



FORM 941E-ME

2009

MAINE REVENUE SERVICES
Pass-through Entity Withholding
Exemption Form



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To exempt nonresident Maine-source income from pass-through entity withholding.
This form must be submitted prior to the first withholding payment deadline for which it is to be effective.

Entity Name:

Entity Federal Identification Number:

Address:

Telephone Number:

City:

State: ZIP Code:

This is a request for exemption for 2009 from the Maine pass-through entity withholding requirement for nonresident members of a pass-through entity with Maine-source income. The request is based on the reason(s) checked below. Check all boxes that apply. See instructions for a description of the qualified exemptions. If all nonresident members fall under one or more automatic exemptions, you are not required to file this form (see instructions). If required to file this form, mail it separately from Form 1065ME/1120S-ME.

Form 941E-ME is due January 31, 2009. MRS will accept exemption forms filed after this due date; however, the exemption will not take effect until the quarter during which Form 941E-ME is filed. The entity may be held liable for any taxes that were required to be withheld, or for interest and penalties on taxes that should have been withheld.

If you are registered to file a Maine pass-through entity withholding return, but all of the members are exempt from the pass-through entity withholding requirement, check this box, and Maine Revenue Services will cancel your pass-through entity withholding account.

ENTITY TYPE

Exemption Breakdown

Partnership

Automatic exemption

Number of Members:

S corporation

Compliant taxpayer(s) - attach Form 941LM-ME

Number of Members:

LLC

Composite filing (see instructions)

Number of Members:

Requested - Only for members who do not qualify for any of the above (see instructions)

Number of Members:

Nonexempt nonresident members*

Number of Members:

* Do not submit this form if the number of nonexempt members equals the total nonresident members. You must register and withhold.

Total Nonresident Members:

I certify that I have collected a Compliant Taxpayer Affidavit from each member participating in the compliant taxpayer group and a Composite Filing Participation Statement from each member participating in the composite filing.

Under penalties of perjury, I declare that I have examined this form and accompanying schedules and statements and to the best of my knowledge and belief they are true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Officer's Signature: Title: Date:

Officer's Printed Name:

Preparer's Signature: Date:

Preparer's Printed Name:



Mail to:

Maine Revenue Services
P.O. Box 9118
Augusta, ME 04332-9118

Office Use Only

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INSTRUCTIONS

AUTOMATIC EXEMPTIONS. Do not use this form if all members fall under the automatic exemptions. It is not necessary to apply for, or receive approval for, automatic exemptions. However, if you are currently registered with Maine Revenue Services for pass-through entity withholding, you must contact Maine Revenue Services to cancel your registration or file Form 941P-ME each quarter reflecting no tax withheld. **The three automatic exemptions are:**

- 1) If a nonresident member will have less than \$1,000 in Maine-source member income from the entity for the current year or had less than \$1,000 of Maine-source member income in the previous year, the entity is not required to withhold income tax from that member. It should be noted, however, that the nonresident member is not exempt from Maine income tax solely because the entity is exempt from the withholding requirement for that member. Often, if a nonresident member has any Maine-source income, there will be a tax liability.
- 2) If a tax-exempt entity is a nonresident member of a pass-through entity, the pass-through entity is automatically exempt from withholding income taxes from that member. If, however, the pass-through entity has knowledge that the Maine-source income from the pass-through entity is taxable to the member entity at the federal level, the withholding requirement is not waived. Generally, a tax-exempt entity is an association, trust or other organization which, by reason of its purposes or activities is exempt from federal income tax (including IRAs, Keoghs, pension and profit-sharing plans and other such organizations).
- 3) If a nonresident pass-through entity (upper-tier) realizes income from another pass-through entity (lower-tier) and the lower-tier entity has already withheld from that income, the upper-tier entity is exempt from withholding on that income (each entity, however, must issue Forms 1099ME to its members).

If all nonresident members of a pass-through entity fall under one or more automatic exemptions, the entity is not required to register with MRS to establish a pass-through entity withholding account, file a Pass-through Entity Withholding Exemption Form (941E-ME), file a Pass-through Entity Return (Form 941P-ME), or, except for exemption number 3 above, issue Forms 1099ME to members relating to pass-through entity withholding.

Exemption breakdown. Check the box or boxes that correspond to the exemption applicable to the nonresident members. Enter the number of members participating in that exemption to the right of the check box. Add the number of participating nonresident members and enter the total in the appropriate boxes. A brief summary of the exemptions is provided below. Required forms can be found on the MRS web site at www.maine.gov/revenue.

Compliant taxpayers. A pass-through entity wishing to be exempt from the withholding requirement for nonresident members under the compliant taxpayer exemption must complete the following procedures.

- 1) Each nonresident member wishing to be exempted as a compliant taxpayer must sign and submit to the entity a Nonresident Member Affidavit and Agreement for Compliance with Maine Income Tax (Form 941AF-ME) acknowledging the fact that they are subject to Maine income tax laws and will make estimated payments and file income tax returns for the tax year as required by law. The entity must keep all affidavits in its records. The nonresident member also authorizes MRS to notify the entity of any noncompliance.
- 2) The entity must then submit to MRS, with a Pass-through Entity Withholding Exemption Form (941E-ME), a List of Participating Members (941LM-ME), including all members who have signed the Compliant Taxpayer Affidavit. This list must include each member's name and social security number

or EIN.

- 3) A nonresident member who has been previously disqualified by MRS is not eligible to participate.

