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# A Reference Guide to the Sales and Tax Law 2016

Maine Revenue Services

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# **MAINE REVENUE SERVICE SALES, FUEL & SPECIAL TAX DIVISION**



## **A REFERENCE GUIDE TO THE SALES AND USE TAX LAW**

**Prepared by  
Peter B. Beaulieu, Director**

**October 2015  
18<sup>th</sup> Edition**

The information contained in this booklet is intended solely as advice to assist persons in determining, and complying with their obligations under Maine tax law. It is written in a less formal style and is aimed to address issues commonly faced by businesses. It is not intended to be all inclusive. References in this guide to “MRS” mean Maine Revenue Services.

Taxpayers are responsible for complying with all applicable tax statutes and rules, relevant portions of which are set forth throughout this booklet. Although MRS guidance documents do not have the same legal force and effect as rules, justifiable reliance upon the guidance documents will be considered in mitigation of any penalties for any underpayment of tax due.

Requests for information on specific situations are encouraged. They should be in writing, contain full information as to the transaction in question and be directed to:

**MAINE REVENUE SERVICE  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, MAINE 04332-1060  
TEL: (207) 624-9693**

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## Summary of Major Changes from 17<sup>th</sup> Edition

Added to grid:

January 1, 2016	9% on rentals of living quarters; service provider tax increases to 6%	Basic cable and satellite television service; satellite radio service; residential interstate and international telecommunications service.
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## SALES, USE & SERVICE PROVIDER TAX HISTORY

On May 3, 1951, the Governor of the State of Maine approved legislation imposing a sales and use tax at the rate of 2% on retail sales to be effective beginning July 1, 1951. The legislature also provided approximately 22 exemptions and exclusions.

Since 1951 many new exemptions and exclusions have been enacted. In total there are well over 100 different sales tax exemptions in addition to the items and services that are excluded from the tax base.

The chart at the end of this Overview section summarizes the tax rate and major changes in the tax base over the years.

### SALES TAX

To summarize the sales tax law, one sentence can be quoted from the statute:

*A tax is imposed on the value of all tangible personal property, products transferred electronically and taxable services sold at retail in this State.*  
**§ 1811**

This statement says it all, provided one has a basic understanding of the terms used. The Law contains many definitions to clarify the meanings of various terms found within the statute. The most important of these definitions are "tangible personal property", "product transferred electronically", "taxable services", "sale", and "retail sale".

### TANGIBLE PERSONAL PROPERTY

"Tangible personal property" is defined as follows:

*...personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program. "Tangible personal property" includes any product transferred electronically. § 1752(17)*

*"Custom computer software program" means any computer software that is written or prepared exclusively for a particular customer. "Custom computer software program" does not include a "canned" or prewritten program that is held or exists for a general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. An existing prewritten program that has been modified to meet a particular customer's needs is a "custom computer software program" to the extent of the modification, and to the extent that the amount charged for the modification is separately stated. § 1752(1-E)*



Thus, sales and use tax applies to anything that can be seen, felt and touched. This is easy to visualize in the case of vehicles, appliances, tables and chairs, our clothes, etc. The gray area begins with tangible products that are generated as a result of a service being performed for the purchaser, for instance, blueprints by a surveyor, financial statements by an accountant, a will drawn up by a lawyer, etc. A discussion in the area of services is provided later in this guide.

### **PRODUCTS TRANSFERRED ELECTRONICALLY**

"Product transferred electronically" is defined as follows:

***"Product transferred electronically" means a digital product transferred to the purchaser electronically the sale of which in nondigital physical form would be subject to tax under this Part as a sale of tangible personal property.***  
**§ 1752(9-E)**

The sale of a digital product is subject to the general rate of tax if the nondigital physical form would be subject to sales tax. For instance, the sale of digital music, books, magazines, newspapers, and movies are taxable since the sale of a CD, paper-bound book, and DVD are taxable.

***A product transferred electronically is sold in this State if: the product is delivered electronically to a purchaser located in this State, the product is received by the purchaser at the seller's location in this State, a Maine billing address is provided by the purchaser in connection with the transaction or a Maine billing address is indicated in the seller's business records.***  
**§ 1811, last ¶**

The sale of a digital copy of a publication is taxable provided the publication is downloadable to the subscriber's electronic device. If the subscriber is allowed only to access and view an online version of the publication and the digital copy may not be downloaded, the subscription is not taxable.

When the location where the digital publication is being downloaded is unknown, the subscriber's billing address determines whether the sale occurs in Maine or not. If the billing address is in Maine, the subscription is treated as taxable.

### **TAXABLE SERVICES**

Sales of services in general are not taxable. However, certain services are specifically subject to sales tax as follows:

- ***Rental of living quarters in any hotel, rooming house, or tourist or trailer camp;***
- ***Rental or lease of an automobile;***
- ***Rental or lease of a camper trailer or a motor home;***
- ***Rental or lease of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds from a person primarily engaged in the business of renting automobiles;***

- *Transmission and distribution of electricity;*
- *Extended service contract on an automobile or truck; and*
- *Prepaid calling service.*  
§ 1752(17-B)

Other services that are subject to a service provider tax rather than a sales tax include:

- *Telecommunications service;*
- *Installation, maintenance or repair of telecommunications equipment;*
- *Ancillary services (this term is related to telecommunications services);*
- *Extended cable and extended satellite television service;*
- *(Effective January 1, 2016, this service will read “Cable and satellite television or radio services.”)*
- *Fabrication services;*
- *Rental of video media and video equipment;*
- *Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105.*  
§ 2552

Once again definitions in the statute play an important role in clarifying these terms which are discussed in the “Taxable Services” and the “Service Provider Tax” sections of this guide.

## SALE

A sale is defined as:

*...any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase. § 1752(13)*

In order for a sale to occur, two things must happen. An item or service must be transferred to another party and that party must pay for it somehow. The most common type of sale occurs by selling property in exchange for cash. However, two people could agree to exchange property without any further cash payment or a person could agree to transfer property in exchange for services rendered. In either case a sale still exists.

### **Installment and layaway sales**

Sometimes a sale occurs but the purchaser has the transaction financed. For instance a person may obtain a loan from a bank to purchase an automobile or the person presents a charge card to pay for the purchase. These transactions are sales and are reported as a sale in the month in which the transaction occurs. If the seller of the goods offers its customers the ability to pay over time, the sale is reported in the month in which the goods are transferred to the customer. For instance, on June 20th a hardware store customer purchases a new circular saw, charges the amount to their “store account” and walks away with the saw. The sale is recorded in June. With regards to layaway sales, however, the customer is paying over time but does not receive the

goods until the entire transaction has been paid in full. Layaway payments should be considered as “deposits” with the sale occurring in the month in which the final payment is made and the goods are transferred to the customer. For instance, on September 10<sup>th</sup> a customer places on layaway 5 items to be used as Christmas gifts totaling \$200.00 plus \$11.00 tax, and makes ten weekly payments of \$21.10. On November 18<sup>th</sup> a final payment is received and the goods are transferred to the customer. The sale is booked in November.

### RETAIL SALE

Retail sale means:

*...any sale of tangible personal property or a taxable service in the ordinary course of business. § 1752 (11)*

Thus the sale of a refrigerator in an appliance store is a retail sale and subject to tax since the refrigerator is tangible personal property and the sale is in the ordinary business of the appliance store. The same applies to taxable services such as the rental of a DVD in a video store. However, if the appliance store was to sell their office desk, the desk is tangible but not an item they ordinarily sell in their store. The sale of the desk is not a retail sale but rather a casual sale.

The definition of "retail sale" continues to specifically state situations included in the term as follows:

*(1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later;*

*(2) Sale of products for internal human consumption to a person for resale through vending machines when sold to a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines. The tax must be paid by the retailer to the State;*

*(3) A sale in the ordinary course of business by a retailer to a purchaser who is not engaged in selling that kind of tangible personal property or taxable service in the ordinary course of repeated and successive transactions of like character; and*

*(4) The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease or rental in the ordinary course of business, except when:*

*(a) The sale is to an affiliated entity and the transferee, or ultimate transferee in a series of transactions among affiliated entities, purchases the assets for resale, lease or rental in the ordinary course of business; or*

*(b) The sale is to a person that purchases the assets for resale, lease or rental in the ordinary course of business or that purchases the assets*

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*for transfer to an affiliate, directly or through a series of transactions among affiliated entities, for resale, lease or rental by the affiliate in the ordinary course of business.*

*For purposes of this subparagraph, “affiliate” or “affiliated” includes both direct and indirect affiliates.*

In the first inclusion, a transaction that is financed is a retail sale even though the title to the property does not pass to the purchaser until a later date. In the second inclusion, sales to a person primarily engaged in making vending machine sales of food products are retail sales. In the third inclusion, the sale by a retailer to a person of property that that person does not ordinarily sell is a retail sale. And in the fourth inclusion, the sale of goods that a business had purchased for resale is a retail sale even when sold as part of a sale or liquidation of the business. In all cases, tax applies to the sale unless it is otherwise exempt.

The definition of "retail sale" excludes the following:

*(1) Any casual sale;*

*(2) Any sale by a personal representative in the settlement of an estate unless the sale is made through a retailer or the sale is made in the continuation or operation of a business;*

*(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented for a period of less than one year. For the purposes of this subparagraph, “automobile” includes a pickup truck or van with a gross vehicle weight of less than 26,000 pounds;*

*(4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;*

*(5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more;*

*(6) The sale, to a person engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services;*

*(7) The sale, to a person engaged in the business of renting furniture or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;*

*(8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant to Title 29-A, section 953;*

*(9) The sale of automobile repair parts used in the performance of repair services on an automobile pursuant to an extended service contract sold on or after September 20, 2007 that entitles the purchaser to specific benefits in the service of the automobile for a specific duration;*

*(10) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of tangible personal property for resale in the form of tangible personal property, except resale as a casual sale;*

*(11) The sale, to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of a taxable service for resale, except resale as a casual sale;*

*(12) The sale, to a retailer that is not required to register under section 1754-B, of tangible personal property for resale outside the State in the form of tangible personal property, except resale as a casual sale;*

*(13) The sale, to a retailer that is not required to register under section 1754-B, of a taxable service for resale outside the State, except resale as a casual sale;*

*(14) The sale of repair parts used in the performance of repair services on telecommunications equipment as defined in section 2551, subsection 19 pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the telecommunications equipment for a specific duration;*

*(15) The sale of positive airway pressure equipment and supplies for rental for personal use to a person engaged in the business of renting positive airway pressure equipment;*

*(16) The sale, to a person engaged in the business of renting or leasing motor homes, as defined in Title 29-A, section 101, subsection 40, or camper trailers, of motor homes or camper trailers for rental; or*

*(17) The sale of truck repair parts used in the performance of repair services on a truck pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the truck for a specific duration.*

These exclusions have the effect of an exemption, since if they are excluded from the definition of retail sale, they are not subject to tax. For instance:

- The sale of a person's television to a neighbor is a casual sale and is not subject to tax; (There are certain casual sales, discussed below, that are specifically taxed in the law.)
- The sale of items in an estate if sold by a personal representative who is not engaged in business is not taxable;
- Subsections 3 through 9 and 14, 16 and 17 provide exclusions for items associated with taxable transactions, such as auto rentals, video rentals, etc. (This was enacted to avoid paying tax on the purchase of the item as well as collecting tax on the rentals.)
- Subsection 15 provides an exclusion for items associated with the exemption for leasing positive airway pressure equipment.

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- Subsections 10 through 13 provide exclusions for goods and services purchased for resale by registered retailers and non-resident retailers. Note that these exclusions do not apply if the resale of the item will be at casual sale. For instance if an individual purchases a refrigerator, the individual is not in the business of making sales of tangible personal property and cannot escape paying tax by claiming the refrigerator will be resold to a friend, even if that resale does in fact occur. With regards to the purchase of tangible personal property for resale, these exclusions also state that the resale of the item must also be in the form of tangible personal property. For instance, the sale of lumber to a carpenter to build a house is a retail sale and cannot be purchased exempt for resale since the sale of the finished product is a sale of “real” property and not personal property.

### CASUAL SALES<sup>1</sup>

Although the definition of "retail sale" excludes casual sales, the statute does impose tax on certain casual sales as follows:

***The tax imposed by this Part must be levied upon all casual rentals of living quarters in a hotel, rooming house, tourist camp or trailer camp and upon all casual sales involving the sale of trailers, truck campers, motor vehicles, special mobile equipment, watercraft or aircraft<sup>2</sup> unless the property is sold for resale at retail sale or to a corporation, partnership, trust,<sup>3</sup> limited liability company or limited liability partnership when the seller is the owner of 50% or more of the common stock of the corporation or of the ownership interests in the partnership, trust, limited liability company or limited liability partnership. This section does not apply to the rental of living quarters rented for a total of fewer than 15 days in the calendar year, except that a person who owns and offers for rental more than one property in the State during the calendar year is liable for collecting sales tax with respect to the rental of each unit regardless of the number of days for which it is rented. For purposes of this section, "special mobile equipment" does not include farm tractors and lumber harvesting vehicles or loaders. § 1764***

You will note a similarity in these items in that most require some form of registration with either the Department of Motor Vehicles or the Department of Inland Fisheries and Wildlife. The statute further requires that tax must be paid as a prerequisite to registration. Therefore, rather than the casual seller bearing the responsibility of collecting the tax on such a sale, which would be administratively impractical, tax is collected by the registering agency.

More information on this topic can be found in the "EXEMPTIONS" section of this book.

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<sup>1</sup> See also Instructional Bulletin 9

<sup>2</sup> For the period of July 1, 2011 to June 30, 2033, all sales of aircraft are exempt. See Section 1760(88-A).

<sup>3</sup> “trust” was added to the statute effective October 15, 2015.

## USE TAX

Each state that imposes a sales tax has a complementary use tax that simply provides if a sales tax has not been paid on purchases for use within Maine, a use tax is due. The statute reads in part:

***A tax is imposed, at the respective rate provided in section 1811, on the storage, use or other consumption in this State of tangible personal property or a service, the sale of which would be subject to tax under section 1764 or 1811.....When tangible personal property purchased for resale is withdrawn from inventory by the retailer for the retailer's own use, use tax liability accrues at the date of withdrawal. § 1861***

***"Storage" includes any keeping or retention in this State of tangible personal property. § 1752 (15)***

***"Storage" or "use" does not include keeping or retention or the exercise of power over tangible personal property brought into this State for the purpose of subsequently transporting it outside the State for use by the purchaser thereafter solely outside the State, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser solely outside the State. § 1752 (16)***

***"Use" includes the exercise in this State of any right or power over tangible personal property incident to its ownership, including the derivation of income, whether received in money or in the form of other benefits, by a lessor from the rental of tangible personal property located in this State. § 1752 (21)***

Use tax is a substitute for sales tax. All states that have a sales tax also impose a use tax that is intended in part to minimize unfair competition between sales made in-state and those made out-of-state. The use tax rate is the same as the sales tax rate.

Use tax applies when sales tax has not been charged. Purchases made out-of-state are the most common type of transactions subject to use tax. For instance, if a retailer purchases goods for its own use (not resale) from a supplier located in Massachusetts, use tax applies. A Maine resident or business does not escape sales tax by purchasing out-of-state. Some of the more commonly purchased taxable items are office supplies and equipment, computer hardware, software and supplies, janitorial supplies, fax machines and supplies, photocopiers and supplies, and books. If a retailer removes goods from inventory that are being held for resale, and makes use of them, use tax applies. Use tax, in this case, is based on the cost of the item to the retailer, not on the retail selling price.

Many of the exemptions that apply to sales tax also apply to use tax. A retailer should report any use tax liabilities on the current month's sales and use tax return.

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## SPECIFIC EXEMPTIONS FROM USE TAX

### Certain property purchased out-of-state

*Sales of property purchased and used by the present owner outside the State:*

*A. If the property is an automobile, as defined in Title 29-A, section 101, subsection 7, and if the owner is an individual who was, at the time of purchase, a resident of the other state;*

*A-2. If the property is a snowmobile or all-terrain vehicle as defined in Title 12, section 13001 and the purchaser is an individual who is not a resident of the State; § 1760(45)*

Goods purchased outside of Maine but used within Maine may be subject to use tax. If a nonresident individual has purchased an automobile, snowmobile or all-terrain vehicle while living out-of-state and relocates to Maine, use tax does not apply.

*A-3. If the property is an aircraft not exempted under subsection 88 or 88-A and the owner at the time of purchase was a resident of another state or tax jurisdiction and the aircraft is present in this State not more than 20 days during the 12 months following its purchase, exclusive of days during which the aircraft is in this State for the purpose of undergoing "major alterations," "major repairs" or "preventive maintenance" as those terms are described in 14 Code of Federal Regulations, Appendix A to Part 43, as in effect on January 1, 2005. For the purposes of this paragraph, the location of an aircraft on the ground in the State at any time during a day is considered presence in the State for that entire day, and a day must be disregarded if at any time during that day the aircraft is used to provide free emergency or compassionate air transportation arranged by an incorporated nonprofit organization providing free air transportation in private aircraft by volunteer pilots so children and adults may access life-saving medical care;<sup>4</sup> § 1760(45)*

*A-4. If the property is brought into this State solely to conduct activities directly related to a declared state disaster or emergency, at the request of the State, a county, city, town or political subdivision of the State or a registered business, the property is owned by a person not otherwise required to register as a seller under section 1754-B and the property is present in this State only during a disaster period. As used in this paragraph, "declared state disaster or emergency" has the same meaning as in Title 10, section 9902, subsection 1 and "disaster period" means the period of 60 days that begins with the date of the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or major emergency, whichever occurs first; or § 1760(45)*

Property brought into Maine by certain nonresident businesses for the purpose of providing disaster relief services is not subject to use tax.

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<sup>4</sup> For the period of July 1, 2011 to June 30, 2033, all sales of aircraft are exempt. See Section 1760(88-A).



***B. For more than 12 months in all other cases.***

***Property, other than automobiles, snowmobiles, all-terrain vehicles and aircraft<sup>3</sup>, that is required to be registered for use in this State does not qualify for this exemption unless it was registered by its present owner outside this State more than 12 months prior to its registration in this State. If property required to be registered for use in this State was not required to be registered for use outside this State, the owner must be able to document actual use of the property outside this State for more than 12 months prior to its registration in this State. For purposes of this subsection, “use” does not include storage but means actual use of the property for a purpose consistent with its design. § 1760(45)***

Property, other than those described above, purchased outside of Maine and used outside of Maine for more than 12 months after purchase is exempt from use tax. In the context of aircraft, the Maine Supreme Court has held that the subsection 1760(45)(B) exemption applies if the use of the property outside of Maine during the 12 months after it was purchased was sufficiently substantial to warrant exemption from Maine use tax. Whether the use of the property outside of Maine during that period was sufficiently substantial is a case-specific determination depending upon all of the facts and circumstances.

***The tax imposed by this Part does not apply to the use, storage or other consumption in this State of tangible personal property or taxable services purchased outside the State upon which the purchaser has paid a sales or use tax imposed by another taxing jurisdiction that is equal to or greater than the tax imposed by this Part. If the amount of sales or use tax paid to another taxing jurisdiction is less than the amount of tax imposed by this Part, then the purchaser shall pay to the State Tax Assessor an amount sufficient to make the total amount of sales and use tax paid to the other taxing jurisdiction and this State equal to the amount imposed by this Part. § 1862***

If purchases are made in a state that charges sales tax and the purchase was taxed, no additional tax is due in Maine provided the tax was equal to or greater than Maine's rate. If the tax is less than Maine's rate, the purchaser owes the difference. For instance, if another state's rate is 3% and Maine's rate is 5.5%, a Maine use tax of 2.5% is due.

Some out-of-state companies charge Maine sales tax because they have a presence in Maine that requires them to register, collect and remit sales tax. Others voluntarily register. Use tax does not apply if a supplier has charged a Maine sales tax.

## **TAX RATES**

***A tax is imposed on the value of all tangible personal property, products transferred electronically and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile, of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles or of a loaner vehicle that is***

*provided other than to a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty; 7% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services and products transferred electronically. Notwithstanding the other provisions of this section, from October 1, 2013 to December 31, 2015, the rate of tax is 8% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible personal property and taxable services and products transferred electronically. Notwithstanding the other provisions of this section, beginning January 1, 2016, the rate of tax is 9% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 8% on the value of prepared food; 8% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; and 5.5% on the value of all other tangible personal property and taxable services and products transferred electronically. Value is measured by the sale price, except as otherwise provided. The value of rental for a period of less than one year of an automobile or of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles is the total rental charged to the lessee and includes, but is not limited to, maintenance and service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the rental agreement to recover the owner's estimated costs of the charges imposed by government authority for title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet registered in the State. All fees must be disclosed when an estimated quote is provided to the lessee. § 1811*

To summarize § 1811, the rate of 5.5% applies to all sales of:

- tangible personal property
- products transferred electronically
- rental or lease of an automobile for more than one year
- rental or lease of a camper trailer or motor home
- rental or lease of pickup truck or van
- prepaid calling arrangements
- transmission and distribution of electricity
- extended warranties on automobiles and trucks

The rate of 8% applies to all sales of:

- prepared food
- alcoholic drinks sold from establishments which are licensed to sell alcoholic drinks for on-premises consumption
- certain rentals of living quarters<sup>5</sup>

The rate of 10% applies to:

- short-term rentals of automobiles
- a pickup truck or van with a gross vehicle weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles
- a loaner vehicle that is provided other than to a motor vehicle dealer's service customers pursuant to a manufacturer's or dealer's warranty

Use tax rates are applied the same way as sales tax.

<sup>5</sup> Effective January 1, 2016, the rate on certain rentals of living quarters increases to 9%.

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## LIABILITY FOR PAYMENT OF TAX

The sales tax is a levy on the purchaser, not the seller.

***The tax imposed by this Part is declared to be a levy on the consumer. The retailer shall add the amount of the tax to the sale price and may state the amount of the tax separately from the sale price of tangible personal property or taxable services on price display signs, sales or delivery slips, bills and statements that advertise or indicate the sale price of that property or those services. If the retailer does not state the amount of the tax separately from the sale price of tangible personal property or taxable services, the retailer shall include a statement on the sales slip or invoice presented to the purchaser that the stated price includes Maine sales tax. § 1753***

However, the seller is obligated to collect the tax from the purchaser.

***Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of that tax, to the sale price, except as otherwise provided, and when added the tax constitutes a part of the price, is a debt of the purchaser to the retailer until paid and is recoverable at law in the same manner as the purchase price. § 1812(1)***

The taxes collected by a seller are considered to be held in trust for the State.

***.... (t)he liability for the taxes or fees and the interest or penalty on taxes or fees is enforceable by assessment and collection, in the manner prescribed in this Part, against the person and against any officer, director, member, agent or employee of that person who, in that capacity, is responsible for the control or management of the funds or finances of that person or is responsible for the payment of that person's taxes... § 177(1)***

## TRANSITION RULES FOR RATE INCREASES

Rate increases generally apply to transactions occurring on or after an application date. A sale occurs when there is a transfer of a product or service for payment. Neither a contract for a future purchase nor a deposit received toward a future purchase is a sale until the product or service is delivered and the seller receives payment or a promise of payment (receivable). The rate in effect when the product or service is delivered applies, not when the contract is negotiated or when a deposit is made.

Example: A deposit is received on July 20, 2015 by a hotel for an accommodation in May 2016. The tax rate increases to 9% on January 1, 2016. The rate of 9% applies since the sale occurs in May 2016, even if the deposit received in 2015 was the entire amount due.

When an invoice period straddles an application date, such as with sales of utilities, the rate in effect on the invoice date applies.

Example: An electric utility bill covers the period of September 24, 2013 through October 23, 2013. The tax rate increased to 5.5% on October 1, 2013. The invoice date was October 26, 2013. The 5.5% rate applies to the entire invoice amount.

## Historical Changes to Sales, Use and Service Provider Tax

### Law

<i>Year</i>	<i>Rate increased to:</i>	<i>Tax Base broadened to include:</i>
1957	3%	
1959		Rentals of living quarters
1963	4%	
1965		Telephone and telegraph services
1967	4.5%	
1969	5%	
1977		Rentals of automobiles on short term basis
1984		Cigarettes, liquor, extended cable tv
1986	7% on rental of living quarters and short term rentals of automobiles	Fabrication services
1989	10% on alcoholic drinks	Rentals of video tapes and video equipment
1990		Rentals of video games
1991	6% general rate; 7% meals and drinks	Snack foods
1993		Gross receipts tax on nursing homes and restaurants (7%)
1994	10% on short term rentals of automobiles	
1995		Long term rentals of automobiles
1997		Gross receipts tax on nursing homes abolished
1998	General rate decreased to 5.5%	
1999		Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement.
2000	General rate decreased to 5%	
2001	7% on all food prepared by retailer	“Snack tax” repealed January 1, 2001
2004		Service Provider Tax Private non-medical institution services added
July 1, 2005		Casual rental of living quarters Community support services Day habilitation services Personal support services Residential training services
Oct 1, 2005		Extended satellite television service
Oct. 1, 2007		Premiums on oil changes Extended warranties on automobiles
Aug. 1, 2008		Premiums on oil changes repealed and replaced with premiums on bulk gasoline and diesel engine oil
Oct. 1, 2009		Premium on motor oil expanded to prepackaged motor vehicle oil
Jan. 1, 2010		E-9-1-1 surcharge of 37¢ per retail transaction imposed on prepaid wireless
July 1, 2010		E-9-1-1 surcharge increases to 45¢
Oct. 1, 2011		Short term rental or lease of certain pickups and vans
Oct. 1, 2012		Rentals of camper trailers and motor homes
Jan. 1, 2013		Fee of 98¢ per retail transaction imposed on prepaid wireless
Oct. 1, 2013	5.5% general rate; 8% meals, drinks and lodging	Publications exemption repealed
Oct. 9, 2013		Extended warranties on trucks
April 24, 2014		Exemption for free publications and advertising inserts for publications. (Effective retroactively to October 1, 2013.)
July 1, 2014		Exemption for certain adaptive equipment
January 1, 2016	9% on rentals of living quarters; service provider tax increases to 6%	Basic cable and satellite television service; satellite radio service; residential interstate and international telecommunications service.

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**SALE PRICE<sup>6</sup>**

"Sale price" is defined as follows:

*...the total amount of a retail sale valued in money, whether received in money or otherwise. § 1752(14)*

Tax applies not only to cash sales, but also to credit sales and to transactions where the sale price is paid in part or in whole by barter, rendition of services, or any other valuable consideration. "Sale price" includes the following:

**Sale price includes certain services**

✎ *Any consideration for services that are a part of a retail sale; § 1752(14)(A)(1)*

Sales tax applies to the full charge for the goods sold, **including any charges for services that are a part of the sale**. For example, the charge by a caterer to prepare and serve food for a reception not only covers the cost of the food, but also the cost of preparation and service. Tax applies to the entire charge, since preparing and serving the food are services which are part of the sale. Even though charges for preparation and serving are separately stated, tax still applies to these charges.

**Alteration charges**

When a merchant offers goods for sale, and agrees to alter them to the customer's requirements, the charges for such alterations are part of the sale price on which tax is based, whether separately stated or not. For example, a customer selects a coat. However, certain alterations are necessary before the coat is satisfactory as a piece of wearing apparel for the customer. The merchant or someone contracted by the merchant performs the alterations and charges the customer an additional \$10 alteration fee. The alteration fee is considered a part of the sale price upon which tax is based, even if separately stated.

**Fabrication charges**

Charges for production, fabrication or processing of tangible personal property are included in sale price when performed on tangible personal property belonging to the fabricator. The point at which title passes to the customer is of no relevance in determining the taxability of such charges. For example, a customer enters into a contract with a boat builder to construct a boat in accordance with certain plans and specifications. The charges for the labor of building the boat are taxable regardless of whether title to the materials passes to the customer before or after

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<sup>6</sup> See also Instructional Bulletin 39

the production occurs. For services performed on tangible personal property furnished directly or indirectly by the customer, see the Service Provider Tax explanation of fabrication services.

### **Assembly charges**

Some types of furniture and equipment are sold either on a knocked down, or unfinished, or on an assembled, or finished basis; the assembled or finished item being priced correspondingly higher. Charges for assembling or finishing, in such cases, are part of the taxable sale price, whether separately stated or not.

In all the above cases, the alteration, fabrication, assembly or finishing of the article sold constitute "services which are a part of (the) sale" and are taxable whether separately stated or not.

### **Layaway fees**

In the layaway sale context where the property has not yet been delivered to the purchaser, a layaway payment is just a deposit. Tax is not collected each time a payment is made. The sale price includes the total amount of all layaway payments, but sales tax is not collected unless and until the final payment is made and the product is delivered to the purchaser. A layaway service fee is a charge for a service that is part of the sale and is included in the taxable sale price when a sale is completed, but is not taxable when it is retained by the retailer after a layaway sale arrangement is cancelled. A fee charged for the cancellation of a layaway sale arrangement is not taxable.

### **Delivery Charges**

A cash on delivery ("COD") charge constitutes payment for the service of collecting the purchase price from the purchaser. Handling charges, mileage charges, "wait charges," and fuel surcharges are services that are associated with a sale. All of these charges are included in the taxable sale price, whether separately stated or not.

### **Sale price includes more than cash sales**

*✎ All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.*  
*§ 1752(14)(A)(2)*

Tax applies not only to cash sales, but also to credit sales, and to transactions where the sale price is paid in part or in whole by barter, rendition of services, or any other valuable consideration. The total selling price of a product constitutes its sale price regardless of the fact

that the price may be broken down into components of cost of materials, labor and services performed on the product prior to the sale.

### **Trade-ins**

When property is sold, with an allowance being made for traded-in property, tax applies to the entire sale price, including the allowance for trade-in. Thus, if a refrigerator is sold for \$800, the customer paying \$700 in cash and \$100 by way of allowance on a traded in refrigerator, tax is based on the full price of \$800.

### **Allowable trade-in credits**

However the law provides an exception to this rule.

*When one or more items in one of the following categories are traded in toward the sale price of another item in that same category, the tax imposed by this Part must be levied only upon the difference between the sale price of the purchased property and the trade-in allowance of the property taken in trade. This section does not apply to transactions between dealers involving exchange of the property from inventory:*

1. *Motor vehicles;*
3. *Watercraft;*
4. *Aircraft<sup>7</sup>;*
6. *Chain saws;*
7. *Special mobile equipment; or*
8. *Trailers and truck campers;*

*The trade-in credit allowed by this section is not available unless the items traded are in the same category. The tax must be levied only upon the difference between the sale price of the purchased property and the trade-in allowance of the property taken in trade. § 1765*

*Motor vehicle. "Motor vehicle" means any self-propelled vehicle designed for the conveyance of passengers or property on the public highways. "Motor vehicle" includes an all-terrain vehicle and a snowmobile as defined in Title 12, section 13001. § 1752(7)*

*Watercraft. "Watercraft" means any type of vessel, boat, canoe or craft designed for use as a means of transportation on water, other than a seaplane, including motors, electronic and mechanical equipment and other machinery, whether permanently or temporarily attached, which are customarily used in the operations of the watercraft. § 1752(24)*

*Aircraft. "Aircraft" means any powered contrivance designed for navigation in the air except a rocket or missile. § 1752(1-A)*

*Special mobile equipment. "Special mobile equipment" means any self-propelled vehicle not designed or used primarily for the transportation of persons or property that may be operated or moved only incidentally over the*

<sup>7</sup> For the period of July 1, 2011 to June 30, 2033, all sales of aircraft are exempt. See Section 1760(88-A).



*highways, including, but not limited to, road construction or maintenance machinery, farm tractors, lumber harvesting vehicles or loaders, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well drillers and wood sawing equipment. § 1752(14-B)*

*Trailer. "Trailer" means a vehicle without motive power and mounted on wheels that is designed to carry persons or property and to be drawn by a motor vehicle and not operated on tracks. "Trailer" includes a camper trailer as defined in section 1481, subsection 1-A without restriction on length. § 1752(19-A)*

*Truck camper. "Truck camper" means a slide-in camper designed to be mounted on a truck body to provide temporary living quarters for recreational, camping, travel or other use. § 1752(20-A)*

Thus whenever one of the above items is traded against the same type of item, the tax is computed on the difference. For sales tax purposes, trade-in allowances only apply to the above listed items. Retailers who sell any vehicles mentioned above are advised to review MRS' Instruction Bulletin No. 24 which provides more detail in this area.

Park model homes are taxed in the same manner as all other camper trailers. Trade-ins of any trailer, truck camper or another park model home is an allowable reduction in the taxable sale price of the new park model home.

### **Core charges**

Customers who purchase certain property that can be reconditioned and resold by the seller are encouraged to bring their used property to the seller by being charged what is often called a "core charge". The core charge is usually refunded or credited to the customer when the used property is brought to the seller. Core charges are part of the selling price of the new property being purchased and are subject to tax. For instance, an alternator may be sold for \$80.00 with a core charge of \$10.00. The total selling price subject to tax is \$90.00. If a used alternator is traded-in at the same time as the purchase of the new alternator, the selling price subject to tax remains at \$90.00 even though a \$10.00 credit is allowed. If the used alternator is returned to the seller at a later date and the customer is refunded the \$10.00 core charge, no refund of sales tax is allowed. The definition of "sale price" does not exclude an allowance of this sort nor are core charges allowable as trade-in credits.

