



January 17, 2025

Alex Weber, General Counsel
Maine Revenue Services
P.O. Box 1060
Augusta, ME 04332-1060

RE: SIFMA Comments on Proposed Amendments to Rule 801

Dear Mr. Weber:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ and its Asset Management Group (“SIFMA AMG”)² appreciate the opportunity to provide comments on your proposal regarding sourcing of receipts from services under the Maine apportionment sales factor and respectfully request a public hearing on the proposed amendments to this rule.

These rule amendments would, among other changes, modify the sourcing of receipts from sales of services for sales factor purposes. SIFMA and SIFMA AMG are concerned with the proposed amendments to Rule 801. Specifically, (1) provisions relating to apportionment of service receipts for sales factor purposes; (2) that the rule would be applied retroactively to 2010, and (3) that there are new substantive tax policy changes that should be addressed by the legislature.

The proposed approach to sourcing of services receipts is unclear and inconsistent

Maine’s apportionment statute states, “receipts from the performance of services must be attributed to the state where the services are received.”³ The statute provides additional language related to apportionment, looking to the place of a customer’s trade or business and billing address when the location of service receipt is not readily identifiable.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. For more information, visit <http://www.sifma.org>.

² SIFMA’s Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <http://www.sifma.org/amg>.

³ Me. Rev. Stat. Ann. tit. 36 § 5211(16-A)

States generally adopt two market-based approaches to sourcing receipts from services— “place of delivery” sourcing and “benefit received” sourcing, which in many situations can be different locations. In adopting their sourcing statutes, states typically define which of these approaches they use to avoid confusion. For instance, Massachusetts⁴ adopts a place of delivery sourcing regime, while other jurisdictions expressly adopt benefit received regimes. With each state’s approach, the respective legislature and tax agency frequently adopt detailed provisions addressing nuances of applying the chosen policy approach to services sourcing.

Maine’s proposed rule amendment would be inconsistent with the statute because it would implement both approaches to sourcing services, whereas the statute requires place of delivery sourcing. The statute requires that “receipts from the performance of services must be attributed to the state where the services are received,” and when that location is not easily determined additional provisions look to the place of a customer’s trade or business (*i.e.*, place of delivery sourcing).⁵

As currently drafted, the proposed rule uses the terms “acquired” and “experienced” to define where a service is received. Since those terms are not synonymous, they appear to contradict one another in the proposed rule as well as serve to contradict the statute. For example, the use of the term “acquired” indicates that a taxpayer should look to the location where a service is delivered to a customer—the place of delivery method—while use of the term “experienced” appears to look to where a customer benefits from a purchased service—the benefit received method. By requiring sourcing at the location to where the service is “acquired or experienced,” the proposed regulation could look to both the location where the benefit of a service is received as well as the location where a service is delivered. This opens the possibility of applying different sourcing rules for similarly situated taxpayers and renders the proposed rule internally inconsistent.

This lack of clarity and consistency is reflected in the examples in the proposed rule. As discussed above, the proposed amendments would define “received” as “acquired or experienced.” However, all the examples are nearly identical examples contained in the Massachusetts apportionment regulation⁶ and Multistate Tax Commission (“MTC”) model⁷ apportionment sourcing regulation. The examples, however, do not contain any explanation of the proposed “acquired or experienced” standard. The examples fail to distinguish that both Massachusetts and the MTC model regulations source receipts from the sale of services to where they are delivered. This is inconsistent with the proposed language to the extent it would source services to where they are “experienced.”

SIFMA and SIFMA AMG are concerned that the proposed rule would create uncertainty on the correct approach to comply with Maine’s tax laws, and, because the rule appears to apply both the delivery and benefits received methods simultaneously, may allow the Department to apply either approach dependent upon which method is most favorable to the state.

⁴ See, 63 Mass. G.L. § 38(f)(3).

⁵ Me. Rev. Stat. Ann. tit. 36 § 5211(16-A)

⁶ 830 CMR 63.38.1(9)(d)4.c.ii(A)3

⁷ See, Multistate Tax Commission, “Model General Allocation & Apportionment Regulations as of July 25, 2018,” Reg. IV.17(d)(4)(C)5, available at <https://www.mtc.gov/wp-content/uploads/MTCImages&Files/MTC/media/AUR/FINAL-APPROVED-2018-Proposed-Amendments-042020.pdf>.

Substantive tax policy changes in policy should be prospective only

We respectfully oppose the retroactive application of any rule change and submit that any change should be applied only prospectively.

The proposed changes to Rule 801 include a statement that they would apply retroactively to calendar year 2010, potentially applying to tax periods starting on or after January 1, 2010. As discussed above, the proposed changes to Rule 801 are substantive policy changes that would impact taxpayer tax determinations; they are not a technical clarification of existing law. A lengthy period of retroactivity with a substantive change and shifting tax policy approach undermines taxpayer reliance on the certainty of settled law. As reflected in the state's tax statute of limitations of 3 to 6 years for assessments and refunds,⁸ taxpayers should be afforded the certainty of settled law in positions taken based on the law and regulations in prior years.

Mutual fund service provider services sourcing should align with recent rulings

We respectfully request that Rule 801 clarify that receipts from providing mutual fund services to a Registered Investment Company ("RIC") not be sourced to the RIC shareholders (*i.e.*, shareholder sourcing). Rather, such services should be sourced to the location of the RIC in consistent with recent decisions issued by the Maine Board of Tax Appeals. We urge that any attempt to adopt express statutory provisions for services provided to RICs be done by the Maine legislature as the legislatures in other states have done.

The proposed amendments would create confusion as they deviate from statute

The proposed regulation is a substantive change to the law that deviates from the statute, as noted above. These changes would introduce a unique tax framework that would create substantial uncertainty and place unnecessary burdens on the resources of the Department and taxpayers. By implementing a regulation that would require a taxpayer to use two different sourcing methods simultaneously will likely lead to taxpayers being forced to choose one method – or to try and implement both sourcing methods on a case-by-case basis – which will create significant bookkeeping issues, as well as create significant inefficiencies on audit. Amending the proposed regulations to more closely align with existing statute would address this issue.

Conclusion

In summary, the suggested modifications to Rule 801 seem to be internally inconsistent and misaligned with the underlying statute. The amendments introduce a substantive tax policy change that deviates from the statute, and we urge you to ensure that the proposed rule is prospective.

⁸ Me. Rev. Stat. Ann. tit. 36, §§ 141-144

We are grateful for the opportunity to offer our feedback on the proposed rule changes. We respectfully request Maine Revenue Services to conduct a public hearing on the proposed amendments to Rule 801.

Please do not hesitate to contact Stephanie Klarer at 212-313-1211 or sklarer@sifma.org or Lindsey Keljo at 202-962-7312 or lkeljo@sifma.org with any questions or comments.

Sincerely,

/s/

Stephanie I. Klarer
Assistant Vice President
State Government Affairs
SIFMA

A handwritten signature in blue ink that reads "LKeljo". The signature is written in a cursive, flowing style.

Lindsey Weber Keljo, Esq.
Head
Asset Management Group
SIFMA