

ENACTED LEGISLATION – 2009 SESSION
Income/Estate/Insurance Premiums Taxes &
Tax Benefit Programs

Administrative Provisions

Power of attorney. Maine Revenue Services is directed to create and post to the bureau's web site a simplified application for requesting a limited power of attorney. The limited power of attorney will allow bureau representatives to discuss taxpayer information with a designated representative of the taxpayer. Effective September 12, 2009. LD 1321, Resolve 2009, c. 126.

Set-off agreements. The assessor may enter into agreements with the IRS and with other states regarding mutual set-off agreements for the application of overpayments to the debts a taxpayer has with Maine, the IRS or another state, provided the agreement is a reciprocal agreement. Effective September 12, 2009. LD 1401, PL 2009, c. 361 § 5.

Subsequent offenses. Several separate criminal offense sections are consolidated into a single section that asserts that a subsequent offense under Title 36 will carry an increased criminal class of one level higher than was previously associated with that crime. These criminal offense provisions are applicable to all taxes administered under Title 36. Effective September 12, 2009. LD 1401, PL 2009, c. 361 §§ 6, 31, 32.

Restitution. For purposes of set-off of debt, the term "liquidated tax liability" is defined to include court-ordered monetary restitution due the bureau as a result of an imposed sentence. Effective September 12, 2009. LD 1401, PL 2009, c. 361 §§ 10, 30.

Economic Development Incentive Report. The annual report from taxpayers regarding economic development incentives is no longer required. The report was due from taxpayers receiving specified state benefits in excess of \$10,000 during the previous year. Effective June 9, 2009. LD 1468, PL 2009, c. 337 §§ 5, 10, 11.

General

Conformity. Conformity with the Internal Revenue Code and amendments is extended to the Code as of February 17, 2009. Conformity with the Code applies unless otherwise stated in Maine law. Applies to tax years beginning on or after January 1, 2008 and to any prior years as specifically provided by the Code. See 36 MRSA § 111(1-A). LD #353, PL 2009, c. 213 § BBBB-1.

Individual Income Tax

Tax Reform – individual income tax changes. Recent tax reform legislation made numerous changes to the Maine individual income tax calculation beginning in 2010. For a detailed description of these changes, see www.maine.gov/revenue/incomeestate/1040/taxreformindividual.htm.

Estimated Tax for Individuals. Currently, taxpayers subject to the estimated tax requirement may elect to pay an amount equal to 100% of last year's income tax liability or 90% of the current year income tax liability in order to avoid the penalty for underpayment of estimated tax.

Maine law is changed for a limited number of individual taxpayers to disallow use of the election to pay estimated tax based on the prior year's tax liability when an unusual event occurs, such as realization of a large, one-time capital gain. An unusual event is defined as a one-time event resulting in taxable proceeds or other

income exceeding \$500,000. The change applies to tax years beginning on or after January 1, 2009. 36 MRSA §§ 5228(1)(D), 5228(2), 5228(3), 5228(5)(D) and 5228(11). LD 45, PL 2009, c. 1, Part I.

Net operating losses. No NOL deductions are allowed on Maine returns for tax years beginning in 2009, 2010 and 2011. This includes no deductions for federal net operating loss carryforwards and no deductions for Maine recapture modifications related to denial of federal NOL carrybacks. Thus, the subtraction modification recapture of previously denied federal NOL carrybacks is disallowed and an addition modification is required equal to any federal carryforward amount. The disallowance of NOL deductions in 2009, 2010 and 2011 may be recaptured through subtraction modifications that will be allowed for tax years beginning after 2011. The recapture must be made during the federal carryover period plus the number of years the NOL deduction was disallowed. Effective May 28, 2009. 36 MRSA § 5122. LD 353, PL 2009, c. 213, Part ZZZ.

Bonus depreciation. Maine law has decoupled from the most recent extension of the federal bonus depreciation allowance. The decoupling is consistent with Maine statutory decoupling with bonus depreciation since the first federal enactment in 2002. The recapture of the denied depreciation is claimed in the same manner as the 2008 depreciation recapture. The addition modification in the year the asset is placed in service is the difference between the federal depreciation claimed and the depreciation that would have been allowed without the bonus depreciation allowance. In subsequent years, the recapture is equal to the depreciation that would have been allowed without bonus depreciation less the depreciation claimed at the federal level. Any aggregate difference between federal and Maine book value may be claimed as a modification in the year of disposition of an asset. Effective May 28, 2009. 36 MRSA § 5122. LD 353, PL 2009, c. 213, Part BBBB.

