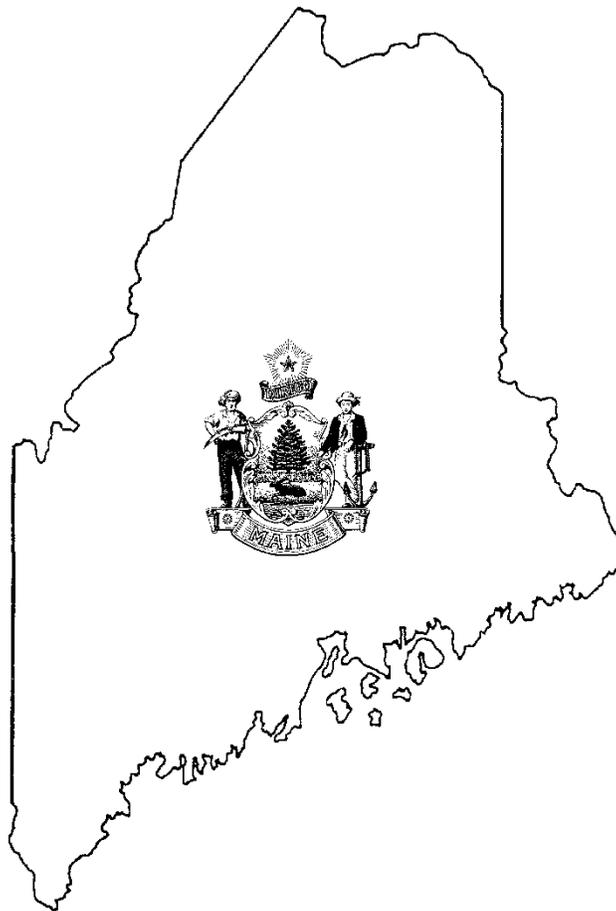


# INDIVIDUAL INCOME TAX

## Determining Residency Status



# GUIDANCE DOCUMENT

Maine Revenue Services, Income/Estate Tax Division

Last Revised: December, 2015

## INTRODUCTION

If you are a **Maine resident** for the entire tax year, you must pay Maine tax on all of your taxable income regardless of its sources – wages, investment income, interest income, pension, and dividends among other things. Note however, that active duty military pay earned by a Maine resident servicemember for service performed outside of Maine under written military orders is not subject to Maine individual income tax. If you are subject to income tax by another state or similar jurisdiction in another country on some of this same income, you may be allowed a credit against Maine income tax for all or some of the tax paid to the other state or jurisdiction. (*See the MRS Instructional Pamphlet, “Credit for Income Taxes paid to Another Jurisdiction.”*)

If you are a **nonresident** or **“safe harbor” resident** of Maine, you must pay Maine tax on all income from work performed in Maine. You must also pay Maine tax on all other income derived from Maine sources, including income derived from sole proprietorships, partnerships and S corporations, and capital gains from real or tangible property sold in Maine and income from rental of Maine property. Except for certain sales of a partnership interest on or after July 1, 2005, a nonresident generally does not have to pay Maine tax on interest, dividends, alimony, pensions or other income from intangible sources unless such income is from property employed in a business carried on in Maine.

If you are a **part-year resident** of Maine, you must pay tax on *all* of your income for the part of the year you were a Maine resident, and you must also pay tax on any income derived from Maine sources during the part of the year you were a nonresident or a “safe harbor” resident.

### Exceptions:

- ① A nonresident individual working in Maine as an employee is not required to pay a Maine tax or file a Maine return on income from personal services unless that individual works in Maine for more than 12 days or, having worked in Maine for more than 12 days, earns or derives income from all Maine sources totaling more than \$3,000. Up to 24 days performing certain personal services, such as training and site inspections, are not counted against the 12-day threshold. Also, generally, a nonresident individual present in Maine for business for no more than 12 days and earning no more than \$3,000 from business activity in Maine is not required to pay a Maine tax or file a Maine return on that income.
- ① Income earned by a nonresident employee of a political subdivision of an adjoining state performing services in Maine in accordance with an interlocal agreement under 30-A M.R.S., Chapter 115 is not considered Maine-source income, so long as the work performed does not displace a Maine resident employee.
- ① Compensation or income directly related to a declared state disaster or emergency is exempt from Maine tax if the taxpayer’s only presence in Maine during the tax year is for the sole purpose of providing disaster relief.