### **Sale price does not include vendor discounts**

The definition continues to **exclude** the following charges:

✎ *Discounts allowed and taken on sales; § 1752(14)(B)(1)*

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If a 2% allowance is made for payment within a stated time, and this allowance or discount is actually taken by the customer, tax applies to the stated price less the discount, or the amount actually paid.

Example: Two customers purchase \$100 worth of taxable goods, with 2% being allowed for prompt payment. Customer A pays promptly and thus takes the 2% discount. Tax is based upon a sale price of \$98. Customer B does not pay promptly and does not take the 2% discount. Tax is based upon a sale price of \$100.

On the other hand, if interest is charged on overdue accounts, tax does not apply to the interest so charged.

Coupons<sup>8</sup> and rebates are another form of discount, although not always deductible from the sale price. Coupons are issued by either a manufacturer of the product or by a retailer. The application of sales tax in each case differs.

### **Manufacturers' coupons**

When a retailer accepts a manufacturers' coupon, the retailer does not recognize any loss in the profit made on the sale. The retailer is reimbursed for the face value of the coupon by the manufacturer. In other words, the patron uses the coupon like cash and the retailer receives the cash when the coupons are redeemed with the manufacturer. The sale price on which tax is based is the total selling price before deducting the value of the coupon.

Example: A customer, when purchasing laundry detergent, redeems a coupon issued by the manufacturer of the detergent. The sale price of the detergent is \$2.29 and the face value of the coupon is \$.25. The sales tax is computed on \$2.29; the sale price before deducting the value of the coupon.

### **Retailer's coupons**

When a retailer issues a store coupon, the retailer is reducing the price of the item purchased with the coupon by an amount equal to the face value of the coupon. The retailer reduces its profit on the sale and the value of the coupon is not recovered from any other party. This type of coupon is a seller's discount that is deducted from the sale price before computing the sales tax.

Example: A drug store publishes in an advertising flyer its own store coupon offering \$.50 off the purchase of a particular shampoo. The shampoo sells for \$2.89. The sales tax is computed on \$2.39, the sale price after deducting the value of the coupon.

### **Rebates**

Similarly, rebates are treated as a seller's discount if the retailer is the one providing the rebate. However, rebates are more commonly provided by manufacturers and for the same reason

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<sup>8</sup> See also Instructional Bulletin 25

stated above, are not deducted from the sale price before computing tax. This remains true even if the rebate is assigned by the purchaser to the seller.

### **Gift certificates**

When a customer purchases a gift certificate, the customer is simply exchanging cash for a form of credit from the retailer. The purchase of a gift certificate is therefore not a taxable transaction. It is not until the gift certificate is presented to pay for a purchase of tangible personal property or service that the transaction is taxed, assuming that the goods or services are taxable. The sale price of the purchased goods is not reduced by the amount of the gift certificate before calculating the sales tax.

When a gift certificate is purchased for less than its face value, the difference between the face value and the purchase value may be treated as a retailer discount since that value will not be recovered from any other source. When the certificate is later redeemed, the retailer discount reduces the taxable sale price of the transaction provided the retailer is able to document or otherwise reliably establish the value paid for the certificate and is treating the difference as a retailer discount.

Example 1: Customer purchases a “Deal of the Day” certificate, valued at \$100, for \$75; good toward the rental of a hotel room. When the certificate is redeemed, the retailer, having made prior arrangements for this offer to occur, has documentation that the amount paid for the certificate was \$75. If the rental transaction amounted to \$150, \$25 of the certificate (\$100 less the amount paid of \$75) is treated as a retailer discount, reducing the taxable sale price to \$125 (\$150 - \$25). The amount paid for the certificate, \$75, is treated as cash toward payment of this transaction.

Example 2: A non-profit organization is given a \$50 certificate free of charge to use in a raffle contest. The winner of the raffle redeems the certificate on a hotel room rental valued at \$125. Provided the retailer has documentation that this certificate was provided free of charge and will not be reimbursed for the certificate value from any other source, the retailer can treat the \$50 as a retailer discount and reduce the taxable sale price to \$75 (\$125-\$50).

### **Sales tax paid on goods returned under warranty is refundable**

*ⓧ Allowances in cash or by credit made upon the return of merchandise pursuant to warranty; § 1752(14)(B)(2)*

When an adjustment of price is made by a retailer on the return of defective merchandise that has been warranted, the adjustment, or allowance, is deductible on a subsequent sales and use tax return of the retailer if the original sale was taxable and was so reported by the retailer.

For example, a tire is sold with a 30-month warranty, adjustment being based upon period of use. Assuming the tire was sold for \$30.00 with an allowance of \$1.00 per month for the period by which the tire fails to meet the warranty. If the tire is returned for failure after 24

months, the allowance would be \$6.00. The purchaser would be entitled to a refund of \$6.00 plus sales tax on this amount; and the retailer would deduct \$6.00 on its next sales and use tax return. Usually such adjustments are made as the result of a written warranty, as in the case of an automobile tire. It is not necessary that the warranty be in writing, since there is a general unwritten warranty that goods are not defective for the purpose for which they are intended.

While an adjustment of sales tax liability may be made for allowance by warranty, whether written or not, an adjustment cannot be made where the merchandise is returned as unsatisfactory, not because of written warranty or because it is defective and so fails to meet an unwritten warranty; but because the purchaser finds it is not suited for the purchaser's purpose. In the latter case, unless the full purchase price is refunded, no adjustment of sales tax can be made.

For example, a customer purchases a snow blower. After using it for a short time the customer finds it is not powerful enough. There is neither failure to meet a written warranty nor any defect in the machine. The customer returns it to the dealer and is allowed 85% of the original purchase price. There is no adjustment permitted so far as sales tax is concerned.

**Sales tax paid on goods returned not under warranty is refundable if the full price is refunded**

*☞ The price of property returned by customers, when the full price is refunded either in cash or by credit; § 1752(14)(B)(3)*

If merchandise is returned by the customer and the full purchase price is refunded, either in cash or by credit toward other purchases, sales tax charged would be refunded to the customer or included in the credit. The retailer would deduct the original sale price of the item on a subsequent sales and use tax return.

If, in connection with such returned merchandise, the retailer makes a standard service charge, the transaction will be considered a refund of the full purchase price if the service charge is separately shown and so identified on the invoice to the customer or in the records of the retailer. The customer would be entitled to a refund of the entire sales tax paid on the original transaction. For example, a retailer makes a standard service charge of \$1.00 in all cases where merchandise is returned by the customer for refund.

The invoice or credit memo to the customer indicates "purchase price refunded \$30.00, less service charge \$1.00 - net \$29.00". The retailer should treat this as a refund of the full purchase price and also refund the sales tax originally paid on the \$30.00 sale. Note, however, that except for deduction of a standard service charge, the refund must be of the entire purchase price. For example, if an item has been used by the customer and the retailer therefore refunds less than the full purchase price (the transaction not involving an express or implied warranty), no adjustment of sales tax can be made.

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### Installation and repair charges may not be taxable

✎ *The price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated; § 1752(14)(B)(4)*

If an appliance store sells a dishwasher but also agrees to install it for a fee, the installation labor charge would not be taxed if separately stated from the sale price of the dishwasher. If not separately stated, the total charge is subject to tax.

When repair parts or accessories are installed in an item owned by the customer, and the charge for installation or repair labor is separately stated from the charge for the parts or accessories, only the materials portion of the sale is subject to tax. If labor and materials are not separately stated, but invoiced as one bundled price, the entire amount charged to the customer is taxable. When repairs do not include the sale of parts, no tax is charged to the customer.<sup>9</sup>

Installation, maintenance and repair of telecommunications equipment is subject to the service provider tax. A discussion of the taxation of telecommunications can be found in this guide under the topic of “Services”.

### Repair work generally

Tools and equipment used in the repair of tangible personal property are subject to tax when purchased by the repairer. Supplies may or may not be taxable. For Maine sales and use tax purposes, a distinction is drawn between inventories of items that are “used” or consumed by the repairer, and inventories of items that are ultimately transferred to the possession of customers.

### Consumables

Items that are “used” or consumed in the performance of a service are taxable. If the Maine sales tax is not paid on such items at the time of their purchase, the repairer must report use tax on the items. Here is a non-exclusive list of items that generally fall in this category:

Adhesives/glue	Aerosol products	Battery cleaner
Brake cleaner	Brake lathe bits	Brushes
Buffing compound/pads	Car wash soap	Choke cleaner
Cleaners	Deodorizer	Disc brake quieter
Drill bits	Engine degreaser/cleaner	Floor dry
Gases/oxygen, acetylene	Glass cleaner	Gloves
Grinder wheels	Hacksaw blades	Hand cleaner
Key tags	Light bulbs – facility	Masks
Paper floor and seat mats	Paper towels	Protective eyewear
Putty spreaders	Rags	Razor blades
Sandpaper	Soap	Tape (masking)
Wash mitts	Washer/solvent	Wax

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<sup>9</sup> See also Instructional Bulletin 53

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### Items transferred to the customer

Items that are ultimately transferred to the possession of the customer can be handled one of two ways: (1) they can be itemized and billed to the customer as a part of the sale; or (2) they can be maintained all together as one “inventory” and billed out to the customer as a percentage of labor or other charge, typically as a single line item called “shop supplies”. Either way, sales tax must be charged and collected from the customer. Here is a non-exclusive list of items that generally fall in this category:

A/C & heater treatment	A/C oil	Batteries (small AA)
Body filler	Brake fluid/line fittings	Coolant
Dyes-oil/A/C	Electrical terminals	Electrical wire
Gasket maker/adhesive	Grease/gear lube	Hardener
Helicoils	Hose clamps	Keylock parts
Light bulbs – vehicle	Nuts & bolts	Paint/thinner
Pipe sealant	Plastic wire ties	Power steering fluid
Rubber hoses	Rubberized undercoating	Screws
Silicon	Small nuts/bolts/fasteners	Solder
Spray trim adhesive	Strip caulking	Tape (electrical/duct)
Thread lock	Touch up paint	Vacuum fittings
Valve stem caps	Welding rods	Wheel weights
Wire looms		

### Tips are generally not taxable

*✎ Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, restaurant or other eating establishment to its employees as wages; § 1752(14)(B)(5)*

When a customer provides a tip for an employee of a seller, the tip is not part of the sale price and is exempt from sales tax whether given directly to the employee in cash or added by the customer to a charge account, as long as the full amount of the tip is turned over to the employee by the seller.

An amount or flat percentage charged or collected in lieu of a gratuity, and designated as a service charge by the seller, is not part of the taxable sale price when all of it is disbursed by the seller to employees as wages. Otherwise, the service charge must be included in the seller’s gross receipts subject to tax even though the amount or flat percentage may be paid over in part to the employees.

### Certain excise taxes are not subject to a sales tax

*✎ The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax; § 1752(14)(B)(6)*

Examples of federal retailer's excise taxes are the former 10% federal luxury tax and the 12% heavy vehicle tax. Generally speaking, federal excise taxes imposed on automobiles, tires, firearms, tobacco, liquor and sporting goods are manufacturers' excise taxes and are taxable as part of the sale price. As a result, the total selling price of cigarettes and beer, for instance, are taxable even though federal excise taxes are embedded in the retail price.

**Certain delivery charges are taxable<sup>10</sup>**

*✎ The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail; § 1752(14)(B)(7)*

Transportation charges are exempt from sales tax if **all three** of the above requirements are met, namely:

**1) Shipment is made directly to the purchaser**

It is not necessary that shipment be made directly from the location of the seller, so transportation charges associated with a so-called "drop shipment" may be exempt if the other requirements are met. The cost of transporting the property sold to the location of the **seller** is always part of the taxable sale price of the property, whether or not it is separately stated to the customer.

Examples of situations in which transportation charges are subject to tax because they are not for shipment directly to the location of the purchaser are:

- i. "Home party" sales where the goods ordered at the party are shipped to the representative and then delivered by the representative to the customers;
- ii. The cost of shipping property (such as inventory) from the manufacturer to the retailer ("incoming freight"), even though that cost is separately stated on the invoice to the customer;
- iii. Catalog or special order sales made at a retail location where the goods are shipped to the retailer and picked up by the customer at the retail location.

**2) Charges are separately stated**

Although advisable, it is not essential that the transportation charges be separately stated on the invoice of the seller. Any verifiable record showing the amount of the transportation charge as a separate item, such as a bill of lading, is acceptable evidence to substantiate a deduction for transportation charges. In the

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<sup>10</sup> See also Instructional Bulletin 30

absence of a verifiable record, no deduction is allowed. An estimate of the cost of transportation, by either the seller or the purchaser, is not acceptable.

**Shipping and handling**

The cost of transportation is not separately stated when it is combined with charges for other services as in the case of a "shipping and handling" charge.

**3) Shipment is made by common or contract carrier or the US Mail**

**A charge for delivery by the seller is taxable**

Charges for delivery by the seller are part of the sale price for purposes of computing the sales tax. There are no circumstances under which the seller of tangible personal property can be a common or contract carrier with respect to that property.

**All three** of the above conditions must be met for transportation charges to be excludible. For example, charges for transportation from the point of manufacture to the seller are not excludible. Charges for transportation from the seller to the purchaser are likewise not excludible if the seller delivers the goods in the seller's own vehicle rather than shipping them by common or contract carrier or mail.

A charge for delivery by the seller in its own vehicle is included in the taxable sale price if the products being sold and delivered are taxable items. If the delivery involves both taxable and exempt components (for example, a restaurant buying both food and supplies) delivery charges may be partially exempted from tax by applying a proration; however, if 10% or fewer of the items in question are taxable, the taxable portion of the transaction is considered de minimis and the transportation charges are excludible from the sale price.

**State imposed fees are exempt**

✎ *Any charge, deposit, fee or premium imposed by a law of this State.*

This excludes, but is not limited to, the \$1.00 lemon law arbitration fee imposed by Title 10, section 1169, subsection 11, the \$1.00 recycling assistance fee imposed by section 4832, subsection 1, the \$10.00 lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B, the premium imposed on motor vehicle oil by Title 10, section 1020, subsection 6-A, and the prepaid wireless fee imposed by Title 35-A, section 7104-C.

**Disposal charges for used tires**

✎ *Any amount charged for the disposal of used tires. § 1752(14)(B)(13)*

This excludes the amount charged by a retailer for the disposal of used tires from the taxable sale price. For instance, when a customer purchases a new tire a retailer may charge the



customer a small fee to dispose of the customer's used tire. The disposal fee is not part of the selling price of the new tire.

**Single-use bag fees**

✎ *Any amount charged for a paper or plastic single-use carry-out bag.*

This excludes the amount charged by a retailer for a paper or plastic single-use carry-out bag.

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**OTHER FEES ADMINISTERED BY MAINE REVENUE****RECYCLING ASSISTANCE FEES<sup>11</sup>**

*A fee is imposed on the retail sale in this State of new tires and new lead-acid batteries in the amount of \$1 per tire or lead-acid battery. A fee in the same amount is imposed on the storage, use or other consumption in this State of tires and lead-acid batteries purchased new in this State by the user or purchased outside the State by the user unless the fee imposed by this section has been paid. § 4832(1)*

A recycling assistance fee is imposed on the retail sale of **new** tires and **new** lead-acid batteries at the rate of \$1.00 each. Sales of **used** tires and batteries are not subject to the fee. The fee applies to all items in each category whether used for residential, commercial or industrial purposes unless specifically exempted. The fee is applied in the same manner as sales and use tax. Any exclusion, exemption or credit provided in the sales and use tax law also applies to the recycling assistance fee.

**Lead-acid batteries**

*"Lead-acid battery" means a device designed and used for the storage of electrical energy through chemical reactions involving lead and acids. § 4831(2)*

The law is specific in applying the fee to only batteries which involve lead and acids. These are most commonly used to store electrical energy for motorized vehicles, such as automobiles, trucks, motorcycles, etc. "Lead-acid batteries" include those sold for security systems installed in real property. "Lead-acid batteries" do not include those sold for motorized wheelchairs and tricarts.

**Tires**

*"Tire" means the device made of rubber or any similar substance which is intended to be attached to a motorized vehicle or trailer and is designed to support the load of the motorized vehicle or trailer. § 4831(4)*

*"Motorized vehicle" means any self-propelled vehicle, including motorcycles, construction and farm vehicles and other off-road vehicles, not operating exclusively on tracks. § 4831(3)*

*"Trailer" means any vehicle without motive power that is designed to be drawn by a motorized vehicle. § 4831(5)*

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<sup>11</sup> See also Instructional Bulletin 48

Only tires to be attached to a motorized vehicle or trailer are subject to the fee. For purposes of this fee, retread tires are used tires and are not subject to the fee. "Tires" include those sold for airplanes and lawn and garden tractors but do not include those sold for motorized wheelchairs, tricarts and push-type lawn mowers.

### **PREMIUMS ON MOTOR VEHICLE OIL<sup>12</sup>**

***In addition to any other tax or charge imposed under state or federal law, a premium is imposed on motor vehicle oil sold or distributed in the State as provided in this subsection. A motor vehicle oil dealer that makes the first sale or distribution of motor vehicle oil in the State shall pay the premium.***

***The premium is calculated as follows:***

- A. Diesel engine crankcase oil is subject to a premium of 35¢ per gallon;***
- B. Gasoline engine crankcase oil sold or distributed in a container with a volume of 5 gallons or less is subject to a premium of 35¢ per gallon;***
- C. Gasoline engine crankcase oil sold or distributed in a container with a volume of more than 5 gallons is subject to a premium of \$1.10 per gallon; and***
- D. All motor vehicle oil other than diesel engine crankcase oil and gasoline engine crankcase oil that is sold or distributed in a container with a volume of 16 gallons or less is subject to a premium of 35¢ per gallon.***

***All premiums must be paid to the State Tax Assessor and are subject to the administrative provisions of Title 36, Parts 1 and 3 as though they were a sales tax liability. By the 20th day of each month, the State Tax Assessor shall notify the State Controller and the Treasurer of State of the amount of revenue attributable to the premium collected under this subsection in the previous month. When notified by the State Tax Assessor, the State Controller shall transfer that amount to the fund. 10 MRSA, § 1020(6-A)***

A premium is imposed on motor vehicle oil. The premium is \$1.10 per gallon for gasoline engine crankcase oils with a volume of more than 5 gallons, 35¢ per gallon on gasoline engine crankcase oil with a volume of 5 gallons or less, 35¢ per gallon for diesel engine crankcase oils and 35¢ per gallon on all motor oil other than diesel engine crankcase oil and gasoline engine crankcase oil with a volume of 16 gallons or less sold or distributed in the State. The premiums are imposed on the "motor vehicle oil dealer that makes the first sale or distribution of motor vehicle oil in the State". All premiums must be paid monthly to the State Tax Assessor. The premium on motor vehicle oil other than diesel engine crankcase oil and gasoline engine crankcase oil with a volume of 16 gallons or less applies to transmission, gear box, hydraulic and differential fluids/oils.

***An eligible dealer shall submit a claim for reimbursement of eligible premiums on motor vehicle oil sold by that dealer outside the State on a form prescribed***

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<sup>12</sup> See also Instructional Bulletin 57

*by the State Tax Assessor no later than March 31st annually... Reimbursement claims submitted beginning in 2013 may be made only for eligible premiums paid in the immediately preceding calendar year. All applications for reimbursement must be made under penalties of perjury. For purposes of this subsection, an application for reimbursement is considered a return, as defined in Title 36, section 111, subsection 4. 10 MRSA, § 1020-C(2)*

Motor vehicle oil dealers that have exported product from Maine on which the premium has been paid, qualify for reimbursement of the premium by submitting to MRS an annual claim for reimbursement.

The statute provides the following definitions:

*“Motor vehicle oil” means any lubricating oil or other lubricant that is reclaimable and classified for use in an internal combustion engine or the transmission, gear box, hydraulic system, compressor or differential for a motor vehicle, including but not limited to natural, synthetic, and rerefined motor oils, whether or not in retail containers. 10 MRSA, § 1020(1)(F)*

*“Diesel engine crankcase oil” means motor vehicle oil that is classified for use in a diesel engine crankcase by meeting the performance requirements of the American Petroleum Institute beginning with CA standards and all succeeding specifications under those standards, inclusive of all original equipment manufacturer-specific engine oils. 10 MRSA, § 1020(1)(A-2)*

*"Gasoline engine crankcase oil" means motor vehicle oil that is classified for use in a gasoline engine crankcase by meeting the performance requirements of the American Petroleum Institute, beginning with SA standards through the most current standards, inclusive of original equipment manufacturer-specific engine oils, and International Lubricant Standardization and Approval Committee GF-1 standards through current standards, inclusive of all original equipment manufacturer-specific engine oils. 10 MRSA, § 1020(1)(C-1)*

*“Motor vehicle oil dealer” means any person, firm, or corporation engaged in the business of producing, packaging, or otherwise preparing motor vehicle oil for market, or selling, or distributing motor vehicle oil. 10 MRSA, § 1020(1)(G)*

*"Eligible dealer" means a motor vehicle oil dealer that has sold or distributed motor vehicle oil outside the State on which the motor vehicle oil premium was imposed by section 1020, subsection 6-A. 10 MRSA, § 1020-C (1)(A)*

*"Eligible premium" means a premium that has been reported and paid by a motor vehicle oil dealer to the State Tax Assessor on motor vehicle oil that was subsequently sold or distributed by an eligible dealer outside the State during the relevant reimbursement period. 10 MRSA, § 1020-C (1)(B)*

#### **PREPAID WIRELESS FEE**

A prepaid wireless fee is applied to purchases of prepaid wireless service from a wireless service provider and any prepaid wireless service sold by a retailer, such as in the form of a prepaid wireless card. This is not to be confused with a prepaid calling card.

The prepaid wireless fee amount is determined by the Public Utilities Commission and is comprised of an amount for the Maine Universal Service Fund, the Maine Telecommunications

Education Access Fund, and the statewide prepaid wireless telecommunications service E-9-1-1 surcharge. The fee cannot be adjusted more frequently than once every 24 months. Beginning January 1, 2015, the amount to be collected on each retail transaction is \$1.01, which is made up of the following:

E9-1-1	\$ .45
MUSF	\$ .38
MTEAF	\$ .18

The prepaid wireless fee must be collected by the seller from the prepaid wireless consumer with respect to each retail transaction occurring in this State. An in-person retail transaction is treated as occurring in this State if that business location is in this State. Any other retail transaction must be treated as occurring in this State if the retail transaction is treated as occurring in this State for the purposes of 36 M.R.S.A. §1752(8-B) (“prepaid calling service”).

The amount of the prepaid wireless fee must be separately stated on an invoice, receipt or similar document that is provided to the prepaid wireless consumer by the seller when practicable. In circumstances where disclosure is not practicable, the seller must make information regarding the amount of the fee available to the consumer in another manner.

The fee is to be remitted to the State Tax Assessor in the same manner as sales tax. A retailer who is not a prepaid wireless provider may deduct and retain 3% of the fee collected by the seller from the prepaid wireless consumer. This 3% collection allowance should be deducted prior to entering the amount of the fee collected on the sales and use tax return. Documentation to support the amount of the fee collected, as well as the allowance computation, must be retained in the retailer’s records. The calculation of sales tax is not to include the fee.

## TAXABLE SERVICES

The taxation of services is not new to Maine. In fact, Maine has taxed services since 1959 when it began to tax rentals of living quarters. In 1965, it was telephone and telegraph services; in 1977 short term rentals of automobiles; in 1984 extended cable television services; in 1986 fabrication services and custom computer programming; in 1989 rentals of video tapes; in 1995 long-term rentals of automobiles; in 1999 certain rent-to-own transactions; in 2004 the creation of the service provider tax and in 2005 the addition of extended satellite television services. In all of these situations, no sale of tangible personal property exists. Rather a service is being rendered.

In determining if a service is taxable, some are clearly exempt and others are clearly taxable. With the exception of services provided in connection with the sale of tangible personal property, only sales of services defined as taxable services by statute are taxable. However, transactions do occur somewhere in the middle that make such a determination more difficult.

Another distinction is whether a sale is treated as a sale of services, tangible personal property, or intangible property. Historically MRS has regarded financial reports, wills and blueprints as intangibles. The purchaser is obtaining the technical services of the provider even though the provider, in turn, presents an instrument to convey thoughts, ideas or research of the provider. The value of the transaction is in the service being rendered. On the other hand MRS is sometimes faced with determining if a transaction is a service or is a sale of tangible personal property wherein a service is provided but results in a transfer of tangible personal property. For instance the production of such items as brochures and audio and video discs, requires a high degree of technical expertise. The cost of production is mainly creative time and labor and the cost of materials used in the production is relatively small. However, the value of this transaction is in the tangible personal property being produced and transferred.

The following services are subject to sales tax:

- ***Rental of living quarters in any hotel, rooming house, tourist or trailer camp;***
- ***Rental or lease of an automobile;***
- ***Rental or lease of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds from a person primarily engaged in the business of renting automobiles;***
- ***Rental or lease of a camper trailer or motor home;***
- ***Transmission and distribution of electricity;***
- ***Extended service contract on an automobile or truck; and***
- ***Prepaid calling service.***

§ 1752(17-B)

Certain other services are subject to the service provider tax rather than the sales tax. Explanation of those services can be found in the Service Provider Tax section of this guide.

## TRANSIENT RENTALS<sup>13</sup>

*☒ Rental of living quarters in any hotel, rooming house, tourist or trailer camp; § 1752(17-B)*

The following definitions found in the sales and use tax law provide the foundation for determining the type of living quarters that are taxable.

*Living quarters. "Living quarters" means sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space. § 1752(6)*

*Hotel. "Hotel" means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants. § 1752(4)*

*Rooming house. "Rooming house" means every house, cottage, condominium unit, vacation home, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings. § 1752(12)*

*Tourist camp. "Tourist camp" means a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation. § 1752(19)*

*Trailer camp. "Trailer camp" means a place with or without service facilities where space is offered to the public for tenting or for the parking and accommodation of camper trailers, motor homes or truck campers used for living quarters. The rental price includes all service charges paid to the lessor. § 1752(20)*

Generally, the amount paid for occupancy of these rooms or spaces is subject to the sales tax. There are situations, however, where a rental charge is not for the rental of living quarters and would not be taxable or is a rental that is specifically exempt.

### **Incidental charges at hotels**

When a hotel offers separate facilities or services (such as a golf course, tennis courts, telephones, internet access and pay-per-view movies) that are not a part of the rental of living quarters, and where any charges for those facilities or services are in fact extra and are paid only by persons who make use of them, those charges are not subject to tax. However, if a rental fee is inclusive of these services and the customer has no option to exclude some or all of the services, the entire rental fee is subject to tax. For instance, if a hotel charges \$149.99 per night for a room, but the fee includes access to the facility's spa, exercise room, pool and tennis courts, the entire \$149.99 is subject to sales tax. Also, if a hotel charges a "resort fee" in addition to the

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<sup>13</sup> See also Instructional Bulletin 32

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rental of the room, and the customer has no option but to pay this fee, the fee is a part of the sale price and subject to tax.

Sales tax applies to the amount billed for extra services that are a part of the rental of a room in a hotel, whether or not separately stated. Some examples of services that are considered a part of the rental of living quarters include extra charges for use of a cot or crib or for use of cooking facilities, pet fees, damage or cleaning fees, and fees or “penalties” imposed for smoking in a nonsmoking room. Service fees charged by property management firms are also subject to sales tax.

### **Rental of public rooms**

Rental by a hotel of a dining room, assembly room or other area not intended for use as living quarters is not taxable. When a hotel rents a room designed as living quarters, such as a hospitality suite with bedrooms, the rental is taxable regardless of the use actually made of the room by the person renting it.

### **Rentals of video media and video equipment**

The Maine service provider tax applies to rentals of video media, video games and video equipment for noncommercial playback. A hotel that rents any of these items is liable for the service provider tax on the rentals, not sales tax. Taxable rentals include not only rentals of VHS and DVD movies and players, but also rentals of video equipment for use at business conferences, seminars and the like. Purchases of video media and video equipment for rental by a hotel are not taxable.

### **Tent and trailer space**

The rental of space for the pitching of tents or the parking of motor homes, travel trailers and camper trailers is taxable. The rental price includes all service charges paid to the lessor, whether or not those charges are separately collected or stated. If the tents or trailers themselves are rented, that rental is also taxable.

### **Package plans**

Rental facilities may offer a variety of packages of a night’s lodging, together with entertainment services; e.g. movie passes, ski lift tickets, plays, concerts, cruises, etc. These packages are typically offered for one price and do not provide a breakdown of the cost between the room rental and the other activity or activities. In cases where a bundled transaction contains both taxable and exempt components, the entire amount is subject to sales tax. However, if the taxable and exempt values are separately stated, either on the invoice to the customer or in the books and



records of the business, sales tax only applies to the taxable amount. (Note that incidental services remain subject to tax, see above.)

Example 1: A ski package offers a two-day lift ticket, 2 nights' rental and two breakfasts for \$350. The customer's receipt displays the package as \$350 and the business does not separately account for the values of each item. The entire \$350 is subject to sales tax at the meals and lodging rate.

Example 2: A hotel package offers 2 concert tickets and one night's lodging for \$250. The customer's receipt shows the value of the tickets as \$150 and the room as \$100. The room rental of \$100 is subject to sales tax, while the ticket value is exempt.

Example 3: Same as Example 2, but the customer's receipt does not provide a breakdown. However, the business, in its books and records, separately accounts for the exempt and taxable values. The taxable amount remains at \$100.

### **Occupancy for 28 days or more**

The law provides an exemption that reads:

***Continuous residence; refunds and credits. Rental charged to any person who resides continuously for 28 days or more at any one hotel, rooming house, tourist camp or trailer camp if:***

***A. The person does not maintain a primary residence at some other location; or***

***B. The person is residing away from that person's primary residence in connection with employment or education.***

***Tax paid by such a person to the retailer under section 1812 during the initial 28-day period must be refunded by the retailer. If the tax has been reported and paid to the State by the retailer, it may be taken as a credit by the retailer on the return filed by the retailer covering the month in which the refund was made to the tenant. § 1760(20)***

Rental charged to any person who resides continuously for 28 days or more in the same hotel, rooming house, tourist camp or trailer camp is nontaxable if the living quarters are the person's primary residence, or if the rental is in connection with education or employment. This exemption applies, for instance, to apartment rentals (as it is a person's primary residence), rentals to college students (as it is for education) and rentals to such people as construction workers working away from home (as it is for employment reasons). If tax has been paid by the person during the initial 28 day period, that tax should be refunded by the retailer (lessor). If the retailer (lessor) has reported and paid the tax to the State, the retailer should take a corresponding credit on the sales and use tax return filed for the period in which the refund or credit occurred by adjusting the taxable rentals figure shown on the return. A person claiming this exemption must provide a statement to the retailer. See the Appendix for a sample copy of an affidavit to be used for this purpose.

## Living quarters furnished to employees

The law also provides another exemption that reads:

***Certain meals and lodging. Meals or lodging provided to employees at their place of employment when the value of those meals or that lodging is allowed as a credit toward the wages of those employees. § 1760(75)***

When living quarters are furnished by an employer to an employee at the place of employment and the value of the rental is allowed as a credit toward the wages of the employee, the rental is exempt from sales tax. See Title 36 § 1760(75). This occurs only when the living quarters are provided at the place of employment and an amount for the rental is credited toward the wages of the employee, regardless of whether the living quarters are actually used. The furnishing of these employee living quarters are exempt from sales tax if the employer was required by the Internal Revenue Code and IRS regulations to report the value of the living quarters as taxable wages, regardless of whether or not the employer actually did. If no amount is credited for the rental and the employer charges the employee for the living quarters, the charge is subject to sales tax, whether paid in cash or by payroll deduction.

Example 1: Employee receives wages in the amount of \$400 and has a payroll deduction of \$70 for payment of room rentals for the week. The rentals are subject to sales tax.

Example 2: Employee receives gross earnings in the amount of \$450. Included in gross earnings is \$50, the value of the lodging. The \$50 lodging rental is not taxable.

## Specific exemptions

The sales and use tax law provides the following specific exemptions from tax:

***Camps. Rental charged for living quarters, sleeping or housekeeping accommodations at camps entitled to exemption from property tax under section 652, subsection 1. § 1760(17)***

***Certain institutions. Rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization or nursing care of human beings. § 1760(18)***

***Schools. Rental charged for living quarters, sleeping or housekeeping accommodations to any student necessitated by attendance at a school. § 1760(19)***

***"School" means a public or incorporated nonprofit elementary, secondary or postsecondary educational institution that has a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year and that keeps and furnishes to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank. § 1752(14-E)***

Rentals by a children's summer camp when an entire lump sum admission fee is charged and the provision of living quarters is only incidental to a bona fide, organized, and disciplined program of instruction and recreation are also exempt from sales tax.

