Federal Coronavirus Legislation: Maine Tax Conformity and Implications

Families First Coronavirus Response Act, Pub. L. No. 116-127
Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136

Maine's income tax system is fundamentally linked to the United States Internal Revenue Code (IRC or the Code) and other federal tax law as specified in Title 36 of the Maine Revised Statutes. Maine tax provisions are linked to the Code as of a specific date in order to avoid the prohibition in the Maine Constitution against the delegation of the Legislature's taxing power. The current conformity date is December 31, 2019 (See 36 M.R.S. Section 111(1-A)). Each year, therefore, the Legislature must review federal tax law changes and adopt them in state tax law to the extent that Maine will conform to federal tax changes.

In addition to those amendments that must be reviewed annually, and which require an affirmative act of the Legislature to make part of Maine law, the Legislature has also enacted a limited number of provisions where the State automatically conforms to amendments without the need for additional legislation. This so called "rolling conformity" is the exception and limited by the Maine Constitution's prohibition that the Legislature not "surrender the power of taxation."

The current conformity date of December 31, 2019 was adopted by the supplemental budget for the fiscal years ending June 30, 2020 and June 30, 2021. Since December 31, 2019 the Federal Government has enacted two coronavirus relief laws that contain federal tax provisions with immediate Maine income tax implications.

Conformity Revenue Estimate Summary

	Tax Year	FY 2021	FY 2022	FY 2023
Conformity				
Credits for paid sick and family leave • Denial of double benefit	2019 and 2020	*		
Forgiveness of paycheck protection program loans • Potential denial of double benefit	2019 and 2020	*		
Qualified retirement accounts	2020 and later	-$1,800,000	-$300,000	$0
Charitable contribution above-the-line deduction	2020	-$2,750,000	$0	$0
Charitable contribution limits	2019 and 2020	-$465,000	-$230,000	$71,000
Exclusion of employer student loan payments		-$800,000	$0	$0
Employee retentions credit • Denial of double benefit	2019 and 2020	*		
Net operating losses	2018-2020**	*		
Modify limit on non-corporate losses	2018-2020**	-$20,500,000	-$500,000	-$500,000
Interest deduction cap to 50% of income	2019-2020**	-$8,000,000	-$1,250,000	-$420,000
Qualified improvement property	2018 and later	-$2,000,000	-$700,000	-$700,000
Telehealth and HSAs	2020 and 2021	*		
Expansion of HSA/FSA qualified expenses	2020 and later	-$420,000	-$645,000	-$730,000

Revenue forecasting***				
Suspend RMDs		-$16,750,000	$1,300,000	$1,400,000
Single-employer plan delay in contribution		$3,400,000	-$265,000	-$300,000
*Revenue estimate under review.				
**These items will have an ongoing impact because they can be carried forward to future years.				
***Part of the FY 21 impact for these provisions may occur in FY 20 instead.				

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Section 7001 (Payroll Credit for Required Paid Sick Leave)
Section 7002 (Credit for Sick Leave for Certain Self-Employed Individuals)
Section 7003 (Payroll Credit for Required Paid Family Leave)
Section 7004 (Credit for Family Leave for Certain Self-Employed Individuals)

Credits. Employers are allowed credits against the employer's share of Social Security and Medicare taxes imposed on employee wages, equal to 100 percent of the qualified paid sick leave wages paid by the employer during the calendar quarter and another credit equal to 100 percent of the qualified family leave wages paid by the employer during the calendar quarter. An eligible self-employed individual is allowed a refundable tax credit in circumstances in which they would have received qualified family leave or qualified paid sick leave under the act if they had been an employee of an employer.

Conformity impact: No conformity issue. Maine does not conform to new federal tax credits, instead the State allows Maine specific credits (some of which are linked to, or based on, federal credits).

Tax years impacted: NA.

Preliminary conformity estimate: NA.

