Maine 2026 Tax Update:

Legal Updates, Legislation, & Year-End Planning

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Agenda

- Maine's pass-through entity tax
- Millionaire's surcharge
- OBBBA conformity
  - Corporate
  - Individual
- Other updates
  - Data centers
  - Independent Office of Tax Appeals
  - Sales tax on lease and rental of TPP
  - Current litigation

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Pass-through Entity Tax

- Source: Title 36, ch. 815, subchapter 3 (36 M.R.S. § 5199-A, *et seq.*)
- Effective for tax years beginning on or after January 1, 2026
- Elective
  - Election made annually on timely filed return, including extensions
  - Irrevocable once made
- Eligible PTEs:
  - Partnerships, excluding publicly traded partnerships;
  - S corporations

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Pass-through Entity Tax – Who & What is in the Base?

- Key definition: "qualified member" means an individual, trust, or estate that is a direct owner in an electing PTE
  - Excludes corporations, PTEs, IRC § 501 exempt organizations
  - Includes interest owned through a disregarded entity
- PTET base
  - Aggregate of "distributive share of income" of all qualified members
    - Resident qualified members: 100% of PTE distributive share included in FAGI
    - Nonresident qualified members: Maine-source PTE distribute share included in FAGI
  - Guaranteed payments are included
  - Losses are excluded; treated as zero in the base
  - Addback of PTET paid to Maine and other jurisdictions w. substantially similar PTET

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Pass-through Entity Tax – Computation

- PTET
  - Rate: 7.15% (highest individual rate)
  - Excludes 2% surcharge
  - PTET is not reduced by state-specific credits
- Individual income tax
  - Each qualified member receives a 90% refundable credit on their individual income tax return based on their share of PTET
  - Addback of member's distributive share of PTET paid to Maine and other jurisdictions

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Pass-through Entity Tax – Resident Credit

- Maine resident qualified members are allowed a credit for their share of PTET paid to other jurisdictions, if:
  - Other jurisdiction has an individual (or fiduciary) income tax that is "substantially similar" to Maine's individual income tax (or fiduciary) income tax, and
  - Other jurisdiction's PTET is "substantially similar" to Maine's PTET
- Functionally, this means that there is no credit allowed for New Hampshire BPT (and a few other states' taxes on PTEs)

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Pass-through Entity Tax – Nonresident Considerations

- Electing PTE must pay a 10% estimated tax for each nonresident qualified member's distributive share of PTET (due with return)
- Nonresident qualified member is not required to filed a Maine return if:
  - Nonresident for the entire tax year
  - 100% of member's Maine AGI (including spouse's income) is from an electing PTE
  - Electing PTE(s) files and pays the Maine PTET
  - The member's 90% PTET credit plus the 10% estimated tax paid by the PTE satisfy member's (and spouse's) Maine tax liability
- No nonresident withholding required by PTE for qualified members included on Maine PTET return

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Pass-through Entity Tax – Estimated Tax

- Estimated payments
  - Required if estimated PTET liability is $1,000 or more for the tax year
  - Amount: Smaller of (1) preceding tax year's PTET liability or (2) 90% of current tax year. Both exclude the 10% nonresident estimated tax
  - Due dates: 15th day of 4th, 6th, 9th, and 13th month following beginning of PTE tax year
- Tax years beginning in 2026
  - Quarterly payments required only for payments due on or after July 29, 2026
  - Underpayment penalties will not be applied in the first tax year of PTET
- Year-end planning: Consider timing of estimated payments to maximize federal deduction

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Pass-through Entity Tax – Reporting

- PTET Return
  - Due 15th day of 3rd month following end of PTE's tax year
  - Federal extension automatically extends Maine deadline to federal plus 30 days
  - No interest paid on overpayments
  - Amended returns require State Tax Assessor's consent
- Qualified member reporting
  - Due 30 days after Maine return is filed
  - Reports each qualified member's distributive share of PTET