### **Casual rentals**

*The tax imposed by this Part must be levied upon all casual rentals of living quarters in a hotel, rooming house, tourist camp or trailer camp ... This section does not apply to the rental of living quarters rented for a total of fewer than 15 days in the calendar year, except that a person who owns and offers for rental more than one property in the State during the calendar year is liable for collecting sales tax with respect to the rental of each unit regardless of the number of days for which it is rented. § 1764*

A person who has only one room or a single camp for rent is required to register as a retailer and collect the 8%<sup>14</sup> sales tax unless rental is for fewer than 15 days each calendar year. Property that is placed in the hands of a real estate agent or other person engaged in the business of renting or managing rentals of living quarters is not a casual rental and is subject to sales tax in the same manner as that of a hotel.

### **Forfeited room deposits or cancellation fees**

The definition of "sale price" excludes the following:

*Any amount charged or collected by a person engaged in the rental of living quarters as a forfeited room deposit or cancellation fee if the prospective occupant of the living quarters cancels the reservation on or before the scheduled date of arrival. § 1752(14)(B)(11)*

When a patron rents a room, it is customary for the establishment to require a deposit to hold the room. If the patron cancels or fails to show up on the date of arrival, the deposit, or a portion of the deposit, is forfeited by the patron. The statute distinguishes between amounts which are deemed to be rentals of living quarters and those amounts which are deemed cancellation fees.

If a patron cancels the reservation on or prior to the scheduled date of arrival and the establishment retains a "cancellation fee", the fee is not subject to Maine sales tax. However, if the patron fails to show on the scheduled date of arrival, any amount forfeited to the establishment is treated as rental of living quarters and is subject to Maine sales tax.

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<sup>14</sup> Effective January 1, 2016, the rate on certain rentals of living quarters increases to 9%.

## Complimentary rooms

When a dissatisfied customer is not charged at all for a room, it is considered a canceled sale and no sales tax is due. If a dissatisfied customer is given a free room in the future, that subsequent transaction is considered a tax-free complimentary room. If a dissatisfied customer is given a discount on the next visit, a discounted sale occurs and sales tax must be collected on the reduced amount.

If a complimentary room is provided when one or more rooms are rented or more than one night's rental is purchased, a discounted sale occurs and sales tax must be collected on the reduced amount.

Examples:

- Complimentary room on a special occasion, such as an anniversary or reunion
- Complimentary room to a tour group, such as a bus driver, tour guide, banquet planner
- Complimentary room to a special guest, such as an actor or entertainer
- A two-nights-for-one special

If a complimentary room is provided without the purchase of any other tangible personal property or taxable service, for instance a dignitary or public official being provided a free room for the night, the complimentary room is not taxable.

When a retailer hires an entertainer and provides a room to the entertainer as part of the contractual arrangement between the two parties, the room is subject to sales tax; rather than paying cash, the entertainer is providing consideration in the form of services rendered. When a complimentary room is provided to a hired entertainer outside of any contractual obligation, no sales tax is due.

## PREPAID CALLING ARRANGEMENTS

☞ *Prepaid calling service; § 1752(17-B)*

"Prepaid calling service" is defined as:

*... the right to access exclusively telecommunications services that must be paid for in advance that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed, and that is sold in predetermined units or dollars, the number of which declines with use in a known amount. The sale or recharge of the service is considered a sale within the State if the transfer for consideration takes place at the vendor's place of business in the State. If the sale or recharge of prepaid calling service does not take place at the vendor's place of business, the sale or recharge is deemed to take place at the customer's shipping address, or if there is no item shipped, at the customer's billing address or the location associated with the customer's mobile telephone number. The sale of the service is deemed to occur on the date of the transfer for consideration of the service. § 1752(8-B)*

Prepaid calling cards and other calling arrangements are taxable at the time of sale. The "sale price" is the card's or arrangement's full face value. In the event the sale or "recharge" does not occur at a vendor's place of business, the sale is deemed to take place at the customer's billing address.

Note: The prepaid calling arrangement should not be confused with purchases of prepaid *wireless* service from a wireless service provider or general retailer. Prepaid wireless service is subject to the service provider tax.

### **TRANSMISSION AND DISTRIBUTION OF ELECTRICITY**

***Transmission and distribution of electricity. § 1752(17-B)***

Electricity is provided by two separate companies; an electricity supplier, and a transmission and distribution (T&D) company. The electricity supplier sells electricity to consumers in a competitive market. The T&D company delivers the electricity over lines which they maintain and service. The sale of electricity is a taxable sale of tangible personal property. The charge for the transmission and distribution of the electricity is a taxable service and is likewise subject to tax.

### **EXTENDED WARRANTY ON AUTOMOBILES AND TRUCKS**

***The sale of an extended service contract on an automobile or truck that entitles the purchaser to specific benefits in the service of the automobile or truck for a specific duration. § 1752(17-B)***

***“Retail sale” does not include:***

- ***The sale of automobile repair parts used in the performance of repair services on an automobile pursuant to an extended service contract sold on or after September 20, 2007 that entitles the purchaser to specific benefits in the service of the automobile for a specific duration. § 1752(11)(B-9)***
- ***The sale of truck repair parts used in the performance of repair services on a truck pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the truck for a specific duration. § 1752(11)(B-17)***

***“Automobile” means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks. “Automobile” includes a pickup truck or van with a gross vehicle weight rating of 10,000 pounds or less. § 1752(1-B)***

***“Truck” means a self-propelled motor vehicle with at least 4 wheels designed and used primarily to carry property, not designed to run on tracks and having a gross vehicle weight rating greater than 10,000 pounds. A truck may be used to tow trailers or semitrailers. § 1752(20-B)***

Sales tax applies to the sale of an extended service contract on an automobile or truck that entitles the purchaser to specific benefits for a specific duration. The sale of the extended

warranty is taxable, while the parts used in subsequent repairs are exempt. Note that this applies only to the sale of extended warranties on **automobiles (including pickup trucks and vans with a gross vehicle weight rating of 10,000 pounds or less and ATV's) and trucks**. The sale of extended warranties on any other property, other than telecommunications equipment, are exempt from sales tax.

## RENTAL OR LEASE OF AUTOS

### ☞ *Rental or lease of an automobile. § 1752(17-B)*

Since definitions play a crucial role in taxation, the term "automobile" has the following definition:

***"Automobile" means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks. "Automobile" includes a pickup truck or van with a gross vehicle weight rating of 10,000 pounds or less. § 1752(1-B)***

Automobiles include, but are not limited to, SUVs, so-called jeeps and scouts and pick-up trucks weighing 10,000 pounds or less. Passenger vans are also automobiles even if retrofitted for another use, such as a service vehicle. "Automobiles" do not include those which have more than 4 wheels, such as dual rear wheel pick-ups, cargo vans and motor homes.

Rentals of automobiles fall into two categories: short term and long term. Within long term rentals, there could be a number of different types of transactions. The tax consequences in each category differ.

### **Short term rentals of automobiles**

Rentals for less than 12 months to one person are deemed to be short-term rentals and are subject to a 10% tax. Typically these are daily rental operations. Taxable rentals include all charges for the rental of the automobile, including maintenance and service contracts, drop-off or pick-up fees, airport surcharges, mileage fees and any separately itemized charges on the rental agreement to recover the owner's estimated costs of the charges imposed by government authority for title fees, inspection fees, local excise tax and agent fees on all vehicles in its rental fleet registered in the State. (§ 1811) Rentals do not include cancellation charges or sales of gasoline.

All rental payments made pursuant to a rental executed in Maine are subject to Maine tax whether the automobile is to be used exclusively in Maine or outside the state. Conversely, rental payments associated with a rental executed outside the state is not subject to Maine's tax even if the automobile is partially or even primarily in Maine.

Rentals to agencies of government and to organizations that are exempt from sales tax are exempt on the same basis as other retail sales.

The definition of "retail sale" excludes "(t)he sale, to a person engaged in the business of renting *automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented for a period of less than one year*". Automobiles purchased exclusively for short term rental are purchased tax exempt. However, if any other use is made of the automobile, the lessor becomes subject to a use tax based on the lessor's purchase price.

### **Long term rentals**

Rentals or leases of automobiles for 12 months or more are long-term leases. With regards to automobiles only, the tax base for long-term leases differ from any other type of vehicle or equipment. The statute states:

***"The value of the rental or lease of an automobile for one year or more is the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee." § 1811, ¶ 3***

As a result, the statute provides that sales tax is computed on the total of three categories:

- total lease payments
- trade-in equity
- cash down payment

#### Total lease payments

Total lease payments are arrived at by multiplying the lease payment by the number of payments in the lease term. If the lease indicates that the 36 monthly payments of \$300.00 are due on the 10th of each month, the tax base for this category is \$10,800. Taxes, such as federal luxury tax, excise and sales taxes, are allowable exclusions from the tax base. Ancillary services such as registration fees, life/disability insurance, warranties and management services, are excluded only if separately stated from the lease payment. (Note, as previously discussed, the sale of an extended service contract on an automobile or truck is a separate taxable service.) For example, if the lease stated above is inclusive of ancillary services, the tax base remains the same. It is immaterial that the \$300 could be broken down into a variety of charges. If on the other hand, the lessor bills the lessee \$150 for ancillary services in addition to the \$300 each month, these services would not be taxable.

Floating interest rates: Leases that have floating interest rates should use the rate effective at the time the lease is executed in determining the total lease payments. However, a reconciliation will be required at the end of the term to determine if any tax adjustment is necessary. For example, at the beginning of a lease it is determined that the lease payment is \$350.00 based on the current interest rate and the term is for 24 months.

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The total lease payments which are part of the tax base and subject to tax amounts to \$8,400.00. During the lease the interest rate fluctuates to a degree that the actual total of the lease payments amounts to \$9,000.00. A tax adjustment is necessary on the last lease payment for the extra \$600.00 in payments.

#### Trade-in equity

Trade-in equity is the value of any kind of trade-in which is a cost reduction to the lease. For instance if a vehicle is taken in trade with a value assigned to it in the amount of \$3,000.00 with no lien, the \$3,000.00 must be added to the tax base. If a lien was involved and the customer owed \$1,000.00, the net amount, or \$2,000.00, is added to the tax base. If the lien is greater than the trade-in value, no equity exists and no value is added (or deducted) from the tax base.

#### Cash Down Payment

Cash down represents any initial cash payment which is a cost reduction to the lease. Cash down includes rebates applied to the lease. It does not include pre-payment of lease payments or payments of sales tax, excise tax, registration fees and other required "up front" costs that are disbursed by the lessor.

### **Special situations**

#### Open-end leases

Open-end leases may or may not have a stated lease term. Thus total rental payments may not be determinable in advance. If a term is determinable and the term is 12 months or more, such as a 12 month lease with monthly renewals thereafter, the lease will be considered a long term lease. The tax base would be computed on the total of the known lease payments. Monthly renewals would be taxed at the general sales tax rate on each payment as they accrue.

If a term is not determinable or the designated term is less than 12 months, the lease will be considered a short-term lease. Each lease payment should be taxed as it accrues at the short-term tax rate of 10%.

A Terminal Rental Adjustment Clause (TRAC) lease is an example of an open-end lease. However, at the end of the lease, the final lease payment is adjusted either upward or downward based upon the condition of the vehicle. Since this represents additional rent due or credit for overpaid rentals, an adjustment to tax is necessary. If there is an increase in the rental payment, additional tax is due. If there is a credit adjustment, a tax credit is appropriate.

#### Lease extensions

In the event a lease is extended, tax is to be computed once again. The lease will continue to be regarded as a long term lease even though the extension may be for a term of less than 12 months. If the term is known, the tax base would include the payment multiplied by the



additional number of months. If the term is not determinable, tax would be computed on each payment as they accrue.

Early termination of lease or removal from state

There is no provision in the sales and use tax law for the refund of sales tax when a lease on which tax has been collected is terminated prior to the end of its term or where the property covered in a lease executed in Maine is subsequently removed from the state.

**Leases to non-residents**

Out-of-state residents that enter into a long term lease of an automobile with a Maine dealer are exempt from Maine sales and use tax provided the automobile is immediately removed from the state and the purchaser executes an “Immediate Removal Affidavit”. A copy can be seen in the Appendix section of this guide. See § 1760(23-C).

**SHORT TERM RENTALS OF PICKUPS AND VANS**

☞ *Rental or lease of a pickup truck or van with a gross vehicle weight of less than 26,000 pounds from a person primarily engaged in the business of renting automobiles. § 1752(17-B)*

Pickups and vans with a gross vehicle weight rating of less than 26,000 pounds are subject to the 10% sales tax provided such rentals are by a person primarily engaged in renting of automobiles on a short-term basis. Dual rear wheel pickups and cargo vans are included in this category. The same discussion above under “short term rental of automobiles” also applies to these pickups and vans.

**RENTAL OR LEASE OF A CAMPER TRAILER OR MOTOR HOME**

☞ *Rental or lease of a camper trailer, or a motor home, as defined in Title 29-A, section 101, subsection 40; § 1752(17-B)*

*“Retail sale” does not include: The sale, to a person engaged in the business of renting or leasing motor homes, as defined in Title 29-A, section 101, subsection 40, or camper trailers, of motor homes or camper trailers for rental. § 1752(11)(B-16)*

The rental or lease of a camper trailer or a motor home is a taxable service subject to the general sales tax rate established by 36 MRSA §1811. The statutory definition of “retail sale” specifically excludes the sale of a camper trailer or a motor home to a person engaged in the business of renting these items. Therefore, such businesses need not pay sales tax when they purchase motor homes and camper trailers for subsequent rental nor accrue use tax when withdrawing a unit out of resale inventory or when locating a unit in Maine for rental. If these products are eventually sold after having been rented for a period of time, such sales are subject to sales tax.

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For purposes of this paragraph, “camper trailer” means a camper trailer as defined in Title 36, section 1481, subsection 1-A but without restriction on length; and “motor home” means a motor home as defined in Title 29-A, section 101, subsection 40. “Motor home” does not include a mobile home.

### **LEASES<sup>15</sup>**

Although leases in general are not “taxable services”, the area of leasing requires a discussion of the different tax treatments of leases. There are generally three types of lease transactions:

- a true lease
- a lease with option to purchase and
- a lease in lieu of purchase

#### **True lease**

In a true lease, the lessor enters into a lease agreement with a lessee for a stated period of time and the property is to be returned to the lessor at the conclusion of the lease term. The lessor is making a taxable use of the property through the derivation of rental income. The lessor is liable for a use tax, due at the beginning of the lease, based on the lessor's cost of the property. If the property is returned to the lessor and leased to another party, no additional use tax is due. No sales tax is charged to the lessee nor are lease payments subject to tax.

#### **Lease with option to purchase**

In a lease with option to purchase, the same liability to the lessor exists as stated in a true lease. However, at the end of the term, the lessee has the option to purchase the property for a stated amount, fair market value or some other value. If the option is exercised, a taxable sale occurs and sales tax would be charged at that time to the lessee based on the option price, including any amounts previously paid as rentals and applied to that price.

#### **Lease in lieu of purchase including automobiles**

In a lease in lieu of purchase, the lessee will acquire title at the end of the lease term. This type of lease is deemed a "sale" at the commencement of the lease. The lessee would be charged sales tax up front based on the total lease payments. (Finance charges which are separately stated may be excluded from the taxable base.) Leases with nominal purchase options, such as \$1.00, are considered leases in lieu of purchase. In addition, TRAC leases may qualify as leases-in-lieu of purchase, depending on the contractual terms.

#### **Trade-ins on leased property**

Trade-in credits are only allowed in transactions involving the "sale" of certain vehicles. Trade-in credits are not allowed on leased property unless the lease is in lieu of purchase and the leased property is of the type that allows trade-in credits.

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<sup>15</sup> See also Instructional Bulletin 20

### **Leases to exempt organizations**

Leases to exempt organizations are treated no differently than the leases mentioned above with the following exceptions: rentals and leases of automobiles, interim rentals and leases in lieu of purchase, being “sales”, are exempt when rented/leased to a sales tax exempt organization. In the case of a lease with option to purchase, the lease is taxable as previously described, while the sale that occurs when the option is exercised is exempt.

### **Interim rentals**

A retailer that purchases tangible personal property for resale, then removes the property from inventory to rent out, is generally required to pay a use tax based on its cost of the property. However 36 MRSA § 1758 allows the retailer, in lieu of paying this use tax, to collect a sales tax on all the rental payments received if the rental qualifies as an “interim rental.” In order to qualify for this provision:

- (1) The property must be purchased for resale; and
- (2) The property cannot be rented to any one person for more than 12 months.

If retailers wish to execute interim rental transactions, they must maintain adequate records for audit purposes, detailing when the item is withdrawn from inventory, to whom the property is rented, the duration of the rental, and the amount of rental income and tax collected. If, after electing to execute an interim rental, a retailer makes any other taxable use of the property, including the rental to one customer for more than a year, the retailer becomes liable for the use tax based on the purchase price of the property less the amount of tax collected on the rentals. Subsequent sales of rented property are subject to sales tax with no credit for tax previously collected on rentals.

Interim rentals do not apply to any rentals included as a taxable service, such as rentals of automobiles, camper trailers and motor homes.

### **Software licenses**

Unlike a sale, a software license provides the user with the authorization to only use the software without title to the software transferring to the user. A software license is therefore treated as a lease. Software licenses that are issued and renewed annually are taxable to the lessor based upon the purchase price. If the software lessor is also the developer of the software, the cost of the product is based upon the lessor’s material costs.

A software license will be considered a lease in lieu of purchase when the license is perpetual or for 10 years or more with no annual renewals. In this situation, the lessor would collect a sales tax from the lessee at the commencement of the lease based upon the total amount of lease payments.

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**SERVICE PROVIDER TAX<sup>16</sup>**

A 5% service provider tax applies to the following services. Effective January 1, 2016, the tax rate increases to 6%.

- *Extended cable and extended satellite television service; (Effective January 1, 2016, this service will read “Cable and satellite television or radio services.”)*
- *Fabrication services;*
- *Rental of video media and video equipment;*
- *Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;*
- *Telecommunications service;*
- *The installation, maintenance or repair of telecommunications equipment;*
- *Ancillary services;*
- *Private nonmedical institution services;*
- *Community support services for persons with mental health diagnosis;*
- *Community support services for persons with intellectual disabilities or autism;*
- *Home support services;*
- *Group residential services for persons with brain injuries.*

§ 2552(1)

*Value is measured by the sale price. The liability for, or the incidence of, the tax imposed by this section is declared to be a levy on the seller. If a seller includes this tax on a customer's bill, it must be shown as a separate line item and identified as a service provider tax. § 2552(2)*

Unlike the sales tax, the service provider tax is imposed on the provider. The provider may pass this cost on to the purchaser, and if this happens, the provider must disclose the tax on the receipt or bill as a “service provider tax”. The value on which the tax is imposed is the transaction’s “sale price”.

### **Sale price**

*“Sale price” means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the cost of materials used, labor or service cost, interest, losses and any other expense of the seller. “Sale price” includes any consideration for services that are a part of a sale. “Sale price” does not include:*

*A. Discounts allowed and taken on sales;*

*B. Allowances in cash or by credit made upon the return of services pursuant to warranty;*

*C. The price of services rejected by customers when the full sale price is refunded either in cash or by credit;*

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<sup>16</sup> See also Instructional Bulletin 55

*D. The amount of any tax imposed by the United States or the State on or with respect to the sale of a service, whether imposed upon the seller or the consumer; or*

*E. The cost of transportation from the service provider's place of business or other point from which shipment is made directly to the purchaser, as long as those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States Postal Service.*

*§ 2551(15)*

#### TELECOMMUNICATIONS SERVICE<sup>17</sup>

- *Telecommunications service; § 2552(1)(E)*

*"Telecommunications services" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point or between or among points.*

*"Telecommunications services" includes transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether the service is referred to as "Voice over Internet Protocol" services or is classified by the Federal Communications Commission as enhanced or value added.*

*"Telecommunications services" does not include:*

- A. Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser when the purchaser's primary purpose for the underlying transaction is to obtain the processed data or information;*
  - B. Installation or maintenance of wiring or equipment on a customer's premises;*
  - C. Tangible personal property;*
  - D. Advertising, including, but not limited to, directory advertising;*
  - E. Billing and collection services provided to 3rd parties;*
  - F. Internet access service;*
  - G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of those services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service as defined in 47 United States Code, Section 522(6) and audio and video programming services delivered by commercial mobile radio service providers as defined in 47 Code of Federal Regulations, Section 20.3;*
  - H. Ancillary services; or*
  - I. Digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ringtones.*
- § 2551(20-A)*

The following are exempt from the service provider tax:

- *Sales of prepaid calling service; § 2557(32)*

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<sup>17</sup> See also Instructional Bulletin 56

- *Sales of international telecommunications service; § 2557(33)*  
*Effective January 1, 2016, this exemption will read:*
  - *Sales of international telecommunications service to a business for use directly in that business; § 2557(33)*

*"International telecommunications service" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. For purposes of this subsection, "United States" includes a territory or possession of the United States. § 2551(5-A)*

- *Sales of interstate telecommunications service. § 2557(34)*  
*Effective January 1, 2016, this exemption will read:*
  - *Sales of interstate telecommunications service to a business for use directly in that business; § 2557(34)*

*"Interstate telecommunications service" means a telecommunications service that originates in one state, territory or possession of the United States and terminates in a different state, territory or possession of the United States. For purposes of this subsection, "state" includes the District of Columbia. § 2551(5-B)*

*"Business" means a commercial activity engaged in as a means of livelihood or profit or an entity that engages in such activities. § 2551(1-I)*

“Telecommunications service” is broadly defined to include all telecommunications services and then provides a list of services that are excluded. Two of the exclusions (installation, maintenance and repair of telecommunications equipment and ancillary services) are subject to the service provider tax as a separately stated service. Additionally, three exemptions are provided in the statute for prepaid calling services (since these are taxable under the sales tax law), international calls and interstate calls. As a result, telecommunications service includes calls made within Maine which also terminate in Maine. The monthly charge for line service is taxable as well as long distance calls within Maine, but calls that originate or terminate outside of Maine are exempt<sup>18</sup>.

“Telecommunications service” is not restricted to entities that provide telephone line service. It also includes voice over internet protocol (VOIP).

### **Installation, maintenance and repair of telecommunications equipment**

- *The installation, maintenance or repair of telecommunications equipment; § 2552(1)(F)*

*"Telecommunications equipment" means any 2-way interactive communications device, system or process for transmitting or receiving signals and capable of exchanging audio, video, data or textual information.*

<sup>18</sup> Effective January 1, 2016, international and interstate calls are only exempt when sold to a business for use directly in that business.

***“Telecommunications equipment” includes all transmission media that are used or capable of being used in the provision of 2-way interactive communications, including, without limitation, copper wire, coaxial cable and optical fiber, except those transmission media designed and primarily used to transmit electricity.***

***"Telecommunications equipment" does not include computers, except those components of a computer used primarily and directly as a 2-way interactive communications device capable of exchanging audio, video, data or textual information. § 2551(19)***

Labor charges for installation, maintenance or repair of telecommunications equipment are subject to the service provider tax. "Telecommunications equipment" not only includes land-line telephones, but also cellular telephones, TDD's, two-way radios, modems, fax machines, telephone switching equipment and telephone wiring, including copper wire, coaxial cable and optical fiber. The definition of telecommunications equipment states that the equipment need only be capable of being used in the provision of 2-way interactive communications. This tax applies to any person who installs or repairs telecommunications equipment and could include electricians and contractors as well as those ordinarily providing telecommunications services. For instance, if an electrician installs telephone wire and coaxial cable in a new home being constructed, that electrician's labor is subject to the service provider tax.

When telecommunications equipment is a component of another piece of equipment (a fax as part of a copier or a modem as part of a computer), repair charges allocable only to the telecommunications equipment are subject to tax.

Since the definition of "retail sale" in the sales tax law does not include the sale of ***“repair parts used in the performance of repair services on telecommunications equipment as defined in section 2551, subsection 19 pursuant to an extended service contract that entitles the purchaser to specific benefits in the service of the telecommunications equipment for a specific duration”***, the purchase of repair parts used in such repair services is exempt from sales and use tax since the sale of the extended service contract is taxable as “installation, maintenance, or repair of telecommunications equipment.

#### **Ancillary services**

- ***Ancillary services; § 2552(1)(L)***

***"Ancillary service" means a service that is associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance, vertical service and voice mail service. §2551(1-C)***

***"Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement. §2551 (1-E)***

***"Directory assistance" means an ancillary service of providing telephone number information or address information or both. §2551 (1-F)***

***"Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services and offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. "Vertical service" includes conference bridging service. §2551 (20-B)***

***"Conference bridging service" means an ancillary service that links 2 or more participants in an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include the telecommunications services used to reach the conference bridge. §2551 (1-D)***

***"Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. "Voice mail service" does not include a vertical service that the customer may be required to have in order to use the voice mail service. §2551 (21-A)***

“Ancillary services” are additional charges associated with telecommunications services. “Ancillary services” is a separately distinguished service subject to the service provider tax. “Ancillary services” include, but are not limited to, charges for billing services, directory assistance, caller-id, setting up conference calls, and voice mail.

#### **Mobile telecommunications services**

***“Mobile telecommunications services” means commercial mobile radio service as defined in 47 Code of Federal Regulations, Section 20.3 as in effect on June 1, 1999. For purposes of sourcing, “mobile telecommunications services” does not include air-ground radiotelephone service as defined in 47 Code of Federal Regulations, Section 22.99 as in effect on June 1, 1999. § 2551(6)***

The definition of telecommunications service in Maine’s law is in conformity with federal statute with regards to the sourcing of mobile telephone services. In summary, Maine can only apply its statute on calls associated with a customer whose place of primary use is in Maine.

“Place of primary use” is defined as:

***... the street address representative of where a customer's use of mobile telecommunications services primarily occurs, which must be either the residential street address or the primary business street address of the customer and must also be located within the licensed service area of the home service provider. For purposes of determining the place of primary use, "customer" means the person or entity that contracts with the home service provider for mobile telecommunications services or, if the end user of such services is not the contracting party, the person that is the end user of such services. The term "customer" does not include a reseller of mobile telecommunications services or a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area. § 2551(8)***



*"Home service provider" means the facilities-based carrier or reseller with which a customer contracts for the provision of mobile telecommunications services. §2551 (5)*

Special rules addressing the responsibilities of a home service provider have also been enacted as follows:

*1. Sourcing rule; identifying place of primary use. Mobile telecommunications services provided to a customer whose place of primary use is located in this State, the charges for which are billed by or for the customer's home service provider, are deemed to be provided at the customer's place of primary use. A home service provider is responsible for obtaining and maintaining a record of a customer's place of primary use. Subject to subsection 2 and if the home service provider's reliance on the information provided by its customer is in good faith, the home service provider:*

*A. May rely on the applicable residential or business street address supplied by the home service provider's customer; and*

*B. May not be held liable for any additional taxes under this chapter based on a different determination of the place of primary use.*

*2. Correction of place of primary use; determination by assessor. If the assessor determines that the address used by a home service provider as a customer's place of primary use does not meet the definition provided by section 2551, subsection 8, the assessor shall notify the customer in writing of that determination and provide the customer an opportunity to demonstrate that that address is the customer's place of primary use. If the customer fails to demonstrate to the assessor's satisfaction within 30 days from the time it receives notice from the assessor, or within another time period as the assessor may allow, that the address in question is the customer's place of primary use, the assessor shall provide the home service provider with the proper address to be used as the customer's place of primary use. The home service provider shall begin using the address provided by the assessor as the customer's place of primary use within 30 days from the date it receives notice of the assessor's determination.*

*3. Hold harmless provision; use of electronic database or enhanced zip code. A home service provider is entitled to the hold harmless protections provided by the federal Mobile Telecommunications Sourcing Act, Public Law 106-252, Section 1, 114 Stat. 2, (2000).*

*4. Bundled services. Notwithstanding any other provision of this chapter, otherwise nontaxable charges that are aggregated with and not separately stated from taxable mobile telecommunications charges are subject to taxation unless the home service provider can, to the satisfaction of the assessor, reasonably identify such charges from books and records kept in the regular course of its business. A customer may not rely upon the nontaxability of bundled services unless the customer's home service provider separately states the otherwise nontaxable services or the home service provider elects, after receiving written notice from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business and that reasonably identify the nontaxable charges.*

*5. Certain preexisting contracts. Subject to subsection 2, a home service provider may treat the address used by it for purposes of the tax*

*imposed by this chapter for any customer under a service contract or agreement in effect on July 28, 2002 as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal period. § 2556*

### CABLE & SATELLITE TELEVISION SERVICES

- ***Extended cable and satellite television services; § 2552(1)(A)***

Until December 31, 2015, "extended cable and satellite television services" is defined as:

***... all cable and satellite television service that is in addition to the minimum service that can be purchased from a cable or satellite television supplier, including the use of associated equipment for which a charge is made. It does not include installation of the associated equipment for which a separate charge is levied. § 2551(2)***

Effective January 1, 2016, "cable and satellite television or radio services" is defined as:

***...all cable and satellite television or radio services, including the installation or use of associated equipment, for which a charge is made. § 2551(2)***

Prior to January 1, 2016, cable and satellite television service is taxed only on programming that the subscriber may elect to receive over and above the minimum service offered to consumers, which is typically the package offering the fewest number of channels. For instance, if a cable company offers a basic package of 18 channels, the charge for this "basic" service is exempt. If the subscriber elects to purchase anything more than this, those charges are taxable. Examples of taxable charges are: 1) the purchase of an extended package of additional channels, 2) movie or sports channels, 3) connections to additional sets, 4) pay-per-view programs or 5) use of special equipment like remote controls or converter boxes. Installation charges are not subject to tax as "extended cable and satellite television services", whether for basic or extended service, provided the charge is separately stated. However, as previously explained under "installation, maintenance and repair of telecommunications equipment," coaxial cable is "telecommunications equipment" and charges for the installation of coaxial cable is subject to the service provider tax. Effective January 1, 2016, all cable and satellite television services and all satellite radio services are subject to the service provider tax.

Since the definition of "retail sale" in the sales tax law does not include the sale to a person "***engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services***", the purchase of converter boxes by the cable or satellite company is exempt from sales and use tax since the rental of the box is taxable as "extended cable and satellite television service".

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**FABRICATION SERVICES<sup>19</sup>**

- ***Fabrication services; § 2552(1)(B)***

"Fabrication services" as defined below are subject to the service provider tax.

***"Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. § 2551(3)***

***The tax imposed by this chapter does not apply to connection with: Sales to a construction contractor or its subcontractor of fabrication services that are to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided by section 2560. § 2557(31)***

"Fabrication services" are those that change materials provided to a fabricator into a different form, character or composition. Fabrication is very similar to manufacturing except that the materials are already owned by the end user. The end user contracts with the fabricator to convert the materials into something different. For instance, Mr. X has some antique floor boards and contracts with a carpenter to make a table. The labor charge by the carpenter is a "fabrication service" that is subject to tax.

"Fabrication services" do not include the charge for attaching, affixing or applying a completed item of tangible personal property to other tangible personal property, or to real property. For example, having a painting mounted into a frame is not fabrication.

***The production of tangible personal property if a sale to the consumer of that tangible personal property would be exempt or otherwise not subject to tax under Part 3; § 2557(35)***

***Fuel used at a manufacturing facility. Ninety-five percent of the sale price of fabrication services for the production of fuel for use at a manufacturing facility as defined in section 1752, subsection 6-A; § 2557(36)***

If the product being fabricated is, under the sales tax law in Part 3, an exempt item or the services are being performed for an exempt organization, the fabrication services are exempt. If the product being fabricated will be used as fuel at a manufacturing facility, the fabrication services are 95% exempt.

All fabrication services performed in Maine are subject to the service provider tax. This includes when out-of-state customers send a product into Maine to have fabrication labor performed, even though the product is returned to the customer at an out-of-state location.

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<sup>19</sup> See also Instructional Bulletin 46

## RENTAL OF VIDEO MEDIA AND VIDEO EQUIPMENT

- ***Rental of video media and video equipment; § 2552(1)(C)***

The statute defines "video media and video equipment" as follows:

***"Video media" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment, and other electronic audio and video media that provide for noncommercial interactive utilization by a person or persons, including digital video discs. "Video equipment" means equipment used to play video media, equipment used for recording images and sound for subsequent noncommercial playback and equipment used for noncommercial interactive utilization of electronic audio and video media.***  
**§ 2551(21)**

Rentals of video media and video games, as well as the equipment used to record or playback video media and games are subject to tax. Late charges and movie passes, since they represent payment for rentals, are also taxable.

The inclusion of the term "noncommercial" was intentional in order to not subject rentals of movies by theaters to a tax. The daily rental of video media and video games, such as DVDs, Blu-ray discs, PlayStation and Xbox games, along with the related equipment, are taxable.

As mentioned in the definition of "retail sale" in the sales tax law, a retail sale does not include "the sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental". Purchases of these items are not subject to sales or use tax since the subsequent rentals are taxed.

## RENTAL OF FURNITURE, AUDIO MEDIA AND EQUIPMENT

Rentals of furniture, audio media and audio equipment are taxable only in those establishments that enter into rental-purchase agreements as defined in M.R.S.A., Title 9-A, § 11-105, sub-§ 7.