No Double Benefit. To prevent a double benefit, employers are required to include in federal taxable income the amount of tax credits received and, under previously existing law, are allowed an offsetting wage deduction in the amount of the family leave or paid sick leave paid to their employees. Thus, the amounts "net out" for federal income tax purposes. The act also prevents employers from receiving credit if they are already allowed a credit under IRC section 45S for paid family and medical leave.

Conformity impact: If Maine does not conform, employers will be allowed a wage deduction but will not be required to include the amount of tax credit received in income. Thus, the employer will receive a deduction for State tax purposes for an expense that was fully reimbursed by the Federal Government. Maine allows a tax credit for family and medical leave benefits linked to the federal IRC section 45S credit. Our preliminary reading of the respective textual provisions is that Maine Revenue Services (MRS) would not allow a double benefit under this credit, whether or not Maine conforms.

Tax years impacted: 2019 and 2020.

Administrative results of nonconformity: Subtraction modification to offset federal inclusion in gross income.

Administrative burden of nonconformity: Moderate.

Preliminary conformity estimate: Under review.

Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136

Section 1106 (Forgiveness of Paycheck Protection Program Loans). The CARES Act includes the Paycheck Protection Program (PPP), which establishes a new category of Small Business Administration guaranteed loans for qualified small businesses. Under this section, PPP loans to eligible businesses will generally be forgiven. In addition, any amount of forgiven debt under this program that would otherwise be includible in taxable income as cancellation of debt income is excluded. The income exclusion is in Title 15 of the U.S. Code, rather than the IRC.

Conformity impact: If Maine does not conform, the amount of loans forgiven could be taxable as cancellation of debt income.

Tax years impacted: 2019 and 2020.

Administrative results of nonconformity: Addition modification to offset federal exclusion from gross income.

Administrative burden of nonconformity: Moderate.

Preliminary conformity estimate: Under review.

Section 2202 (Qualified Retirement Accounts). The income from early coronavirus-related distributions from qualified retirement accounts would be included in income over three years, and the taxpayer can recontribute funds to any qualified plan within three years without regard to that year's contribution cap. In addition, loans from qualified retirement accounts are expanded and repayment terms are relaxed.

Conformity impact: If Maine does not conform, early distributions would be included in Maine taxable income in the year of the distribution.

Tax years impacted: 2020 and after.

Administrative results of nonconformity: If not recontributed, addition modification of income excluded in year of distribution; subtraction modifications in 2nd & 3rd years for the income included in federal adjusted gross income. If recontributed, addition modification in 1st year & subtraction modifications in years of recontributions. This assumes that Maine would conform to the federal provisions allowing the recontribution because decoupling from that treatment would be unrealistically burdensome on taxpayers and the State.

Administrative burden of nonconformity: High (Extremely High if no conformity to the recontribution provisions).

Preliminary conformity estimate: $1.8 million revenue loss in FY 21 and $300,000 in FY 22.

Section 2203 (Temporary Waiver of RMD Rule for Certain Retirement Plans/Accounts).

The required minimum distribution (RMD) rules are waived for certain defined contribution plans and IRAs for calendar year 2020.

Conformity impact: Maine does not impose a penalty or other tax for failure to take an RMD. Therefore, there is no conformity issue associated with this change. However, the change will have a Maine revenue impact due to lost tax revenue on RMDs.

Tax years impacted: NA.

Preliminary revenue estimate: About $16 million revenue loss in FY 21 which will be taken into account in the next revenue forecast.

Section 2204 (Charitable Contributions). Up to $300 in charitable contributions made in 2020 would be tax deductible, above the line, if the contributor does not itemize.

Conformity impact: Unless Maine conforms, contributions would be deductible for Maine purposes only to the extent allowed as an itemized deduction.

Tax years impacted: 2020.

Administrative results of nonconformity: Addition modification to offset federal deduction.

Administrative burden of nonconformity: Moderate.

Preliminary conformity estimate: $2.75 million revenue loss.