Discharge of indebtedness. A federal law change allows certain businesses to defer the recognition of gain due to the discharge of indebtedness occurring during the tax year. For tax years beginning in 2009 and 2010, Maine law decouples from this deferral through the requirement of an addition income modification. To avoid duplicating the income for Maine tax purposes, a deduction modification is allowed in future years when the income is claimed on the federal income tax return. Effective May 28, 2009. 36 MRSA § 5122. LD 353, PL 2009, c. 213, Part BBBB.

Indexing of individual income tax rate schedules. Adjustments will no longer be made to the individual income tax rate schedules when the cost of living adjustment factor is less than the factor calculated for the preceding year. Additionally, indexing of the individual income tax rate brackets must be reduced to produce tax revenue savings of \$10,500,000 for the calendar year based on the most recent revenue projections of the Revenue Forecasting Committee. Applies to tax years beginning on or after January 1, 2009. See 36 MRSA § 5219-S. See LD #353, PL 2009, c. 213, Pt. WWW.

Unemployment Compensation. Unemployment compensation benefits received must be added back to adjusted gross income for Maine tax purposes to the extent that those payments are excluded from federal gross income in accordance with the Code, Section 85(c). Applies to tax years beginning on or after January 1, 2009. See 36 MRSA § 5122(1)(BB). LD #353, PL 2009, c. 213, § BBBB-4.

Standard Deduction – additional federal amounts for property tax and sales/excise tax on purchase of new vehicle. Individuals may not include in the Maine standard deduction the amount of real estate property taxes and/or sales/excise taxes paid on new motor vehicles that are claimed for federal income tax purposes pursuant to the Code, Sections 63(c)(1)(C) and 63(c)(1)(E). Applies to tax years beginning on or after January 1, 2008. See 36 MRSA § 5124-A. LD #353, PL 2009, c. 213, Pt. BBBB-9.

Earned Income Tax Credit. The Maine earned income tax credit, for tax years beginning in 2009 and 2010, is reduced from 5% of the federal credit to 4% of the federal credit. See 36 MRSA § 5219-S. LD #353, PL 2009, c. 213, Pt. BBBB-16.

Requirement to File a Return. The requirement to file a Maine income tax return for individuals who filed a federal income tax return solely to claim a federal earned income tax credit is removed. Additionally, the State Tax Assessor is authorized to identify by rule other exceptions to the requirement to file a Maine income tax return. See 36 MRSA § 5220(7). LD #1401, PL 2009, c.361, § 29.

Pine Tree Development Zones. Several changes to the existing Pine Tree Development Zone program and revenue forecasting law are enacted.

- A statewide Pine Tree Development Zone (“PTDZ”) program is established in 2009 and a two-tier statewide program is established in 2010. The tiers are determined by unemployment levels and whether or not a municipality is located in York or Cumberland counties. Under Tier 1 (non-York/Cumberland County locations & high unemployment areas in York/Cumberland Counties), Employment Tax Increment Financing (“ETIF”) benefits are limited to 10 years and under Tier 2 (locations in Maine that do not qualify as Tier 1), the ETIF benefits are limited to 5 years. All other benefits are subject to the 10-year limitation and are unaffected by the Tier 1/Tier 2 designation.
- The PTDZ benefit period expiration date is pushed out from 2018 to 2028.
- Certain businesses that hire at least 250 employees may use an alternate base level of employment that will make it easier for affected businesses to qualify for the PTDZ benefits.
- The definition of "manufacturing" under the PTDZ program is expanded.
- The PTDZ Reserve Fund is created and is to be funded by PTDZ program revenue. Revenue forecasting law is amended to exclude PTDZ program revenue from revenue projections. Amounts in the new fund will be used to pay PTDZ program ETIF and sales tax reimbursements.

Effective September 12, 2009. LD 1473, PL 2009, c. 461.

Fiduciary Income Tax

Tax Reform – fiduciary income tax changes. Recent tax reform legislation made changes to the Maine individual income tax rates and the Maine minimum tax beginning in 2010 that impact the Maine fiduciary income tax. For details, see www.maine.gov/revenue/incomeestate/1040/taxreformindividual.htm.