- ***Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105. § 2552(1)(D)***

Furniture is defined as:

***... movable items that are intended to make a room or establishment useful for human habitation.***

**A. "Furniture" includes:**

***(1) Living room furniture, including, but not limited to, sofas, love seats, loungers, recliners, chairs, end tables, coffee tables, curio cabinets, home entertainment centers, book shelves and floor and table lamps;***

***(2) Bedroom furniture, including, but not limited to, headboards, footboards, bed frames, mattresses, box springs, dressers, chests of drawers, mirrors, armoires, nightstands, bunk beds, roll-away beds and chests;***

(3) *Baby furniture, including, but not limited to, cribs, dressers and changing tables;*

(4) *Dining room furniture, including, but not limited to, tables, chairs, dinette sets, hutches and dry sinks;*

(5) *Patio and outdoor furniture, including, but not limited to, tables, chairs, umbrellas, porch swings and gliders;*

(6) *Office furniture including, but not limited to, desks, chairs, tables, workstations, movable partitions, shelving, file cabinets, coat racks and couches; and*

(7) *Home electronic devices, including home appliances, home computers, televisions, stereos and radios.*

**B. "Furniture" does not include:**

(1) *Items that are affixed to real property such as sinks, toilets, built-in cabinets or light fixtures; or*

(2) *Furnishings such as carpeting, artwork, draperies or blinds. § 2551(4)*

Rent-to-own establishments are liable for the service provider tax on rental payments as they occur. As provided in the definition of "retail sale" in the sales tax law, a retail sale does not include *"the sale, to a person engaged in the business of renting furniture or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105."* Purchases of the items listed in the definition of "furniture" as well as audio media and audio equipment are not subject to sales or use tax since the subsequent rentals are taxed.

The following services are subject to the Service Provider Tax when the person providing the services is licensed by the Maine Department of Health and Human Services (DHHS) or has a contract with DHHS. If an entity offers these services but is not licensed by or under contract with DHHS, then the sale of these services is not subject to the Service Provider Tax.

If an entity is licensed by or under contract with DHHS, then all the services described below are subject to the Service Provider Tax, even those services provided to "private pay" clients. Sales of services for MaineCare residents that are paid by DHHS are taxed based on the number of billing units billed out for the reporting period multiplied by the rate assigned to the provider by DHHS, net of the amount of tax included in the payment. (Note: This rate paid by DHHS includes the 5% allowance for reimbursement of this tax.) For "private pay" clients, the sales of services described below are taxed based on the total amount billed out for the services.

The Service Provider Tax return has separate lines for reporting the value of services provided to clients and the value of the service provider tax imposed on those services. Report amounts billed to private pay clients for services provided and the amounts billed for reimbursement by DHHS for services provided on the "Gross Services" line of the return. (Note: Amounts reimbursed by DHHS include both the cost of services and the service provider tax.) Enter the value of any non-taxable services (for example, sales for resale or sales to exempt

organizations) on the "Exempt Services" line. The "Gross Services" and "Taxable Services" lines on the return are usually the same. Report the value of the service provider tax imposed on the taxable services amount on the "Total Tax" line, including amounts reimbursable by DHHS and amounts billed to private pay clients. MRS has limited information regarding these services outside of the definitions listed below which are found in Title 36. Specific questions regarding what are included in these services should be directed to DHHS.

#### **PRIVATE NONMEDICAL INSTITUTION SERVICES**

*"Private nonmedical institution services" means services, including food, shelter and treatment, that are provided by a private nonmedical institution. § 2551(11)*

*"Private nonmedical institution" means a person licensed by the Department of Health and Human Services to provide private nonmedical institution services to 4 or more MaineCare-eligible and other residents in single or multiple facilities under a written agreement with the Department of Health and Human Services. "Private nonmedical institution" does not include a health insurance organization, hospital, nursing home or community health care center. § 2551(10)*

#### **COMMUNITY SUPPORT SERVICES FOR PERSONS WITH MENTAL HEALTH DIAGNOSES**

*"Community support services for persons with mental health diagnoses" means rehabilitative services provided to adults at least 18 years of age or to emancipated children that are provided in the context of a supportive relationship pursuant to an individual support plan that promotes a person's recovery and integration of the person into the community and that sustain the person in that person's current living situation or another living situation of that person's choice. "Community support services for persons with mental health diagnoses" includes only those services provided by a designated community support services provider licensed by and operating under a contract with the Department of Health and Human Services for such services, whether the provider is reimbursed through participation in the MaineCare program or with state grant funds. "Community support services for persons with mental health diagnoses" includes only those services provided to persons with mental health diagnoses. § 2551(1-A)*

#### **COMMUNITY SUPPORT SERVICES FOR PERSONS WITH INTELLECTUAL DISABILITIES OR AUTISM**

*"Community support services for persons with intellectual disabilities or autism" means services:*

*A. That are provided by community-based agencies to children or adults with intellectual disabilities or autism and include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive living skills; and*

*B. That take place in a nonresidential setting separate from the home or facility in which the child or adult resides, except when a physician has ordered that such services be provided in the child's or adult's home, and focus on enabling the child or adult to attain or maintain maximum functional levels.*

*"Community support services for persons with intellectual disabilities or autism" includes only those services provided by designated agencies under a contract with the Department of Health and Human Services. § 2551(1-B)*

#### **HOME SUPPORT SERVICES**

*"Home support services" means services provided to adults with intellectual disabilities or autism, including direct assistance with eating, bathing, dressing, personal hygiene and other activities of daily living. These services include only those services provided by designated agencies under a contract with the Department of Health and Human Services and:*

*A. May include assistance with instrumental activities of daily living such as assistance with the preparation of meals, but does not include the cost of the meals themselves;*

*B. If specified in the adult's care plan, may include such housekeeping chores as bed making, dusting and vacuuming that are incidental to the care furnished, or are essential to the health and welfare of the adult; and*

*C. May be provided by a provider unrelated to the adult or by an adult relative other than an adult recipient's spouse, but may not be provided in the same setting where residential training is provided. § 2551(7-B)*

#### **GROUP RESIDENTIAL SERVICES FOR PERSONS WITH BRAIN INJURIES**

*"Group residential services for persons with brain injuries" means services provided to adults with acquired brain injuries, including direct assistance with eating, bathing, dressing, personal hygiene and other activities of daily living provided by designated agencies under a contract with the Department of Health and Human Services. § 2551(1-H)*

#### **Requirement to file amended return**

*1. Amended return required. A person subject to the tax imposed by this chapter must file an amended return whenever an agency of the State, other than the Bureau of Revenue Services, or of the United States makes an audit finding that changes or corrects any item affecting the person's liability under this chapter or whenever for any reason there is a change or correction affecting the person's liability under this chapter.*

*2. Amended return filed. The amended return must be filed within 180 days of an audit finding that affects a person's liability under this chapter or within 180 days of the date that a person learns of a change or correction that affects that person's liability under this chapter.*

*3. Contents of amended return. The amended return required by this section must indicate the change or correction and the reason for that change or correction. The amended return constitutes an admission as to the correctness of the change unless the taxpayer includes with the return a written explanation of the reason the change or correction is erroneous.*

**4. Additional requirements.** *The assessor may require additional information to be filed with the amended return. The assessor may prescribe exceptions to the requirements of this section. § 2558*

If any of the five services are audited by the Department of Health and Human Services or the Federal government, an amended return must be filed within 180 days.

## SERVICE PROVIDER TAX EXEMPTIONS

### NONPROFIT ORGANIZATIONS

#### Exempt activities

*A tax exemption provided by section 2557 to a person based upon its charitable, nonprofit or other public purposes applies only if the service purchased is intended to be used by the person primarily in the activity identified by the particular exemption. A tax exemption provided by section 2557 to a person based upon its charitable, nonprofit or other public purposes does not apply where title is held or taken by the person as security for any financing arrangement. An exemption certificate issued by the State Tax Assessor pursuant to section 2557 must identify the exempt activity and must state that the certificate may be used by the holder only when purchasing services intended to be used by the holder primarily in the exempt activity. When an otherwise qualifying person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases. § 2560*

Maine does not provide a blanket service provider tax exemption for nonprofit organizations that have been granted a federal tax exemption, known as 501(c) organizations. Only certain specifically listed organizations are exempt from the service provider tax. Each of the following statutory exemptions is preceded with the language "incorporated nonprofit" and the language has in some cases been paraphrased (see the statute itself for the complete language of each exemption):

- *Nursing homes licensed by the Department of Health and Human Services § 2557(3)(B)*
- *Residential care facilities licensed by the Department of Health and Human Services § 2557(3)(C)*
- *Assisted housing programs for the elderly licensed by the Department of Health and Human Services § 2557(3)(D)*
- *Home health care agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended § 2557(3)(E)*
- *Rural community health centers § 2557(3)(F)*
- *Dental health centers § 2557(3)(G)*
- *Medical clinics whose sole mission is to provide free medical care to the indigent or uninsured § 2557(3)(G-1)*
- *Organizations organized for the sole purpose of conducting medical research § 2557(3)(H)*



- *Organizations organized for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology § 2557(3)(I)*
- *Institutions operating educational television or radio stations § 2557(3)(J)*
- *Organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia § 2557(3)(L)*
- *Private residential child care facilities that are licensed by the Department of Health and Human Services as residential child care facilities § 2557(4)*
- *Fire departments and ambulance services § 2557(5)*
- *Memorial foundations that primarily provide cultural programs free to the public, historical societies and museums § 2557(8)*
- *Licensed child care facilities § 2557(9)*
- *Sales to organizations providing*
  - A. *Temporary residential accommodations to pediatric patients suffering from critical illness or disease such as cancer or who are accident victims, to adult patients with cancer or to the families of the patients; or*
  - B. *Temporary residential accommodations, or food, or both, to hospital patients or to the families of hospital patients § 2557(11)*
- *Organizations that provide free temporary emergency shelter or food for underprivileged individuals in this State § 2557(12)*
- *Certain child abuse and neglect prevention councils § 2557(13)*
- *Veterans' Memorial Cemetery Associations § 2557(15)*
- *Volunteer search and rescue organizations § 2557(16)*
- *Hospice organizations that provide a program or care for the physical and emotional needs of terminally ill patients § 2557(17)*
- *Councils and local units of national scouting organizations § 2557(18)*
- *Educational organizations that are receiving, or have received, funding from the Department of Education and that provide educational programs specifically designed for teaching young people how to make decisions about drugs, alcohol and interpersonal relationships at a residential youth camp setting § 2557(19)*
- *Local branches of international charitable organizations that lend medical supplies and equipment to persons free of charge § 2557(20)*
- *Organizations whose sole purpose is to fulfill the wishes of children with life-threatening diseases when their families or guardians are unable to otherwise financially fulfill those wishes § 2557(21)*
- *Organizations engaged primarily in providing support systems for single-parent families for the development of psychological and economic self-sufficiency § 2557(22)*
- *Local branches of organizations whose purpose is to construct low-cost housing for low-income people § 2557(23)*
- *Organizations whose sole purpose is to create, maintain and update a registry of Vietnam veterans § 2557(24)*
- *Organizations whose primary purposes are to promote public understanding of hearing impairment and to assist hearing-impaired persons through the dissemination of information about hearing impairment to the general public and referral to and coordination of community resources available to hearing-impaired persons § 2557(25)*

- *Organizations organized for the purpose of providing direct supportive services in the State to veterans and their families living with service-related post-traumatic stress disorder or traumatic brain injury. § 2557(37)<sup>20</sup>*

With the following statutory exemptions, the organization in question may only need to be incorporated *or* nonprofit in addition to meeting the specific statutory language:

- *Incorporated hospitals § 2557(3)(A)*
- *Church affiliated nonprofit organization that operates a residential home for adults § 2557(10)*
- *Nonprofit free public lending library that is funded in part or wholly by the State or any political subdivision or the Federal Government § 2557(14)*
- *Nonprofit youth organizations whose primary purpose is to provide athletic instruction in a nonresidential setting § 2557(18)*
- *Nonprofit organizations whose primary purpose is to develop housing for low-income people § 2557(27)*
- *Nonprofit organizations whose primary purpose is to obtain, medically evaluate and distribute eyes for use in corneal transplantation, research and education § 2557(28)*
- *Nonprofit collaboratives of academic, public, school and special libraries that provide support for library resource sharing, promote quality library information services and support the cultural, educational and economic development of the State. § 2557(38)<sup>21</sup>*

#### CERTAIN ESTABLISHMENTS

Other entities also enjoy exemption from service provider tax.

- *Sales that this State is prohibited from taxing under the constitution or laws of the United States or under the constitution of this State; § 2557(1)*
- *Sales to the State or any political subdivision, or to the Federal Government, or to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them. This exemption does not apply to corporations organized under Title IV, Part E of the federal Farm Credit Act of 1971, 12 United States Code, Sections 2211 to 2214. § 2557(2)*

In addition to the Federal Government, the State of Maine, and any county, city, town or plantation in the State of Maine, this exemption covers sales to:

- School Districts in Maine;
- Water, Power, Parking and other Districts in Maine established by legislative act as quasi-municipal corporations;
- Village Corporation;
- Maine Turnpike Authority.

In the case of the above, sales made to these entities must be documented by listing the name of the governmental agency on the invoice or sales slip. See Rule 302 for additional information regarding documentation requirements that apply depending on the method of

<sup>20</sup> Effective October 1, 2015

<sup>21</sup> Effective October 1, 2015

payment. Sales to other states or their subdivisions are not exempt from Maine service provider tax.

- *Schools § 2557(3)(K)*
- *Regularly organized churches or houses of religious worship § 2557(3)(M)*
- *Community mental health facilities, adult developmental services facilities or substance abuse facilities that are:*
  - A. Contractors under or receiving support under the federal Community Mental Health Centers Act, or its successors; or*
  - B. Receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204 § 2557(6)*
- *Regional planning commissions and councils of government, which are established in accordance with Title 30-A § 2557(7)*
- *Statewide organizations that advocate for children and that are members of the Medicaid Advisory Committee § 2557(13)*
- *Community action agencies designated in accordance with Title 22, section 5324 § 2557(13)*
- *Credit unions that are organized under the laws of this State. This subsection remains in effect only for the time that federally chartered credit unions are, by reason of federal law, exempt from payment of the tax imposed by this chapter § 2557(26)*
- *Sales to certain air ambulance services that are limited liability companies § 2557(5)*
- *Sales to centers for innovation as described in Title 5, section 13141. § 2557(29)*

### **Sales for resale**

*Sales of services to another service provider for resale. § 2557(30)*

*When a service provider purchases a service subject to tax under this chapter from another service provider using a resale certificate approved by the assessor and claims that it will resell the service, and then subsequently uses the service itself rather than reselling it, the purchaser becomes liable for any unpaid tax on that service on the date of such use. § 2554(4)*

Services can be sold exempt when sold to another service provider for resale. Unlike sales tax, resale certificates are not automatically generated and mailed. With the exception of telecommunications services, it is unlikely that the other services will be sold to another provider for resale. For this reason, a resale certificate has been developed for use by telecommunication services providers. A copy can be seen in the Appendix section of this guide. If a provider subsequently uses the services that it purchased exempt for resale, the provider becomes liable for the tax directly to the state on those services.

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## REGISTRATION OF SERVICE PROVIDERS

*"Service provider" means a person who sells one or more of the services listed in section 2552. § 2551(17)*

*Every person subject to the tax imposed by this chapter shall register as a service provider with the assessor by submitting an application on a form prescribed and furnished by the assessor. The assessor shall issue a service provider tax registration certificate to each applicant that properly completes and submits an application form. A separate application must be completed and a separate registration certificate issued for each place of business, and the registration certificate must be conspicuously displayed at that place of business. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning of that term in the Maine Administrative Procedure Act. § 2553(1)*

Persons engaged in providing any of the services subject to the service provider tax are required to register with MRS to facilitate the collection of tax. Once registered, periodic reporting and remittance of the tax is required.

### Payment of taxes

*The tax imposed by this chapter is due and payable on the date on which the person subject to the tax is paid for the service rendered, or the billing date, whichever comes first. Upon such terms and conditions as the assessor may prescribe, the assessor may permit a postponement of payment to a date not later than the date on which the sales so taxed are required to be reported. § 2554(2)*

### Tax returns due on the 15<sup>th</sup>

*Every person subject to the tax imposed by this chapter shall file with the assessor, on or before the 15th day of each month, a return made under the penalties of perjury on a form prescribed by the assessor. The return must report the total sale price of all sales made during the preceding calendar month and such other information as the assessor requires. The assessor may permit the filing of returns other than monthly. The assessor may by rule waive the reporting of nontaxable sales. The assessor may for good cause extend for not more than 30 days the time for filing returns required under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. § 2554(1)*

Service providers are responsible for filing a service provider return on or before the 15th of the month. The information on the return reflects sales that occurred in the prior month. If the due date falls on a weekend or holiday, the due date is next business day. For information regarding payment and filing mandates and how to file electronically, see the "Responsibilities of the Retailer" section of this guide.

## Filing Frequencies

1. *Generally; returns filed monthly. Except as otherwise provided by this Rule, every service provider must file monthly tax returns. The State Tax Assessor will periodically review the status of taxpayer accounts and notify service providers whose filing frequency has been changed pursuant to this Rule. Upon application to the assessor, a taxpayer may be authorized to file returns more frequently than this Rule requires. For the purposes of this rule, “service provider” means an individual or business entity registered with Maine Revenue Services for the collection and payment of the Service Provider Tax pursuant to Title 36, Chapter 358.*

2. *Quarterly returns. Every service provider whose average tax liability is at least \$100 per month but less than \$600 per month must file four returns each year. The reporting periods are January through March; April through June; July through September; and October through December. The due date for filing the return and paying the tax is the fifteenth day of the month following the end of each reporting period.*

3. *Biannual returns. Every service provider whose average tax liability is at least \$50 per year but less than \$100 per month must file two returns each year. The reporting periods are January through June and July through December. The due dates for filing the returns and paying the tax are the fifteenth day of the month following the end of each reporting period (July 15th and January 15th).*

4. *Annual return. Every service provider whose average annual tax liability is less than \$50 must file one return each year. The reporting period is the calendar year, and the due date for filing the return and paying the tax is the fifteenth day of the month following the end of the reporting period (January 15th).*

5. *Exceptions. The assessor may temporarily require service providers to file using unusual or more frequent reporting periods in order to administer substantial changes in the service provider tax law, such as rate changes. Rule 401*

## Extensions

*Upon application to the State Tax Assessor, the time for filing returns may be extended for 30 days for good cause. The extension remains in effect until revoked in writing by the State Tax Assessor. The extension does not extend the time for paying the tax. Rule 401*

## Reporting on cash basis

*Generally, service providers are required to file tax returns on an accrual basis. However, a service provider that properly files its federal income tax returns on a cash basis may elect to file its service provider tax returns on a cash basis. Rule 401*

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**Consolidated Filing**

*Upon application to the State Tax Assessor, a service provider that makes sales at more than one place of business may be authorized to file a single consolidated return reporting the total amount of sales made at all of the locations. The return must include a schedule showing a breakdown of taxable sales made at each location. Rule 401*

**Bad Debts<sup>22</sup>**

*The tax paid on sales for which all or a portion of the sale price is charged off by the service provider as uncollectible may be credited against the tax due on a subsequent return filed by the service provider within 3 years of the charge-off but, if any such accounts are thereafter collected by the service provider, a tax must be paid upon the amount so collected. § 2554(3)*

**Note:** This is not a refund provision. If a service provider has a bad debt on which they had paid a service provider tax, the tax may be credited to the provider. The amount must be deducted on a service provider tax return filed within three years from the date the amount was actually charged off on the books of the retailer. Credit for charge-offs cannot be taken later than the 15th day of the 37th month after the uncollectible amount was charged off on the books of the retailer.

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<sup>22</sup> See also Instructional Bulletin 29

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## EXEMPTIONS

Like the service provider tax law, the sales and use tax law provides numerous exemptions. Sales and use tax exemptions can be grouped in the following categories:

- Exempt goods
- Exempt services
- Nonprofit organizations
- Certain establishments
- Casual sales

### EXEMPT GOODS

This section has been categorized into sub groups for easier reference. These groups are food items, medical items, printed items, donated merchandise, building materials, commerce items, agriculture and animals, vehicles, fuel and utilities, manufacturing, and Pine Tree Development Zones.

### FOOD ITEMS

#### Grocery staples<sup>23</sup>

Effective until December 31, 2015, “grocery staples” is defined as:

***Grocery staples. "Grocery staples" means food products ordinarily consumed for human nourishment.***

***'Grocery staples' does not include spirituous, malt or vinous liquors; soft drinks, iced tea, sodas or beverages such as are ordinarily dispensed at bars or soda fountains or in connection with bars or soda fountains; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; water, including mineral bottled and carbonated waters and ice; dietary substitutes; candy and confections; and prepared food." § 1752(3-B)***

Effective January 1, 2016, “grocery staples” is defined as:

***"Grocery staples" means food products ordinarily consumed for human nourishment.***

***"Grocery staples" does not include:***

- A. Spirituous, malt or vinous liquors;***
- B. Medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician;***
- C. Water, including mineral bottled and carbonated waters and ice;***
- D. Dietary substitutes;***
- E. Candy and confections, including but not limited to confectionery spreads. As used in this paragraph, "candy" means a preparation of***

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<sup>23</sup> See also Instructional Bulletin 12



*sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces;*

*F. Prepared food; and*

*G. The following food and drinks ordinarily sold for consumption without further preparation:*

*(1) Soft drinks and powdered and liquid drink mixes except powdered milk, infant formula, coffee and tea;*

*(2) Sandwiches and salads;*

*(3) Supplemental meal items such as corn chips, potato chips, crisped vegetable or fruit chips, potato sticks, pork rinds, pretzels, crackers, popped popcorn, cheese sticks, cheese puffs and dips;*

*(4) Fruit bars, granola bars, trail mix, breakfast bars, rice cakes, popcorn cakes, bread sticks and dried sugared fruit;*

*(5) Nuts and seeds that have been processed or treated by salting, spicing, smoking, roasting or other means;*

*(6) Desserts and bakery items, including but not limited to doughnuts, cookies, muffins, dessert breads, pastries, croissants, cakes, pies, ice cream cones, ice cream, ice milk, frozen confections, frozen yogurt, sherbet, ready-to-eat pudding, gelatins and dessert sauces; and*

*(7) Meat sticks, meat jerky and meat bars.*

*As used in this paragraph, "without further preparation" does not include combining an item with a liquid or toasting, microwaving or otherwise heating or thawing a product for palatability rather than for the purpose of cooking the product.*

*"Grocery staples" includes bread and bread products, jam, jelly, pickles, honey, condiments, maple syrup, spaghetti sauce or salad dressing when packaged as a separate item for retail sale. § 1752(3-B)*

*"Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products; that contain soy, rice or similar milk substitutes; or that contain greater than 50% vegetable or fruit juice by volume. § 1752(14-F)*

Products that are excluded from the definition of grocery staples are taxable. See Instructional Bulletin No. 12 for a more detailed explanation of taxable and exempt items commonly sold in a grocery store.

## Prepared food<sup>24</sup>

Another important exclusion to the definition of “grocery staples” is “prepared food” which is defined as follows:

**“‘Prepared food’ means:**

- A. Meals served on or off the premises of the retailer;**
- B. Food and drinks that are prepared by the retailer and ready for consumption without further preparation; and**
- C. All food and drinks sold from an establishment whose sales of food and drinks that are prepared by the retailer account for more than 75% of the establishment's gross receipts.**

**‘Prepared food’ does not include bulk sales of grocery staples.”**

**§ 1752(8-A)**

All “prepared food” is taxable at the rate of 8% regardless of where it is sold. The following explains the different terms found in the definition of “prepared food”.

### Meals served on or off the premises of the retailer

This category includes any meal sold by any retailer whether served at the retailer’s place of business or off-site. It includes all food or drink prepared for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the retailer. Common retailers included in this category are restaurants, fast food chains, cafeterias, caterers and other eateries providing sit down service.

Sandwiches requiring no further preparation and food heated by the retailer are considered “meals”, whether prepared by the retailer or a third party, and regardless of the type of retailer making the sale.

### Food and drink prepared by the retailer and ready for consumption without further preparation

This category includes all food and drink that is prepared by any retailer and that is ready to eat. “Prepared by the retailer” means:

- Food prepared for sale in a heated state regardless of cooling which may have occurred prior to the sale. Some examples are hot dogs, hamburgers, hot sandwiches, pizza, chicken pieces and rotisserie chicken.
- Mixing or combining two or more food ingredients for sale as a single item, such as bakery items, sandwiches, deli platters, salads and desserts.
- Food or drink prepared from syrups or mixes, such as soda fountain drinks, slush-type drinks, soft-serve ice cream and milk shakes.
- Food or drink sold with eating utensils provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins or straws.

<sup>24</sup> See also Instructional Bulletin 27

- Food that is prepared for sale in self-serve areas such as salad bars and self-serve food carts.

Example 1: A snack bar prepares hot dogs, hamburgers, sandwiches, fountain drinks, slush-type drinks and soft serve ice cream. All these products are taxable at the prepared food rate.

Example 2: A grocery store prepares sandwiches, hot chicken, coleslaw, potato salad and also prepares food for a salad bar where customers can create their own salads. All these items are taxable at the prepared food rate, except those excluded as “bulk sales of grocery staples” as explained below.

Example 3: A convenience store sells hot dogs, pizza slices, sandwiches, hot coffee, fountain drinks, and slush-type drinks. All these items are taxable at the prepared food rate.

Example 4: A bakery prepares and sells bread and bread products, doughnuts, muffins, pastries, cakes, pies and hot coffee. All these items are “prepared by the retailer” and taxable at the prepared food rate, except those excluded as “bulk sales of grocery staples” as explained below.

Food and drink sold from an establishment that is predominately in the business of selling prepared food for immediate consumption (75% rule)

This category identifies retailers that are more similar in nature to a restaurant than a grocery store. A retailer that falls within this category is required to charge the prepared food tax rate on **all** of its sales of food and drinks requiring no further preparation, whether they were prepared by the retailer or not, except those excluded as “bulk sales of grocery staples” as explained below. The two factors to compare are 1) sales of food prepared by the retailer and 2) total sales. If dividing (1) by (2) generates a percentage of more than 75%, the retailer falls within this category.

“Sales of food prepared by the retailer” include all food that the retailer prepares, including hot food, hot drinks, sandwiches, bakery items, soda fountain drinks, slush-type drinks, ice cream served in a cup, cone or dish, and milkshakes. “Total sales” include all receipts by the retailer, including grocery staples, prepared food, cigarettes, beer, wine, soda, candy, gasoline, and periodicals; rental income from the rental of space at the retailer’s site, such as space for vendors, room rentals and campsite rentals; and revenue generated at the retailer’s site from other sources, such as admittance fees and equipment rentals.

Sales of individually packaged pastries, chips, cookies, etc. and drinks including soda, water, juice, milk, etc. and candy must all be taxed at prepared food rate along with the food prepared by the retailer.

A retailer that does not meet the 75% rule must collect the prepared food tax rate only on those sales of food prepared by the retailer as mentioned in the prior section. Sales of other

taxable items, such as soda, beer, wine, candy, ice, cigarettes, etc. are taxed at the general sales tax rate. Sales of grocery staples are all exempt.

Example 1: A convenience store prepares and sells sandwiches, pizzas, and soda fountain drinks. In addition it sells convenience foods, a small line of grocery staples, candy, beer, wine, cigarettes and gasoline. Its total sales for the year are \$500,000. Sales of “prepared food” (sandwiches, pizzas and soda fountain drinks) for the year are \$125,000. Because only 25% of its total sales are prepared food, this store should charge the prepared food rate only on its prepared food. Other taxable items would be taxed at the general sales tax rate.

Example 2: A sandwich shop prepares and sells sandwiches, pizzas, pasta dishes, hot dogs, hamburgers, and soda fountain drinks. In addition it sells chips, pastries, candy, soda, water, beer, juices and milk. Its total sales for the year are \$300,000. Sales of “prepared food” (sandwiches, pizzas, pasta dishes, hot dogs, hamburgers, and soda fountain drinks) for the year are \$240,000. Since more than 75% of its total sales are prepared food (80%), this retailer must charge the prepared food rate on all its sales of food and drink that do not require further preparation (chips, pastries, candy, soda, water, beer, juices and milk).

### **Sale price of prepared food**

Charges that are directly in connection with the sale of prepared food, (charges for labor, linen, place settings, utensils, etc.) are included in the sale price and subject to tax at the prepared food rate, even if the charges are separately stated. Other incidental charges such as charges for tables, chairs, rentals of equipment, use of centerpieces, etc., are not subject to tax. Sales of items such as centerpieces and decorations are subject to sales tax at the general sales tax rate.

### **Exclusion for bulk sales of grocery staples**

The definition of “prepared food” does provide one exclusion. “Bulk sales of grocery staples” are exempt regardless of the location from which they are sold. Some examples of food prepared by the retailer that qualify as bulk sales of grocery staples prior to January 1, 2016 are:

- pies, cakes, desserts and bread and bread products, except those packaged as a single serving
- donuts, muffins, pastries, cookies, etc. sold in quantities of 6 or more
- products sold in the “deli case”, such as salads, luncheon meats and cheese, except sandwiches and food prepared for sale in a heated state regardless of cooling which may have occurred prior to the sale
- ice cream packaged in quart or larger containers, maple syrup, jam, jellies, pickles, honey, and spaghetti sauce

For retailers that meet the 75% rule, “bulk sales of grocery staples” also include:

- a bag of coffee
- salad dressing
- drinks, including milk and juice, in quart or larger containers

- potato chips, corn chips and similar items packaged in 6 ounce or larger containers
- packages of cookies, crackers, etc. except those packaged as a single serving

Effective January 1, 2016, pies, cakes, desserts, donuts, muffins, pastries, cookies, salads, and ice cream are excluded from the definition of grocery staple and would therefore be taxable, even when sold in bulk quantities.

### **Liquor sold in licensed establishments**

Liquor sold in establishments that are licensed for on-premises consumption of liquor is subject to an 8% sales tax. "Liquor" includes spirits, wine and malt liquor.

### **Personal chef**

A personal chef who comes to a customer's home and prepares one or more meals may be selling prepared food. When the personal chef does no more than prepare the food using the ingredients provided by the customer, the chef's labor is not taxable. However, if a personal chef provides the ingredients and prepares a meal ready for consumption without further preparation, the chef is selling prepared food and must collect tax at the prepared food rate. A meal is "ready for consumption without further preparation" even if it needs to be toasted, microwaved or otherwise heated for palatability rather than for the purpose of cooking or baking the product. If the personal chef prepares meals and places them in a freezer for the customer to boil, fry, grill, bake or otherwise cook at a later time, the food is not "ready for consumption without further preparation" and is exempt from tax.

### **Cooking demonstrations**

Persons engaged in preparing food may provide "cooking demonstrations" or "cooking schools" where the participants may or may not be involved in the preparation of the food. The following provides guidance for how the prepared food is taxed in certain situations:

Example 1: In a class where the preparation is demonstrated to the participants and the participants can "sample" the prepared food, but a meal is not prepared for each participant, any charge for observing the preparation is not subject to tax. However the person that purchased the items used at the demonstration is subject to use tax at the prepared food rate on the ingredients used in preparing the food.

Example 2: In a class where all participants have a hands-on preparation class and can eat what they prepared, any charge for participation is not subject to tax. However, the person that purchased the items used at the demonstration is subject to use tax at the prepared food rate on the ingredients included in the class fee. If participants purchase their own ingredients, the exemption provided for grocery staples applies.

Example 3: In a class where the preparation is demonstrated to the participants and a meal is then served to each participant, a sale of prepared food is being made to each participant and the entire “class fee” is subject to sales tax at the prepared food rate unless a reasonable demonstration fee is separately stated from the sale price of the meal.

### **Certain meals**

#### ***Sales of meals:***

#### ***A. Served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school; § 1760(6)***

Sales of meals served to the students or teachers of a school by public or private schools, school districts, student organizations and parent-teacher associations are exempt from sales tax.

This exemption applies to:

- i. Sales of meals made in the school cafeteria during the normal school day
- ii. Sales of meals by a post-secondary school as part of a student “meal plan”
- iii. Sales of meals by a school or student organization at a school event where those in attendance are mainly students and teachers
- iv. Sales of meals by a caterer when contracted by the school to provide student and teacher meals

The law also provides an exemption for sales of goods and services by schools, student organizations, booster clubs and parent-teacher associations. Sales of meals by any of these organizations, even to customers other than students or teachers, qualify for exemption provided that the proceeds are used to benefit the school or student organization or are donated to charity.

#### ***B. To patients of institutions licensed by the Department of Health and Human Services for the hospitalization or nursing care of human beings, or to patients or residents of institutions licensed by the Department of Health and Human Services under Title 22, Subtitle 6 or Title 22, section 1781; § 1760(6)***

Sales of meals, food and drink to patients of hospitals licensed by the State for the care of human beings are exempt from sales tax. Also exempt are sales of meals, food and drink by other institutions licensed by the State for the hospitalization or nursing care of human beings.

