COST, Maine CPAs Slam Proposed Apportionment Rule

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By Emily Hollingsworth

The Maine tax department's proposed changes to an apportionment rule extend beyond what's provided in state statute and should be addressed by the Legislature, according to comment letters from two tax organizations.

The Council On State Taxation and the Maine Society of CPAs (MECPA) have expressed opposition to Maine Revenue Services' proposed amendments to its apportionment provisions under Rule 801. Public comment on the proposed amendments ended on January 17.

The amendments are intended to clarify the rule's definition of compensation related to the state's payroll factor and the sourcing of receipts from services for corporate income tax purposes, according to a December 2024 tax alert. The amendments include examples illustrating sourcing as applied to certain services.

Leonore Heavey, COST senior tax counsel, argued in the organization's January 17 comment letter that the "decision to expand the sourcing rule with this additional language is a significant substantive change for affected taxpayers that exceeds Maine Revenue Services' administrative authority." She suggested that the additional language should instead be addressed by the Legislature.

According to the state's statute on apportionment under 36 Me. Rev. Stat. section 5211, "receipts from the performance of services must be attributed to the state where the services are received."

The proposed amendment to Rule 801 adds to this definition, according to Heavey, by including the phrase "where the services are acquired or experienced." The proposed rule also adds that "services may be received by a person other than the person who contracted for or paid for the services."

Heavey, citing COST's policy position against retroactive application of tax changes that could impose new or higher tax liabilities on taxpayers, also called for Maine Revenue Services to apply the changes prospectively if the department chooses to proceed.

Heavey also requested that the department hold a public hearing on the proposed rule changes.

MECPA Executive Director Trish Brigham, in a January 16 comment letter, shared COST's objections on the proposed apportionment rule, adding that the phrase "acquired or experienced" is poorly defined and would create compliance issues and uncertainty for taxpayers and accountants.

Brigham also said the proposed rule's language surrounding recordkeeping requirements, which says that the location of the services received would be based on all available facts and not limited to the books and records of the taxpayer, "would create inordinate complexity" by requiring taxpayers to obtain records from third parties and would ultimately be unworkable.

MECPA urged the department to withdraw the proposed rules, saying that if the rule changes are adopted there would "undoubtedly be increased operational and financial burden placed on Maine businesses, many of whom are small-to-midsize organizations."

"We feel that these changes represent poor tax policy, are unworkable in practice, are confusing and contradictory and should certainly not be applied retroactively," Brigham said, adding that significant policy changes should be handled by the Legislature and "not be passed off as routine technical changes."