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Millionaire's Surcharge

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Millionaire's Surcharge

- Effective for tax years beginning on or after January 1, 2026
- 2% surcharge on Maine taxable income in excess of:
  - Single: $1 million
  - Married filing jointly, head of household, surviving spouse: $1.5 million
  - Married filing separately: $750,000
- Applies to trusts and estates subject to Maine fiduciary income tax, at the single-filer threshold
- Thresholds are adjusted annually for inflation beginning with tax years beginning in 2027

(36 M.R.S. § § 5111(7), 5160, 5403(12))

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OBBBA Conformity

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IRC Conformity

- Maine is a static conformity state
- For tax years beginning on or after January 1, 2025 (and any prior years as specifically provided by the IRC), references to the Internal Revenue Code in Maine law refer to the IRC in effect as of December 31, 2025.

(P.L. 2025, c. 432)

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IRC Conformity

- In large part, IRC conformity is OBBBA conformity, including:
  - Increased IRC § 179 expensing limits
  - Expanded EBIDTA-based calculation of IRC § 163(j) business interest deduction
  - Ended accelerated depreciation for certain types of clean energy property
  - New 1% floor for corporate deductible charitable contributions
- Maine generally only conforms to above-the-line deductions, which means Maine has not conformed to:
  - No tax on tips
  - No tax on overtime
  - Deduction for car loan interest
  - Senior deduction

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R&D Deduction – Phase-In for Large Businesses

- IRC § 174A, starting in tax years 2025, allows companies to deduct domestic research and experimental expenses in year incurred.
- Phase-in conformity between 2025-2030 for large businesses. Maine requires an addback of federal § 174A deduction multiplied by the applicable percentage:
  - 2025: 100%
  - 2026:70%
  - 2027: 50%
  - 2028: 30%
  - 2029: 10%
  - 2030: 0% - full conformity

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R&D Deduction – Phase-In for Large Businesses

- Disallowed portion of the § 174A deduction is amortized and deducted ratably between year following the year of addback and the 2030 tax year.
- Planning point: track the Maine addback and future recapture separately from the federal deduction.

(36 M.R.S. § § 5122(1)(QQ), (2)(BBB), 5200-A(1)(LL), (2)(KK))

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R&D Deduction – Full Conformity for Small Businesses

- Small business: Average annual gross receipts of $31 million or less
- Maine has fully conformed, including to OBBBA's catchup provisions that allow small businesses to amend their returns for 2022-2025 to retroactively apply the immediate expensing rule.

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Bonus Depreciation - Decoupled

- Maine has decoupled from IRC § 168(k) bonus depreciation in most years prior to OBBBA.
- Maine laws updated to continue to decouple. 36 M.R.S. § 5200-A(1)(II).

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Accelerated Depreciation for QPP - Decoupled

- IRC § 168(n) creates new 100% depreciation deduction for "qualified production property"
  - Nonresidential real property that is directly integral to manufacturing, chemical production, agricultural production, or refining. (Note: qualification requirements are highly detailed)
  - Must be constructed before 1/19/2025 and before 1/1/2029
  - Must be placed in service after 7/4/2025 and before 1/1/2031
- Maine requires addback of federal deduction in year taken. May be recaptured ratably, based on depreciation schedule that would have been allowable without § 168(n) (typically, 39 years)

36 M.R.S. § § 5200-A(1)(MM), (2)(LL)

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Opportunity Zone Incentives - Decoupled

- OBBBA made the Opportunity Zone program, which was set to expire on December 31, 2026, permanent.
- Maine decouples from key OZ benefits

1. Deferral of capital gain from sale of property when gain is rolled into an OZ investment

   Maine treatment: After December 31, 2026, taxpayer must recognized capital gain in year realized, addback amount of gain invested

2. Increase in basis of investment if held for at least 5 years

   Maine treatment: Add back any step up in basis when investment property acquired after December 31, 2026 is sold.