#### ***C. By hospitals, schools, long-term care facilities, food contractors and restaurants to incorporated nonprofit area agencies on aging for the purpose of providing meals to the elderly; § 1760(6)***

Sales of meals by hospitals, schools, long-term care facilities, food contractors and restaurants to incorporated nonprofit area agencies on aging for the purpose of providing meals to the elderly are exempt from sales tax. The seller of these meals is required to obtain an exemption certificate, issued by MRS, from the incorporated nonprofit area agency purchasing the meals.

*D. To residents of incorporated nonprofit church-affiliated congregate housing facilities for the elderly in which at least 75% of the units are available for leasing to eligible lower-income residents;*

*E. Served by a college to its employees if the meals are purchased with debit cards issued by the college;*

*F. Served by youth camps licensed by the Department of Health and Human Services and defined in Title 22, section 2491, subsection 16: and*

*G. Served by a retirement facility to its residents when participation in the meal program is a condition of occupancy or the cost of the meals is included in or paid with a comprehensive fee that includes the right to reside in a residential dwelling unit and meals or other services, whether that fee is charged annually, monthly, weekly or daily. § 1760(6)*

*"Retirement facility" means a facility that includes residential dwelling units where, on an average monthly basis, at least 80% of the residents of the facility are persons 62 years of age or older. § 1752(11-A)*

#### **American Legion Auxiliary**

*Sales of meals and related items and services by a nonprofit auxiliary organization of the American Legion in connection with a fund-raising event sponsored by the auxiliary organization if the meals and related items and services are provided in a room that is separate from the lounge facilities, if any, of the American Legion and patrons are prohibited from taking alcoholic beverages from the lounge facilities to the separate room where the meals and related items and services are provided. § 1760(85)*

#### **Food stamp purchases**

*Sales of items purchased with food instruments distributed by the Department of Health and Human Services pursuant to the Supplemental Nutrition Assistance Program or the Women, Infants and Children Special Supplemental Food Program. § 1760(54)*

#### **Sales through vending machines<sup>25</sup>**

*Sales of products for internal human consumption when sold through vending machines by a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines. § 1760(34)*

The status of products sold through vending machines depends upon the product being sold and the type of business activity of the retailer. "Vending machines" do not include "snack boxes" that require purchasers to be on their honor in paying for the selected item.

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<sup>25</sup> See also Instructional Bulletin 8

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This exemption only applies to products for internal human consumption by a person who primarily is a vending company. Although the exemption exists for the sale, the items are subject to use tax based on the seller's cost.

"Products for internal human consumption" means:

*"edible products sold for human nutrition or refreshment and containers or utensils provided simultaneously for the consumption of these products. It does not include spirituous, malt or vinous liquors, medicines, tonics, vitamins, dietary supplements or cigarettes." § 1752(5-A)*

Items that come within the scope of this definition are sandwiches, chips, ice cream, candy, soft drinks and other food items. Also included within this definition are the paper plates, cups, utensils and packaging materials for these items. Chewing gum is **not** for "internal human consumption."

Items, other than those mentioned above, when sold through vending machines are retail sales and subject to tax on the selling price. Examples of such items are cigarettes, toys, gum, health and beauty aids, and other goods not for "internal human consumption." The retailer would purchase these items free of tax by presenting the supplier with a resale certificate.

A retailer may sell a combination of the items mentioned above. Or the retailer may be engaged in other activities besides vending machines such as a lunch counter or a cafeteria. The following discusses the two categories that a vending machine operator could fall into and the tax consequences of each.

#### When More Than 50% of Retail Sales Are Through Vending Machines.

For retailers in this situation only, vending machine sales of products for internal human consumption are not taxed on the selling price. However the products are taxed at the retailer's cost. The law allows the purchase of these items free of tax for resale if the supplier is provided a resale certificate. Purchases are then reported as "taxable purchases" on the sales and use tax return. This exemption applies only to items for internal human consumption. Other items sold through vending machines are taxed on their selling price.

#### When 50% or Less of Retail Sales are Through Vending Machines.

Vending machine operators who receive 50% or less of their gross receipts from retail sales through vending machines do not qualify for this exemption. Such retailers must report their entire vending machine sales based on the selling price.

(Note: It is a given that the sale price of items sold through vending machines includes the sales tax).



### **Residential water**

***Residential water. Sales of water purchased for use in buildings designed and used for both human habitation and sleeping, with the exception of hotels. § 1760(39)***

This exemption applies to all buildings designed for human habitation and sleeping, but specifically excludes hotels. All other commercial uses are taxable. Sales of bottled water delivered by the seller are governed by who the purchaser is.

This exemption does not apply to sales of bottled water in retail stores, such as grocery stores, convenience stores, department stores and the like. These sales are taxable since they are governed by the definition of “grocery staple” which specifically excludes water.

### **Meals provided to employees**

***Meals or lodging provided to employees at their place of employment when the value of those meals or that lodging is allowed as a credit toward the wages of those employees. § 1760(75)***

When the value in money of a meal furnished by an employer to an employee at the place of employment is credited toward the wages of the employee, the meal is exempt from sales tax. This occurs only when the meal is provided at the place of employment and an amount for meals is credited toward the wages of the employee regardless of whether meals are actually consumed. The furnishing of these employee meals are exempt from sales tax if the employer was required by the Internal Revenue Code and IRS regulations to report the value of the meals as taxable wages, regardless of whether or not the employer actually did. If no amount is credited for meals and the employer charges the employee for meals, the charge is subject to sales tax at the prepared food rate, whether paid in cash or by payroll deduction.

If a meal served to an employee is not part of the employee’s compensation, the employer is not required to report the meal as compensation. If the employer provides the meal at no charge to the employee, the employer is subject to use tax at the prepared food rate on its cost of ingredients.

### **Meals to contract staff**

When a retailer hires an entertainer and provides a meal to the entertainer as part of the contractual arrangement between the two parties, a bartered transaction has occurred (a meal in exchange for services). The value of the meal should be reported as a taxable sale. When a complimentary meal is provided to a hired entertainer outside of any contractual obligation, use tax is due at the prepared food rate on the retailer’s cost of ingredients.

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## Meals provided to dissatisfied customers

When a dissatisfied customer is not charged at all for a meal, it is considered a canceled sale and no sales or use tax is due. If a dissatisfied customer is given a free meal on the next visit, the complimentary meal is subject to use tax at the prepared food rate on the seller's cost of ingredients. If the customer is given a discount on the next visit, a discounted sale occurs and sales tax must be collected on the reduced amount.

## Complimentary meals

If a complimentary meal is provided when one or more meals are purchased, a discounted sale occurs and sales tax must be collected on the reduced amount.

Examples:

- Complimentary meal on a special occasion such as to a mother on Mother's Day, to a father on Father's Day or to a person on their birthday.
- Complimentary meal to a tour group such as a bus driver, tour guide or banquet planner.
- Complimentary meal to a special guest such as a dignitary, public official, actor or entertainer.
- A two-for-one meal coupon.

If a complimentary meal is provided without the purchase of any other tangible personal property or taxable service, for instance a public official and spouse being provided a free meal, the complimentary meal is subject to use tax at the prepared food rate on the seller's cost of ingredients.

## MEDICAL ITEMS

### Medicines<sup>26</sup>

*Sales of medicines for human beings sold on a doctor's prescription. This subsection does not apply to the sale of marijuana pursuant to Title 22, chapter 558-C. § 1760(5)*

"Medicines" means antibiotics, analgesics, antipyretics, stimulants, sedatives, antitoxins, anesthetics, antipruritics, hormones, antihistamines, certain "dermal fillers" (such as BoTox®), injectable contrast agents, vitamins, oxygen, vaccines and other substances that are used in the prevention, diagnosis or treatment of disease or injury and that either (1) require a prescription in order to be purchased or administered to the retail consumer or patient; or (2) are sold in packaging that contains a U.S. Food and Drug Administration OTC Drug Facts Label. "Sold on doctor's prescription" means that a medical professional authorized by law to prescribe medicines for human beings dispensed or administered the medicine or a licensed pharmacist sold the

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<sup>26</sup> See also Instructional Bulletin 41

medicine in accordance with a prescription issued by a medical professional authorized by law to prescribe medicines for human beings.

Bandages, dressings, sutures, swabs, hypodermics, diagnostic test kits, instruments and similar items that may be used in the diagnosis and treatment of injury or disease, but that are not medicines, are subject to tax when sold to any non-exempt purchaser. (However, sales of items used only in the diagnosis or treatment of diabetes are exempt as explained later.) Sales to individuals of “over-the-counter” drugs without a written prescription are taxable, even if the drug is purchased on the advice or recommendation of a physician. However, there is no tax on nonprescription medicines purchased by a doctor for use in the doctor’s medical practice.

Sales of medicines originally prescribed by a doctor on a refillable prescription are exempt when the prescription is refilled. Sales of medical marijuana are taxable.

### **Prosthetic devices**

***Sale of prosthetic aids, hearing aids or eyeglasses and artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity; § 1760(5-A)***

"Prosthetic aids" means devices that are worn on or in the human body to replace a missing portion of the body or to correct physical malformity or malfunction. Artificial limbs and artificial eyes; mammary prostheses and brassieres specifically designed to accommodate mammary prostheses; ostomy appliances; enteral feeding devices; dentures, crowns, caps and materials actually used in the repair or replacement of teeth such as dental amalgam and cement; and cardiac pacemakers are examples of items that qualify for exemption as prosthetic aids. Repair parts for items that meet the definition of "prosthetic aids" are also exempt.

Items ordinarily worn for cosmetic purposes, such as wigs, false eyelashes and makeup, are taxable whether or not the need for them results from a medical condition.

Orthopedic or therapeutic devices and appliances that do not replace a functioning part of the human body or do not correct physical malformity or malfunction are not prosthetic aids. Articles of this type are taxable unless they constitute "artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity". A device is “designed for the use of” a particular individual with a physical incapacity, and therefore qualifies for exemption, if the device has been manufactured or fabricated specifically for the individual, or if the device has been molded to the individual to such a degree that it can be worn only by that individual. A product that is designed to be merely adjustable does not qualify for the exemption. Sales of standardized or stock devices such as trusses, supports, neck or back braces, orthopedic shoes, athletic supporters, support hosiery, arch supporters, elastic bandages and similar items are taxable unless they meet the “designed for the use of” requirements mentioned above.

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Sales of hearing aids and sales of batteries and repair parts for hearing aids are exempt from tax as are sales of corrective eyeglasses and contact lenses, repair or replacement parts and lenses for corrective eyeglasses.

Noncorrective safety glasses, sport glasses and goggles, noncorrective sunglasses, opera glasses, magnifying glasses, platform magnifiers and similar items are taxable. Cleaning solutions and supplies for contact lenses and eyeglasses are taxable.

### **Positive airway pressure equipment and supplies**

*Positive airway pressure equipment and supplies sold or leased for personal use. § 1760(94)*

*"Positive airway pressure equipment and supplies" means continuous positive air pressure and bilevel positive air pressure equipment and supplies, and repair and replacement parts for such equipment, used in respiratory ventilation. § 1752(8-C)*

*"Retail sale" does not include: The sale of positive airway pressure equipment and supplies for rental for personal use to a person engaged in the business of renting positive airway pressure equipment. § 1752(11)(B)(15)*

An exemption applies to positive airway pressure ("PAP") equipment and supplies sold or leased for personal use. "Positive airway pressure equipment and supplies" means continuous positive air pressure and bilevel positive air pressure equipment and supplies, and repair and replacement parts for such equipment, used in respiratory ventilation. "Personal use" means for use in a person's home, as opposed to use by a business, such as a doctor's office. Retailers are exempt from sales tax when purchasing PAP equipment and supplies for resale. Likewise, persons engaged in the business of renting PAP equipment are exempt when purchasing PAP equipment for rental for the personal use by their customer.

### **Diabetic supplies**

*All equipment and supplies, whether medical or otherwise, used in the diagnosis or treatment of diabetes; § 1760(33)*

The sale of all equipment and supplies, whether medical or otherwise, used in the diagnosis or treatment of diabetes are exempt from tax. This includes sales of insulin, antidiabetic drugs, testing supplies such as Clinitest®, Clinistix® and Tes-Tape®, and other items used only in the treatment of diabetes. Sales of hypodermic syringes and needles to diabetic patients are exempt.

Sales of items that are not used only in the diagnosis or treatment of diabetes, and that are not prescription medicines, should be regarded as taxable unless the purchaser provides written

evidence such as a statement from a doctor that the patient has been diagnosed as diabetic, and the purchaser states that the items being purchased are to be used in the treatment of diabetes.

### **Crutches and wheelchairs**

***...crutches and wheelchairs for the use of sick, injured or disabled persons and not for rental. § 1760(5-A)***

Crutches and wheelchairs sold for the use of sick, injured or disabled persons are exempt. “Crutches” include canes and walkers. Sales of crutches and wheelchairs for rental use are taxable. Certain electric scooters and power chairs (but not “lift chairs”) fall within the classification of “wheelchairs” when they are designed and used to provide or increase the ability of a sick, injured or disabled person to move from one place to another.

Other than crutches and wheelchairs and adaptive equipment discussed below, there is no general exemption in the Sales and Use Tax Law for mobility enhancing equipment. Some examples of items that are subject to tax are wheelchair lifts, toilet, tub and shower aids, motor vehicles that have been modified, and materials used in the construction of wheelchair ramps or other alterations to real property to make it accessible to handicapped persons.

### **Adaptive Equipment**

***Sales to a person with a disability or a person at the request of a person with a disability of adaptive equipment for installation in or on a motor vehicle to make that vehicle operable or accessible by a person with a disability who is issued a disability plate or placard by the Secretary of State pursuant to Title 29-A, section 521. § 1760(95)***

A sales tax exemption applies to sales of adaptive equipment sold for installation in or on a motor vehicle to make that vehicle operable or accessible by a person with a disability who is issued a disability plate or placard by the Secretary of State pursuant to Title 29-A, section 521. The purchase must be made by or at the request of the person with the disability. The exemption applies to sales made on or after July 1, 2014.

The exemption applies only to the sale of adaptive equipment to be installed in or on a motor vehicle. The exemption does not apply to repair parts or the sale of a motor vehicle that will be or has been modified with adaptive equipment.

Retailers making such tax exempt sales must obtain from the purchaser a copy of a properly completed affidavit to document and support treating a transaction as exempt. An “Affidavit For Purchase of Adaptive Equipment” is available online at <http://maine.gov/revenue/forms/sales/salesforms.htm>.

When a retailer sells a motor vehicle and also provides the service of installing adaptive equipment prior to making delivery to the customer, the value of the adaptive equipment must be

separately stated from the value of the motor vehicle on the billing invoice to the customer in order for the sale to qualify for the exemption. If the value of the exempt equipment is not separately stated, but invoiced as one bundled price, the entire amount charged to the customer is taxable.

### **Third-party payment of medical bills**

Payment for medical equipment is often received from a party other than the consumer of the goods. The third-party payor may be an insurance company, a state agency, a municipality or Medicare/Medicaid. Even though the third-party payor may be an organization that is exempt from sales tax, the transaction remains a sale to the consumer not to the exempt organization. If the transaction is otherwise taxable, sales tax applies even when billed to the exempt organization.

## **PRINTED ITEMS**

### **Self-help literature on alcoholism**

*Sales of self-help literature relating to alcoholism to alcoholics anonymous groups. § 1760(57)*

### **Advertising and promotional material**

*Sales of advertising or promotional materials printed on paper and purchased for the purpose of subsequently transporting such materials outside the State for use by the purchaser thereafter solely outside the State. § 1760 (83)*

If a retailer purchases printed advertising or promotional materials, like flyers, pamphlets or brochures, for the purpose of mailing them directly out-of-state or for inclusion as "stuffers" in goods being delivered out-of-state, the purchase is exempt from tax. If the materials purchased are partially taxable and partially exempt (mailed in-state and out-of-state), the retailer should pay tax on the entire purchase and apply to MRS for a refund on the exempt portion.

### **Free publications and inserts to publications**

*Sales of publications and printed materials included in publications as follows:*  
*A. Any publication that is purchased for distribution without charge as a free publication; and*  
*B. Printed paper materials, including advertising flyers and promotional materials, purchased for inclusion in a publication.*

*For purposes of this subsection, "publication" means printed paper material, including without limitation newspapers, magazines and trade journals and employee, client and organization newsletters, issued at average intervals not exceeding 3 months that manifests a continuity of identity from issue to issue by a front page masthead bearing the name, date, volume and issue number of the publication and by a continuity of style, format, themes and subject matter.*

***For purposes of this subsection, "publication" does not include printed paper materials consisting primarily of advertisements or the promotion of a single seller's products or services. § 1760(14-A)***

Any publication that is purchased for distribution without charge as a free publication is exempt from sales tax. Printed paper materials consisting primarily of advertisements or the promotion of a single seller's products or services is not an exempt free publication. However, printed paper materials, including advertising flyers and promotional materials, purchased for inclusion in a publication are exempt. For example:

- The printing of a local community newspaper distributed for free to the public is exempt to the publisher.
- A grocery store's weekly advertisement is not a publication. Copies of the advertisement that are placed in the grocer's store are taxable. Copies that are included in the regional daily newspaper or any other publication are exempt.

Printers making such tax exempt sales must obtain from the publisher a copy of a properly completed affidavit to document and support treating a transaction as exempt. An "Affidavit for Purchases of Free Publications and Inserts to Publications" is available online at <http://maine.gov/revenue/forms/sales/salesforms.htm>.

## **DONATED MERCHANDISE**

### **Donations to non-profit organizations**

***No use tax may be imposed on the donation of merchandise by a retailer to an organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3), as amended, when the merchandise has been returned to the retailer by the purchaser and the retailer then gives to the purchaser an allowance in cash or by credit pursuant to warranty or when the full price of the merchandise returned is refunded, either in cash or by credit, to the purchaser. § 1863***

***A use tax is not imposed on the donation of merchandise by a retailer from inventory to an organization if sales to that organization are exempt from sales tax under section 1760. § 1864***

## **BUILDING MATERIALS**

### **Manufactured housing<sup>27</sup>**

***Sales of:***

***A. Used manufactured housing; and***

***B. New manufactured housing to the extent of all costs, other than materials, included in the sale price, but the exemption may not exceed 50% of the sale price. § 1760(40)***

***"Manufactured housing" has the same meaning as defined in Title 10, section 9002, subsection 7. § 1752(6-C)***

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<sup>27</sup> See also Instructional Bulletin 31

This exemption does have a limitation however. When new manufactured housing is sold, the sales tax applies to either the portion of the sale price that represents the cost of materials or 50% of the sale price, whichever is greater. No sales tax applies to sales of manufactured housing that has been permanently incorporated into real property by the seller, although the seller would be subject to a tax on its purchase of the home. Sales of used manufactured housing are exempt. The sale of related but incidental products such as steps, decking or skirting does not fall within the 50% exemption; such items are taxable at 100% of the sale price.

*The tax imposed by this Part on the sale or use of manufactured housing, except when the dealer has collected the tax in full, must be paid by the purchaser to the State Tax Assessor. The assessor shall provide a tax receipt to the purchaser. Upon request by the municipal officials or the Maine Land Use Planning Commission, the receipt must be made available by the purchaser to certify that the tax has been paid, pursuant to Title 30-A, section 4358, subsection 4 or Title 30-A, section 7060, subsection 1, paragraph C.*

*A valid bill of sale from a dealer showing that the tax has been collected in full serves to certify that the tax has been paid, pursuant to Title 30-A, section 4358, subsection 4, or Title 30-A, section 7060, subsection 1, paragraph C, in lieu of a tax receipt provided by the assessor. § 1952-B*

The above section is used in conjunction with municipalities issuing building permits. A purchaser of manufactured housing must show proof that tax has been paid as a prerequisite to obtaining a building permit.

### **Portable classrooms**

*Sales of tangible personal property to be physically incorporated in and become a part of a portable classroom for lease to a school. If the portable classroom is used for an otherwise taxable use within 2 years from the date of the first use, the lessor is liable for use tax based on the original sale price. § 1760(58)*

### **Construction contracts with exempt organizations**

*Sales to a construction contractor or its subcontractor of tangible personal property that is to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided by section 1760-C. § 1760(61)*

This exemption only applies to property that will become physically attached to the realty of the exempt organization. It does not apply to supplies used by the contractor nor to any machinery or equipment purchased by the contractor, even though the equipment is being purchased specifically for the exempt job. For purposes of this exemption, contractors also include subcontractors.



If a contractor has an inventory of property on which tax has been paid and subsequently uses the property on an exempt job, the contractor is eligible for refund provided the property meets the requirements stated above.

**Railroad track materials**

*Railroad track materials purchased and installed on railroad lines located within the boundaries of the State. The track materials shall include rail, ties, ballast, joint bars and associated materials, such as bolts, nuts, tie plates, spikes, culverts, steel, concrete or stone, switch stands, switch points, frogs, switch ties, bridge ties and bridge steel. § 1760(52)*

**COMMERCE ITEMS**

**Ships stores**

*Sale of cabin, deck, engine supplies and bunkering oil to ships engaged in transporting cargo or passengers for hire in interstate or foreign commerce. § 1760(4)*

Bunkering oil in this exemption refers to any fuel used to propel the vessel as opposed to use in the operation of any equipment, such as cranes, hoists and generators.

**Packaging materials<sup>28</sup>**

*Sales of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials to:*

- A. Persons engaged in the business of:*
  - (1) Packing or packaging tangible personal property; and*
  - (2) Shipping or transporting that tangible personal property; or*

*B. Persons for use in packing, packaging or shipping tangible personal property sold by them or on which they have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in their regular course of business that are transferred to the possession of the purchaser of that tangible personal property; § 1760(12-A)*

*Sale of returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. §1760 (12)*

These exemptions include materials that are used to ensure the delivery of the contents in physically good condition. Examples include, but are not limited to, the following items:

Bags	Crates	Sawdust
Bindings	Dry ice	Styrofoam
Boxes	Fuel Tanks	Tape
Bottles	Ice	Twine
Cans	Labels	Wrappings
Containers	Paper	
Cores	Pallets	

<sup>28</sup> See also Instructional Bulletin 23

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These exemptions apply to both non-returnable and returnable packaging materials, provided that the materials pass into the possession of the customer of the shipper.

These exemptions only apply when the purchaser uses the packaging materials to package and ship goods being transported by the purchaser, to package or ship goods that are being sold by the purchaser or on which a service of cleaning, pressing, dyeing, washing, repairing or reconditioning has been performed by the purchaser. For example, an individual contracts with a moving company to transport their household items to another town or a gift shop sells a product to a customer and agrees to ship the product to the customer's home. The box, stuffing, labels and tape used to package the item for shipment are exempt from tax. Likewise, a dry cleaning business is exempt from paying tax on hangers, plastic, twine and wrapping paper used to package the garments that have been cleaned for a customer.

Packaging items used by a business to store goods are subject to tax.

### **Bags Sold To Redemption Centers**

*Sales to a local redemption center licensed under Title 38, section 3113 of plastic bags used by the redemption center to sort, store or transport returnable beverage containers. § 1760(93)*

### **Delivery out of state**

*Sales of tangible personal property when the seller delivers the property to a location outside this State or to the United States Postal Service, a common carrier or a contract carrier hired by the seller for delivery to a location outside this State, regardless of whether the property is purchased F.O.B. shipping point or other point in this State and regardless of whether passage of title occurs in this State. This exemption does not apply to any subsequent use of the property in this State. § 1760 (82)*

When a retailer makes a sale and delivers the product to the purchaser, the sale is complete upon delivery. If the retailer delivers the product to a point outside Maine, the sale is exempt from Maine sales tax. The delivery must be made with the retailer's own vehicle or the retailer must contract with a common or contract carrier to make the delivery.

If the purchaser takes delivery within Maine, it is a taxable sale, even though the purchaser immediately removes the property from the state. However, there are exceptions for certain vehicles, watercraft, all-terrain vehicles and snowmobiles purchased by nonresidents as explained later in this section.

### **Catalog sales and internet sales**

A retailer that solicits sales through a catalog or internet web site must collect tax on sales made to customers in Maine if the retailer has sufficient "nexus" (connection) in Maine. More information on who is required to register to collect Maine sales tax can be found in the "Responsibilities of the Retailer" section of this guide.

Retailers registered in Maine selling goods to Maine residents must collect Maine sales tax since the retailer has a substantial physical presence in Maine and the sale occurs in Maine. This is true regardless of whether the sale occurred in the retailer's store, if the goods are ordered over the telephone or if the goods are ordered through the retailer's homepage.

If the retailer receives orders through mail-order or the internet from non-residents and the goods are shipped out-of-state, the sale is not taxable in Maine. If the retailer is not required to register in Maine, the sales are not subject to Maine's sales tax but the purchaser is subject to Maine's use tax on such a purchase.

## AGRICULTURE AND ANIMALS

### **Aquacultural production and bait**

*Sales of feed, hormones, pesticides, antibiotics and medicine for use in aquacultural production and sales of bait to commercial fishermen.*  
§ 1760(7-A)

### **Products used in commercial agricultural production<sup>29</sup>**

*Sales of seed, fertilizers, defoliant and pesticides, including, but not limited to, rodenticides, insecticides, fungicides and weed killers, for use in commercial agricultural production as defined in section 2013, subsection 1, paragraph A.*  
§ 1760(7-B)

### **Animal agricultural production**

*Sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides and litter for use in animal agricultural production and sales of antiseptics and cleaning agents used in commercial animal agricultural production. Animal agricultural production includes the raising and keeping of equines.* § 1760(7-C)

### **Bedding material**

*Sales of organic bedding materials for farm animals and hay.* § 1760(78)

It is important to note that these exemptions differ based on the use of the products. For instance, with regards to agricultural production, the products listed in § 1760(7-B) are only exempt if sold to a person engaged in a commercial activity. As a result, vegetable seeds, seedlings and fertilizer used in home gardens are taxable. This exemption does not apply to activities such as fertilizing lawns and golf courses, or defoliating under power lines or telephone lines since these activities do not include commercial agricultural production.

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<sup>29</sup> See also Instructional Bulletin 14

With regards to animal agricultural production, sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides and litter are not restricted to commercial activities and would apply to all agricultural animals, such as cows, pigs, chickens, goats, llamas, alpaca, and sheep, whether raised as pets or as a commercial venture. Animal agricultural production also includes the raising and keeping of equines. Thus hay, bedding material and medicines for horses, whether used as a pet or for commercial purposes, are exempt. Exempt sales of antiseptics and cleaning agents are restricted to commercial animal agricultural production, such as a dairy farmer.

All sales of hay, regardless of its intended use, are exempt from sales tax. Straw, on the other hand, is taxable unless it is used as bedding material for farm animals.

### **Commercial farmers, fishermen, wood harvesters, nurseries and greenhouses<sup>30</sup>**

This section only applies to those persons engaged in the commercial activity of farming, fishing (including those engaged in aquaculture), and wood harvesting, and persons operating commercial nurseries and greenhouses. Although this is a refund provision, it does provide an exemption for purchases made after certification. Prior to certification or in cases where the exemption card cannot be used to purchase a certain item, the purchaser can seek a refund. Multi-use equipment qualifies for refund if it meets the conditions required for exemption. In order to qualify for a refund, reasonable documentation of the percentage of use in the exempt activity is required.

Upon application to MRS, an exemption card is issued to those persons who qualify. The exemption card can then be used to purchase qualifying depreciable machinery and equipment, including repair parts for such, free of tax. See "Exempt Sale Documentation" for more information on what records the retailer must obtain.

Effectively, the statute provides an exemption for:

- Depreciable machinery and equipment, including repair and replacement parts, used directly and primarily in commercial agriculture, commercial fishing, commercial aquaculture and commercial wood harvesting.
- Electricity used in commercial agriculture, commercial fishing, commercial aquaculture and commercial wood harvesting, including electricity used in support activities such as storage operations, maintenance operations and related administrative activities.
- Fuel for use in a commercial fishing vessel.

***1. Definitions. As used in this section, unless the context otherwise indicates, the following words have the following meanings.***

***A. "Commercial agricultural production" means commercial production of crops, plants, trees, compost and livestock.***

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<sup>30</sup> See also Instructional Bulletins 44, 45, 49 and 58.

*A-1. "Commercial aquacultural production" means the commercial production of cultured fish, shellfish, seaweed or other marine plants for human and animal consumption, including:*

*(1) All cultivating activities occurring at hatcheries or nurseries, from the egg, larval or spore stages to the transfer of the product to a growing site; and*

*(2) All cultivating activities occurring on water, from the receipt of fish, shellfish, seaweed or other marine plants from onshore facilities to the delivery of harvested products to onshore facilities for processing.*

*B. "Commercial fishing" means attempting to catch fish or any other marine animals or organisms with the intent of disposing of them for profit or trade in commercial channels and does not include subsistence fishing for personal use, sport fishing or charter boat fishing where the vessel is used for carrying sport anglers to available fishing grounds.*

*B-1. "Commercial wood harvesting" means the commercial severance and yarding of trees for sale or for processing into logs, pulpwood, bolt wood, wood chips, stud wood, poles, pilings, biomass or fuel wood or other products commonly known as forest products.*

*C. "Depreciable machinery and equipment" means, except as otherwise provided by this paragraph, that part of the following machinery and equipment for which depreciation is allowable under the Code and repair parts for that machinery and equipment:*

*(1) New or used machinery and equipment for use directly and primarily in commercial agricultural production, including self-propelled vehicles; attachments and equipment for the production of field and orchard crops; new or used machinery and equipment for use directly and primarily in production of milk, animal husbandry and production of livestock, including poultry; new or used machinery and equipment used in the removal and storage of manure; and new or used machinery and equipment not used directly and primarily in commercial agricultural production, but used to transport potatoes from a truck into a storage location;*

*(2) New or used watercraft, nets, traps, cables, tackle and related equipment necessary to and used directly and primarily in commercial fishing;*

*(3) New or used watercraft, machinery or equipment used directly and primarily for commercial aquacultural production, including, but not limited to: nets; ropes; cables; anchors and anchor weights; shackles and other hardware; buoys; fish tanks; fish totes; oxygen tanks; pumping systems; generators; water-heating systems; boilers and related pumping systems; diving equipment; feeders and related equipment; power-generating equipment; tank water-level sensors; aboveground piping; water-oxygenating systems; fish-grading equipment; safety equipment; and sea cage systems, including walkways and frames, lights, netting, buoys, shackles, ropes, cables, anchors and anchor weights; and*

*(4) New or used machinery and equipment for use directly and primarily in commercial wood harvesting, including, but not limited to, chain saws, skidders, delimiters, forwarders, slashers, feller bunchers and wood chippers.*

*"Depreciable machinery and equipment" does not include a motor vehicle as defined in section 1752, subsection 7 or a trailer as defined in section 1752, subsection 19-A.*

*2. Refund authorized. Any person, association of persons, firm or corporation that purchases electricity, or that purchases or leases depreciable machinery or equipment, for use in commercial agricultural production, commercial fishing, commercial aquacultural production or commercial wood harvesting or that purchases fuel for use in a commercial fishing vessel must be refunded the amount of sales tax paid upon presenting to the State Tax Assessor evidence that the purchase is eligible for refund under this section.*

*Evidence required by the assessor may include a copy or copies of that portion of the purchaser's or lessee's most recent filing under the United States Internal Revenue Code that indicates that the purchaser or lessee is engaged in commercial agricultural production, commercial fishing, commercial aquacultural production or commercial wood harvesting and that the purchased machinery or equipment is depreciable for those purposes or would be depreciable for those purposes if owned by the lessee.*

*In the event that any piece of machinery or equipment is only partially depreciable under the United States Internal Revenue Code, any reimbursement of the sales tax must be prorated accordingly. In the event that electricity or fuel for a commercial fishing vessel is used in qualifying and nonqualifying activities, any reimbursement of the sales tax must be prorated accordingly.*

*Application for refunds must be filed with the assessor within 36 months of the date of purchase or execution of the lease.*

*3. Purchases made free of tax with certificate. Sales tax need not be paid on the purchase of electricity, fuel for a commercial fishing vessel or a single item of machinery or equipment if the purchaser has obtained a certificate from the assessor stating that the purchaser is engaged in commercial agricultural production, commercial fishing, commercial aquacultural production or commercial wood harvesting and authorizing the purchaser to purchase electricity, fuel for a commercial fishing vessel or depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the electricity, fuel for a commercial fishing vessel or depreciable machinery or equipment must be used directly in commercial agricultural production, commercial fishing, commercial aquacultural production or commercial wood harvesting. In order to qualify for this exemption, the electricity or fuel for a commercial fishing vessel must be used in qualifying activities, including support operations. § 2013*

*1. "Agricultural composting operation" means composting that takes place on a farm. "Agricultural composting operation" does not include an operation*

*that involves nonorganic municipal solid waste or that composts municipal sludge, septage, industrial solid waste or industrial sludge. "Agricultural composting operation" does not include an operation that composts materials with a moderate or high risk of contamination from heavy metals, volatile and semivolatile organic compounds, polychlorinated biphenyls or dioxin. Title 7, § 152(1)*

*4. "Composting" means the controlled aerobic decomposition of organic materials to produce a soil-like product beneficial to plant growth and suitable for agronomic use. Title 7, § 152(4)*

In order to qualify for this exemption, machinery or equipment must meet three tests.

