Federal Coronavirus Legislation: Maine Tax Conformity and Implications July Update and Legislative Proposal

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

Recap: Income Tax Conformity

This memo follows up on the May 7th Office of Tax Policy report, "Federal Coronavirus Legislation: Maine Tax Conformity and Implications," regarding recent federal COVID-19 legislation impacting Maine income tax conformity. In that report, we discussed that under current law in Title 36 Maine's income tax law is linked to the U.S. Internal Revenue Code ("IRC") as of December 31, 2019; and that the tax provisions in recent 2020 federal COVID-19 legislation (Families First Act and the CARES Act) affects tax years 2018, 2019, 2020 and later.

Tax Year 2019 and 7/15/2020 Filing Date: MRS Non-Conformity Guidance

Because taxpayers will be filing their federal TY 2019 returns using the 2020 Families First and CARES Act changes to the IRC, Maine Revenue Services ("MRS") has notified taxpayers and practitioners and released updated guidance for taxpayers on how to make calculation adjustments in order to properly file their Maine 2019 returns based on current Maine law.

IRC Conformity Legislation: Tax Years 2018, 2019, 2020 and Later

In broad brush, we are proposing the following:

- For tax years 2018 and 2019, not conforming to any of the significant retroactive federal changes to the Code except for the federal treatment of Paycheck Protection Program loan forgiveness, QIP depreciation, increase in the individual charitable contribution limit, and the no-double benefit tax treatment items.
- For tax years 2020 (and later, as applicable), we are proposing conformity for all items except for the limits on non-corporate business losses and interest deduction.

The following chart lists the major tax provisions at issue, applicable tax year, estimated revenue impact for conforming to the federal provision, and our legislative proposal. Note that "conformity" entails simple date change in Title 36 for definition of "Code" and an application provision for the applicable tax year. "Nonconformity" to the federal change entails legislative amendment to Title 36 for a specified modification and corresponding application date.

Conformity Revenue Estimate By Item

		Tax Year(s) Affected	PROPOSAL FOR T36 CONFORMITY TO SELECTED ITEM: Yes/No	FY 2021	FY 2022	FY 2023
	Title 36/IRC Conformity Major Items					
1	Modify limit on non-corporate 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.	2018-2020**	No.	$0	$0	$0
2	Increase interest deduction cap to 50% of income The amount of interest expense that businesses can deduct is increased from 30% to 50% of adjusted taxable income for 2019 and 2020.	2019 and 2020**	No.	$0	$0	$0
3	Qualified improvement property “Technical” correction to federal TCJA error – qualified improvement property will be depreciable over 15 years rather than 39 years, qualifying it for bonus depreciation.	2018 and later	Yes; but not eligible for the MCIC prior to 2020.	-$1,300,000	-$2,300,000	-$3,300,000
4	Charitable contribution limits The deduction limitations for charitable contributions are increased for 2020. Changing the charitable contribution limit will have little impact on individuals because Maine has a separate limitation on itemized deductions.	2019 and 2020	Only for individuals in 2019. Yes for 2020.	-$300,000	$230,000	$71,000
5	Net operating losses (NOLs) 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 suspended so that NOL carryforwards are fully deductible.	2018-2020**	Only as to the NOL limit. 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.	$0	$0	$0

6	Credits for paid sick and family leave • Denial of double benefit	2019 and 2020	Yes.	Modest revenue loss	Modest revenue loss	
7	Forgiveness of paycheck protection program loans • Potential denial of double benefit	2019 and 2020	Yes.	Small revenue gain	Small revenue gain	
8	Employee retentions credit • Denial of double benefit	2019 and 2020	Yes.	Modest revenue loss	Modest revenue loss	
9	Charitable contribution above-the-line deduction Up to $300 in charitable contributions made in 2020 would be tax deductible, above the line, if the contributor does not itemize.	2020	Yes.	-$2,750,000	$0	$0
10	Qualified retirement accounts Various changes regarding early distributions, recontributions, and loans.	2020 and later	Yes; decoupling would be very complicated.	-$1,800,000	-$300,000	$0
11	Exclusion of 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.	2020	Yes.	-$800,000	$0	$0
12	Expansion of HSA/FSA qualified expenses	2020 and later	Yes; decoupling would be very complicated.	-$420,000	-$645,000	-$730,000
13	Expansion of Telehealth and HSAs	2020 and 2021	Yes; decoupling would be very complicated.	$0	$0	$0
	TOTAL			**-$7,370,000**	**-$3,015,000**	**-$4,101,000**