Corporate Income Tax

Apportionment. The corporate sales tax apportionment factor must now exclude from both the numerator and the denominator sales of tangible personal property that is delivered to a state where the taxpayer is not taxable. A taxpayer is taxable in another state if that state has jurisdiction to subject the taxpayer to a net income tax. Applies to tax years beginning on or after January 1, 2009. 36 MRSA § 5211. LD 353, PL 2009, c. 213, Part NN.

Net operating losses. No NOL deductions are allowed on the Maine return for tax years beginning in 2009, 2010 and 2011. This includes no deductions for federal net operating loss carryforwards and no deductions for Maine recapture modifications related to denial of federal NOL carrybacks. Thus, the subtraction modification recapture of previously denied federal NOL carrybacks is disallowed and an addition modification is required equal to any federal carryforward amount. The disallowance of NOL deductions in 2009, 2010 and 2011 may be recaptured through subtraction modifications that will be allowed for tax years beginning after 2011. The recapture must be made during the federal carryover period plus the number of years the NOL deduction was disallowed. Effective May 28, 2009. 36 MRSA § 5200-A. LD 353, PL 2009, c. 213, Part ZZZ.

Bonus depreciation. Maine law has decoupled from the most recent extension of the federal bonus depreciation allowance. The decoupling is consistent with Maine statutory decoupling with bonus depreciation since first federal enactment in 2002. The recapture of the denied depreciation is claimed in the same manner as the 2008 depreciation recapture. The addition modification in the year the asset is placed in service is the difference between the federal depreciation claimed and the depreciation that would have been allowed without the bonus depreciation allowance. In subsequent years, the recapture is equal to the depreciation that would have been allowed without bonus depreciation less the depreciation claimed at the federal level. Any aggregate difference between federal and Maine book value may be claimed as a modification in the year of disposition of an asset. Effective May 28, 2009. 36 MRSA § 5200-A. LD 353, PL 2009, c. 213, Part BBBB.

Discharge of indebtedness. A federal law change allows certain businesses to defer the recognition of gain due to the discharge of indebtedness occurring during the tax year. For tax years beginning in 2009 and 2010, Maine law decouples from this deferral through the requirement of an addition income modification. To avoid duplicating the income for Maine tax purposes, a deduction modification is allowed in future years when the income is claimed on the federal income tax return. Effective May 28, 2009. 36 MRSA § 5200-A. LD 353, PL 2009, c. 213, Part BBBB.

Pine Tree Development Zones. Several changes to the existing Pine Tree Development Zone program and revenue forecasting law are enacted.

- A statewide Pine Tree Development Zone (“PTDZ”) program is established in 2009 and a two-tier statewide program is established in 2010. The tiers are determined by unemployment levels and whether or not a municipality is located in York or Cumberland counties. Under Tier 1 (non-York/Cumberland County locations & high unemployment areas in York/Cumberland Counties), Employment Tax Increment Financing (“ETIF”) benefits are limited to 10 years and under Tier 2 (locations in Maine that do not qualify as Tier 1), the ETIF benefits are limited to 5 years. All other benefits are subject to the 10-year limitation and are unaffected by the Tier 1/Tier 2 designation.
- The PTDZ benefit period expiration date is pushed out from 2018 to 2028.
- Certain businesses that hire at least 250 employees may use an alternate base level of employment that will make it easier for affected businesses to qualify for the PTDZ benefits.
- The definition of "manufacturing" under the PTDZ program is expanded.
- The PTDZ Reserve Fund is created and is to be funded by PTDZ program revenue. Revenue forecasting law is amended to exclude PTDZ program revenue from revenue projections. Amounts in the new fund will be used to pay PTDZ program ETIF and sales tax reimbursements.

Effective September 12, 2009. LD 1473, PL 2009, c. 461.

[Withholding/Unemployment Taxes](#)

Tax Reform – individual income tax changes. Recent tax reform legislation made numerous changes to the Maine individual income tax calculation beginning in 2010. Unless tax reform is repealed or delayed, the Maine withholding tables booklet for calendar year 2010 will be updated to reflect these changes. For a detailed description on tax reform, see www.maine.gov/revenue/incomeestate/1040/taxreformindividual.htm.

[Estate Tax](#)

Ongoing application of tax. The Maine estate tax will continue beyond 2009, despite what may occur with the federal estate tax. For deaths after December 31, 2009, the Maine estate tax will be calculated the same as for

deaths occurring during 2009. 36 MRSA §§ 4062(1-A) & (1-B). LD 353, PL 2009, c. 213, Part E, §§ E-1 – E-2.