Machinery or equipment must:

1. be used directly in commercial production; and
2. be used primarily in commercial production; and
3. be depreciable for Federal Income Tax purposes.

*"Directly" refers to those activities or operations that constitute an integral and essential part of commercial agricultural production, commercial aquacultural production, commercial wood harvesting or commercial fishing, as contrasted with and distinguished from those activities or operations that are simply incidental, convenient or remote to those activities. Except in the case of electricity, items used in support operations (including construction or repair facilities, machine shops, storage activities, administration or highway transportation) are not used directly in commercial agricultural production, commercial aquacultural production, commercial wood harvesting or commercial fishing. Rule 323*

*"Primarily" means more than 50% of the time. Rule 323*

Additionally, "primarily" means more than 50% of the time during the period that begins on the date on which the machinery or equipment is first placed in service by the purchaser and ends 2 years from that date or at the time that the machinery or equipment is sold, scrapped, destroyed or otherwise permanently removed from service by the taxpayer, whichever occurs first.

"Machinery and equipment" does not include:

- A. Land, buildings and other inherently permanent structures such as docks and silos;
- B. Materials and components, such as lumber, plumbing and wiring, that become an integral part of a building or other structure;
- C. Foundations for machinery and equipment (excluded by 36 MRSA § 1752(7-B)); or
- D. Special purpose buildings used to house or support machinery and equipment (also excluded by 36 MRSA § 1752(7-B)).

Property that is attached to a building or other structure may still qualify as "machinery and equipment". This may be the case, for example, if the item is readily removable without causing significant damage to the building or other structure to which it is attached. Therefore, items such as the following may qualify for exemption (but only if they are purchased by the person engaged

in commercial agricultural production and the equipment is used directly and primarily in commercial agricultural production). The exemption for depreciable machinery and equipment does not pass through to a contractor making purchases of building materials and real property fixtures in the performance of a realty contract with a person engaged in commercial agricultural production.<sup>31</sup>

- Heating, venting, air conditioning and refrigeration units (including ductwork, control equipment, fans, roll up systems, ridge vents, etc.).
- Irrigation system and supplies (clocks, pipe, fittings, pumps etc.)
- Shade structures and shade systems in greenhouses, and greenhouse film and coverings.

Some of the more common items that qualify for exemption as machinery or equipment are:

#### Commercial Agriculture

Balers	Harrows	Milking Equipment	Seeding Machines
Carts	Harvesters	Mowers	Soil mixers
Combines	Hay & Forge	Pickers	Seeders
Conveyors	equipment	Planters	Sprayers
Cultivators	Herd management	Plows	Tractors
Feeders	system equipment	Pruners	Transplant machines
Grading Tables	Irrigation benches	Removable Stalls	Tree spades
Grow lights	Manure Spreaders	Rotary Cutters	Wagons
	Roto Tillers	Water Bowls	
	Seed Cutters	Water system injectors	

#### Commercial Fishermen

Bait Bags	Depth Finder	Hydraulics	Pot Haulers
Batteries	Draggers	Life Rafts	Pneumatic Controls
Boats	Engines	Life Equipment	Radar Equipment
Buoys	Filters	Lights	Rope
Bow Thruster	Fire Extinguisher	Long Lines	Scanners
CB Radio	Fish Scanner	Loran	Seine Nets
Chains	Haulers	Motors	Tags
Color Sounder	Hooks	Net Floats	Trap Stock
Depth Sounder	Hoops	Nets	Traps
		Plotter	Vents

#### Commercial Aquaculture

Aboveground piping	Fish tanks	Ropes
Anchors and anchor weights	Fish totes	Safety equipment
Boilers and related pumping systems	Fish-grading equipment	Sea cage systems
Buoys	Generators	Shackles and other hardware
Cables	Nets	Tank water-level sensors
Diving equipment	Oxygen tanks	Water-heating systems
Feeders and related equipment	Power generating equipment	Water-oxygenating systems
	Pumping systems	

<sup>31</sup> See also Instructional Bulletin 28



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Commercial Wood Harvesters

Chainsaws	Felling Heads	Skidders
Chippers	Forwarders	Slashers
Delimbers	Harvesters	
Feller Bunchers	Mulchers (also known as masticators or brushcutters)	

The construction and maintenance of skid roads, skid trails, and winter haul roads qualify as commercial wood harvesting. The construction and maintenance of land management and travel roads is not considered commercial wood harvesting. Since construction equipment purchased for this activity is typically not equipment traditionally used in wood harvesting, sales tax should be paid to the vendor, or use tax should be paid directly to MRS (as in the case of a casual purchase), and the wood harvester would request a refund directly from MRS.

Repair and replacement parts for exempt machinery and equipment used in commercial agriculture, commercial fishing, commercial aquaculture and commercial wood harvesting, including items such as batteries, filters, tires, starters, alternators and belts, are also exempt.

The certificate of exemption may not be used to purchase any of the following items:

1. Nonqualifying machinery and equipment;
2. Motor vehicles, trailers, attachments for motor vehicles such as bulk bodies, fertilizer bodies and motor vehicle repair parts, snowmobiles, and ATV's;
3. Tools and Supplies, other than repair parts, such as lubricants, coolants, solvents, cleaning supplies, personal apparel;
4. Fuels, except fuel for use in a commercial fishing vessel;
5. Items incorporated in real property such as fencing, storage buildings, silos, special purpose buildings, heating or ventilation systems and construction materials;
6. Items which are not 100% depreciable equipment;
7. Items which are not commonly used in commercial agricultural production, commercial fishing, commercial aquacultural production or commercial wood harvesting such as lawn and garden tractors, construction equipment, lag tractors, backhoe tractors, fork lift trucks, log loaders, utility vehicles, grain bins, computers, office equipment and scraper blades.

**Seedlings for commercial forestry use**

*Sales of tree seedlings for use in commercial forestry. § 1760(73)*

**Seeing eye dogs**

*Sales of tangible personal property and taxable services essential for the care and maintenance of seeing eye dogs used to aid any blind person. § 1760(35)*

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**VEHICLES<sup>32</sup>**
**Automobiles to amputee veterans**

*Sales of automobiles to veterans who are granted free registration of such vehicles by the Secretary of State under Title 29-A, section 523, subsection 1. § 1760(22)*

**Loaner vehicles purchased or rented by new vehicle dealers**

*The use of a loaner vehicle provided by a new vehicle dealer, as defined in Title 29-A, section 851, subsection 9, to a service customer pursuant to a manufacturer's or dealer's warranty. § 1760(21-A)*

*"Loaner vehicle" means an automobile to be provided to a motor vehicle dealer's service customers for short-term use free of charge pursuant to the dealer's franchise, as defined in Title 10, section 1171, subsection 6. § 1752(5-C)*

*The rental for a period of less than one year of an automobile when the rental is to the service customer of a new vehicle dealer, as defined in Title 29-A, section 851, subsection 9, pursuant to a manufacturer's or new vehicle dealer's warranty and the rental fee is paid by that new vehicle dealer or warrantor. § 1760(92)*

**Certain vehicles purchased by nonresidents**

*Sales or leases of the following vehicles to a person that is not a resident of this State, if the vehicle is intended to be driven or transported outside the State immediately upon delivery:*

- A. Motor vehicles other than those that are being leased for a period of less than one year;*
- B. Semitrailers;*
- C. Aircraft, if the property is an aircraft not exempted under subsection 88-A; and*
- E. Camper trailers, including truck campers, other than those that are being leased for a period of less than one year.*

*If the vehicles are registered for use in the State within 12 months of the date of purchase, the person seeking registration is liable for use tax on the basis of the original purchase price. § 1760(23-C)*

*"Motor vehicle" means any self-propelled vehicle designed for the conveyance of passengers or property on the public highways. "Motor vehicle" includes an all-terrain vehicle and a snowmobile as defined in Title 12, section 13001. § 1752(7)*

*"Camper trailer" has the same meaning as in section 1481, but without any restriction on length. § 1752(22)*

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<sup>32</sup> See also Instructional Bulletin 24

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**Certain vehicles purchased or leased by qualifying resident businesses**

*The sale or lease of a motor vehicle, except an automobile rented for a period of less than one year or an all-terrain vehicle or snowmobile as defined in Title 12, section 13001, to a qualifying resident business if the vehicle is intended to be driven or transported outside the State immediately upon delivery and intended to be used exclusively in the qualifying resident business's out-of-state business activities.*

*For purposes of this subsection, "qualifying resident business" includes any individual, association, society, club, general partnership, limited partnership, limited liability company, trust, estate, corporation or any other legal entity that:*

- A. Is organized under the laws of this State or has its principal place of business in this State; and*
- B. Conducts business activities from a fixed location or locations outside the State.*

*If the vehicle is not used exclusively in the qualifying resident business's out-of-state business activities or is registered for use in the State within 12 months of the date of purchase, the person seeking registration is liable for use tax on the basis of the original purchase price. § 1760(23-D)*

**Watercraft sold to nonresidents**

*Sales to or use by a person that is not a resident of this State of watercraft or materials used in watercraft as specified in this subsection.*

*A. The following are exempt when the sale is made in this State to a person that is not a resident of this State and the watercraft is sailed or transported outside the State within 30 days of delivery by the seller:*

- (1) A watercraft;*
- (2) Sales, under contract for the construction of a watercraft, of materials to be incorporated in that watercraft; and*
- (3) Sales of materials to be incorporated in the watercraft for the repair, alteration, refitting, reconstruction, overhaul or restoration of that watercraft.*

*B. The purchase of a watercraft outside this State is exempt if the watercraft is registered outside the State by the purchaser and used outside the State by the purchaser and the watercraft is present in the State not more than 30 days, not including any time spent in this State for temporary storage, during the 12 months following its purchase. For purposes of this paragraph, "used outside the State" does not include storage but means actual use of the watercraft for a purpose consistent with its design.*

*C. If, for a purpose other than temporary storage, a watercraft is present in this State for more than 30 days during the 12-month period following its date of purchase, the exemption applies only to 60% of the sale price of the watercraft or materials for the construction, repair, alteration, refitting, reconstruction, overhaul or restoration of the watercraft, as specified in paragraph A. § 1760(25)*

If a nonresident purchases a watercraft in Maine and removes the watercraft from Maine within the first 30 days after delivery, the sale is exempt. If the nonresident purchaser intends to

use the watercraft in Maine for more than 30 days within the first 12 months after purchase, the nonresident purchaser qualifies for a 60% exemption of the sale price. Nonresident purchasers making either claim must complete an Affidavit of Exemption form which can be found in the Appendix.

#### **Casual sales of snowmobiles and all-terrain vehicles to nonresidents**

*The sale of a snowmobile, as defined in Title 12, section 13001, subsection 25, or an all-terrain vehicle, as defined in Title 12, section 13001, subsection 3, to an individual who is not a resident of this State, unless the seller is a retailer in this State. § 1760(25-C)<sup>33</sup>*

This exemption only applies to casual sales of snowmobiles and all-terrain vehicles. For retail sales of these items to nonresidents, see “Certain vehicles purchased by nonresidents” above.

#### **Automobiles used in driver education programs**

*Sales to automobile dealers, registered under section 1754-B, of automobiles for the purpose of equipping the same with dual controls and loaning or leasing the same to public or private secondary schools without consideration or for a consideration of not more than \$1 a year, and used exclusively by such schools in driver education programs. § 1760(21)*

#### **Aircraft**

*Sales, use or leases of aircraft and sales of repair and replacement parts exclusively for use in aircraft or in the significant overhauling or rebuilding of aircraft or aircraft parts or components from July 1, 2011 to June 30, 2033. § 1760(88-A)*

This exemption applies to the sale, use or lease of aircraft and the sale of “repair or replacement parts”. Fuel, lubricants and consumable supplies are not considered “parts” and remain taxable. “Shop supplies”, as discussed in “repair work generally” found earlier in this guide, qualify as exempt “repair or replacement parts”, as does paint.

#### **Certain vehicles used in interstate or foreign commerce**

*The sale of a vehicle, railroad rolling stock, aircraft or watercraft that is placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days after that sale and that is used by the purchaser not less than 80% of the time for the next 2 years as an instrumentality of interstate or foreign commerce. The State Tax Assessor may for good cause extend for not*

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<sup>33</sup> Effective October 15, 2015.

*more than 60 days the time for placing the instrumentality in use in interstate or foreign commerce. For purposes of this subsection, property is "placed in use as an instrumentality of interstate or foreign commerce" by its carrying of, or providing the motive power for the carrying of, a bona fide payload in interstate or foreign commerce, or by being dispatched to a specific location at which it will be loaded upon arrival with, or will be used as motive power for the carrying of, a payload in interstate or foreign commerce. For purposes of this subsection, "bona fide payload" means a cargo of persons or property transported by a contract or common carrier for compensation that exceeds the direct cost of carrying that cargo or pursuant to a legal obligation to provide service as a public utility or a cargo of property transported in the reasonable conduct of the purchaser's own nontransportation business in interstate commerce.*

*B. For purposes of this subsection, personal property is not in use as an instrumentality of interstate or foreign commerce when carrying a bona fide payload that both originates and terminates within the State, unless the personal property is a bus with a capacity of at least 47 passengers that is engaged in transporting within the State a bona fide payload of travelers on an interstate or foreign cruise that originates outside the State and terminates outside the State and the transportation is provided pursuant to a contract between the interstate or foreign cruise provider and the person providing the transportation.*

*C. The exemption provided by this subsection is not limited to instrumentalities otherwise required to be exempt under the United States Constitution. § 1760(41)*

In order to qualify for this exemption, three criteria must be met. The vehicle must be:

- placed in use by the purchaser
- used within 30 days of purchase in interstate or foreign commerce
- used in interstate or foreign commerce more than 80% of the time within the next 2 years after purchase

A vehicle that is leased and used in interstate or foreign commerce is considered to be used by the lessee, not the purchaser, as an instrumentality of interstate or foreign commerce. Consequently, leased vehicles, including leased vehicles that are operated by the lessor, do not qualify for this exemption.

Use of a vehicle in intrastate and local operations is not use as an instrumentality of interstate or foreign commerce. Vehicles are considered to be used in intrastate or local operations when they are carrying cargo that both originates and terminates within the State of Maine. However, a bus with a capacity of at least 47 passengers that is contracted to transport passengers of a cruise ship that originated and will terminate outside of Maine qualifies as use in interstate or foreign commerce while transporting those passengers within Maine.

Time means a day or portion of a day during which the vehicle is actually being used to carry cargo or dispatched to a specific location for the purpose of being loaded with cargo. For example, if a vehicle carried cargo or was on route to be loaded with cargo during 500 days in the

2-year period following the date of purchase, it has met the 80% use requirement if during 400 of those days the cargo was in interstate or foreign commerce.

The State Tax Assessor may for good cause extend by up to 60 days the time for placing the vehicle in use as an instrumentality of interstate or foreign commerce.

It is not necessary that the purchaser apply for the extension, but good cause must be documented in the records of the purchaser. Good cause does not exist when the extension is required because of the taxpayer's negligence or failure to make a good faith effort to place the vehicle in use in interstate or foreign commerce within 30 days from the date of purchase.

This exemption applies only to vehicles, railroad rolling stock, aircraft<sup>34</sup>, and watercraft. Repair parts, operating supplies and accessories are not exempt. Accessories purchased as part of a vehicle are exempt from Maine sales or use tax if the vehicle qualifies for exemption. Accessories purchased separately from the vehicle are taxable.

So-called glider kits are considered repair parts rather than vehicles. The purchase of a glider kit is subject to tax whether or not the vehicle on which it will be mounted is used by the purchaser as an instrumentality of interstate or foreign commerce.

#### **Certain snow grooming equipment**

*Sales to snowmobile clubs incorporated under the provisions of Title 13-B of snowmobiles and snowmobile trail grooming equipment used directly and exclusively for the grooming of snowmobile trails. § 1760(90)*

#### **FUEL AND UTILITIES<sup>35</sup>**

##### **Certain motor fuels**

*Sales of:*

*A. Motor fuels upon which a tax at the maximum rate for highway use pursuant to Part 5 or a comparable tax of another state or a province of Canada has been paid; or*

*B. Internal combustion engine fuel, as defined in section 2902, bought and used for the purpose of propelling jet engine aircraft. § 1760(8)*

Whenever motor fuels are subject to the excise (road) tax, sales tax does not apply. However, there are situations where the excise tax is refundable in the gasoline and special fuel statutes, such as fuel used off the highways of this state. In those situations the refund is adjusted to retain the use tax that would otherwise apply.

<sup>34</sup> For the period of July 1, 2011 to June 30, 2033, all sales of aircraft are exempt. See Section 1760(88-A).

<sup>35</sup> See also Instructional Bulletin 13

**Fuel for burning blueberry lands**

*Sales of all fuels used in burning blueberry fields. § 1760(9-A)*

**Fuel for certain greenhouse facilities**

*Ninety-five percent of the sale price of all fuel purchased for use at a greenhouse facility occupying at least 1,000,000 square feet of indoor space operated by an agricultural employer that employs at least 100 employees and is engaged in the year-round commercial production of fruits or vegetables. § 1760(9-H)*

**Coal, oil and wood**

*Coal, oil, wood and all other fuels, except gas and electricity, when bought for cooking and heating in buildings designed and used for both human habitation and sleeping. The sale of kerosene or home heating oil that is prepackaged or dispensed from a tank for retail sale in a container with a capacity of 5 gallons or less, or the sale of any amount of wood pellets or any 100% compressed wood product intended for use in a wood stove or fireplace, or of any amount of firewood, is presumed to meet the requirements of this subsection when the product is received by the purchaser at the retail location<sup>36</sup>. § 1760(9)*

In addition to a residential house, "buildings designed and used for both human habitation and sleeping" include hotels, "bed and breakfast", boarding homes, nursing homes, overnight cabins, orphanages, homes for the aged and convalescent homes. Any other commercial use is taxable. It is important to point out that the exemption is for fuel when bought for cooking and heating "in" buildings designed "and used" for both habitation and sleeping. This exemption would not apply to fuel used in outside grills or fuel used in heating a detached garage or outdoor pool.

In situations where a heating system services both commercial and residential space, such as a neighborhood store with connected apartments, a partial exemption would be applicable based on the square footage of the residential area. See Bulletin No. 13 "Sales of Fuel and Utilities" for additional information.

Sales of kerosene or home heating oil in 5 gallon or less containers, whether they are prepackaged or directly pumped from a retail station, are presumed to be for purposes of residential cooking or heating and are exempt from sales tax. If a purchaser claims that a retail purchase of greater than 5 gallons is for residential cooking or heating, the seller must document the transaction with either an affidavit or a log.

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<sup>36</sup> Statute change effective on October 15, 2015, clarified that this presumption only applies to over-the-counter transactions.

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Effective October 1, 2013, the sale of any amount of 100% compressed wood products (pellets and bricks) and the sale of less than a cord of wood are presumed to be for purposes of residential cooking or heating and are exempt from sales tax.

Any fuel consumed by a whole-house generator to create electricity in the event of a power outage for exempt residential users is exempt.

### **Residential electricity**

#### *Sale and delivery of residential electricity as follows:*

*A. The first 750 kilowatt hours of residential electricity per month; and*

*B. Off-peak residential electricity used for space heating or water heating by means of an electric thermal storage device. For the purpose of this paragraph, "off-peak residential electricity" means the off-peak delivery of residential electricity pursuant to tariffs on file with the Public Utilities Commission and the electricity supplied.*

*For the purpose of this subsection, "residential electricity" means electricity furnished to buildings designed and used for both human habitation and sleeping, with the exception of hotels. When residential electricity is furnished through one meter to more than one residential unit and when the transmission and distribution utility applies its tariff on a per unit basis, the furnishing of electricity is considered a separate sale for each unit to which the tariff applies. For the purpose of this subsection, "delivery" means transmission and distribution; § 1760(9-B)*

Unlike coal, oil and wood, this exemption only applies to the first 750 kWh sold to homes, mobile homes, boarding homes, nursing homes, and apartment houses. All commercial uses are taxable, including hotels.

The law provides a sales tax exemption for off-peak residential electricity used for space heating or water heating by means of an electric thermal storage device. This exemption is in addition to the "first 750 KWH per month" exemption, but as a practical matter will only apply (and will therefore only need to be documented) in cases where (1) a residential user purchases more than 750 KWH of electricity in a given month; (2) the user employs an electric thermal storage device for space heating and/or water heating; and (3) the utility company that provides electricity to the user separately accounts for off-peak usage and separately meters electricity used in connection with the user's thermal storage device. For purposes of this exemption, "off-peak residential electricity" means the off-peak delivery of residential electricity pursuant to tariffs on file with the Public Utilities Commission.

In situations where an electrical system services both commercial and residential space, such as a neighborhood store with connected apartments, a partial exemption would be applicable based on the square footage of the residential area. See Bulletin No. 13 "Sales of Fuel and Utilities" for additional information.



**Net energy billing customers**

*Sale or delivery of kilowatt hours of electricity to net energy billing customers as defined by the Public Utilities Commission for which no money is paid to the electricity provider or to the transmission and distribution utility. § 1760(80)*

**Residential gas**

*Sales of gas when bought for cooking and heating in buildings designed and used for both human habitation and sleeping, with the exception of hotels. § 1760(9-C)*

Once again, this exemption is limited to homes, mobile homes, boarding homes, nursing homes, and apartment houses. All commercial uses are taxable. Gas consumed by a whole-house generator to create electricity in the event of a power outage for exempt residential users is exempt.

In situations where gas services both commercial and residential space, such as a neighborhood store with connected apartments, a partial exemption would be applicable based on the square footage of the residential area. Note however that this exemption does not apply to hotels. “Bed and Breakfast” facilities fall under the “hotel” category. Areas dedicated to “Bed and Breakfast” guests are considered “commercial” use. See Bulletin No. 13 “Sales of Fuel and Utilities” for additional information.

Sales of 30-lb or smaller containers, including the refilling of such containers, is presumed taxable as the gas would typically be used in outside grills or in camper trailers and would not be used “in buildings” designed for human habitation and sleeping. When a customer returns an empty container and purchases a full container, such as under a bottled gas return/exchange program, and is billed a single non-itemized charge, sales tax applies to that entire charge. If the value of the fuel and the value of the container are separately stated, sales tax only applies to the value of the fuel.

**Fuel oil or coal**

*Fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale. § 1760(9-G)*

**Fuel and electricity used at a manufacturing facility**

*Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. § 1760(9-D)*

See also the "Manufacturing" section on this issue.

## MANUFACTURING

### Certain items used in manufacturing

*Production machinery and equipment, machinery and equipment used in research, ingredients and items consumed and destroyed in the manufacturing process. § 1760(31), (32) and (74)*

See also the "Manufacturing" section on this issue.

### PINE TREE DEVELOPMENT ZONES ("PTDZ")<sup>37</sup>

#### Sales of tangible personal property to qualified PTDZ business

*Beginning July 1, 2005, sales of tangible personal property, and of the transmission and distribution of electricity, to a qualified Pine Tree Development Zone business, as defined in Title 30-A, section 5250-I, subsection 17, for use directly and primarily in one or more qualified business activities, as defined in Title 30-A, section 5250-I, subsection 16. The exemption provided by this subsection is limited for each qualified Pine Tree Development Zone business to sales occurring within a period of 10 years in the case of a business located in a tier 1 location, as defined in Title 30-A, section 5250-I, subsection 21-A, and 5 years in the case of a business located in a tier 2 location, as defined in Title 30-A, section 5250-I, subsection 21-B, from the date the business is certified pursuant to Title 30-A, section 5250-O or until December 31, 2028, whichever occurs first. As used in this subsection, "primarily" means more than 50% of the time during the period that begins on the date on which the property is first placed in service by the purchaser and ends 2 years from that date or at the time the property is sold, scrapped, destroyed or otherwise permanently removed from service by the purchaser, whichever occurs first. § 1760(87)*

The PTDZ tax credits and benefits are available to certified businesses engaged in qualified activity for tax years beginning on or after January 1, 2004. The sales tax exemption began on July 1, 2005. To obtain certification, the business must apply to the Department of Economic and Community Development ("DECD") and meet the requirements for qualified business activity. In general, in order to be certified, a business must be engaged in a targeted business sector (manufacturing, financial services, selected technologies); must intend to expand the base level of employment with qualified employees; and the qualified employees must be new fulltime employees who are hired by a Pine Tree Development Zone business for work directly in one or more qualified business activities. Also refer to the "Refunds and Credits" portion of this guide for refunds available to those constructing realty for a qualified PTDZ business.

<sup>37</sup> See also Instructional Bulletin 52

## EXEMPT SERVICES

In addition to true services, there are limited exemptions provided in the statute that deal with services in general and "taxable services". Most of them deal with rentals of living quarters as previously discussed under "Transient Rentals".

### Funeral services

#### *Sales of funeral services. § 1760(24)*

"Sales of funeral services" means sales of tangible personal property by a funeral director insofar as such sales are a necessary part of the preparation of a human body for burial, or a necessary part of the ceremony conducted by the funeral director prior to or in connection with the burial of a human body. Sales by funeral directors of caskets, vaults, boxes, clothing, crematory urns, or other similar items generally referred to as "funeral furnishings", are exempt from tax whereas items sold as an accommodation rather than as an integral part of the funeral service (or preparation therefore), such as sale of flowers, or items of a similar character, are taxable.

### Certain rentals

*Camps. Rental charged for living quarters, sleeping or housekeeping accommodations at camps entitled to exemption from property tax under section 652, subsection 1. § 1760(17)*

*Certain institutions. Rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization or nursing care of human beings. § 1760(18)*

*Schools. Rental charged for living quarters, sleeping or housekeeping accommodations to any student necessitated by attendance at a school. § 1760(19)*

*Continuous residence; refunds and credits. Rental charged to any person who resides continuously for 28 days or more at any one hotel, rooming house, tourist camp or trailer camp if:*

*A. The person does not maintain a primary residence at some other location; or*

*B. The person is residing away from that person's primary residence in connection with employment or education.*

*Tax paid by such person to the retailer under section 1812 during the initial 28-day period must be refunded by the retailer. If the tax has been reported and paid to the State by the retailer, it may be taken as a credit by the retailer*

*on the return filed by the retailer covering the month in which the refund was made to that tenant. § 1760(20)*

See also "Transient Rentals".

## NONPROFIT ORGANIZATIONS<sup>38</sup>

### Exempt activities

*The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes apply only if the property or service purchased is intended to be used by the person primarily in the activity identified by the particular exemption. The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes do not apply where title is held or taken by the person as security for any financing arrangement. Exemption certificates issued by the State Tax Assessor pursuant to section 1760 must identify the exempt activity and must state that the certificate may be used by the holder only when purchasing property or services intended to be used by the holder primarily in the exempt activity. If the holder of an exemption certificate furnishes that certificate to a person for use in purchasing tangible personal property or taxable services that are physically incorporated in, and become a permanent part of, real property that is not used by the holder of the certificate primarily in the exempt activity, the State Tax Assessor may assess the unpaid tax against the holder of the certificate as provided in section 141. When an otherwise qualifying person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases. § 1760-C*

Maine does not provide a blanket sales and use tax exemption for nonprofit organizations that have been granted a federal tax exemption, known as 501(c) organizations. Only certain specifically listed organizations are exempt from sales and use tax. Each of the following statutory exemptions is preceded with the language "incorporated nonprofit" and the language has in some cases been paraphrased (see the statute itself for the complete language of each exemption):

- *Nursing homes licensed by the Department of Health and Human Services § 1760(16)(B)*
- *Residential care facilities licensed by the Department of Health and Human Services § 1760(16)(C)*
- *Assisted housing programs for the elderly licensed by the Department of Health and Human Services § 1760(16)(D)*
- *Home health care agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended § 1760(16)(E)*
- *Rural community health centers § 1760(16)(F)*
- *Dental health centers § 1760(16)(G)*
- *Medical clinics whose sole mission is to provide free medical care to the indigent or uninsured § 1760(16)(G-1)*
- *Organizations organized for the sole purpose of conducting medical research*

<sup>38</sup> See also Instructional Bulletin 36

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**§ 1760(16)(H)**

- *Organizations organized for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology § 1760(16)(I)*
- *Institutions operating educational television or radio stations § 1760(16)(J)*
- *Organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia § 1760(16)(L)*
- *Private residential child care facilities that are licensed by the Department of Health and Human Services as child care facilities § 1760(18-A)*
- *Fire departments and ambulance services § 1760(26)*
- *Memorial foundations that primarily provide cultural programs free to the public, historical societies and museums § 1760(42)*
- *Licensed child care facilities § 1760(43)*
- *Sales to organizations providing:*
  - A. Temporary residential accommodations to pediatric patients suffering from critical illness or disease such as cancer or who are accident victims, to adult patients with cancer or to the families of the patients; or*
  - B. Temporary residential accommodations, or food, or both, to hospital patients or to the families of hospital patients § 1760(46)*
- *Organizations that provide free temporary emergency shelter or food for underprivileged individuals in this State § 1760(47-A)*
- *Child abuse and neglect prevention councils § 1760(49)*
- *Veterans' Memorial Cemetery Associations § 1760(51)*
- *Volunteer search and rescue organizations § 1760(53)*
- *Hospice organizations which provide a program or care for the physical and emotional needs of terminally ill patients § 1760(55)*
- *Councils and local units of national scouting organizations § 1760(56)*
- *Educational organizations that are receiving, or have received, funding from the Department of Education and that provide educational programs specifically designed for teaching young people how to make decisions about drugs, alcohol and interpersonal relationships at a residential camp setting § 1760(59)*
- *Animal shelters (purchasing) tangible personal property used in the operation and maintenance of those shelters or in the maintenance and care of any animal, including wildlife, housed in those shelters § 1760(60)*
- *Local branches of international charitable organizations that lend medical supplies and equipment to persons free of charge § 1760(62)*
- *Organizations whose sole purpose is to fulfill the wishes of children with life-threatening diseases when their family or guardian is unable to otherwise financially fulfill those wishes § 1760(63)*
- *Monasteries and convents ... in their operation and maintenance. For the purpose of this subsection, "monasteries" and "convents" means the dwelling places of communities of religious persons § 1760(65)*
- *Organizations engaged primarily in providing support systems for single-parent families for the development of psychological and economic self-sufficiency § 1760(66)*
- *Local branches of organizations whose purpose is to construct low-cost housing for low-income people § 1760(67)*
- *Organizations whose sole purpose is to create, maintain and update a registry of Vietnam veterans § 1760(69)*
- *Organizations whose primary purposes are to promote public understanding of hearing impairment and to assist hearing-impaired persons through the*

*dissemination of information about hearing impairment to the general public and referral to and coordination of community resources available to hearing-impaired persons. § 1760(70)*

- *Sales to incorporated nonprofit organizations organized for the purpose of providing direct supportive services in the State to veterans and their families living with service-related post-traumatic stress disorder or traumatic brain injury. § 1760(98)<sup>39</sup>*

With the following statutory exemptions, the organization in question may only need to be incorporated *or* nonprofit in addition to meeting the specific statutory language:

- *Incorporated hospital § 1760(16)(A)*
- *Church affiliated nonprofit organization that operates a residential home for adults § 1760(44)*
- *Nonprofit free public lending library which is funded in part or wholly by the State or any political subdivision or the federal government § 1760(50)*
- *Nonprofit youth organizations whose primary purpose is to provide athletic instruction in a nonresidential setting § 1760(56)*
- *Nonprofit organizations whose primary purpose is to develop housing for low-income people § 1760(72)*
- *Nonprofit organizations whose primary purpose is to obtain, medically evaluate and distribute eyes for use in corneal transplantation, research and education. § 1760(77)*
- *Sales to nonprofit collaboratives of academic, public, school and special libraries that provide support for library resource sharing, promote quality library information services and support the cultural, educational and economic development of the State. § 1760(99)<sup>40</sup>*

#### CERTAIN ESTABLISHMENTS

Other entities also enjoy exemption from sales and use tax.

- *Sales which this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State. § 1760(1)*
- *Sales to the State or any political subdivision of the State, or to the Federal Government, or to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them. This exemption does not apply to corporations organized under Title IV, Part E of the Farm Credit Act of 1971, 12 United States Code, Sections 2211 to 2214. § 1760(2)*

In addition to the Federal Government, the State of Maine, and any county, city, town or plantation in the State of Maine, this exemption covers sales to:

- School Districts in Maine;
- Water, Power, Parking and other Districts in Maine established by legislative act as quasi-municipal corporations;
- Village Corporation;
- Maine Turnpike Authority.

<sup>39</sup> Effective October 1, 2015

<sup>40</sup> Effective October 1, 2015

In the case of the above, sales made to these entities must be documented by listing the name of the governmental agency on the invoice or sales slip. See Rule 302 for additional information regarding documentation requirements that apply depending on the method of payment. Sales to other states or their subdivisions are not exempt from Maine sales tax.

