

Maine Revised Statutes

Title 36: TAXATION

Chapter 821: APPORTIONMENT OF INCOME

§5212. APPORTIONMENT OF INCOME OF MUTUAL FUND SERVICE PROVIDERS

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

A. "Administration services" includes, but is not limited to, clerical, fund or shareholder accounting; participant record-keeping; transfer agency; bookkeeping; data processing; custodial; internal auditing; legal; and tax services performed for a regulated investment company. Services qualify as administration services only if the provider of such service or services during the taxable year also provides, or is affiliated with a person that provides, management or distribution services to the same regulated investment company during the same taxable year. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

B. "Distribution services" includes, but is not limited to, the services of advertising, servicing, marketing or selling shares of a regulated investment company. The services of advertising, servicing or marketing shares qualify as distribution services only when the service is performed by a person who is or, in the case of a closed-end company, was either engaged in the services of selling regulated investment company shares or affiliated with a person that is engaged in the service of selling regulated investment company shares. In the case of an open-end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to 15 United States Code, Section 80a-15(b), as amended. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

C. "Domicile" of a shareholder of a regulated investment company is presumed to be the shareholder's mailing address on the records of the regulated investment company or the mutual fund service provider. If the regulated investment company or the mutual fund service provider has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, the presumption does not control. If the shareholder of record is a person that holds the shares of a regulated investment company as depositor for the benefit of a separate account, then the shareholder of record is the contract owner or policyholder of the contracts or policies supported by the separate account, and it is presumed that the domicile of that shareholder of record is the contract owner's or policyholder's mailing address to the extent that the regulated investment company maintains such mailing addresses in the regular course of business. If the shareholder's principal place of business is different than the shareholder's mailing address, the presumption does not control. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

D. "Management services" includes, but is not limited to, the rendering of investment advice directly or indirectly to a regulated investment company, making determination as to when sales and purchases of securities are to be made on behalf of the regulated investment company or the selling or purchasing of securities constituting assets of a regulated investment company and related activities. Services qualify as management services only when such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to 15 United States Code, Section 80a-15(a), as amended, for a person that has entered into such contract with the regulated investment company or for a person that is affiliated with a person that has entered into such contract with a regulated investment company. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

E. "Mutual fund service provider" means any taxpayer subject to tax under this Part, other than a financial institution as defined in section 5206-D, subsection 8, that derives more than 50% of its gross income from the direct or indirect provision of management, distribution or administration services

to or on behalf of a regulated investment company or from trustees, sponsors and participants of employee benefit plans that have accounts in a regulated investment company. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

F. "Regulated investment company" means a regulated investment company as defined in the Code, Section 851. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

[1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF) .]

2. Election of special apportionment of formula for mutual fund service providers.

Notwithstanding any other provision of this Title, a mutual fund service provider may elect to apportion its net income by the method provided for in this section. The election, if made, is irrevocable for successive periods of 5 years. The net income of an electing mutual fund service provider may be apportioned to this State as follows.

A. Net income is multiplied by a fraction, the numerator of which is the Maine receipts during the taxable year and the denominator of which is the total receipts everywhere for the same taxable year. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

B. For purposes of this subsection, Maine receipts from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company or from trustees, sponsors and participants of employee benefit plans that have accounts in a regulated investment company are determined by multiplying total receipts for the taxable year from each separate regulated investment company for which the mutual fund service provider performs management, distribution or administration services by a fraction. The numerator of the fraction is the average of the number of shares owned by the regulated investment company's shareholders domiciled in this State at the beginning of and at the end of the regulated investment company's taxable year, and the denominator of the fraction is the average of the number of the shares owned by the regulated investment company's shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year. [1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF).]

C. Receipts other than from the provision of services described in paragraph B are Maine receipts if they would qualify as Maine sales under section 5211, subsection 15 or 16-A. [2007, c. 240, Pt. V, §13 (AMD).]

[1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF); 2007, c. 240, Pt. V, §13 (AMD) .]

3. Combined reporting not applicable. Notwithstanding any other provision of this Title, a mutual fund service provider that has elected the apportionment method provided for in this section is not required to file a combined report, and neither the income nor the property, payroll or sales of a mutual fund service provider that has elected the apportionment method provided for in this section may be included in a combined report of another taxpayer.

[1999, c. 754, §1 (NEW); 1999, c. 754, §2 (AFF) .]

SECTION HISTORY

1999, c. 754, §1 (NEW). 1999, c. 754, §2 (AFF). 2007, c. 240, Pt. V, §13 (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 127th Maine Legislature and is current through October 1, 2016. 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.