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January 17, 2025

Via Email

Alex Weber
General Counsel
Maine Revenue Services

Re: Opposition to Proposed Amendments to Rule 801 and Hearing Request

Dear Mr. Weber:

On behalf of the Council On State Taxation (COST), I respectfully submit these comments on the draft amendments to Rule 801 (Apportionment) and request a public hearing on the proposed amendments. COST believes that some of the language of the proposed amendments represents an expansion of Maine Revenue Services' authority that is not supported by any statutory change and that any change in administrative policy that negatively impacts taxpayers should apply prospectively only.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 500 major corporations engaged in interstate and international business many of which have operations in Maine. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multistate business entities.

Rule Amendments Not Supported by Legislative Change

COST is not aware of any legislative change that supports the proposed amendments to Rule 801. The current rule reflects the text of the apportionment statute, 36 M.R.S. § 5211: "...receipts from the performance of services must be attributed to the state where the services are received." The proposed amendment adds additional language not found in the apportionment statute that expands the sourcing rule beyond the statutory provisions to the location "where the services are acquired or experienced" and further provides that "[s]ervices may be received by a person other than the person who contracted for or paid for the services." 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 and should instead be addressed by the Maine Legislature.

Policy Changes Should Be Prospective Only

The COST Board of Directors has adopted the following policy position¹ on retroactive tax legislation:

Legislation imposing new or increased tax liabilities attributable to prior periods is fundamentally unfair and, in some cases, unconstitutional and thus must be avoided. Under no circumstance should legislation imposing new or increased tax liabilities be applied to any periods beginning prior to the date the legislation was enacted. Retroactive legislation or administrative pronouncements that do not impose new or increased tax liabilities may be appropriate.

The reasoning of the policy position also applies to administrative policy changes. COST therefore respectfully requests that if Maine Revenue Services (despite the administrative overreach) proceeds with changes to the apportionment rule that negatively impact taxpayers that these changes should apply prospectively.

Conclusion

COST respectfully suggests that the amendments to Rule 801 represent a significant departure from current law that must be addressed by the Legislature and that any change in policy that negatively impacts taxpayers should apply only prospectively. COST requests a public hearing on the proposed amendments to Rule 801.

Sincerely,



Leonore Heavey
Senior Tax Counsel

CC: COST Board of Directors

¹ <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/retroactivetaxlegislation.pdf>