### **Vouchers issued by exempt organizations**

Vouchers or similar official documents are sometimes issued by tax-exempt organizations or government agencies to needy individuals or students for items such as books, clothing and appliances. When such a voucher is issued by an exempt organization to an individual for redemption at a retail location for a taxable product, the sale is considered to be a taxable sale from the retailer to the individual redeeming the voucher, and sales tax must be collected, reported and remitted by the retailer.

Occasionally an exempt organization or government agency will authorize its own employee to make a purchase of an item of tangible personal property to be used on the job, such as protective or safety equipment or clothing. When an employee of the exempt organization or agency presents a retailer with a purchase order or other authority issued by the exempt organization and accepted in good faith by the retailer, the sale will generally qualify as an exempt sale to that organization provided that the sale price does not exceed the amount stated in the purchase order. If the retailer is not presented with a purchase order or other authority, the sale is considered to be a sale to the individual, not a sale to the exempt organization.

### **Sales to foreign countries and to foreign diplomats**

Sales to foreign countries may or may not be exempt from Maine sales or use tax depending on the particular country in question, and also possibly depending on the amount of the purchase price. The same is true for sales to foreign diplomatic personnel. For more information on sales to foreign missions and their personnel, consult the web site maintained by the US Department of State, Office of Foreign Missions, Tax Program at <http://www.state.gov/ofm/tax/>.

### **Sales to employees of exempt entities**

Sales directly to and paid for by a sales tax exempt entity are exempt. However, sales to employees of these organizations do not always meet this criterion. If a sale to an employee of such an organization is paid for by that employee, either with cash, personal check or personal credit card, the organization's exemption does not apply unless the employee presents a purchase order issued by the exempt organization that identifies the specific item or items to be purchased. This includes sales to state employees, county/city/town employees and any employee of an

organization mentioned in this section as being exempt from sales tax. See Instructional Bulletin 36 and Rule 302 for more information.

### **Federal employees**

The federal government issues credit cards for its employee purchases. The majority of the cards are direct-billed to the federal government and thus are exempt from tax. However, there are cards which are billed to the employee, for later reimbursement, which are taxable sales.

The following describes these cards and their tax status:

**Fleet card** - states "For Official Government Fleet Use Only"

Purchases are centrally billed and exempt from sales tax

**Purchase card** - states "For Official US Government Purchases Only - US Government Tax Exempt"

Purchases are centrally billed and exempt from sales tax

**Travel Card** - states "For Official Government Travel Only"

Purchases with cards that have a 0, 6, 7, 8 or 9 in the sixth digit are exempt. All others are taxable sales.

**Integrated card** - states "For Official Government Use Only"

Fleet and purchase type transactions are exempt.

Travel purchases are exempt if sixth digit is a 0, 6, 7, 8 or 9.

To see what these SmartPay credit cards look like, go to <https://smartpay.gsa.gov> and make the following selections: *Info for Businesses; How to recognize the GSA SmartPay Card.*

- *Schools § 1760(16)(K)*
- *Regularly organized churches or houses of religious worship § 1760(16)(M)*
- *Community mental health facilities, adult developmental services facilities or substance abuse facilities that are:*
  - A. Contractors under or receiving support under the Federal Community Mental Health Centers Act, or its successors; or*
  - B. Receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204 § 1760(28)*
- *Materials for the construction, repair or maintenance of an animal waste storage facility certified by the Commissioner of Agriculture § 1760(81)*
- *Water pollution control facility, certified as such by the Commissioner of Environmental Protection, and any part or accessories thereof, or any materials for the construction, repair or maintenance of a facility; § 1760(29)*  
*See also "Manufacturing"*
- *Air pollution control facility, certified as such by the Commissioner of Environmental Protection, and any part or accessories thereof, or any materials for the construction, repair or maintenance thereof § 1760(30)*  
*See also "Manufacturing"*
- *Regional planning commissions and councils of government, which are established in accordance with Title 30-A § 1760(37)*
- *Statewide organizations that advocate for children and that are members of the Medicaid Advisory Committee § 1760(49)*



- *Community action agencies designated in accordance with Title 22, section 5324 § 1760(49)*
- *Credit unions that are organized under the laws of this State. This subsection shall remain in effect only for the time that federally chartered credit unions are, by reason of federal law, exempt from payment of state sales tax § 1760(71)*
- *Sales and leases to certain air ambulance services that are limited liability companies § 1760(26)*
- *Sales to centers for innovation as described in Title 5, section 13141. § 1760(84)*

### **Sales by exempt organizations**

Sales by exempt organizations are generally taxable unless the sales qualify as casual sales. However, the statute does provide two specific exemptions for sales made by an organization:

*Sales of tangible personal property and taxable services by elementary and secondary schools and by student organizations sponsored by those schools, including booster clubs and student or parent-teacher organizations, as long as the profits from the sales are used to benefit those schools or student organizations or are used for a charitable purpose. § 1760(64)*

*Sales by any (nonprofit free public lending) library or a nonprofit corporation organized to support that library as long as the proceeds from the sales are used to benefit the library. § 1760(50)*

Public and private elementary and secondary schools making sales of candy bars, calendars, yearbooks, clothing, etc. are exempt from charging tax on such sales, provided the profits are used to benefit the school or student organization or are used for a charitable purpose. Libraries, and organizations that support libraries, making sales of used books, plants, calendars, etc. are also exempt from charging tax as long the proceeds benefit the library.

### **CASUAL SALES**

The definition of "retail sale", as previously mentioned, excludes "any casual sale". Casual sales are therefore not subject to sales or use tax. The statute defines a "casual sale" as follows:

*“Casual sale” means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. “Casual sale” includes transactions at a bazaar, fair, rummage sale, picnic or similar event by a civic, religious or fraternal organization that is not a registered retailer. The sale by a registered retailer of tangible personal property that that retailer has used in the course of the retailer’s business is not a casual sale if that property is of like character to that sold by the retailer in the ordinary course of repeated and successive transactions. “Casual sale” does not include any transaction in which a retailer sells tangible personal*

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*property or a taxable service on behalf of the owner of that property or the provider of that service. § 1752(1-D)*

The definition is actually divided into four types of situations where a casual sale exists. The first speaks to the majority of casual sales which affect all of us. These are sales made by any individual when selling property that they have owned and used. These individuals are not regularly engaged in the business of selling property and their activity of selling will only occur that one day, or at most, a few times a year.

The next situation specifically involves sales by civic, religious or fraternal organizations which are not registered retailers. Their sales at a bazaar, fair, rummage sale, picnic or similar event, are "casual sales" no matter what the duration. MRS also recognizes fund raising campaigns of limited duration involving the sale of such items as candy, light bulbs, novelties or other tangible personal property, as casual sales unless the organization is registered or required to be registered as a seller.

The definition of "retail sale" also states that purchases for resale are exempt, unless the resale will be at casual sale. As a result, unless the organization has a sales tax exemption for purchases they make, the organization will be required to pay sales or use tax on the purchase of goods that they will resell.

The next area speaks about sales made by retailers of items that they have used in their business. Most likely, such a sale would be casual in nature and be exempt. However, if the item being sold is the same type of item regularly sold by the retailer, then the sale is taxable. For instance, if an auto dealer decides to sell some of its office furniture, the sale is exempt as a casual sale. However, if an office equipment business sells furniture that it once had in inventory, but has been using for a time period, the sale is taxable.

The last area addresses the fact that casual sales do not include consignment sales. These are sales where a person has left goods with a registered retailer to sell on that person's behalf. Ultimate sales of these goods are retail sales even though the goods do not belong to the retailer.

Some other examples of casual sales are:

- Sales made by a personal representative in the settlement of an estate, unless those sales continue the operation of a retail business or are made by a retailer.
- The sale of an entire business by the owner, with the exception of goods in inventory.
- Judicial sales, executions, etc., unless made by a registered retailer.
- Sales by a person engaged in a business or occupation such as manufacturing or farming, of used machinery, fixtures, equipment or similar items when the seller is not engaged in the business of selling those items.

The following are examples of transactions which, although they may appear to resemble casual sales, are deemed to be retail sales. Sales of the kinds listed below are subject to sales or use tax in the same way as other retail sales.

- Sales made in the ordinary course of business by a registered retailer on behalf of the owner, even though the owner is not in the business of making such sales. A retailer has the same duties when making sales of property belonging to another as when selling the retailer's own goods.
- Retail sales by a manufacturer, wholesaler, processor or jobber of the kinds of property ordinarily produced or sold by that business, even though retail sales are infrequent and comprise only a small fraction of the total sales of that business.
- Sales that are an integral part of a business, such as the sale of repossessed personal property by a bank or finance company, even though the sale of tangible personal property is not the primary activity of that business.
- Sales by lessors of personal property previously rented or leased.

#### **Taxable casual sales**

There are certain kinds of property which, by statute, are taxable even if sold at casual sale. The statute reads:

*The tax imposed by this Part must be levied upon all casual rentals of living quarters in a hotel, rooming house, tourist camp or trailer camp and upon all casual sales involving the sale of trailers, truck campers, motor vehicles, special mobile equipment, watercraft or aircraft<sup>41</sup> unless the property is sold for resale at retail sale or to a corporation, partnership, trust, limited liability company or limited liability partnership when the seller is the owner of 50% or more of the common stock of the corporation or of the ownership interests in the partnership, trust, limited liability company or limited liability partnership. This section does not apply to the rental of living quarters rented for a total of fewer than 15 days in the calendar year, except that a person who owns and offers for rental more than one property in the State during the calendar year is liable for collecting sales tax with respect to the rental of each unit regardless of the number of days for which it is rented. For purposes of this section, "special mobile equipment" does not include farm tractors and lumber harvesting vehicles or loaders. § 1764*

The following provides definitions for the kinds of property mentioned:

*Trailer. "Trailer" means a vehicle without motive power and mounted on wheels that is designed to carry persons or property and to be drawn by a motor vehicle and not operated on tracks. "Trailer" includes a camper trailer as defined in section 1481, subsection 1-A but without restriction on length. § 1752(19-A)*

*Truck camper. "Truck camper" means a slide-in camper designed to be mounted on a truck body to provide temporary living quarters for recreational, camping, travel or other use. § 1752(20-A)*

*Motor vehicle. "Motor vehicle" means any self-propelled vehicle designed for the conveyance of passengers or property on the public highways. "Motor*

<sup>41</sup> For the period of July 1, 2011 to June 30, 2033, all sales of aircraft are exempt. See Section 1760(88-A).

*vehicle" includes an all-terrain vehicle and a snowmobile as defined in Title 12, section 13001. § 1752(7)*

*Special mobile equipment. "Special mobile equipment" means any self-propelled vehicle not designed or used primarily for the transportation of persons or property that may be operated or moved only incidentally over the highways, including, but not limited to, road construction or maintenance machinery, farm tractors, lumber harvesting vehicles or loaders, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well drillers and wood sawing equipment. § 1752(14-B)*

*Watercraft. "Watercraft" means any type of vessel, boat, canoe or craft designed for use as a means of transportation on water, other than a seaplane, including motors, electronic and mechanical equipment and other machinery, whether permanently or temporarily attached, which are customarily used in the operations of the watercraft. § 1752(24)*

*Aircraft. "Aircraft" means any powered contrivance designed for navigation in the air except a rocket or missile. § 1752(1-A)*

If any of these items are sold at casual sale and the seller does not report and pay tax on the transaction, payment of use tax is due from the purchaser directly to the State. The statute also makes it a prerequisite to pay the use tax before any of the above items, except aircraft, are registered:

*Payment of tax on vehicles and recreational vehicles. The tax imposed by this Part on the sale or use of any vehicle, snowmobile, all-terrain vehicle or watercraft must, except where the dealer has collected the tax in full, be paid by the purchaser or other person seeking registration of the vehicle, snowmobile, all-terrain vehicle or watercraft at the time and place of registration. In the case of vehicles, the tax must be collected by the Secretary of State and transmitted to the Treasurer of State as provided by Title 29-A, section 409. In the case of watercraft, snowmobiles and all-terrain vehicles, the tax must be collected by the Commissioner of Inland Fisheries and Wildlife and transmitted to the Treasurer of State as provided by Title 12, 13002 to 13005. § 1952-A*

## **Yard sales**

When individuals who are not in the business of selling goods dispose of their own used household items by selling them at a yard sale or similar event, or by placing an advertisement in the classified section of a newspaper, they are making casual sales. If the property sold is a motor vehicle, aircraft<sup>42</sup>, watercraft, camper trailer, livestock trailer or special mobile equipment, the purchaser is responsible for payment of the tax directly to the State as previously stated.

So-called yard sales that are operated on a continuing basis or include items produced or acquired for resale by the seller are not casual sales. Persons who operate businesses of this type are required to register as sellers under the Sales and Use Tax Law and to collect, report and remit Maine sales tax in the same way as other retailers. If used household items are intermingled with items produced or acquired for resale, all sales are subject to tax.

<sup>42</sup> For the period of July 1, 2011 to June 30, 2033, all sales of aircraft are exempt. See Section 1760(88-A).

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## RESPONSIBILITIES OF THE RETAILER

***"Retailer" means a person who makes retail sales or who is required to register by section 1754-A or 1754-B or who is registered under section 1756. § 1752(10)***

Persons engaged in selling tangible personal property and taxable services which are subject to the sales and use tax are required to register with MRS to facilitate the collection of tax. Once registered, periodic reporting and remittance of the tax is required.

### **Registration requirements<sup>43</sup>**

The statute identifies categories of sellers who must register for a seller's certificate under the Sales and Use Tax laws.

***Every seller of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business; § 1754-B(1)(A)***

Having any type of physical presence or nexus in this State, such as operating or maintaining a store, warehouse, office or repair facility, requires registration.

***Every seller of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders, by means of one or more salespeople within this State, for retail sales within this State; § 1754-B(1)(B)***

Retailers could also be subject to registration requirements even if no real property is maintained in this State. If an employee travels within the State, soliciting sales, registration is required.

***Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. § 1754-B(1)(G)***

Every seller that has any other type of substantial physical presence in Maine must register. The level of physical presence that is "substantial" is the amount sufficient to satisfy U.S. constitutional standards. In general, substantial physical presence would include the seller's ownership of, or lease interest in, any real property in Maine, the seller's purposeful use in Maine of personal property to conduct any part of its business, and the activity in Maine of the seller's employees and contractors or other agents associated with establishing and/or maintaining a market for the seller's products.

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<sup>43</sup> See also Instructional Bulletin 43

Retailers could also be subject to registration requirements even if an employee within Maine is not soliciting sales. For instance, the retailer may only have employees providing repair, installation or maintenance services within Maine or the retailer may be delivering its goods to Maine with its own vehicle. Delivery of goods by a common or contract carrier or the U.S. mail does not constitute delivery by the retailer.

***Every lessor engaged in the leasing of tangible personal property located in this State that does not maintain a place of business in this State but makes retail sales to purchasers from this State; § 1754-B(1)(C)***

If a business is engaged in the leasing of tangible personal property within Maine and also makes retail sales to Maine customers, the business is required to register. A lessor is engaged in making retail sales in Maine when the lessor executes a "lease in lieu of purchase", accepts a lessee's option to purchase or sells previously rented property.

### **Rebuttable presumptions**

***This subsection defines the basis for and obligations associated with the rebuttable presumption created by this subsection that a seller not registered under subsection 1 is engaged in the business of selling tangible personal property or taxable services for use in this State and is required to register as a retailer with the assessor.***

***A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.***

***(1) "Affiliated person" means a person that is a member of the same controlled group of corporations as the seller or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations. For purposes of this subparagraph, "controlled group of corporations" has the same meaning as in the Code, Section 1563(a).***

***(2) "Person" means an individual or entity that qualifies as a person under the Code, Section 7701(a)(1).***

***(3) "Seller" means a person that sells, other than in a casual sale, tangible personal property or taxable services.***

***B. A seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if an affiliated person has a substantial physical presence in this State or if any person, other than a person acting in its capacity as a common carrier, that has a substantial physical presence in this State:***

***(1) Sells a similar line of products as the seller and does so under a business name that is the same as or similar to that of the seller;***

***(2) Maintains an office, distribution facility, warehouse or storage place or similar place of business in the State to facilitate the delivery of property or services sold by the seller to the seller's customers;***

***(3) Uses trademarks, service marks or trade names in the State that are the same as or substantially similar to those used by the seller;***

*(4) Delivers, installs, assembles or performs maintenance services for the seller's customers within the State;*

*(5) Facilitates the seller's delivery of property to customers in the State by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the State; or*

*(6) Conducts any activities in the State that are significantly associated with the seller's ability to establish and maintain a market in the State for the seller's sales.*

*A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part. A seller may rebut the presumption created in this paragraph by demonstrating that the person's activities in the State are not significantly associated with the seller's ability to establish or maintain a market in this State for the seller's sales.*

*C. A seller that does not otherwise meet the requirements of paragraph B is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this State if the seller enters into an agreement with a person under which the person, for a commission or other consideration, while within this State:*

*(1) Directly or indirectly refers potential customers, whether by a link on an Internet website, by telemarketing, by an in-person presentation or otherwise, to the seller; and*

*(2) The cumulative gross receipts from retail sales by the seller to customers in the State who are referred to the seller by all persons with this type of an agreement with the seller are in excess of \$10,000 during the preceding 12 months.*

*A seller who meets the requirements of this paragraph shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part.*

*A seller may rebut the presumption created in this paragraph by submitting proof that the person with whom the seller has an agreement did not engage in any activity within the State that was significantly associated with the seller's ability to establish or maintain the seller's market in the State during the preceding 12 months. Such proof may consist of sworn, written statements from all of the persons within this State with whom the seller has an agreement stating that they did not engage in any solicitation in the State on behalf of the seller during the preceding 12 months; these statements must be provided and obtained in good faith.*

*A person who enters into an agreement with a seller under this paragraph to refer customers by a link on an Internet website is not required to register or collect taxes under this Part solely because of the existence of the agreement.*  
**§ 1754-B(1-A)**

Section 1754-B(1-A) creates a rebuttable presumption that a seller is nevertheless engaged in the business of selling tangible personal property or taxable services for use in this State and is required to register as a retailer with MRS under the following situations:

1. An affiliate of the seller has a substantial physical presence in this State



Example: If a seller operating a dotcom is an affiliate of a corporation that operates a bricks-and-mortar retail store in Maine, the affiliate has a requirement to register in Maine.

2. An unaffiliated person, other than a common carrier, that has a substantial physical presence in this State;

- a. Sells a similar line of products as the seller and does so under a business name that is the same or similar to that of the seller;

Example: ABC Company Maine, a retail store in Maine, sells similar line of products as ABC Company USA. ABC Company USA is required to register in Maine and collect sales/use tax for its sales shipped to Maine residents.

- b. Maintains an office, distribution facility, warehouse or storage place or similar place of business in Maine to facilitate the delivery of property or services sold by the seller to the seller's customers;

Example: Sales by an out-of-state retailer are fulfilled by an unaffiliated distribution facility located in Maine. The out-of-state retailer is required to register and collect sales/use tax in Maine.

- c. Uses trademarks, service marks or trade names in Maine that are the same or substantially similar to those used by the seller;

Example: ABC Corporation operates a number of fast food chain franchises in Maine using the trademark and trade name of the franchisor. The franchisor is required to register and collect sales/use tax in Maine.

- d. Delivers, installs, assembles or performs maintenance services for the seller's customers within Maine;

Example: ABC Corporation contracts with a person in Maine to install and/or repair equipment that ABC has sold to a Maine customer. ABC Corporation is required to register and collect sales/use tax in Maine.

- e. Facilitates the seller's delivery of property to customers in Maine by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in Maine; or

Example: Out-of-state manufacturer makes a sale to a Maine customer and instructs the Maine customer to pick up the merchandise at a distributor's warehouse located near the customer in Maine. The out-of-state manufacturer is required to register and collect sales/use tax in Maine.

- f. Conducts any activities in Maine that are significantly associated with the seller's ability to establish and maintain a market in Maine for the seller's sales.

Example: Person in Maine provides dog training seminars across the state. The person has an arrangement with a national dog food company to promote their product during the seminars. This activity establishes and maintains a market in Maine. The national dog food company is required to register and collect sales/use tax in Maine.

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A seller may rebut these presumptions by demonstrating that the person's activities in Maine are not significantly associated with the seller's ability to establish or maintain a market in Maine for the seller's sales.

3. A seller enters into an agreement with a person under which the person, for a commission or other consideration, while within Maine:
  - a. Directly or indirectly refers potential customers, whether by a link on an Internet website, by telemarketing, by an in-person presentation or otherwise, to the seller; and
  - b. The cumulative gross receipts from retail sales by the seller to customers in Maine who are referred to the seller by all persons with this type of an agreement with the seller are in excess of \$10,000 during the preceding 12 months.

Example: A Maine retailer places a link on their website that sends their customer to an out-of-state seller's website. The seller's agreement with the Maine retailer is that they receive a 10% commission on any sales originating from that referral. The out-of-state seller has this agreement with a number of retailers within Maine. The out-of-state seller is required to register in Maine if their sales through this type of agreement with all of the Maine retailers exceeded \$10,000 during the preceding 12 months.

A seller may rebut this presumption by submitting proof that the person with whom the seller has an agreement did not engage in any activity within Maine that was significantly associated with the seller's ability to establish or maintain its market in Maine during the preceding 12 months. The proof may consist of sworn, written statements from all of the persons within Maine with whom the seller has an agreement stating that they did not engage in any solicitation in Maine on behalf of the seller during the preceding 12 months; these statements must be provided and obtained in good faith.

A person who enters into an agreement with a seller to refer customers by a link on an Internet website is not required to register solely because of the existence of the agreement.

Advertising alone does not establish a requirement to register.

Example: An out-of-state seller enters into an agreement with a Maine retailer to place an advertisement on the Maine retailer's website. Visitors to the website can click the ad and be directed to the out-of-state seller's website. In exchange for the ad, the Maine retailer receives a set monthly fee unrelated to the amount of sales derived from the referral. This type of arrangement alone does not establish a requirement to register in Maine.

### **Mandatory registration by persons other than sellers**

The following activities require persons acting under contract with, or otherwise acting on behalf of, a seller making sales within Maine or sales into Maine to register with MRS and collect and remit sales and use taxes accordingly.

***Every agent, representative, salesperson, solicitor or distributor that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution and that receives compensation by reason of sales of tangible personal property or taxable services made outside this State by a principal for use, storage or other consumption in this State; § 1754-B(1)(E)***

Persons who act as representatives, solicitors, salespersons or independent selling agents and receive commissions from sales made by the principal are required to be registered if the principal is not registered. For instance, if an independent selling agent promotes the retailer's product by conducting home parties or by using the retailer's catalog to solicit sales, the agent would be held accountable for registration unless the principal is registered. In these types of situations, the out-of-state retailer should be registered for ease in administration; not only for MRS, but also for the agent and the retailer.

***Every person that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution and that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate. For purposes of this paragraph, paragraph E and paragraph G, the following activities do not constitute a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution:***

- (1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd-party common carrier;***
- (2) Attending trade shows, seminars or conventions in this State;***
- (3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;***
- (4) Maintaining a bank account or banking relationship in this State;***  
***or***
- (5) Using a vendor in this State for printing; § 1754-B(1)(D)***

There are limited exclusions for certain activities which, by themselves, do not establish a presence in Maine sufficient to require registration. These limited “safe harbor” activities applicable to § 1754-B(1), subsections D, E and G are:

- Solicitation of business in Maine through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the US mail or by an interstate 3rd-party common carrier;

Example: ABC Corporation is an out-of-state corporation with no activity in Maine other than soliciting orders worldwide on its website hosted outside of Maine, and its sales to Maine customers are delivered to Maine by common carrier.

- Attending trade shows, seminars or conventions in Maine;

Example: ABC Corporation is an out-of-state corporation that sends employees annually to a seminar in Maine for training purposes only. The employees do not solicit sales while in Maine.

- Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in Maine;
- Maintaining a bank account or banking relationship in Maine; or
- Using a vendor in Maine for printing.

*Every person that manages or operates in the regular course of business or on a casual basis a hotel, rooming house or tourist or trailer camp in this State or that collects or receives rents from a hotel, rooming house or tourist or trailer camp in this State; § 1754-B(1)(F)*

*Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of the owner of that property or the provider of those services. § 1754-B(1)(H)*

Registration is required if a retailer makes retail sales within Maine, whether the sales are of goods purchased by that retailer for resale or are goods consigned to the retailer and sold on the owner's behalf.

*Every person not otherwise required to be registered that sells tangible personal property to the State and is required to register as a condition of doing business with the State pursuant to Title 5, section 1825-B; and; § 1754-B(1)(I)*

*Every person that holds a wine direct shipper license under Title 28-A, section 1403-A. § 1754-B(1)(J)*

If a business is required as a condition of doing business in this state, such as when making sales to the State or when shipping wine direct to a customer in Maine, the business is required to register.

### **Voluntary registration**

In addition, any seller who is not required to register by any of the above, may voluntarily do so to collect use tax.

*Every seller of tangible personal property or taxable services that is not required by section 1754-B to register may register upon those terms that the assessor prescribes. Upon registration, the seller has the rights and duties of a person required to be registered and is subject to the same penalties, except that the seller's liability may be limited to tax actually collected. The seller so registered may at any time surrender the seller's registration certificate and request that the registration certificate be canceled. Upon receipt of the certificate and request, the assessor shall grant the cancellation, if it appears to the assessor that the seller has satisfied all liability to the State and that the seller is not required by law to register. Upon surrender of the certificate, the seller must cease to collect sales or use taxes upon sales that occur on and after the date of the surrender. § 1756*

### **Rental of retail space**

*A person who rents or leases space to more than 4 persons at one location for less than a 12-month period for the purpose of making retail sales shall register with the State Tax Assessor. The form for application for registration and the registration certificates must be prescribed and furnished free of charge by the assessor. For each location where more than 4 persons rent or lease space for less than 12 months from the same person, the assessor shall issue a registration certificate, which must be conspicuously displayed at that location. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning of that term in the Maine Administrative Procedure Act.*

*A person required to register with the assessor under this section may not rent or lease space to a person for the purpose of making retail sales without verifying that the person is the holder of a valid registration certificate issued by the assessor under section 1754-B.*

*Each person required to register with the assessor under this section shall maintain a list subject to the requirements of section 135, subsection 1 that includes the names, addresses and sales tax registration certificate numbers of those persons who have rented or leased space at that location for the purpose of making retail sales and the dates on which those rentals or leases occurred.*  
**§ 1754-A**

Persons who rent out space at flea markets, craft shows or any other event where retail sales are being made are also required to register with MRS, require that persons renting from them have a valid sales tax registration certificate and retain information concerning those persons making sales.

### **Registration for use tax only**

Businesses that have no sales but make purchases that are subject to use tax are required to register for reporting purposes. Returns are due in the same manner as sales and use tax returns, but only in those months where liability exists.

*Use Tax Returns. Every person, not otherwise required to file sales and use tax returns, who regularly makes purchases for business use that are subject to Maine use tax must register with the State Tax Assessor to file use tax returns. Every person so registered must file a use tax return for each month in which taxable purchases were made. Use tax returns need not be filed for months during which no taxable purchases were made. Rule 304, section .08*

### **Registration procedure**

*Application forms for sales tax registration certificates must be prescribed and furnished free of charge by the assessor. The assessor shall issue a registration certificate to each applicant that properly completes and submits an application form. A separate application must be completed and a separate registration certificate issued for each place of business. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning of that term in the Maine Administrative Procedure Act. Each application for a registration certificate must contain a*

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*statement as to the type or types of tangible personal property that the applicant intends to purchase for resale and the type or types of taxable services that the applicant intends to sell, and each retailer registered under this section must inform the assessor in writing of any changes to the type or types of tangible personal property that it purchases for resale or to the type or types of taxable services that it sells.*

*If the retailer maintains a place of business in this State, the retailer shall make available a copy of the registration certificate issued for that place of business at that place of business for inspection by the assessor, the assessor's representatives and agents or authorized municipal officials. If the retailer does not have a fixed place of business and makes sales from one or more motor vehicles, each motor vehicle is deemed to be a place of business.*

*§ 1754-B(2)*

Registration with MRS is accomplished by submitting an application for registration. This application is also the mechanism to register for any other tax that MRS administers, such as withholding and fuel excise taxes. Once the application is processed, a Retailer's Certificate is issued. Although the certificate does not need to be displayed, the certificate does need to be available for review by the assessor, the assessor's representatives or agents or municipal officials. The certificate is valid until canceled by the taxpayer or revoked by MRS and is not assignable to a new owner. If the retailer operates more than one business, a separate certificate is necessary for each location.

### **Collection of taxes**

*The tax imposed by this Part is declared to be a levy on the consumer. The retailer shall add the amount of the tax to the sale price and may state the amount of the tax separately from the sale price of tangible personal property or taxable services on price display signs, sales or delivery slips, bills and statements that advertise or indicate the sale price of that property or those services. If the retailer does not state the amount of the tax separately from the sale price of tangible personal property or taxable services, the retailer shall include a statement on the sales slip or invoice presented to the purchaser that the stated price includes Maine sales tax. § 1753*

In the event a retailer, such as a vendor cart, a roadside stand or a dairy bar, does not provide its customers with a sales slip or invoice, the retailer must clearly state on display signs, menus or other advertisements of the retailer's products, that sales tax is included in the advertised selling price.

### **Tax is part of sale price**

*Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of that tax, to the sale price, except as otherwise provided, and when added the tax constitutes a part of the price, is a debt of the purchaser to the retailer until paid and is recoverable at law in the same manner as the purchase price. § 1812(1)*

**Unlawful to possess or transfer automated sales suppression devices**

*1. A person is guilty of possession or transfer of an automated sales suppression device if:*

*A. The person knowingly possesses, purchases or owns any automated sales suppression device or phantom-ware. Violation of this paragraph is a Class D crime; or*

*B. The person knowingly manufactures, sells, installs or transfers any automated sales suppression device or phantom-ware or possesses, purchases or owns with the intent to sell, install or transfer any automated sales suppression device or phantom-ware. Violation of this paragraph is a Class C crime.*

*2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.*

*A. "Automated sales suppression device" means a computer software program, which may be stored on magnetic or optical media, accessed through the Internet or accessed through any other means, that is designed or used to falsify the electronic records of an electronic cash register or other point-of-sale system, including, but not limited to, transaction data and transaction reports.*

*B. "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling or processing retail sales transaction data.*

*C. "Phantom-ware" means a hidden, preinstalled or installed programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual 2nd cash register or to eliminate or manipulate transaction records, which may or may not be preserved in digital formats, can represent either the true or the manipulated records of transactions in the electronic cash register and is intended to falsify the electronic records of an electronic cash register or other point-of-sale system.*

*D. "Transaction data" includes a description of items purchased by a customer; the price for each item; a taxability determination for each item; a segregated tax amount for each taxed item; the amount of cash or credit tendered; the net amount returned to the customer in change; the date and time of the purchase; the name, address and identification number of the vendor; and the receipt or invoice number of the transaction.*

*E. "Transaction report" means a report that includes, but is not limited to, sales, taxes collected, methods of payment and voided sales at an electronic cash register that is printed on cash register tape at the end of a day or shift or a report that includes every action at an electronic cash register that is stored electronically. 17-A MRSA, § 909*

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A person may not knowingly manufacture, sell, transfer, possess, purchase, own, or install in this State any automated sales suppression device or phantom-ware. An automated sales suppression device, commonly known as a “zapper”, is a computer software program that may be stored on magnetic or optical media, accessed through the Internet or any other means, that is designed or used to falsify the electronic records of an electronic cash register or other point-of-sale system, including, but not limited to, transaction data and transaction reports.

#### **Unlawful to advertise no tax**

*It shall be unlawful for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by chapters 211 to 225 will be assumed or absorbed by the retailer, or that it will not be added to or included in the selling price of the property sold, or if added or included that it or any part thereof will be refunded. Any person violating any part of this section shall be guilty of a Class E crime. § 1761*

*"Advertise" means to make a public announcement by any means whatsoever, including a notice or announcement in a radio or televised broadcast, newspaper, magazine, catalog, circular, handbill, sign, placard or billboard. § 1752(1)*

Although the economic burden of the sales tax falls upon the purchaser, the legal incidence of the tax rests squarely on the retailer. State v. Marcotte, 418 A.2d 1118 (Me. 1980). Every retailer is required to add sales tax to the selling price and, once added, the tax becomes a debt of the purchaser to the seller. If the purchaser fails to pay the tax, the debt is recoverable by the seller at law in the same way that the selling price would be. Although the retailer can advertise that tax is included in the selling price, **it is a crime for the retailer to state that the sales tax will be assumed, absorbed, refunded or not charged at all to the purchaser.** Thus a seller cannot advertise that no sales tax will be charged on otherwise taxable items or that no sales tax will be charged on a certain day or period of time. A retailer can include the sales tax in the selling price, but when doing so, must include a statement on the invoice or sales slip indicating that tax is included.

