

# **REPORT OF STATE TAX ASSESSOR REGARDING TAX COLLECTION AND ENFORCEMENT ALONG MAINE'S BORDER**

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## **I. INTRODUCTION**

Pursuant to 2009 Resolves, Chapter 27 (the “Resolve”), the State Tax Assessor was directed to work with municipal and county officials and law enforcement agencies in locations near the border of New Hampshire (“border area”) to identify residents of Maine who register motor vehicles, aircraft or watercraft in another state in order to avoid paying Maine excise tax, income tax or sales/use tax. To comply with the Resolve, staff from the Maine Revenue Services’ (“MRS”) Compliance Division was assigned to investigate registration violations along the Maine border, with primary focus on the southern and western locations bordering New Hampshire. Staff contacted local law enforcement and town officials familiar with possible violations in their area. Our first main objective was to gauge the level of interest in this type of tax enforcement at the local level; this involved, in part, educating local officials and providing any necessary assistance regarding the relevant statutes and appropriate methodology for identifying violations. Our second main objective was to take a fresh look at the current scope of “cross-border” tax avoidance, and in the process to identify potential violations and issue tax assessments when warranted.

## **II. EXECUTIVE SUMMARY**

Despite the fiscal incentive that border area municipalities have to collect excise taxes on motor vehicles owed by their residents and used in Maine, most of these municipalities did not appear to be interested in expending significant resources in solving this problem. This is perhaps understandable, as tax law enforcement in the area of improper registration of motor vehicles is very time-intensive. MRS did identify 66 separate improperly registered automobiles in the course of 8 months of work, but these cases did not generate substantial General Fund revenues. MRS will continue to make itself available to municipalities in areas bordering New Hampshire whenever they call

upon us for assistance, and we will continue to follow up appropriately on all reports that we receive of possible violations of this type.

### **III. APPLICABLE STATUTORY PROVISIONS AND OTHER RELEVANT LAW**

**A. Automobiles.** Title 29-A MRSA §351 provides that the owner of a motor vehicle operated in Maine is responsible for registering the vehicle in this State. “Owner” means a person holding title to a vehicle or having the exclusive right to the use of the vehicle for a period of 30 days or more; leased vehicles are therefore included. 29-A MRSA §101(50). A person who operates an unregistered vehicle, fails to register a vehicle or permits a vehicle that is not registered to remain on a public way commits a civil violation if the vehicle was registered and the registration has been expired for more than 30 days but less than 150 days; and commits a Class E crime if the vehicle was not registered or the registration has been expired for 150 days or more. Title 29-A §514 provides that a person required to register a vehicle in this State who instead registers it in another state or who fails to register it is guilty of evasion of registration fees and excise taxes; violation is a traffic infraction punishable by a fine of not less than \$500 nor more than \$1,000.

Section 351 is construed by MRS to mean that any motor vehicle garaged or maintained in Maine or used primarily in this State must be registered in Maine, including a motor vehicle owned by an individual Maine resident. “Resident” means a person who has declared or established residency in this State or has been domiciled in this State for a period of at least 30 days. 29-A MRSA §101(62).

“Domicile” is a common-law term that has relevance in many other areas of law, including other areas of tax law; for example, the statutory definition of “Maine resident” for income tax purposes has been based on the concept of “domicile” since the income tax was enacted in 1969. In the great majority of cases it is clear where an individual maintains his or her legal residence; a domicile analysis must be made only in those few cases that do not fall into the “obvious” category. Domicile determinations are made on a case-by-case basis according to the particular circumstances of the individual taxpayer’s life.

An individual *nonresident* of Maine is not required to register in this State a vehicle that is used in Maine but is properly registered in the state of residence. The Title 29-A provisions regarding registration of motor vehicles also do not apply to a nonresident student who is enrolled in a university, college or school in Maine and who possesses a valid registration and license issued by the student's home state. 29-A MRSA §109. Active-duty military personnel may also be exempt from registration fees and excise taxes in certain circumstances under the federal Servicemembers Civil Relief Act.

However, a vehicle owned or leased by a nonresident must generally be registered in Maine if it (1) is not registered in the state of residence and (2) is garaged or maintained in Maine or used primarily in this State. Moreover, the statute provides that an individual who becomes a Maine resident (that is, establishes a domicile here) must, within 30 days of establishing residency, register in Maine any vehicle that is garaged or maintained in Maine or used primarily in Maine. A new Maine resident who operates or allows the operation in Maine of a vehicle that is not registered in this State commits a civil violation if more than 30 days but less than 150 days have elapsed since the individual established residency; or a Class E crime if more than 150 days have elapsed since residency was established.

