CHAPTER 827

WITHHOLDING OF TAX

§5250. Employer to withhold tax from wages

1. General. Every employer maintaining an office or transacting business in this State that makes payment to a resident individual or a nonresident individual of wages subject to tax under this Part shall, if required to withhold federal income tax from those wages, deduct and withhold from those wages for each payroll period a tax so computed as to result in an amount being withheld from the employee's wages during each calendar year that is substantially equivalent to the tax reasonably estimated to be due from the employee under this Part with respect to the amount of those wages included in the employee's adjusted gross income during that calendar year. The State Tax Assessor shall establish by rule the method of determining the amount to be withheld. This section does not apply to shares of a lobster boat's catch that are apportioned by a lobster boat operator to a sternman. This section does not apply to wages from which a tax is required to be deducted and withheld under the Code, Sections 1441 and 1442. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2011, c. 240, §39 (AMD).]

2. Withholding exemptions. For purposes of this section:

A. An employee is entitled to the same number of withholding exemptions as the number of withholding exemptions to which the employee is entitled for federal income tax withholding purposes, unless otherwise provided by rule; and [PL 1997, c. 668, §36 (AMD).]

B. The dollar amount of each withholding allowance in this State must be equivalent to the amount of the personal exemption determined in section 5126-A whether the individual is a resident or a nonresident. [PL 2017, c. 474, Pt. B, §18 (AMD).]

C. [PL 1997, c. 668, §37 (RP).]
[PL 2017, c. 474, Pt. B, §18 (AMD).]

3. Withholding agreements. The assessor may enter into agreements with the tax departments of other states that require income tax to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of those states under this chapter. The agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and may relieve employers in this State from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax department of the other states grant similar treatment to residents of this State.
[PL 1995, c. 639, §24 (AMD).]

4. Withholding exemption variance certificate.

[PL 1997, c. 668, §38 (RP).]

5. Fiscal agents. Fiduciaries, agents and other persons designated in accordance with the Code, Section 3504 to perform acts required of employers may, at the discretion of the assessor, be designated to perform acts required of employers for the purposes of complying with the requirements of this section. Designation by the assessor is subject to the terms and conditions the assessor may require. Except as may be otherwise prescribed by rule, all provisions of this Title applicable with respect to an employer, to the extent that such provision has application to the provisions of this section, including the provisions of section 177, are applicable to the designated fiduciary, agent or other person, including, but not limited to, provisions governing assessment of liability and application of interest

and penalties. Notwithstanding the immediately preceding sentence, an employer for which a fiduciary, agent or other person acts remains subject to the provisions of this Title applicable with respect to employers.
[PL 2019, c. 401, Pt. C, §14 (NEW).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1971, c. 61, §8 (AMD). PL 1975, c. 627, §3 (AMD). PL 1977, c. 477, §19 (AMD). PL 1979, c. 541, §A243 (AMD). PL 1981, c. 371, §1 (AMD). PL 1987, c. 504, §37 (AMD). PL 1989, c. 495, §§4,9 (AMD). PL 1989, c. 596, §J7 (AMD). PL 1995, c. 639, §24 (AMD). PL 1995, c. 646, §§1,2 (AMD). PL 1997, c. 668, §§36-38 (AMD). PL 2011, c. 240, §39 (AMD). PL 2017, c. 474, Pt. B, §18 (AMD). PL 2019, c. 401, Pt. C, §14 (AMD).

§5250-A. Withholding on sales of real estate

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Consideration" means the total price or amount paid, or required to be paid, for real property valued in money, whether received in money or otherwise and includes the amount of any mortgage, lien or encumbrance on the real property. [PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

B. "Real estate escrow person" means any of the following persons involved in a real estate transaction in the following order of priority:

(1) The person, including any attorney, escrow company or title company, responsible for closing the transaction;

(2) The mortgage lender;

(3) The seller's broker;

(4) The buyer's broker; and

(5) Any other person who receives and disburses the consideration or value for the interest or property conveyed. [PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

C. "Resident," when used in reference to an individual, estate or trust, means an individual, estate or trust that has established a domicile in the State as of the date of transfer of the Maine real property, or that was a resident for purposes of the previous income tax year, unless the individual, estate or trust has established a domicile outside of the State as of the date of transfer of the Maine real property. "Resident," when used in reference to a corporation, means a corporation that, as of the date of transfer of the Maine real property, is incorporated in the State or maintains a permanent place of business in the State. "Resident," when used in reference to a partnership, means a partnership at least 75% of whose ownership interest, as of the date of the transfer of Maine real property, is held by residents of this State. [PL 1991, c. 621, §1 (AMD).]