Section 2205 (Contribution Limits). The deduction limitations for charitable contributions are increased for 2020 from 50% to 100% of federal adjusted gross income for individuals and from 10% to 25% of taxable income for corporations. The limitation of deductions for contributions of food inventory are increased from 15% to 25%.

Conformity impact: Unless Maine conforms, the current limits would remain in effect. However, changing the charitable contribution limit will have little impact on individuals because Maine has a separate limitation on itemized deductions.

Tax years impacted: 2019 and 2020.

Administrative results of nonconformity: Complex calculation of subtraction modification to reduce Maine itemized deductions.

Administrative burden of nonconformity: High.

Preliminary conformity estimate: For individual, negligible. For corporate, $465,000 revenue loss in FY 21, and revenue gain of $230,000 in FY 22 and $71,000 in FY 23.

Section 2206 (Employer Student Loan Payments). An employer may contribute up to $5,250 annually toward an employee's student loans, and such payment is excluded from the employee's income for payments made after the date of enactment and before January 1, 2021.

Conformity impact: Unless Maine conforms, such payments could be includable in the income of the employee for Maine purposes. However, the payments would be excluded under current State law if they are eligible for the Opportunity Maine credit.

Tax years impacted: 2020.

Administrative results of nonconformity: Addition modification for income excluded from employee income. (Note: Possible subtraction modification under existing Opportunity Maine credit law, Title 36 M.R.S. Section 5122(2)(FF).)

Administrative burden of nonconformity: Moderate.

Preliminary conformity estimate: $800,000 revenue loss in FY 21.

Section 2301 (Employee Retentions Credit). The CARES Act provides eligible employers with a refundable employment tax credit for each calendar quarter equal to 50 percent of qualified wages paid to employees during such quarter. Only wages paid after March 12, 2020, and before January 1, 2021, qualify for the credit. In order to avoid a double tax benefit, the CARES Act provides that the deduction for wages paid shall be reduced by the amount of the tax credits received and that the wages used for determining this credit may not also be used to claim the IRC section 45S credit for paid family and medical leave.

Conformity impact: There is no conformity impact for the credit itself. Maine does not conform to new federal tax credits, instead the State allows Maine specific credits (some of which are linked to, or based on, federal credits). However, the wage deduction disallowance does have a conformity impact. If Maine does not conform, employers will be allowed both the wage deduction and the tax credit for the same expense. Thus, the employer will receive a deduction for State tax purposes for an expense that was fully reimbursed by the Federal Government. Maine allows a tax credit for family and medical leave benefits linked to the federal IRC section 45S credit. Our preliminary reading of the respective textual provisions is that MRS would not allow a double benefit under this credit, whether or not Maine conforms.

Tax years impacted: 2019 and 2020.

Administrative results of nonconformity: Subtraction modification to offset the federal deduction limitation.

Administrative burden of nonconformity: Moderate.

Preliminary conformity estimate: Under review.

Section 2303 (Net Operating Losses). Net Operating Losses (NOLs) arising in a tax year beginning in 2018, 2019 or 2020 can be carried back five years. In addition, the NOL deduction limit (80% of taxable income) is removed so that NOL are fully deductible.

Conformity impact: Maine does not currently conform to these items as a result of existing income modifications. The Department bill, LD 2011 “Act to Update”, which was carried over in the House, would bring Maine into conformity with the existing federal NOL deduction limit but not the suspension of the limit or the allowance of NOL carrybacks. This proposal could be updated to bring Maine into conformity with both the limit and the temporary suspension of the limit.

Tax years impacted: 2018, 2019 and 2020, as well as a preceding and ongoing impact due to the carryback and carryforward of NOLs.

Administrative results of nonconformity: Maine does not currently conform to these items as a result of existing income modifications.

Administrative burden of nonconformity: Maine does not currently conform to these items as a result of existing income modifications.

Preliminary conformity estimate: Under review.

Section 2304 (Noncorporate Losses). The excess business loss limitation (for losses over $250,000 for individuals and $500,000 for married filing joint returns) applicable to noncorporate taxpayers is repealed for tax years 2018-20.