See 36 M.R.S. §§ 5142(8-B) and 5142(9) and Rule 806.

A **“resident”** taxpayer is a person who is:

- domiciled in Maine (a “permanent legal resident”) or
- a statutory resident (*see* below).

A **“safe harbor” resident** is a person who is domiciled in Maine but who is not a Maine resident for income tax purposes (*see* below). For more information and examples, *see* the *Guidance to Residency*

*Safe Harbors brochure* available at <http://www.maine.gov/revenue/incomeestate/guidance> or call the forms line at (207) 624-7894.

A “**part-year resident**” of Maine is an individual who is domiciled in Maine for part of the year and who is not a statutory resident in that year (see below).

A “**nonresident**” taxpayer is an individual who earns income in Maine but who is not a Maine resident for income tax purposes.

## DOMICILE STATUS

The state in which you are domiciled is your **permanent legal residence**. This is the place you intend to make your home for a permanent or indefinite period of time. It is generally the place where you dwell and which is the center of your domestic, social and civic life.

Except for “safe harbor” residents, if you are domiciled in Maine, you are a Maine “resident” for income tax purposes – even if you are outside the state for the entire tax year. A person can have only one domicile, therefore, if you are domiciled in Maine you cannot be domiciled in another state or country. Similarly, if you are domiciled in another state or country, you cannot be domiciled in Maine. **However, as explained in the following section you may be domiciled in one state or country and still be a statutory resident for tax purposes in another state or country.**

Once your domicile is established in Maine, it continues until you establish domicile elsewhere. If your legal residency becomes an issue, you will have the burden of showing that you have established domicile in another state or country.

If you move out of Maine temporarily, without establishing domicile in the other state (or country), you continue to be domiciled in Maine. This is the case even if you sell your home in Maine.

For most people, even those who divide their time between different states, there is no question where they are domiciled; it is clear where they maintain their “home base.” Think of it this way: most people know the place they call home.

For others, though, it can be more difficult. When Maine Revenue Services determines where a taxpayer is domiciled, we consider **all** of the taxpayer’s relevant facts and circumstances (with a few exceptions noted below). You should do the same when determining how to file your income tax returns. Remember that although your **intent** is critical in determining where you are domiciled, a simple statement of intent – “I intended to make Florida my domicile in 2015,” for example – is not conclusive. Many factors are used as evidence of domicile.

It is important to know that **no single factor** will determine your state of domicile. Rather, all relevant factors are evaluated together. The criteria below are some of the factors we consider in making domicile determinations. You, too, should consider them to determine your domicile for income tax purposes.

### **Property ownership and residence:**

- the location of your principal residence
- your mailing address
- where you spend the most amount of time

- whether you applied for a Homestead or Veterans property tax exemption in Maine or a comparable benefit in another state

**Family and dependents:**

- whether you can be claimed as a dependent on another person's federal income tax return and where that person is domiciled
- where your spouse or dependents reside
- where your dependents attend elementary and secondary school
- where you or your dependents qualify for in-state college tuition

**Licenses and registrations:**

- where you are registered to vote
- which state issued your driver's license
- where your vehicles are registered
- where you maintain professional licenses
- where you declare residency for hunting and fishing licenses

**Financial data:**

- the state where you qualify for unemployment insurance
- the state in which you filed previous resident tax returns
- the state where you earn your wages
- the address recorded for insurance policies, deeds, mortgages, or other legal documents

**Affiliations:**

- the state in which you hold fraternal, social or athletic memberships
- the state where you maintain union memberships
- the location of a church or other house of worship of which you are a member

**Other factors:**

- where your personal property is located
- where you conduct your business
- the address listed for you in a telephone directory
- where you keep your pets

**Exceptions:** Maine Revenue Services does not consider your charitable contributions (whether made to an organization located in or outside of Maine) when making domicile determinations. Also, the geographic location of your professional advisors (doctors, lawyers, accountants, etc.) and financial institutions is not considered.