The concept of domicile is partially reflected in 29-A MRSA §514, which provides that, for purposes of determining whether an evasion of registration fees and excise taxes has occurred, an individual is presumed to be a Maine resident if he or she has enrolled a minor child in a Maine public school or has declared Maine residency on a form, document or application. This statute cites two examples of the types of evidence that are typically used to make a determination of domicile; it does not prevent the use of many other factors that may be relevant in a given situation.

**B. Aircraft and watercraft.** Statutory registration requirements for watercraft are found in Title 12 MRSA, Part 13, Subpart 6. The owner (resident or nonresident) of a motorboat that is used principally in Maine must generally obtain a registration certificate from the Commissioner of Inland Fisheries and Wildlife. Registration requirements for aircraft are found in Title 6 MRSA, Chapter 4; all aircraft registrations in Maine are done

at the state level with the Department of Transportation, and aircraft registration fees are deposited into the Transit, Aviation and Rail Transportation Fund.

#### **IV. DISTRIBUTION OF REVENUES**

Registration fees and taxes payable in connection with motor vehicles, aircraft and watercraft accrue as follows:

**A. Motor vehicles.** Motor vehicle registration fees are payable to the Secretary of State, Bureau of Motor Vehicles. Excise taxes on a motor vehicle owned by an individual Maine resident are payable to the municipality in which the owner resides. 36 MRSA §1484(3)(A). Excise taxes on a motor vehicle owned by a nonresident individual must be paid to the municipality where the owner is “temporarily or occasionally” residing, or if there is no such place, to the Secretary of State. 36 MRSA §1484(3)(B). The place of payment of excise taxes on motor vehicles owned by a corporation or partnership depends upon the specific facts and must be paid as set forth in 36 MRSA §1484(3)(C).

**B. Aircraft.** Aircraft registration fees are payable to the Maine Department of Transportation (“DOT”). Excise taxes are also payable to DOT, but unless the aircraft is based at the Augusta State Airport, the tax revenues are distributed by DOT to the municipality where the aircraft is based (or if the aircraft is based at an airport owned by a county, to that county).

**C. Watercraft.** Registration fees for watercraft used on the waters of the State are payable to the Maine Department of Inland Fisheries and Wildlife. For watercraft owned by an individual resident of Maine, excise tax is payable to the municipality where the owner resides. For nonresidents and partnerships and corporations, excise tax is payable to the municipality where the watercraft is principally moored, docked or located or has an established base of operations.

#### **V. NARRATIVE**

Motor vehicle registrations have long been the focus of concern regarding the improper avoidance by Maine residents of excise tax and use tax. MRS has received many reports over the years of Maine residents, particularly those living in border areas, registering automobiles in New Hampshire in order to avoid paying Maine registration

fees, excise tax and sales/use tax. In many cases, telephone calls are made to the “tip line” maintained by the MRS Compliance Division to facilitate the reporting of state tax violations. We have historically followed up on many of these leads and taken enforcement action when appropriate, sometimes in conjunction with municipal authorities. In some cases, the individuals in question have been attempting to evade Maine income tax by falsely claiming to be domiciled in New Hampshire or another state without an income tax; more commonly the individual’s tax evasion has been limited to the improper registration of a motor vehicle.

MRS believes that some evasion by Maine residents of registration fees and excise taxes does occur with respect to watercraft and aircraft that are improperly registered in another state, but that it is relatively insignificant, in terms of lost revenues, compared with the improper registration of motor vehicles. The MRS compliance Division does have ongoing desk audit programs in place to identify sales and use tax violations involving watercraft and aircraft, and pursues registration fees and excise taxes in appropriate cases.

Enforcement activity undertaken by Maine border municipalities with regard to improper registration of motor vehicles is uneven. For the most part, Maine municipalities do not dedicate significant time or resources to the enforcement of vehicle registrations, or even do much to make their residents aware of the law. One exception is the Town of Kittery, which some years ago announced a “zero tolerance” policy on the improper registration of motor vehicles in another state, and appears to have done a good job, both in informing its residents that violations will be enforced, and in following through by issuing citations. The town’s website has information regarding registration violations and has even created a short video on topic that is posted to “YouTube” and linked on the website. North and South Berwick both also have some information on their respective Town websites, but neither town warns residents of potential citations or otherwise appears to make a concerted effort to enforce the law in this area.

