

General Instructions

Purpose of Form: 36 M.R.S. § 5250-A requires a buyer to withhold state income tax when real property located in Maine is acquired from a nonresident of Maine. The buyer must withhold and remit to the state tax assessor 2.5% of the consideration received by the transferor (seller) on the transfer. A completed Form REW-1-1120 (for sellers that are corporations), Form REW-1-1040 (for sellers who are individuals or sole proprietors), and/or Form REW-1-1041 (for sellers that are estates or trusts) must accompany the remittance.

Be sure to complete the appropriate REW-1 form for each seller:

- REW-1-1040 - For sellers who will report this sale on Form 1040ME, the Maine individual income tax return. (Individuals, sole proprietors, grantor or revocable trusts, individual members of pass-through entities);
- REW-1-1041- For sellers who will report this sale on Form 1041ME, the Maine fiduciary income tax return. (estates, trusts); or
- REW-1-1120 - For sellers who will report this sale on Form 1120ME, the Maine corporate income tax return. (C corporations, other entities taxable at the corporate level).

Important note (multiple sellers): If there are multiple sellers, you **must** complete a separate REW-1 form for each seller receiving proceeds from the sale. For example, if the seller is a partnership, complete a separate REW-1 form for each partner receiving proceeds from the disposition.

Exceptions: The buyer is not required to withhold or file this return if any of the following applies:

- a. The seller furnishes to the buyer written certification stating, under penalty of perjury, that as of the date of transfer the seller is a resident of Maine, as defined in 36 M.R.S. § 5250-A;
- b. The seller or the buyer has received from the state tax assessor a certificate of waiver stating that no tax is due on the gain from the transfer or that the seller has provided adequate security to cover the liability;
- c. The consideration for the property is less than \$100,000;
- d. Written notification of the withholding requirements has not been provided to the buyer. The real estate escrow person is liable for the withholding tax unless it is shown

that the failure to notify is due to reasonable cause;

- 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 Internal Revenue Code, § 501(a), an insurance company exempt from Maine income taxes or a subsidiary of an insurance company described in 24-A M.R.S., § 1157 (5)(B)(1) that is exempt from Maine income taxes; or,
- f. The property is being transferred via a foreclosure sale. Foreclosure sale means a sale of real property incident to a foreclosure and includes a mortgagee's sale of real estate owned property of which the mortgagee, or third-party entity, retained or took ownership as the result of an unsuccessful attempt to sell the property at the time of a previous foreclosure auction.

Withholding Certificate Issued by the State Tax Assessor:

A withholding certificate may be issued by the state tax assessor to reduce or eliminate withholding on transfers of Maine real property interests by nonresidents. The certificate may be issued if:

1. No tax is due on the gain from the transfer; or,
2. Reduced withholding is appropriate because the 2.5% amount exceeds the seller's maximum tax liability.

If one of the above is applicable, apply for the certificate no later than five business days prior to closing.

When to File: A buyer must report and remit the tax withheld to Maine Revenue Services with this form within 30 days of the date of transfer of the property. Any claim for refund of an overpayment of this withholding must be filed within three years from the time the return was filed or three years from the time the tax was paid, whichever expires later.

Where to File: Send Form REW-1-1120 with payment directly to: Maine Revenue Services, Income/Estate Tax Division - REW, P.O. Box 9101, Augusta, ME 04332-9101 (do not send payment or Form REW-1-1120 with the real estate transfer tax declaration). Provide one copy of Form REW-1-1120 to the real estate escrow person, one copy to the buyer, and two copies to the seller.

Seller's Filing Requirement. Generally, a seller that is a taxable corporation under Maine law and a nonresident individual owner of an S corporation selling Maine property are required to file a Maine income tax return for the taxable year during which the sale of the Maine property occurred. In the case of a nonresident individual owner of an S corporation, a Maine income tax return is not required to be filed if the individual's ownership share of the capital gain from the sale, combined with other Maine-source taxable income, does not result in a Maine income tax liability. However, a Maine tax return must be filed to get a refund of any real estate withholding amount in excess of the Maine income tax liability. The seller must attach a copy of the REW-1 form to the Maine income tax return to ensure proper credit for real estate withholding paid. For more information on the Maine filing requirements for nonresident individuals, see Maine Rule 806 and the instructions for Form 1040ME and Schedule NR or NRH at www.maine.gov/revenue.

Specific Instructions

Important note: If there are multiple sellers, you **must** complete a separate Form REW-1 for each seller receiving proceeds from the sale.

- Block 1.** Check the appropriate box to indicate the type of seller.
- Block 2.** Enter the selling entity's name.
- Block 3.** Enter the federal ID number of the selling entity.
- Block 4.** Enter the current mailing address of the selling entity. Do not list the address of the transferred property.
- Block 5.** Enter the date of this transfer.
- Block 6.** Enter the total consideration (see 36 M.R.S. § 5250-A(1)(A) for definition).
- Block 7.** Enter the percentage of total proceeds received by this seller.
- Block 8.** Enter the location of the property, including map, block, lot, and sub-lot numbers, as well as town and street address. Also enter what the property was used for before the transfer. For example, principal residence, vacation home, rental property, commercial, or vacant land.
- Block 9.** Enter the date the property was acquired by the seller.
- Block 10.** Check the appropriate space to indicate the rate of withholding. If the parties obtained a withholding certificate from the state tax assessor authorizing a reduced rate of withholding, enter the certificate number and attach a copy of the certificate to this return.
- Block 11.** Enter the dollar amount withheld for the seller in block 2.
- Block 12.** Enter the name of the withholding agent (buyer).
- Block 13.** Enter the address of the withholding agent (buyer).
- Block 14.** Enter the social security number or federal ID number of the withholding agent (buyer).