*If you are married, both you and your spouse are presumed to have the same state of residency, even though you may live apart for a portion of the year. (This presumption can be overcome if the facts clearly show that the spouses are domiciled in different states.)*

## STATUTORY RESIDENCY STATUS

Even if you are domiciled in another state, you may still be taxed as a Maine resident if you are a "statutory resident." *Statutory residency, however, does not apply to military personnel. See the section*

on “Military Personnel” for more information on state taxation of military personnel and their family members.

You are a statutory resident if:

1. you spent more than 183 days in Maine during the tax year (any portion of a day is counted as a full day), **and**
2. you maintained a **permanent place of abode** in Maine for the entire tax year.

A **permanent place of abode** is a house, apartment, dwelling place, or other residence that an individual maintains as his or her household, whether or not he or she owns it.

The term does not include a seasonal camp or cottage that is used only for vacations, a hotel or motel room, or a dormitory room used by a student during the school year. A place of abode is not deemed permanent if it is maintained only during a temporary stay in Maine for the accomplishment of a particular purpose.

If you maintained a permanent place of abode in Maine, but claim you were domiciled elsewhere and that you were not present in Maine for more than 183 days in the tax year (as is the case with many so-called “snowbirds,” for example), you should keep adequate records to verify that more than half of the year was spent in another state. Records confirming your whereabouts commonly include planners, calendars, plane tickets, canceled checks and credit card and other receipts.

## RESIDENCY “SAFE HARBORS”

Maine law provides that certain individuals are not treated as resident individuals even though they are domiciled in Maine. In order to qualify for such a “safe harbor,” you must fall under either the General Safe Harbor to the normal residency rules described elsewhere in this document, or the Foreign Safe Harbor. If you believe you qualify for one of these safe harbors, you should consult the Maine Revenue Services *Guidance to Residency “Safe Harbors,”* which contains more detailed information on eligibility and filing requirements.

**General Safe Harbor:** An individual who is domiciled in Maine will nevertheless be treated as a nonresident individual if he or she satisfies all three of the following requirements:

- did not maintain a permanent place of abode in Maine for the entire taxable year;
- maintained a permanent place of abode **outside** Maine for the entire taxable year; and
- spent **no more than 30 days** in the aggregate in Maine during the taxable year.

**Foreign Safe Harbor:** An individual who is domiciled in Maine will nevertheless be treated as a nonresident individual if he or she satisfies all three of the following requirements:

- within any period of 548 consecutive days (the “548-day period”) beginning or ending during that tax year, the individual is present in a foreign country (or countries) for at least 450 days;
- during the 548-day period, the individual is not present in Maine for more than 90 days and does not maintain a permanent place of abode in Maine at which the individual’s spouse (unless the spouse is legally separated) or minor children are present for more than 90 days; and
- during the nonresident portion of the taxable year with which or within which the 548-day period begins and during the nonresident portion of the taxable year with which or within

which the 548-day period ends, the individual is present in Maine for a number of days that does not exceed an amount which bears the same ratio to 90 as the number of days contained in the nonresident portion of the taxable year bears to 548.

## NOW WHAT DO I DO?

Once you've determined where you are a resident, you can identify what types of income are taxable to Maine, what credits you may be entitled to, and what forms are needed.

If you are a full-year Maine *resident*, file Maine Form 1040ME, Individual Income Tax Return.

If you are a *nonresident* or a "safe harbor" resident for all or part of the year and your Maine gross income meets the Maine minimum filing requirement, you must file Form 1040ME and include Schedule NR, Part-Year Residents/Nonresidents/"Safe Harbor" Residents, or Schedule NRH, Nonresident or "Safe Harbor" Resident Married Person Electing to File Single.

## EXAMPLES

**Example 1 - Full-year Domiciled Resident.** Ben and Jennifer are retired. They own a home in Maine in which they reside from May 1 to October 1 (153 days) each year. Ben and Jennifer have Maine driver's licenses and car registrations, and bank accounts in Maine. They are active in community and church affairs in Maine, vote in Maine, and consider Maine to be their home. Ben and Jennifer spend the rest of the year at their condominium in Florida. Ben and Jennifer are residents of Maine for tax purposes, even though they do not spend more than 183 days per year in the state, because they are domiciled in Maine.