[PL 1991, c. 621, §1 (AMD).]

2. Withholding required. Every buyer of real property located in Maine must withhold a withholding tax equal to 2 1/2% of the consideration. The withholding required by this section must be transmitted to the State Tax Assessor within 30 days of the date of transfer of the property unless the State Tax Assessor authorizes the buyer to release the amount withheld, or a portion of it, to the seller. Any buyer who fails to withhold the tax is personally liable for the tax.

[PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

3. Exceptions. A buyer is not required to withhold the tax imposed by this section if:

A. The seller furnishes to the buyer a certificate by the seller stating, under penalty of perjury, that as of the date of transfer the seller is a resident of the State; [PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

B. The seller or the buyer has received from the State Tax Assessor a certificate stating that no tax is due on the gain from the transfer or that the seller has provided adequate security to cover the liability; [PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

C. The consideration for the property is less than $50,000 or, for sales occurring on or after January 1, 2021, less than $100,000; [PL 2019, c. 659, Pt. C, §2 (AMD).]

D. Written notification of the withholding requirements of this section has not been provided to the buyer; or [PL 1995, c. 639, §25 (AMD).]

E. The seller is the State or an agency or a political subdivision of the State, the Federal Government or an agency of the Federal Government, an organization exempt from income taxes pursuant to the Code, Section 501(a), an insurance company exempt from the tax imposed by this Part or a business entity referred to in Title 24-A, section 1157, subsection 5, paragraph B, subparagraph (1) that is exempt from the tax imposed by this Part. [PL 1995, c. 639, §26 (NEW).]

[PL 2019, c. 659, Pt. C, §2 (AMD).]

3-A. Foreclosure sales; transfers in lieu of foreclosure. No tax is required to be withheld pursuant to this section by a buyer at a foreclosure sale when the consideration paid does not exceed the debt secured by the property held by a mortgagee or lienholder; if the consideration paid does exceed the secured debt, the amount of tax withheld pursuant to this section must be the lesser of the surplus over the secured debt or the amount otherwise required to be withheld by this section. When a mortgagor conveys the mortgaged property to a mortgagee in lieu of foreclosure and with no additional consideration, the mortgagee is not required to withhold tax pursuant to this section.

[PL 1991, c. 621, §2 (NEW).]

4. Reduced amount. At the request of the buyer or the seller, the State Tax Assessor may prescribe a reduced amount to be withheld under this section if the State Tax Assessor determines that the reduced amount will not jeopardize the collection of the tax imposed by this Part.

[PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

5. False certificate. If a buyer has actual knowledge that a certificate furnished under subsection 3 is false and the buyer fails to withhold the prescribed amount, the buyer is liable for the amount that should have been withheld and any applicable interest and penalty.

[PL 1991, c. 621, §3 (AMD).]

6. Joint sellers. In the case of joint sellers, if any of the exceptions listed in subsection 3 apply to some but not all of the sellers, the buyer must withhold and remit the tax as if none of the sellers were entitled to an exception, unless at the time of closing the buyer receives a statement signed by all the sellers allocating the gross proceeds among the sellers. In such cases the buyer must allocate the withholding tax according to the proportions set out in that statement, account separately for the amount withheld from each seller and apply any applicable exceptions in subsection 3 to each seller.

[PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

7. Joint buyers. In the case of joint buyers, the obligations and tax imposed by this section apply jointly and severally to each buyer.
[PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

8. Fee for withholding. It is unlawful for any real estate escrow person to charge any customer for complying with the requirements of this section, unless the real estate escrow person withholds and remits an amount to the State Tax Assessor under this section. If the real estate escrow person is instructed by the parties to withhold under this section and the real estate escrow person remits a withholding amount to the State Tax Assessor, it is unlawful for the fee to exceed $25.
[PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

9. Liability of real estate escrow person. Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person is liable for the withholding tax when written notification of the withholding requirements of this section is not provided to the buyer and the disposition of Maine real property is subject to withholding under this section. The real estate escrow person is not liable under this subsection if the tax due as a result of the disposition of Maine real property is paid by the original or extended due date of the seller's return for the taxable year in which the disposition occurred.
[PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 528, Pt. Y, §2 (NEW); PL 1991, c. 528, Pt. Y, §3 (AFF); PL 1991, c. 591, Pt. Y, §2 (NEW); PL 1991, c. 591, Pt. Y, §3 (AFF).]