Conformity impact: Unless Maine conforms, loss limitations would continue to apply for Maine purposes.

Tax years impacted: 2018, 2019 and 2020, as well as an ongoing impact due to the carryforward of disallowed losses.

Administrative results of nonconformity: Complex calculations for addition & subtraction modifications and ongoing tracking.

Administrative burden of nonconformity: High.

Preliminary conformity estimate: Revenue loss of around $20.5 million in FY 21 and $500,000 in FY 22. This estimate is subject to significant uncertainty. The federal Joint Committee on Taxation estimates that the federal cost will be $140 billion over the first two years, which implies a risk that the Maine revenue loss could be significantly understated.

Section 2306 (Business Interest Limitation). The amount of interest expense businesses are allowed to deduct is increased from 30% to 50% of taxable income for 2019 and 2020.

Conformity impact: Unless Maine conforms, the lower interest deduction limitation would continue to apply for Maine purposes.

Tax years impacted: 2019 and 2020, as well as an ongoing impact due to the carryforward of disallowed interest.

Administrative results of nonconformity: Complex calculations for addition & subtraction modifications and ongoing tracking.

Administrative burden of nonconformity: Extremely High.

Preliminary conformity estimate: Revenue loss of $8 million in FY 21, $1.25 million in FY 22, and $.42 in FY 23.

Section 2307 (Qualified Improvement Property). Qualified improvement property will be depreciable over 15 years rather than 39 years, qualifying it for bonus depreciation. Affected businesses may amend prior year returns.

Conformity impact: Unless Maine conforms, qualified improvement property would continue to be depreciated over 39 years for Maine purposes. There would be no impact relative to bonus depreciation as Maine does not currently conform to the bonus deduction as a result of existing income modifications. However, there would be an impact on the Maine Capital Investment Credit which is linked to federal bonus depreciation.

Tax years impacted: 2018 and later.

Administrative results of nonconformity: Complex calculations for addition & subtraction modifications; tracking each qualified property for 40 years.

Administrative burden of nonconformity: Extremely High.

Preliminary conformity estimate: Revenue loss of $2 million in FY 21 and $700,000 ongoing.

Section 3608 (Delay in Payment of Minimum Required Contribution). The CARES Act gives sponsors of single-employer defined benefit pension plans additional time to make minimum funding contributions that were due in 2020. The CARES Act also allows plan sponsors to use their 2019 adjusted funding target attainment percentage to determine whether their plans are subject to benefit reductions for any plan years that take place during the calendar year 2020.

Conformity impact: No conformity impact, however there is a State revenue impact.

Tax years impacted: NA.

Preliminary revenue estimate: About $3.4 million revenue gain in FY 21, then revenue loss of $265,000 in FY 22 and $300,000 in FY 23 which will be taken into account in the next revenue forecast.

Section 3701 (Telehealth and HSAs). High deductible health plans may provide telehealth and remote care services without a deductible for such services during 2020 and 2021, without disqualifying a member of the plan from making contributions to a health savings account (HSA).

Conformity impact: Under review.

Tax years impacted: 2020 and 2021.

Administrative results of nonconformity: Under review.

Administrative burden of nonconformity: Under review.

Preliminary conformity estimate: Negligible or zero; our baseline did not assume an increase in HSA owners without an eligible high deductible plan, so this safe harbor gets us back to baseline assumptions.

Section 3702 (Tax-free Reimbursement of Feminine Hygiene Products). The cost of feminine hygiene products may be covered/reimbursed by HSA, health reimbursement arrangements, health flexible spending accounts (FSA) and Archer medical savings accounts.

Conformity impact: Under review.

Tax years impacted: 2020 and later.

Administrative results of nonconformity: Addition modification for amounts excluded from federal gross income.

Administrative burden of nonconformity: Moderate.

Preliminary conformity estimate: Revenue loss of $420,000 in FY 21, $645,000 in FY 22, $730,000 in FY 23.