MRS began the work required by the Resolve in the late autumn of 2009 by preparing a memo addressed to municipal officials in border areas of the State. The memo reproduced the text of the Resolve and requested the assistance of the local officials in identifying Maine residents who have improperly registered vehicles, aircraft

or watercraft in another state. We offered in the memo to provide a direct contact between MRS and local law enforcement officials, and asked that each municipality contact us with any questions, tips or information. MRS staff also explained the nature of the project to a York County Deputy Sheriff and left him with contact information. The memo was also hand-delivered to the following southwestern Maine border area municipalities:

<b><u>Town</u></b>	<b><u>Contact Date</u></b>
Fryeburg	10-26-2009
Kittery	11-02-2009
Acton	01-06-2010
Lebanon	01-06-2010
Sanford	01-06-2010
Hiram	02-01-2010
Parsonsfield	02-01-2010
Cornish	02-01-2010
Limerick	02-01-2010
Waterboro	02-01-2010
Newfield	02-01-2010
Shapleigh	02-01-2010
Bethel	02-03-2010
Upton	02-03-2010
Ogunquit	02-04-2010
York	02-04-2010
Eliot	02-09-2010
North Berwick	02-09-2010
South Berwick	02-09-2010
Bridgton	02-22-2010
Denmark	02-22-2010

Of these towns, only five have their own police departments: Kittery, North Berwick, South Berwick, Eliot and Fryeburg. The only town to respond to the memo was the Town of Parsonsfield, which contacted MRS regarding a specific case regarding an improperly registered automobile. The case was soon resolved.

We then contacted the Fryeburg Police Department directly, as we had had some prior indication that the town might be interested in pursuing cases of this type. Fryeburg provided MRS with a copy of a list it keeps for suspected motor vehicle registration violations. The Fryeburg list contained addresses and motor vehicle registration plate numbers (37 New Hampshire and 3 Massachusetts), but the list was ultimately

determined by MRS to be largely out-of-date, with only 6 active violations. MRS contacted the individual Maine residents in question, who were warned of the violation and allowed 30 days to comply. These individuals all voluntarily registered their vehicles in Maine and paid the required use tax.

MRS next met with Sgt. Charles Denault of the Kittery Police Department. Sgt. Denault has previously been active in cross-border tax enforcement and was eager to assist MRS in the current project. Sgt. Denault provided MRS with Town enforcement statistics and shared his insights into the most effective method of questioning suspected violators.

From January through August of 2010 MRS visited other towns along the border with New Hampshire and delivered letters containing contact information for MRS staff available to help the towns in addressing suspected cross-border tax violations. The towns were all told that MRS would undertake any investigative work necessary to verify cases of noncompliance.

While officials of some towns expressed strong interest in ongoing enforcement efforts in this area and expressed gratitude that the State of Maine recognizes the problem, officials in most other municipalities did not seem interested in a targeted enforcement effort. Even those municipalities with their own police departments were quick to point out that they did not have the resources or personnel to devote the time to investigating cross-border registration violations. Furthermore, MRS was told by several local police officials that the Maine District Attorneys with responsibility for the southern/western border areas have historically been reluctant to prosecute cases of this type. On April 5th, 2010 we contacted three border-area State of Maine District Attorneys by e-mail but received no response.

From January 2010 through August 2010, MRS began an active search for potential registration/excise tax violations by knocking on the doors of Maine residences with automobiles bearing New Hampshire license plates. Once a violation was confirmed, our approach was to work with people to allow for voluntary compliance rather than immediately issuing a citation for a fine. This work is very time-consuming and labor-intensive but did result in the identification of 66 separate improperly registered automobiles in the course of 8 months of work by one individual spending

roughly one day per week on the project. Of this number, we know that 47 individuals have either registered their vehicles appropriately in Maine or moved out of the State, and believe that most of the remaining violations have also been corrected. Excise tax revenues that can be directly attributed to this project totaled only \$647.43, while the corresponding figure for sales/use tax is \$67.45. Some additional tax revenues are associated with these vehicles, but the amount cannot be determined and it is certainly not substantial.

We found that most of the individuals involved in registration violations were either filing Maine individual income tax returns properly, or were not required to file such returns. This leads us to believe that income tax filing violations are not highly correlated with cross-border motor vehicle registration violations.

At this time we have no plans to continue cross-border registration/excise tax enforcement at the January-August 2010 level.

## **VI. CONCLUSION**

There is evidence that some Maine residents do evade registration fees, excise tax and sales/use tax by improperly registering their motor vehicles in New Hampshire. Border municipalities in particular have a clear incentive to pursue the excise taxes associated with vehicles owned by their residents since these towns receive 100% of those taxes. We do not believe the problem is severe with respect to watercraft or aircraft, and even in the case of motor vehicles, the amount of state revenues involved is not large enough to justify ongoing dedicated enforcement efforts by Maine Revenue Services staff. In response to the directive contained in the Resolve, MRS made itself available to municipalities in areas bordering New Hampshire, but the response was very limited. While MRS cannot be the “tax police” for border towns, we will continue to follow up appropriately on all reports that we receive of possible violations of this type. We also stand ready to assist municipal authorities with their compliance efforts when called upon.