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This Week in State Tax (TWIST)



November 23, 2026

Maine: Trial court rejects look-through sourcing for certain investment advisory services

A Maine trial court recently held that investment advisory and management services provided to mutual funds were received by the funds outside Maine, rather than by the funds' Maine shareholders. The taxpayer provided investment advisory and management services to mutual funds organized in Delaware or Massachusetts with principal places of business in Massachusetts. The taxpayer filed Maine combined income tax returns for tax years 2018 - 2020 on the basis that none of the receipts from services provided to mutual funds were sourced to Maine. On audit, Maine Revenue Services (MRS) determined that a portion of the services was received in Maine based on the location of the funds' shareholders and increased the taxpayer's Maine tax liability. For the 2018 and 2019 tax years, the Maine Board of Tax Appeals canceled the portion of the assessment that sourced receipts from the mutual fund services based on shareholder location, and the State Tax Assessor sought *de novo* review in Superior Court. The taxpayer separately appealed the MRS assessment for the 2020 tax year, and the two matters were consolidated and transferred to the Business and Consumer Court.

Under Maine law, receipts from services are generally attributed to the state where the services are received. In 2023, the Maine Supreme Judicial Court in its *Express Scripts* decision held that pharmacy benefits manager services should be treated as received by individual plan members in Maine who directly received the services at Maine pharmacies. Here, MRS argued that *Express Scripts* should be extended to cover the management and advisory services. The court, however, distinguished between the pharmacy benefits management services in *Express Scripts* and the investment services at issue here on the basis that the advisers managed assets owned by the funds, owed fiduciary duties to the funds, and did not provide investment advice to individual shareholders. Although Maine shareholders benefited indirectly from the advisory services through their interests in the funds and changes in the net asset value of the funds, the court concluded that these benefits were too attenuated to establish that the shareholders received the services. The court likewise held that management services, including preparing shareholder reports and other communications on behalf of the funds, were received by the funds. Because the funds received the investment advisory and management services outside Maine, the related receipts were not attributable to Maine.

The court reached different conclusions regarding transfer agent and general distribution services. Shareholder-facing transfer agent services provided directly to Maine shareholders who held fund shares through Fidelity brokerage accounts could be sourced to Maine, while services associated with Maine residents holding shares through third-party intermediaries were not received in Maine. The court also declined to disturb the sourcing of general distribution services to Maine because the taxpayer had not met its burden of establishing, on the limited record presented, that those services were not received in Maine.

Contact Melissa DelleMonache with questions about *State Tax Assessor v. FMR LLC*.

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