, shareholder or member is a C corporation) and the result divided by 4. The due dates for the quarterly payments will remain unchanged (i.e., the last day of the month following the end of the quarter). For example, the 2012 first quarter payment will be due April 30, 2012. The estimated payments must be made electronically or by using Form 900ME payment vouchers.

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. Thus, the forms generally due January 31, 2012 are not required to be filed in order to take advantage of the applicable pass-through entity withholding exemptions.

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.

In order to take advantage of the compliant taxpayer exemption and composite filing exemption under these new procedures, pass-through entities must keep on file 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. The forms must be kept on file for at least 3 years.

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.

**Note:** These new filing and payment procedures take effect for calendar years 2012 and thereafter. Thus, Form 941P-ME for the 4<sup>th</sup> quarter 2011 is still due January 31, 2012 along with the required withholding payment. The reconciliation Form W-3ME for 2011 is due February 28, 2012. These procedures also do not change the due date and requirement to issue Maine Form 1099ME to partners, shareholders and members affected by pass-through entity withholding.

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](mailto:withholding.tax@maine.gov).

## Payroll Processor Licensing Requirements

To prevent employers from losing money if a payroll processor goes out of business without forwarding tax or unemployment payments it has collected to state or federal tax authorities, payroll processing companies are generally required to obtain a license from the Maine Bureau of Consumer Credit Protection.

In an effort to ease regulatory burden on companies that only file tax reports for clients, but do not handle paychecks and do not have any access to client funds, the Legislature recently enacted a law creating an additional payroll processor license type called a “restricted” payroll processor license.

The law now identifies three different license types: 1) full-service payroll processors; 2) “limited” payroll processors; and 3) “restricted” payroll processors.

**1) Full service payroll processors.** A payroll processor must obtain a full-service license if it collects, holds and turns over withholding tax funds to the appropriate federal or Maine state tax authorities. This requirement also applies to processors that are authorized signers on an employer’s payroll account or that have online banking passwords to an employer’s payroll account in order to facilitate transfers between accounts. These companies must post a surety

bond or letter of credit with the state, or they can choose to pay into to the state's Payroll Processor Recovery Fund.

2) ***“Limited” payroll processors.*** A payroll processor that prepares and issues payroll checks, but does not have access to client tax funds, must obtain a “limited” payroll processor license, and must provide proof of fidelity insurance coverage consisting of a fidelity bond, third-party fidelity coverage, employee dishonesty coverage or crime coverage.

3) ***“Restricted” payroll processors.*** A restricted payroll processor license is available to payroll processors that merely prepare and file state and federal income withholding tax reports and unemployment insurance compensation reports, but provide no other services and do not have any actual or potential access to client funds.

The license fee for a full-service or limited payroll processor license is \$200 if the processor has fewer than 25 clients, \$500 if the processor has 25-500 clients, and \$800 for payroll processors with more than 500 clients. The fee for a restricted payroll license is \$100, regardless of the number of clients.

The law's new “restricted” category is intended to encompass those companies whose tax-related services consist solely of electronically filing withholding and unemployment insurance contributions reports, and including the client's bank account information for direct ACH debit payment.

For more information about payroll processor licensing requirements, go to [www.Credit.Maine.gov](http://www.Credit.Maine.gov), or call the Bureau of Consumer Credit Protection at 207-624-8527.

## Maine Revenue Services Criminal Tax Cases

### **\$1.3 Million in Sales and Fuel Taxes Diverted By Former Bath Fuel Company President To Be Recovered**

Attorney General William J. Schneider announced that the state will recover \$1.3 million in sales, gasoline and special fuel taxes that were diverted by Philip Sewall, former president of M.W. Sewall & Co.

Philip Sewall was found guilty today in West Bath District Court on three counts of failure to pay the taxes collected and fined \$2,000 on each count. The Court ordered Sewall to pay \$50,000 within 12 months in addition to the \$225,000 he has already paid to Maine Revenue Services.

M.W. Sewall & Co. was a family owned company based in Bath that operated a heating oil delivery business and 11 service stations and convenience stores in the Midcoast region. Philip Sewall failed to pay Maine Revenue Services the money collected as sales and fuel taxes from January 2009 through March 2009, instead using the funds to pay his own compensation and other business expenses.

The company filed for bankruptcy protection on March 27, 2009 and its assets are in the process of being sold. As part of a global settlement, the state will continue working with the

bankruptcy trustee for M.W. Sewall & Co. to collect the remaining \$1.06 million from the sale of company assets.

Philip Sewall was removed from M.W. Sewall & Co. and the companies that have emerged from bankruptcy are under new ownership.

“The agreement reached requires Philip Sewall to personally pay out a large amount of money to cover the unpaid taxes owed by the company and other assets are available to repay the state through the bankruptcy. The remaining companies of M.W. Sewall are under new leadership and can move forward. This is a good outcome for the citizens of Maine,” said Attorney General Schneider.

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

**Please contact: Public Communications (207) 626-8478**  
**Maine Revenue Services**  
**PO Box 1060**  
**Augusta, Maine 04332-1060**