**Example 2 - Full-year Domiciled Resident.** Stan and Susan own a house in Rockland, Maine. Their three children are enrolled in the Rockland school system, they register vehicles in Maine, are registered to vote in Rockland and use their Maine address on their insurance policies and mortgage documents. Stan is a merchant seaman who works for a company based out of Texas. His assignments take him out to sea for 4 to 5 months at a time; he always returns to Rockland to be with his family between trips. He and four co-workers split the rent on a small apartment in Texas to use as a home base immediately before and/or after each trip and to provide an address for mail delivery. Stan is domiciled in Maine together with the rest of his family; Maine is his permanent legal residence. He is, therefore, a full-year Maine resident for tax purposes.

**Example 3 - Nonresident.** David is domiciled in New York. He is transferred to his employer's Maine office for a temporary assignment from March 1 to November 30 (274 days), after which he returns to New York. Although David takes an apartment in Maine during this period, he is not a Maine resident, even though he spends more than 183 days of the taxable year in Maine, because he did not have a place of abode in Maine for the entire year. Instead, David will be subject to tax as a nonresident on his income from Maine sources, including any salary or other compensation for services performed in Maine.

**Example 4 - Statutory Resident.** Pete and Pam were formerly domiciled in Winthrop, Maine. In 2015 they retired from their jobs with the State of Maine and bought a home in Port Charlotte, Florida.

Within a few months of that purchase, they obtained Florida drivers licenses, registered to vote in Port Charlotte and took other steps to establish domicile in Florida. As of the move, MRS considers them to be domiciled in that state. They continue to maintain their lakefront house in Winthrop for the entire year and return to Maine every year from mid-April to the end of October (198 days) to spend time with family and friends. Pete and Pam are statutory residents of Maine because they maintain a permanent place of abode and spend more than 183 days in Maine.

**Example 5 - Nonresident, then Statutory Resident.** Sarah is domiciled in New Jersey. She is transferred to her employer's Maine office for an assignment from June 1, 2015 to August 1, 2016. If Sarah resides in an apartment in Maine during this period, she will not be a statutory resident in Maine in 2015, even though she spends more than 183 days of the taxable year in Maine, because her apartment was not maintained for the entire year. Only income she receives (such as her salary) that is connected to or derived from sources in Maine will be subject to Maine's income tax in that year. If Sarah's assignment is extended in 2016 to last for the entire year and she maintains the apartment as a residence throughout 2016, she will be a statutory resident in 2016, and all her income will be subject to Maine income tax that year.

**Example 6 - Statutory Resident, then Domiciled Resident.** In example 5 above, Sarah became a statutory resident in 2015. She continued to maintain her apartment in 2016, changed her domicile from New Jersey to Maine in April 2016, and was present in Maine for more than 183 days in 2016. Under these circumstances, she will be a full-year resident in 2016 and all her income will be subject to Maine tax in that year.

**Example 7 - Part-year residents.** Susan and Sam have been domiciled in Maine for the past five years. They are homeowners and calendar year taxpayers. Susan receives notice from her employer that she is being transferred to the company's office in New York. On September 1, 2015, Susan and Sam move to a new home in Connecticut with the intent to make Connecticut their new state of domicile and take sufficient steps to make it so. Prior to leaving, they put their house in Maine on the market for sale with a local real estate office. An offer is made for the house on October 1, 2015. The house is sold on December 1, 2015. Under these facts, Susan and Sam are part-year residents for 2015. For the period from January 1 through September 1, 2015, they were residents because they were domiciled in Maine. After that date, they relinquished their domicile in Maine and became domiciled in Connecticut. As residents, any income they received from January 1 to September 1, from whatever source, is subject to Maine personal income tax. For the period from September 2 through December 31, 2015, however, only income they receive that is connected to or derived from sources in Maine (such as any taxable gain on the sale of their Maine home) will be subject to Maine's income tax.

## RESIDENT and NONRESIDENT ALIENS

If you are a nonresident alien for federal tax purposes, but have Maine earned income, you may be required to pay Maine income tax. If you are a resident alien for federal tax purposes, and are a Maine resident for tax purposes, you will be required to pay Maine income tax on all your income. The same guidelines that apply to Maine residents, part-year residents of Maine or nonresidents apply to resident aliens and nonresident aliens alike.