If a member fails to comply with Maine tax law, MRS will disqualify the member and notify the entity in writing of the disqualification and the pass-through entity will be required to withhold for that member in subsequent periods. If there is significant noncompliance among the members of an entity, all nonresident members of the entity may be disqualified by the assessor.

Composite filing. A composite filing is a simplified group return for two or more nonresident individual members of a pass-through entity. Only natural persons and certain trusts may participate in the composite exemption. For a full description of the composite filing return and process, see Schedule 1040C-ME at www.maine.gov/revenue/forms.

The advantages to the entity of composite filing are that participating individual nonresident members need not be listed separately on the quarterly return (as is required by the pass-through entity withholding requirement), and no Form 1099ME needs to be issued to the participating member. The advantage to the individual nonresident member is that the entity files the member's Maine income tax return (Form 1040ME) and pays the tax due.

Do not withhold from members who have agreed to participate in the annual composite filing for 2009 (i.e., those included in the number of composite filing participants on the "Exemption Breakdown" area of Form 941E-ME). The steps below must be followed in order to be exempt from the withholding requirement. Note that entities filing a composite return must make estimated payments in lieu of withholding from the participating members.

- 1) The entity must collect a Composite Filing Participation Statement (Form 941CF-ME) from each nonresident member who wants to participate in the group filing. This statement must be obtained prior to the mailing of the Pass-through Entity Withholding Exemption Form.

INSTRUCTIONS, continued

- 2) The entity must then submit to MRS a Pass-through Entity Withholding Exemption Form (941E-ME).
- 3) The entity must make estimated payments (Form 1040ES-ME) on behalf of the composite filing group as long as the aggregate Maine income tax liability is greater than \$1,000. All members of the composite return are grouped together and treated as one filer for estimated tax purposes. If the tax liability of the composite group is anticipated to exceed \$1,000, the entity must make four equal estimated payments in order to avoid the penalty for the underpayment of estimated tax. Estimated payments for the composite group are due based on 8.5% of Maine-source entity income. As with any estimated payments, they may be based either on 90% of the current year's Maine-source member income or 100% of the previous year's Maine-source member income. For more information about estimated payments, see the instructions and worksheets for Forms 1040ES-ME and 2210ME.
- 4) The final requirement for the composite filing exemption is the filing of the composite return. Instructions for the composite filing can be found with Schedule 1040C-ME. Along with the composite return (filed on Form 1040ME), the entity must complete and include Schedule 1040C-ME and Schedule NRC, which asks for the name, ownership percentage, ID number (SSN, EIN, etc.) and share of Maine-source income for each participating member.

If any one of these four steps is not met, the withholding requirement is not waived and the entity will be liable for withholding payments and related interest and penalty charges.

Requested exemptions. Requested exemptions are for members that do not qualify for the compliant taxpayer, composite filing or automatic exemptions. Requested exemptions are those which require prior written authorization from MRS (Notice of

Exemption Authorization). An entity must attach a letter of explanation to Form 941E-ME in order to apply for a requested exemption. If an unusual situation occurs in which the taxpayer believes the entity should be exempt from the withholding law, or the entity would like to propose an alternate application of the withholding requirement, the entity may apply for an exemption. In order to apply, a Pass-through Entity Withholding Exemption Form (941E-ME) must be completed, accompanied by a letter of explanation. An exemption can be requested at any time during the year but, if granted, it is only valid for the remainder of the calendar year. If the exemption request involves a complicated structure, more than 60 days may be required for MRS to issue a decision. If MRS is not able to issue a decision prior to the quarterly withholding deadline, a notice will be sent to the entity; temporary withholding is required until a final decision can be made. The notice of exemption authorization will apply only to the calendar year for which it is requested.

New members during the year. If a new member joins the entity during the year and agrees to participate in the compliant or composite groups, the entity is not required to notify Maine Revenue Services. However, the entity must collect either a Compliant Taxpayer Affidavit or a Composite Filing Participation Statement from that person at that time. For compliant taxpayer members, a new List of Participating Members need not be submitted to MRS until the following year. If a new member does not participate either as a compliant taxpayer or in a composite filing, the entity must withhold from Maine-source income for that member.

Tiered entities. For purposes of withholding, tiered entities exist when one pass-through entity is a member of another pass-through entity. The non-member (lower-tier) entity must withhold for the member (upper-tier) entity. If the entity required to withhold (lower-tier entity) includes, on Form 941LM-ME, a pass-through entity member (upper-tier entity), the lower tier entity must obtain a statement from an officer of the upper-tier entity that

all of the members of the upper tier entity are exempt from withholding on that income. The statement must list the category of exemption for which each member (of the upper-tier entity) qualifies. The lower-tier entity is to retain this statement for a period of no less than three years.

If the lower-tier entity has one or more members that are pass-through entities and one or more members that are individuals for which the lower-tier entity withholds, the lower-tier entity may request a partial exemption for the members of the upper-tier entity(ies) by checking the "requested" box on Form 941E-ME, with an attached statement identifying the need for the partial exemption.

An upper-tier entity that is partially exempt must identify the portion of its Maine-source distributive income that is subject to Maine withholding, and the lower-tier entity will notify Maine Revenue Services of the need for a partial exemption. In these cases, Maine income tax must be withheld from the portion of the Maine-source distributive income of each nonresident upper-tier entity that is not 100% exempt.

If all nonresident members qualify for one or more exemptions and, if required, the entity properly files Form 941E-ME, the entity is not required to register with MRS to establish a pass-through entity withholding account.