Prior taxable gifts. For deaths occurring on or after January 1, 2009, prior taxable gifts made within one year prior to death will be subject to the Maine estate tax and must be included in the decedent’s Maine taxable estate. Prior taxable gifts subject to the Maine estate tax are those gifts in excess of the federal gift tax exclusion made within one year prior to death, but no earlier than January 1, 2008. 36 MRSA § 4062(2). LD 353, PL 2009, c. 213, Part E, § E-3.

Final federal determination. The State Tax Assessor's authority to make adjustments to estate tax returns even in cases where a final federal determination has been issued is extended beyond 2009, except that the changes by the assessor, if any, must be made within one year of the date the return was filed instead of within the prior law 2-year period. This change applies to estates of decedents dying on or after July 1, 2009. 36 MRSA § 4071. LD 353, PL 2009, c. 213, Part E, § E-5.

Discharge of liability. Maine Revenue Services is directed to create and post to the bureau’s web site an application for discharge of personal liability of the personal representative of an estate. Further, the bureau is directed to report to the Taxation Committee, by 1/15/10, the differences in the requirements and procedures between the IRS and MRS for the discharge of liability for a personal representative of an estate. Effective September 12, 2009. LD 950, Resolves 2009, c. 101.

[Maine Residents Property Tax & Rent Refund Program](#)

Tax Reform – tax & rent refund program changes. Recent tax reform legislation made numerous changes to the Maine Residents Property Tax & Rent Refund Program beginning August 1, 2010. For a detailed description of these changes, see www.maine.gov/revenue/taxrelief/taxreformtnr.htm.

Reimbursement limitation. The Maine Residents Property Tax and Rent Refund “Circuit Breaker” program benefit is limited to 80% of the final benefit calculation for programs beginning August 1, 2009 and August 1, 2010. For these two program years, the maximum refund is \$1,600. 36 MRSA § 6207(1)(B). LD 353, PL 2009, c. 213, Part XXX.

[Business Equipment Tax Reimbursement Program](#)

Reimbursement limitation. Reimbursement, through the Business Equipment Tax Reimbursement (“BETR”) program, of property taxes paid during calendar years 2008 and 2009 is limited to 90%. This affects application periods beginning August 1, 2009 and August 1, 2010. Effective May 28, 2009. 36 MRSA § 6652. LD 353, PL 2009, c. 213, Part U.

[Pine Tree Development Zone Program](#)

Statewide Pine Tree Development Zone. Several changes to the existing Pine Tree Development Zone program and revenue forecasting law are enacted.

- A statewide Pine Tree Development Zone (“PTDZ”) program is established in 2009 and a two-tier statewide program is established in 2010. The tiers are determined by unemployment levels and whether or not a municipality is located in York or Cumberland counties. Under Tier 1 (non-

York/Cumberland County locations & high unemployment areas in York/Cumberland Counties), Employment Tax Increment Financing (“ETIF”) benefits are limited to 10 years and under Tier 2 (locations in Maine that do not qualify as Tier 1), the ETIF benefits are limited to 5 years. All other benefits are subject to the 10-year limitation and are unaffected by the Tier 1/Tier 2 designation.

- The PTDZ benefit period expiration date is pushed out from 2018 to 2028.
- Certain businesses that hire at least 250 employees may use an alternate base level of employment that will make it easier for affected businesses to qualify for the PTDZ benefits.
- The definition of "manufacturing" under the PTDZ program is expanded.
- The PTDZ Reserve Fund is created and is to be funded by PTDZ program revenue. Revenue forecasting law is amended to exclude PTDZ program revenue from revenue projections. Amounts in the new fund will be used to pay PTDZ program ETIF and sales tax reimbursements.

Effective September 12, 2009. LD 1473, PL 2009, c. 461.

Base level of employment. A Pine Tree Development Zone business that endures a catastrophic occurrence and has a primary purpose of supporting an industry that supports commercial fishing, marine and boat building activities may adjust the base level of employment for purposes of the Pine Tree Development Zone benefits. A catastrophic occurrence is defined as an “accidental fire, flood, hurricane, windstorm, earthquake or other similar event.” The adjusted base level of employment is equal to 25% of the average number of employees over the three months prior to a catastrophic occurrence. Effective April 9, 2009. 36 MRSA § 6753(4). LD 271, PL 2009, c. 21.