## MILITARY PERSONNEL

A **military member's** legal residence does not change solely because of a change in duty assignment. The legal residence designated at the time of entry into the service remains the same until the member establishes a new legal residence. A completed DD Form 2058, "State of Legal Residence Certificate" is evidence of a change in domicile (but does not prove it conclusively).

Note that active duty military pay earned by a Maine resident servicemember for service performed outside of Maine under written military orders is not subject to Maine individual income tax. If you are a nonresident who is stationed in Maine, your military income will not be taxed by Maine, nor will income from intangible sources, such as interest and dividends. However, if you work at an additional job in Maine or operate a business in Maine, that income will be taxed by Maine.

Generally, a **military spouse** cannot lose or acquire residence or domicile in a state for tax purposes when the military spouse is absent from, or located in, a state solely to be with the servicemember who is complying with military orders. Consequently, for Maine income tax purposes, a military spouse will not be treated as a resident of Maine if the following conditions are met:

- The military spouse is located in Maine solely to be with the servicemember;
- The servicemember is located in Maine in compliance with military orders;
- The servicemember and the spouse were residents or domiciled in the same state other than Maine immediately prior to being located in Maine.

Consequently, income of a nonresident military spouse earned for the performance of services in Maine will not be treated as Maine-source income subject to Maine income taxation.

The exclusion from state taxation applies only with respect to the military spouse. Non-military income earned in Maine by a servicemember is Maine-source income and remains subject to Maine income tax.

Individuals domiciled in Maine who are members of the armed forces of the United States, the National Guard or Reservists who received federal orders for active duty continue to be domiciled in Maine for income tax purposes for the period of time they are stationed outside of Maine.

## STUDENTS

Students generally remain residents of the state in which they were domiciled prior to attending college (even if they attend college full-time in another state).

If you are a Maine resident who attends school in another state, you remain a Maine resident and must pay Maine tax on all taxable income from all sources until you have established domicile in the other state.

**Example 8 - Resident Student.** John attends a college outside of Maine and lives in a dormitory room on campus. He graduated from high school in Maine and when he returns to Maine, he stays with his parents. Even though he spends most of his time in another state, he continues to be a Maine resident because he has not established a new domicile in another state.

**Example 9 - Nonresident Student.** Donna is domiciled in New Jersey and attends college in Maine. She lives in a dormitory room on campus during the school year (240+ days), which runs from late August to May. When the school year ends, she moves out of the dormitory and resides out of state with her parents. The following August, Donna returns to college for another year and again resides in a dormitory room on campus.

Donna's domicile remains the same as her parents. Although she spends most of her time in Maine, she has not changed her previous domicile. In addition, she is not a statutory resident by physical presence. Even though she was present in Maine for more than 183 days, her dormitory room is not considered a permanent place of abode.

## ANSWERS TO FREQUENTLY ASKED QUESTIONS

**Q. *Each year, I live in Maine for five months and in another state for seven months. Does this mean I am not a Maine resident?***

**A.** Not necessarily. If you were domiciled in Maine before you began spending time in the other state, you continue to be a full-year Maine resident unless, or until, you have taken steps to establish domicile in the other state or country.

**Q. *I retired, sold my permanent home in Maine and live the life of a nomad, traveling around the country in a recreational vehicle. Can I correctly say that I am not a resident of any state?***

**A.** No. Everyone is domiciled somewhere. In your case, even though you sold your Maine home, you continue to be a Maine resident until you establish a domicile in another state.

**Q. *My job requires that I move from Maine to another state for the next two years. Will I still be a Maine resident?***

**A.** Yes. If you temporarily move to another state and intend to stay only for a limited time (no matter how long), your residency does not change. If the other state taxes the same income that is taxed by Maine, you may be able to claim a credit for taxes paid to the other state. When you file your Maine Form 1040ME, include the *Worksheet for Credit for Income Tax Paid to Other Jurisdictions*.

If, on the other hand, you move to another state with the intention of making it your home permanently or for an indefinite time, and take steps sufficient to establish a new domicile in that location, you no longer are a Maine resident and would be considered a part-year resident for the year of the move. This change in permanent legal residence is generally characterized by severing ties with Maine and establishing them with another state or country. *See the factors described on pages 3 and 4 for establishing a domicile.*