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GILTI is now NCTI

- OBBBA made certain changes to "global intangible low taxed income," including renaming it to "net CFC tested income."
- References to GILTI have been updated to refer to NCTI
  - 36 M.R.S. § 5200-A(2)(EE): Subtraction of 50% of apportionable NCTI, inclusion of 50% of NCTI in sales factor denominators

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Qualified Small Business Stock - Decoupled

- OBBBA expanded exclusion of gain realized by non-corporate taxpayers on the sale of "qualified small business stock"
  - "Qualified small business stock" is stock in a C corporation, acquired directly from the corporation, which corporation's assets do not exceed $75 million (previously, $50 million) before or immediately after issuance of stock
  - Pre-OB3: Holding period >5 years; exclude up to $10 million of gain
  - OB3: For QSBS acquired after July 4, 2025, holding period is 3 years; exclude up to $15 million; adjusted for inflation
- Maine requires addback of all gain excluded for QSBS acquired after July 4, 2025.
  - QSBS acquired on or before July 4, 2025, no addback required

(36 M.R.S. § 5122(1)(UU))

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Standard Deduction – Phase-In

- OBBBA increased federal standard deduction by $750 for single filers and $1,500 for joint filers for tax years 2025 and later.
- Maine phases-in conformity:
  - 2025 – basic standard deduction
    - $15,000 single, married filing separately
    - $22,500 head of household
    - $30,000 joint, surviving spouse
  - 2026 – basic standard deduction
    - $15,700 single, married filing separately
    - $23,550 head of household
    - $31,400 joint, surviving spouse
  - 2027 – fully conformity to federal standard deduction

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More tax changes

Maine Revenue Services' comprehensive summary of the tax law changes enacted during the last legislative session can be downloaded here:

https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/legischange26.pdf

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More Updates

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Limits on Data Center Incentives

- A data center that begins operations on or after August 1, 2026 is excluded from Maine's Dirigo Business Incentives Program (income tax credits) and the business equipment tax exemption from property tax
  - "Data center" means a facility in Maine, either freestanding or within a larger structure "that primarily contains electronic equipment used for data processing, data storage, cloud computing or similar computing infrastructure services that uses environmental control equipment to maintain the proper conditions for the operation of electronic equipment"
    - "Data center" excludes any portion of the facility containing equipment that is "incidental to and used in support of a business whose primary business activity" is not listed in the previous sentence
  - "Begins operations" means that the data center has installed operational computer and networking equipment and is performing data processing, data storage, cloud computing or similar computing infrastructure services. "Begins operations" does not include construction, site preparation or equipment installation
- Gov. Mills vetoed LD 307, which would have imposed a broad moratorium on data center development in Maine until November 1, 2027.

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Independent Office of Tax Appeals

- Effective January 1, 2027, the Maine Board of Tax Appeals (BTA) will be replaced by an Independent Office of Tax Appeals (OTA)
  - Similarities:
    - Appeals limited to $500,000 or less of tax in controversy
    - Taxpayer can be represented by CPAs or enrolled agents
    - Appeals are *de novo* to Superior Court
  - Key difference: Hearing officer's written decision is final and appealable. Currently, hearing officer issued proposed decision, and Board makes its own decision
  - Hearing officers may be assigned part-time to State Board of Property Tax Review
  - Appeals pending at BTA as of January 1, 2027 will be transferred to OTA

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Reminder: Refunds of Sales Tax on Rental TPP

- Limited refund opportunity!
- Requirements
  - SUT paid on item of TPP purchased on or after 1/1/2023 and before 1/1/2025
  - That item must be part of taxable rental transaction on or after 1/1/2025 and lessor must actually collect and remit tax
  - Refund is limited to amount of tax collected and remitted by lessor from rental or rental of that item between 1/1/2025 and 12/31/2026
- Refund claim must be filed between 1/1/2027 and 3/31/2027
- Planning point: identify qualifying pre-2025 purchases before year-end 2026 so the refund can be substantiated and claimed in early 2027

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Current Litigation Update

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Questions?

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