10. Application of withholding. The amount withheld pursuant to this section is deemed to be a payment against the tax imposed by this Part on income received by the seller.
[PL 1991, c. 621, §4 (NEW).]

SECTION HISTORY

PL 1991, c. 528, §Y2 (NEW). PL 1991, c. 528, §§Y3,RRR (AFF). PL 1991, c. 591, §Y2 (NEW). PL 1991, c. 591, §Y3 (AFF). PL 1991, c. 621, §§1-4 (AMD). PL 1995, c. 639, §§25,26 (AMD). PL 2019, c. 659, Pt. C, §2 (AMD).

§5250-B. Withholding on pass-through entity income of nonresident partners and shareholders

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Member" means an individual or other owner of a pass-through entity. [PL 2003, c. 20, Pt. AA, §1 (NEW); PL 2003, c. 20, Pt. AA, §6 (AFF).]

B. "Nonresident" means a nonresident individual, a business entity that does not have its commercial domicile in the State, or a nonresident estate or trust. [PL 2003, c. 20, Pt. AA, §1 (NEW); PL 2003, c. 20, Pt. AA, §6 (AFF).]

C. "Pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation under the Code and a general partnership, limited partnership, limited liability partnership, limited liability company or similar entity that for the applicable tax year is not taxed as a C corporation for federal tax purposes. For purposes of this section, "pass-through entity" does not include a financial institution subject to tax under chapter 819. [PL 2005, c. 332, §24 (AMD); PL 2005, c. 332, §30 (AFF).]

[PL 2005, c. 332, §24 (AMD); PL 2005, c. 332, §30 (AFF).]

2. Withholding required. Except as provided by subsection 3, every pass-through entity that does business in this State must withhold income tax at the highest tax rate provided in this Part on the proportionate quarterly share of Maine source income of each nonresident member. The method for determining the amount of the share of income and for determining the amount of withholding for each

nonresident member under this section must be prescribed by rules adopted by the assessor. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2003, c. 20, Pt. AA, §1 (NEW); PL 2003, c. 20, Pt. AA, §6 (AFF).]

3. Withholding exemptions. For purposes of this section, a pass-through entity is not required to withhold tax for a nonresident member if:

A. The member's share of annual entity income sourced to the State is less than $1,000; or [PL 2003, c. 20, Pt. AA, §1 (NEW); PL 2003, c. 20, Pt. AA, §6 (AFF).]

B. The bureau has determined by rule, ruling or instruction that the member's income is not subject to withholding. [PL 2003, c. 20, Pt. AA, §1 (NEW); PL 2003, c. 20, Pt. AA, §6 (AFF).]

[PL 2003, c. 20, Pt. AA, §1 (NEW); PL 2003, c. 20, Pt. AA, §6 (AFF).]

SECTION HISTORY

PL 2003, c. 20, §AA1 (NEW). PL 2003, c. 20, §AA6 (AFF). PL 2005, c. 332, §24 (AMD). PL 2005, c. 332, §30 (AFF).

§5251. Information statement

Every person who is required to deduct and withhold tax under this Part, or who would have been required to deduct and withhold tax if an employee had claimed no more than one withholding exemption, shall furnish a written statement as prescribed by the assessor to each person in respect to the items of income subject to withholding paid to that person during the calendar year on or before January 31st of the succeeding year, or, in the case of an employee who is terminated before the close of the calendar year, within 30 days from the date of receipt of a written request from the employee if that 30-day period ends before January 31st. The assessor may establish an alternative due date for providing a written statement under this section that is consistent with the due date for the related federal statement. The statement must show the amount of wages paid by the employer to the employee or, in the case of withholding pursuant to sections 5250-B and 5255-B, the total items of income that were subject to withholding, the amount deducted and withheld as tax and such other information as the assessor requires. [PL 2013, c. 546, §15 (AMD).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1979, c. 541, §A244 (AMD). PL 1981, c. 371, §2 (AMD). PL 1985, c. 535, §23 (AMD). PL 2003, c. 20, §AA2 (AMD). PL 2003, c. 20, §AA6 (AFF). PL 2007, c. 437, §19 (AMD). PL 2007, c. 437, §22 (AFF). PL 2013, c. 546, §15 (AMD).

§5251-A. Fraudulent statement or failure to furnish statement

A person who is required by section 5251 to furnish a statement to a payee and who willfully fails to furnish that statement at the time required by section 5251, in the form and showing the information prescribed by the State Tax Assessor, or who willfully furnishes a false or fraudulent statement commits a civil violation for which a fine of $50 for each such failure must be imposed. [PL 2007, c. 437, §20 (NEW); PL 2007, c. 437, §22 (AFF).]

SECTION HISTORY

PL 2007, c. 437, §20 (NEW). PL 2007, c. 437, §22 (AFF).

§5252. Credit for tax withheld

Wages and other items of income upon which tax is required to be withheld are taxable under this Part as if no withholding were required, but the amount of tax actually deducted and withheld under this chapter in a calendar year is deemed to have been paid to the assessor on behalf of the person from whom withheld, and the person is credited with having paid that amount of tax for the taxable year

beginning in the calendar year. If more than one taxable year begins in a calendar year, the amount is allowed as a credit for the most recent taxable year. [PL 1995, c. 639, §27 (AMD).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1981, c. 371, §3 (AMD). PL 1995, c. 639, §27 (AMD).

§5253. Return and payment of tax withheld

Every person that is required to deduct and withhold tax under section 5250, 5250-B or 5255-B shall, for each calendar quarter or other reporting period required by the State Tax Assessor, file a return on or before the last day of the month following the end of the reporting period and remit payment as prescribed by the assessor. The assessor shall prescribe the voucher required to be filed with the payments. [PL 2011, c. 240, §40 (AMD).]

1. General.
[PL 2003, c. 20, Pt. AA, §3 (RP); PL 2003, c. 20, Pt. AA, §6 (AFF).]

2. Deposit in trust for assessor.
[PL 1985, c. 691, §38 (RP).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1971, c. 61, §9 (AMD). PL 1977, c. 477, §§20,21 (AMD). PL 1981, c. 364, §§71,72 (AMD). PL 1985, c. 535, §24 (AMD). PL 1985, c. 691, §38 (AMD). PL 1989, c. 875, §§E48,49 (AMD). PL 1991, c. 9, §E25 (AMD). PL 1991, c. 9, §E26 (AFF). PL 1993, c. 395, §22 (AMD). PL 1995, c. 657, §9 (AMD). PL 1995, c. 657, §10 (AFF). PL 2003, c. 20, §AA3 (RPR). PL 2003, c. 20, §AA6 (AFF). PL 2011, c. 240, §40 (AMD).

§5254. Liability for withheld taxes

Every person required to deduct and withhold tax under this Part is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the assessor, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of that person. No person may have any right of action against a person in respect to any money deducted and withheld and paid over to the assessor in compliance or in intended compliance with this Part. [PL 1987, c. 402, Pt. A, §191 (RPR); PL 1987, c. 402, Pt. B, §28 (RPR).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1981, c. 371, §4 (AMD). PL 1985, c. 535, §25 (AMD). PL 1985, c. 691, §39 (AMD). PL 1987, c. 402, §§A191,B28 (RPR).

§5255. Failure to withhold

A person who fails to deduct and withhold tax as required by this chapter is relieved from liability for that tax to the extent that the tax against which that tax may be credited has been paid, but the person is not relieved from liability for any additions to tax, penalties or interest otherwise applicable with respect to the failure to file returns and withhold and pay tax as required by this chapter. [PL 2007, c. 438, §109 (AMD).]

SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1985, c. 535, §26 (AMD). PL 2005, c. 618, §16 (AMD). PL 2007, c. 438, §109 (AMD).

§5255-A. Injunction

(REPEALED)

SECTION HISTORY

PL 1971, c. 61, §10 (NEW). PL 1985, c. 535, §27 (AMD). PL 1997, c. 495, §5 (AMD). PL 2001, c. 583, §20 (RP).

§5255-B. Certain items of income under the United States Internal Revenue Code

Any person maintaining an office or transacting business within this State and who is required to deduct and withhold a tax on items of income under the Code, other than wages subject to withholding as provided in section 5250 or sales of real estate subject to withholding as provided in section 5250-A, shall deduct and withhold from such items to the extent they constitute income that is not excluded from taxation under Maine law, a tax equal to 5% of the income, unless withholding pursuant to the Code is based on other than a flat rate amount. In that event, the State's withholding procedure should estimate taxable income using the same approach to exemptions as the Code and the amount of tax to be withheld should be calculated in accordance with withholding methods prescribed pursuant to section 5250. [PL 1999, c. 414, §53 (AMD).]

SECTION HISTORY

PL 1981, c. 371, §5 (NEW). PL 1985, c. 535, §28 (AMD). PL 1987, c. 497, §51 (AMD). PL 1987, c. 504, §38 (AMD). PL 1987, c. 769, §A161 (RPR). PL 1999, c. 414, §53 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 129th Maine Legislature and is current through October 1, 2020. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.