#### **Payment of taxes**

*The taxes imposed by chapters 211 to 225 on sales of tangible personal property and taxable services are due and payable at the time of the sale. Upon such terms and conditions as the State Tax Assessor may prescribe, the assessor may permit a postponement of payment to a date not later than the date on which the sales so taxed are required to be reported. § 1952*

#### **Tax returns due on 15th**

*Every retailer shall file with the State Tax Assessor, on or before the 15th day of each month, a return made under the penalties of perjury on a form*



*prescribed by the assessor. The return must report the total sale price of all sales made during the preceding calendar month and such other information as the assessor requires. The assessor may permit the filing of returns other than monthly. The assessor, by rule, may waive reporting nontaxable sales. The assessor may for good cause extend for not more than 30 days the time for filing returns required under this Part. Every person subject to the use tax shall file similar returns, at similar dates, and pay the tax or furnish a receipt for the tax from a registered retailer. § 1951-A(1)*

#### **Alternative filing for casual renters**

*An individual whose only sales tax collection responsibility under this Title is the collection of sales tax on casual rentals of living quarters pursuant to section 1764 and whose sales tax liability in connection with those rentals during the period of the individual's income tax return is expected to be less than \$2,000 may report and pay that sales tax on the individual's Maine income tax return for that year in lieu of filing returns under subsection 1. If the individual's actual sales tax liability in connection with those rentals is \$2,000 or more for that year, the individual must file returns as required under subsection 1 during the succeeding year.<sup>44</sup> § 1951-A(3)*

#### **Postmark is date of filing**

*If any document or payment required or permitted by this Title to be filed or paid is transmitted by the United States Postal Service to the person with whom or to whom the filing or payment is to be made, the date of the United States Postal Service postmark stamped on the envelope is deemed to be the date of filing or payment if that document or payment was deposited in the mail, postage prepaid and properly addressed to the person with whom or to whom the filing or payment is to be made. If the document or payment is not received by that person or if the postmark date is illegible, omitted or claimed to be erroneous, the document or payment is deemed to have been filed or paid on the mailing date if the sender establishes by competent evidence that the document or payment was deposited with the United States Postal Service, postage prepaid and properly addressed, and, in the case of nonreceipt, files a duplicate document or makes payment, as the case may be, within 15 days after receipt of written notification by the addressee of the addressee's nonreceipt of the document or payment. A record authenticated by the United States Postal Service of mailing by registered mail, certified mail or certificate of mailing constitutes competent evidence of such mailing. Any reference in this section to the United States Postal Service is deemed to include a reference to any delivery service designated by the United States Secretary of the Treasury pursuant to section 7502(f)(2) of the Code, and any reference in this section to a postmark of the United States Postal Service is deemed to include a reference to any date recorded or marked as described in section 7502(f)(2)(C) of the Code by any such designated delivery service. § 153(1)*

#### **When due date is a weekend or holiday**

*When the last day, including any extension of time, prescribed under this Title for the performance of an act falls on Saturday, Sunday or a legal holiday in this State, the performance of that act is timely if it occurs on the*

<sup>44</sup> A person who reports via their income tax return must nonetheless register for sales tax purposes.

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*next succeeding day which is not a Saturday, Sunday or legal holiday in this State. § 153(2)*

Retailers are responsible for filing a sales and use tax return on or before the 15th of the month. The information on the return reflects sales that occurred in the prior month.

### **Submission of returns and funds by electronic means**

*Returns; declaration covering perjury; submission of returns and funds by electronic means*

*1. Declaration required. Any return, report or other document required to be filed pursuant to this Title must contain a declaration, in a form prescribed by the State Tax Assessor, that the statements contained in the return, report or other document are true and are made under the penalties of perjury. When a tax return is filed electronically by a taxpayer or with the taxpayer's permission, the filing of that return constitutes a sworn statement by the taxpayer, made under the penalties of perjury, that the tax liability shown on the return is correct.*

*2. Electronic filing. The State Tax Assessor, with the approval of the Commissioner of Administrative and Financial Services may adopt a rule allowing or requiring the filing of a return or document by electronic data submission. The rule must establish thresholds or phase-in periods to assist taxpayers and preparers in complying with any electronic data submission requirement.*

*A. Unless otherwise provided by a rule adopted pursuant to this subsection, in the case of an employer that submits returns in accordance with section 5253 with respect to 100 or more employees, whether the returns are submitted directly by the employer or by a 3rd party on behalf of the employer, the assessor may require that the returns be filed by electronic data submission.*

*B. Unless otherwise provided by a rule adopted pursuant to this subsection, in the case of a payroll processor as defined in Title 10, chapter 222 that submits returns pursuant to section 5253 or Title 26, chapter 13, subchapter 5 or 7 for 100 or more employers, the assessor may require that the returns be filed by electronic data submission.*

*C. Unless otherwise provided by a rule adopted pursuant to this subsection, in the case of an employer that submits returns pursuant to Title 26, chapter 13, subchapter 5 or 7, the assessor may require that the returns be filed by electronic data submission.<sup>45</sup>*

*3. Payment by electronic funds transfer. The State Tax Assessor, with the approval of the Commissioner of Administrative and Financial Services, may adopt a rule allowing or requiring the payment of a tax or the refund of a tax by electronic funds transfer. An electronic funds transfer allowed or required by the assessor pursuant to this subsection in payment of a tax obligation to the State is considered a return. For the purposes of this subsection, "tax"*

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<sup>45</sup> Effective October 15, 2015

*includes Competitive Skills Scholarship Fund contributions and unemployment insurance contributions required to be paid to the State pursuant to Title 26.*

*A. Unless otherwise provided by a rule adopted pursuant to this subsection, in the case of a person that is liable for \$200,000 or more per year pursuant to section 5253 or for \$400,000 or more per year in payments of any other single tax type, the assessor may require payment or refund of that tax by electronic funds transfer.*

*B. Unless otherwise provided by a rule adopted pursuant to this subsection, in the case of a payroll processor as defined in Title 10, chapter 222, the assessor may require payment or refund of taxes pursuant to section 5253 and payment or refund of Competitive Skills Scholarship Fund contributions and unemployment insurance contributions pursuant to Title 26, chapter 13, subchapters 5 and 7, respectively, by electronic funds transfer.*

*4. Adoption of rules. Rules adopted pursuant to this section are routine technical rules for the purposes of Title 5, chapter 375, subchapter 2-A.*  
*§ 193*

#### **Payment mandates**

*Effective January 1, 2014, any person with a combined tax liability to the State of \$12,000 or more for all tax types during the most recent lookback periods ending during the prior calendar year is required to remit all Maine tax payments electronically using either the ACH credit method or ACH debit method. Rule 102, section .02(A)(7)*

*Effective January 1, 2015, any person with a combined tax liability to the State of \$10,000 or more for all tax types during the most recent lookback periods ending during the prior calendar year is required to remit all Maine tax payments electronically using either the ACH credit method or ACH debit method. Rule 102, section .02(A)(8)*

The statute allows for the creation of a rule mandating the payment of taxes through electronic means. Per Rule 102, any person with a **combined** tax liability of the thresholds mentioned above is required to pay either through ACH Credit or ACH Debit methods. For instance, if a person has an annual liability of \$20,000 in sales tax, \$10,000 in withholding and \$5,000 in income tax, the person has exceeded the combined threshold of \$10,000 for 2015 and would be required to file each of the taxes through electronic methods. See the entire rule for thresholds for prior periods.

#### **Filing mandates**

*A person preparing original Maine tax returns for sales, use or service provider tax must file all the original Maine tax returns for sales, use or service provider tax by electronic data submission effective for returns filed on or after January 1, 2012 and covering tax periods beginning on or after that date. Rule 104, section .04(F)*

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Rule 104 requires the electronic data submission of tax returns and allows a retailer to request a waiver if the electronic filing requirement causes undue hardship. The waiver request must be in writing and contain an explanation of the hardship that will be caused by complying with the electronic filing requirements.

### **Filing electronically**

MRS provides the ability to file electronically through the use of a computer or a touch-tone telephone. Sales, use and service provider tax returns can be filed through the internet by accessing <http://www.maine.gov/revenue> and clicking on "Electronic Services". At the next screen select either "Sales/Use I-File" or "Service Provider I-File". Bookmarking this location will give you quicker access next time.

In order to register online, you will need your registration number and your business code (both of which can be found on your Retailer Certificate) and a password which you will determine. (Note: your registration number must be seven digits and your business code must be three digits otherwise, you may need to add a zero in front of these numbers.) After you have completed your return, you will be given three options for payment; ACH Debit, ACH Credit or payment by check.

Sales, use and service provider tax returns can be filed through the use of a telephone by accessing our Telefile system. This system allows a retailer to file and pay electronically in the event it does not have a computer or internet access. A retailer that wishes to use this system must pre-register in order to receive more detailed information including instructions.

As permitted by the statute, the Assessor has, by rule, set forth other guidelines for the reporting and payment of sales, use and service provider tax. The first is permitting the filing of returns on frequencies other than monthly. See also the "Service Provider Tax" section of this guide.

### **Reporting frequencies**

*.01 Sales and Use Tax Returns. Except as otherwise provided below, every retailer must file monthly sales and use tax returns. The State Tax Assessor will periodically review the status of sales and use tax accounts and notify retailers whose filing frequency has been changed pursuant to this Rule. Upon application to the State Tax Assessor, a retailer may be authorized to file returns more frequently than this Rule requires.*

- A. Every retailer whose average sales and use tax liability is at least \$100 per month but less than \$600 per month must file four returns each year. The reporting periods are January through March, April through June, July through September, and October through December. The due date for filing the return and paying the tax is the fifteenth day of the month following the end of each reporting period.*

- B. Every retailer whose average sales and use tax liability is at least \$50 per year but less than \$100 per month must file two returns each year. The reporting periods are January through June and July through December. The due date for filing the return and paying the tax is the fifteenth day of the month following the end of each reporting period.*
- C. Every retailer whose average annual sales and use tax liability is less than \$50 must file one return each year. The reporting period is the calendar year. The due date for filing the return and paying the tax is the fifteenth day of the month following the end of the reporting period.*
- D. The State Tax Assessor may temporarily require retailers to file using unusual or more frequent reporting periods in order to administer substantial changes in the sales and use tax law, such as rate changes.*

*.02 Seasonal Filing. A retailer whose business is completely closed for one or more calendar months on a regular schedule each year may register as a seasonal filer, indicating the months during which the business is open. A retailer that is registered as a seasonal filer is not required to file a sales and use tax return for any off-season reporting period during which the retailer did not engage in business. Rule 304*

#### **Extensions**

Since some businesses may not have ample time to gather all the information necessary to complete the return, the rule authorizes permanent extensions for filing, but not for paying. Temporary or periodic exemptions are not granted.

*03. Extension of Time for Filing. Upon application to the State Tax Assessor, the time for filing sales and use tax returns may be extended for 30 days for good cause. The extension remains in effect until revoked in writing by the State Tax Assessor. The extension does not extend the time for paying the tax. Rule 304*

#### **Reporting on cash basis**

The sales tax law assumes that most businesses practice an accrual system of accounting. Sales tax is due the month following the month in which the sale occurred even though payment for the sale may not have been received. However, MRS' rule does recognize the fact that businesses may be on a cash basis.

*04. Basis of Accounting. Generally, retailers are required to file sales and use tax returns on an accrual basis. However, a retailer that properly files its federal income tax returns on a cash basis may elect to file its sales and use tax returns on a cash basis. Rule 304*

Thus, the retailer may report only the tax that has been collected in a given month. A business cannot have one accounting system for sales tax purposes and a separate system for income taxes.

## Supplemental report

In addition to the sales and use tax return, vehicle dealers are required to file a supplemental report listing each vehicle sale.

***05. Supplemental Return. Every person who makes retail sales of motor vehicles, watercraft, aircraft, manufactured housing<sup>46</sup>, special mobile equipment, trailers, camper trailers or truck campers must file, in addition to the sales and use tax return, a supplemental return reporting individually each sale of any of these kinds of property made during the reporting period. Every person who rents or leases automobiles for one year or more must file a supplemental return reporting individually each lease or rental. Rule 304***

MRS encourages vehicle dealers to file the supplemental report electronically through a fillable-form Excel or PDF template. Both can be found on the MRS website under “Forms, Publications & Applications”. Choose Sales Tax Forms, Certificates and Affidavits.

## Consolidated filing

A seller who operates multiple places of business is allowed to file a consolidated return covering sales at each location in lieu of multiple sales and use tax returns. A breakdown of sales at each location must be provided if the seller operates businesses in various cities or towns.

***07. Consolidated Filing. Upon application to the State Tax Assessor, a retailer that makes sales at more than one place of business may be authorized to file a single consolidated return reporting the total amount of sales made at all of the locations. The return must include a schedule showing a breakdown of taxable sales made at each location.***

Failing to file any tax return or pay any tax due is subject to penalties as discussed later on in the “Taxpayer Compliance” section of this guide.

## Recordkeeping requirements

***Persons subject to tax under this Title shall maintain such records as the State Tax Assessor determines necessary for the reasonable administration of this Title. Records pertaining to taxes imposed by chapters 371, 575 and 577 and by Part 8 must be retained as long as is required by applicable federal law and regulation. Records pertaining to the special fuel tax user returns filed pursuant to section 3209, subsection 2 and the International Fuel Tax Agreement pursuant to section 3209, subsection 1-B must be retained for 4 years. Records pertaining to all other taxes imposed by this Title must be retained for a period of at least 6 years. The records must be kept in such a manner as to ensure their security and accessibility for inspection by the assessor or any designated agent engaged in the administration of this Title.***  
**§ 135(1)**

***Records kept by a taxpayer doing business in this State must include all bills, receipts, cash register tapes, sales invoices, purchase invoices and any other documentation supporting the entries made in the normal books of account***

<sup>46</sup> Administratively, the assessor no longer requires persons making retail sales of manufactured housing to file the supplemental report.

*and ledgers maintained by the average prudent business person, as well as all related reports produced from these records. The records must also include all documents, schedules or work papers used in connection with the preparation of tax returns filed by the retailer.*

*The minimum information required of a taxpayer includes:*

*(A) Detailed records of all taxable sales of tangible personal property made in Maine, including all components of the total sales price of such sales.*

*(B) Detailed records of all taxable sales of taxable services made in Maine, including all components of the total sale price of such sales.*

*(C) Detailed records of all exempt sales of tangible personal property or taxable services made in Maine, including all components of the total sale price of such sales.*

*(D) Detailed records of all purchases of tangible personal property and taxable services purchased for use or consumption in Maine, including all components of the total purchase price of such items. Rule 103, Section 2(4)*

*The burden of proving that a transaction was not taxable is on the person charged with tax liability. The presumption that a sale was not for resale may be overcome during an audit or upon reconsideration if the seller proves that the purchaser was the holder of a currently valid resale certificate as provided in section 1754-B at the time of the sale or proves through other means that the property purchased was purchased for resale by the purchaser in the ordinary course of business. Notwithstanding section 1752, subsection 11, paragraph B, if the seller satisfies the seller's burden of proof, the sale is not considered a retail sale. § 1763*

Recordkeeping requirements apply to all taxes, including sales, use and service provider taxes. The burden of proving that a sale is exempt is upon the person making the sale. In most instances, the seller is relieved of this burden if it obtains appropriate documentation from the purchaser. Certificates issued by MRS must be accepted by the seller in good faith. The good faith of the seller would be questioned if it had knowledge of facts which give rise to a reasonable inference that the purchaser is not the holder of the exemption certificate, that the merchandise is not to be used exclusively by the exempt organization or will not be resold in the ordinary course of business by a retailer. Some exemptions do not require statements from the purchaser, e.g. grocery staples, while other commodities need affidavits since they can be used for a purpose inconsistent with the exemption, e.g. vehicles used in interstate commerce. See Rule 103 for additional information on recordkeeping requirements.

### **Electronic retention of records**

Advancing technology in the area of record retention allow for new standards of acceptability for such documentation. MRS accepts imaged documents stored in a digital format provided 1) the system meets accepted industry standards for integrity and reliability, 2) the procedures used to capture and store information are reliable and include safeguards to guarantee

authenticity, 3) detail is captured and retained in order to allow for a sales/use tax review and 4) adequate hardware/software is available to readily access records. The retention of original hard-copy documents will depend upon the accuracy, integrity and authenticity offered by the system. See Rule 103 for additional information on retention of records.

### EXEMPT SALE DOCUMENTATION

The following is a summation of documents that MRS deems necessary for the retailer to obtain and keep on file in order to support an exempt sale:

#### Resale certificate<sup>47</sup>

 Resale certificate

*The assessor shall issue a provisional resale certificate to each applicant for initial registration that states on its application that it expects to make annual gross sales of \$3,000 or more. A provisional resale certificate issued between January 1st and September 30th is effective for the duration of the calendar year in which it is issued and the 2 subsequent years. A provisional resale certificate issued between October 1st and December 31st is effective until the end of the 3rd succeeding calendar year. Each certificate must contain the name and address of the retailer, the expiration date of the certificate and the certificate number. If a vendor has a true copy of a retailer's resale certificate on file, that retailer need not present the certificate for each subsequent transaction with that vendor during the period for which it is valid.*

§ 1754-B(2-B)

*On November 1<sup>st</sup> of each year, the assessor shall review the returns filed by each registered retailer unless the retailer has a resale certificate expiring after December 31<sup>st</sup> of that year. If the retailer reports \$3,000 or more in gross sales during the 12 months preceding the assessor's review, the assessor shall issue to the registered retailer a resale certificate effective for 5 calendar years. Each certificate must contain the name and address of the retailer, the expiration date of the certificate and the certificate number. If a vendor has a true copy of a retailer's resale certificate on file, that retailer need not present the certificate for each subsequent transaction with that vendor during the period for which it is valid.*

*A registered retailer that fails to meet the \$3,000 threshold upon the annual review of the assessor is not entitled to renewal of its resale certificate except as provided in this subsection. When any such retailer shows that its gross sales for a more current 12-month period total \$3,000 or more or explains to the satisfaction of the assessor why temporary extraordinary circumstances caused its gross sales for the period used for the assessor's annual review to be less than \$3,000, the assessor shall, upon the written request of the retailer, issue to the retailer a resale certificate effective for the next 5 calendar years.*

§ 1754-B(2-C)

A sale of tangible property for resale (except for resale as a casual sale) is not a taxable transaction. However, the burden of proving that a sale of tangible personal property is for resale

<sup>47</sup> See also Instructional Bulletin 54



is upon the person making the sale. The seller will be relieved of this burden of proof only if a resale certificate in accordance with the provisions of Rule 301 is obtained from the purchaser. Where the sale is to a person who, by reason of being a non-resident of the state not doing business within the state has no seller's registration certificate, the seller should obtain sufficient evidence to sustain the burden of proving the sale is actually for resale. If the purchaser cannot furnish such evidence, the seller should, as a protection, collect the sales tax.

MRS initially issues resale certificates to retailers expecting annual gross sales of \$3,000 or more. The resale certificate is valid for 3 years. Prior to a certificate's expiration, MRS will automatically review the account and reissue the certificate provided the account is active and has the required gross sales volume. Each renewed resale certificate is valid for 5 years.

If a retailer fails to receive a renewal but there were extraordinary circumstances that caused gross sales to be less than \$3,000 during the period of review, the retailer can submit a written request for reconsideration. Alternatively, if a retailer fails to receive a renewal, and, prior to the next renewal review, exceeds \$3,000 of gross sales for a more current 12 month period, the retailer can submit a written request for a renewal at that time.

An out-of-state retailer that is not required to be registered in Maine may still buy exempt if it provides a statement similar to the MRS resale certificate to the seller, preferably on the retailer's own letterhead. Alternatively, MRS has accepted the "Uniform Sales & Use Tax Certificate - Multijurisdiction" form issued by the Multistate Tax Commission as adequate documentation. This form contains the required language and the purchaser indicates in which states it is registered to do business. Not all states have accepted this form, however. As a result, this form would not be acceptable if the out-of-state purchaser is from a state not listed on this form. A copy of the MTC form is available in the document section of this guide or it can be downloaded directly from their website at [www.mtc.gov](http://www.mtc.gov) (select "Uniform Sales & Use Tax Exemption Certificate" under Resources).

Since the burden of proof is on the seller, the seller should obtain whatever documentation will prove that the purchaser is engaged in selling in its home state.

The resale certificate can be used either for a single purchase or to document a retailer's ongoing purchase of goods for resale. If the resale certificate is used as a blanket certificate, the seller is only required to retain one copy of the resale certificate in its files to support the exempt sale rather than obtain a copy for each transaction. However, each transaction supported by the resale certificate must also be documented with purchase invoices appropriately marked.


### **Third-party drop shipments**

On occasion a registered retailer may sell products to another retailer that is not required to be registered in Maine, with an instruction to deliver the products to the purchasing retailer's customer located in Maine, customarily known as a "third-party drop shipment." Since the

selling retailer is registered to collect Maine sales tax and making a delivery in Maine would ordinarily be a taxable transaction, the selling retailer often questions whether or not to collect the sales tax on the transaction.

The transaction in question is between the selling retailer and the purchasing retailer. Even though delivery is in Maine, the purchasing retailer has a valid claim for exemption as a purchase for resale and should provide documentation as previously discussed when selling to retailers who are not required to be registered in Maine.

### **Exempt organizations**

-  Exempt organization certificate, or other exempt letter, issued by MRS, for purchases made by the organization for their own use


Not all organizations are exempt from sales tax. The certificate or letter must be issued by MRS, Sales, Fuel and Special Tax Division and must be unaltered. The State of Maine, the U. S. Government, Maine cities, towns and counties are exempt from sales tax but, for administrative purposes, are generally not issued certificates. Sales made to governmental agencies exempt from Maine sales/use tax must be documented by listing the name of the governmental agency on the invoice or sales slip. For important additional information regarding specific documentation requirements that apply depending on the method of payment (cash, credit card, etc.), see Rule 302.

### **Manufacturers**

-  ST-A-117 - Industrial Users Blanket Certificate of Exemption

This document is presented by a registered seller who is engaged in manufacturing a product. This includes a wide range of entities, from crafters to paper mills. It may be used to exempt all future purchases of qualifying items or for occasional purchases. Items covered by this certificate are ingredients or component parts of the item being produced; items that will be consumed and destroyed in the process; machinery, equipment and repair parts used in manufacturing; and fuel or electricity used at the manufacturing facility.

### **Direct pay permits**

-  ST-P-3 - Direct Pay Permit for use by certain manufacturers

***Many manufacturers and utilities routinely acquire large quantities of tangible personal property under circumstances that make it impractical to determine, at the time of purchase, the manner in which property will be used. It is impractical in these circumstances to determine whether the purchase or use of the property will be taxable or exempt. Holders of direct payment permits are authorized to purchase most items of tangible personal property without payment of the tax to their vendors, and may instead report and pay tax directly to the State. Rule 308(1)***

*Each holder of a direct payment permit must file a copy of the permit with each of its vendors and ensure that the permit number is placed on all purchase orders or contracts covering the purchase of tangible personal property, in lieu of payment of tax to the retailer, except in those transactions excluded in Section 4 below. The holder of direct payment permits shall not authorize anyone to whom they have issued a direct payment permit to file the direct payment permit or permit number with a third party.*

*Sales tax registrations held by holders of direct payment permits will be placed on an inactive basis and accrued sales and use tax liabilities will be reported on sales and use tax returns which will be issued under the direct payment permit number. Rule 308(3)*

Some manufacturers are issued "direct pay permits" by MRS. This allows them to purchase nearly everything exempt from tax and be accountable directly to MRS on taxable items. This permit cannot be used for purchases of prepared food or beverages at restaurants, lodging at hotels, telecommunication services, interim rentals and short-term rentals of automobiles. (See Section 4 of Rule 308.)

#### **Agriculture, Fishing and Wood Harvesting**

- 📁 Exemption Card and ST-A-102 - Affidavit of Exemption for use by those engaged in commercial farming and fishing

Those persons engaged in commercial agricultural production, commercial fishing and commercial aquacultural production must provide the retailer with an affidavit of exemption along with a copy of their exemption card issued by MRS. This card may only be used to purchase electricity or depreciable machinery and equipment, including repairs parts for same. In the case of commercial fishermen, the card may also be used to purchase fuel to be used in a commercial fishing vessel. The card cannot be used to purchase items such as supplies, motor vehicles and repair parts for motor vehicles.

- 📁 ST-A-103 – Affidavit Regarding Purchase of Certain Products For Use In Agriculture, Fishing, Aquaculture and Animal Agriculture

This affidavit covers a wide range of agricultural and fishing products. Use this affidavit carefully as some of the products are only exempt when purchased for use in a commercial activity.

- 📁 ST-A-122 - Products to be Incorporated into a Commercial Fishing Vessel

For use by a person engaged in commercial fishing when purchasing property that will be incorporated into the construction of a fishing vessel.

- 📁 ST-A-123 – Affidavit regarding Purchases of Electricity, Depreciable Machinery or Equipment and Repair Parts Used in Commercial Wood Harvesting

### **Vehicles used in interstate commerce**

- 📁 ST-A-111 - Affidavit to document exempt vehicles for use in interstate or foreign commerce

It is important that the purchaser read the instructions as it provides a complete description of the requirements of this exemption. Retailers should not have the purchaser sign without pointing out the instructions nor should the retailer misrepresent the qualifications of the exemption.

### **Out-of-state deliveries**

- 📁 ST-A-107 - Affidavit to support out-of-state delivery by the seller

This form documents the fact that the seller delivered the merchandise out-of-state. It not only requires the signature of the person making the delivery but also notarization.

### **Certain sales to non-residents**

- 📁 ST-A-106 - Affidavit of Exemption for a sale to an out-of-state resident for immediate removal from Maine of a motor vehicle, camper trailer, semitrailer, aircraft<sup>48</sup>.

The purchaser must be a non-resident individual or business entity and the purchaser must be removing the property from Maine. If the retailer has any knowledge that the purchaser is actually a resident of Maine or that the non-resident does not intend to remove the property, this exemption does not apply. "Motor vehicle" includes snowmobiles and all-terrain vehicles.

- 📁 ST-A-113 - Affidavit of Exemption - Watercraft and/or Materials Incorporated in Watercraft when Sold to a Resident of Another State

The purchaser must be a non-resident individual or business entity but is not necessarily required to remove the property from Maine. If the retailer has any knowledge or facts that lead to the reasonable inference that the purchaser is actually a resident of Maine, this exemption does not apply.

### **Rental of automobiles, camper trailers and motor homes**

- 📁 ST-A-109 - Certificate of Exemption to Purchase an Automobile, Camper Trailer or Motor Home for Lease or Rental
- 📁 ST-A-101 - Affidavit Regarding Lease of Automobile for Service Customer


### **Other certificates and affidavits**

- 📁 ST-A-119 - Contractor's Exempt Purchase Certificate

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<sup>48</sup> For the period of July 1, 2011 to June 30, 2033, all sales of aircraft are exempt. See Section 1760(88-A).


For use by a contractor or subcontractor when purchasing property that will be incorporated into the realty of an exempt organization.

 APP-151– Contractor’s Refund Application for Pine Tree Zones


For use by a contractor or subcontractor when purchasing property that will be incorporated into the realty of a qualified Pine Tree Development Zone business.

 ST-A-120 - Resale Certificate for Packaging Materials


For use by a person, other than a retailer, when purchasing packaging materials that qualify for exemption.

 ST-A-118 - Affidavit for Out of State use of Promotional Materials


For use by a person when purchasing qualifying advertising or promotional materials that will be used out-of-state.

 ST-A-105 Affidavit of Exemption for 28 day Continuous Rental at a Hotel, Rooming House, Tourist, or Trailer Camp

For use by a person claiming its stay beyond 28 days meets the requirements of the sales tax exemption.

 ST-A-108 Affidavit for Commercial Windjammers (purchase of parts and supplies)


For use by Commercial Windjammers when purchasing parts and supplies for use directly and primarily for the operation, repair or maintenance of a windjammer.

 ST-A-115 Affidavit of Exemption for Snowmobile and Trailgrooming Equipment

For use by incorporated snowmobile clubs when purchasing qualifying snowmobile trail grooming equipment.

 STA-124 Affidavit for Purchase of Adaptive Equipment

For use by persons with a disability when purchasing qualifying adaptive equipment for motor vehicles.

 STA-125 Affidavit for Purchase of Free Publications and Inserts to Publications

For use by persons purchasing qualifying free publications or qualifying inserts to publications.

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## REFUNDS & CREDITS

### Tax paid on purchases for resale

*A retailer registered under section 1754-B may claim a credit for sales tax imposed by this Part if the retailer has paid the sales tax on tangible personal property purchased for resale at retail sale. The credit may be claimed only on the return that corresponds to the period in which the tax was paid. The credit may not be claimed if the item has been withdrawn from inventory by the retailer for the retailer's own use prior to its sale. If the retailer purchases an item for resale at retail sale and pays tax to its vendor and if the retailer's sales and use tax liability for the tax period in question is less than the credit being claimed, the retailer is entitled either to carry the credit forward or to receive a refund of the tax paid. § 1811-B*

For those retailers that do not qualify to receive a resale certificate, a refund or credit is available to the retailer for sales tax paid on goods actually purchased for resale. This refund/credit is taken on the sales and use tax return in the period in which the purchase is made.

### Excess collections

*Whenever the tax collected by a retailer for any period exceeds that provided by law, whether the excess is attributable to the collection of tax on exempt or nontaxable transactions or erroneous computation, the total amount collected, excluding only that portion of the excess that has been returned or credited to the person or persons from whom it was collected, constitutes a tax liability of the retailer that must be reported and paid at the time and in the manner provided by sections 1951-A and 1952. § 1814(1)*

*The tax liability specified in subsection 1 shall be subject to assessment, collection and enforcement by the State Tax Assessor in the manner provided in chapters 7 and 211 to 225. § 1814(2)*

### Refunds

*Any such amount which has been paid by or collected from a retailer shall be refunded by the State Tax Assessor to the retailer in accordance with section 2011 only upon submission of proof to the satisfaction of the State Tax Assessor that the amount has been returned or credited to the person or persons from whom it was originally collected. In such cases, interest shall be paid by the State Tax Assessor only upon proof that interest was included in the repayment by the retailer to that person or persons. § 1814(3)*

*If the State Tax Assessor determines, upon written application by a taxpayer or during the course of an audit, that any tax under this Part has been paid more than once or has been erroneously or illegally collected or computed, the assessor shall certify to the State Controller the amount paid in excess of that legally due. That amount must be credited by the assessor on any taxes then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor in interest, but no such credit or refund may be allowed unless within 3 years from the date of overpayment either a written petition stating the grounds upon which the refund or credit is claimed is filed with the assessor or the overpayment is discovered on audit. Interest at the rate*

*determined pursuant to section 186 must be paid on any balance refunded pursuant to this chapter from the date the return listing the overpayment was filed or the date the payment was made, whichever is later, except that no interest may be paid with respect to the refunds provided by section 2013 and, in cases of excessive or erroneous collections, interest must be paid in accordance with section 1814, subsection 3. At the election of the assessor, unless the taxpayer specifically requests a cash refund, the refund may be credited to the taxpayer's sales and use tax account, but, in the case of a credit no further interest may accrue from the date of that election. The taxpayer may not apply for a refund of any amount assessed when administrative and judicial review under section 151 has been completed. § 2011*

When a retailer makes a sale to an otherwise exempt customer, the retailer correctly collects the tax in the absence of exempt documentation. So if an exempt customer failed to provide an exemption certificate, the tax was not erroneously collected. And it is not until such time as the retailer is made known of the fact that the customer is exempt, through the submission of the exemption certificate, that there is an erroneous collection. At that point, the retailer can refund the customer and the retailer claims a refund request. If the retailer refuses to issue the refund, MRS will refund the customer directly, but the customer needs to support its refund request with a statement from the retailer that the tax has not and will not be refunded to the customer by the retailer.

### **Reconsiderations**

*A taxpayer dissatisfied with the decision of the assessor, upon a written request for refund filed under this section may request reconsideration and appeal from the reconsideration in the same manner and under the same conditions as in the case of assessments made under chapter 7. The decision of the assessor upon a written request for refund becomes final as to law and fact in the same manner and under the same conditions as in the case of assessments made under chapter 7. § 2011*

### **Breakage**

*Breakage under this section shall be retained by the retailer as compensation for the collection. § 1812(3)*

*Any retailer who knowingly charges or collects as the sales tax due on the sale price of any property or service an amount in excess of that provided by section 1812 commits a Class E crime. § 1813*

With the exception of breakage, any tax collected by the retailer from the purchaser must be remitted to MRS even if it represents an over-collection or erroneous computation unless the tax has been refunded or credited to the purchaser. "Breakage" is the excess collection provided by the bracket system when applying tax. This most commonly occurs when there are multiple sales of minimal amounts. For instance, assume a sales tax rate of 5.5% and three separate sales of 55 cents, 85 cents and 45 cents. The tax collected in each case is 4 cents, 5 cents and 3 cents,

respectively. Collectively, the total gross sales amounted to \$1.85 and tax of 12 cents. When the retailer reports the gross sales for the month, the retailer computes tax on \$1.85 to arrive at tax due of 10 cents. The extra collection of 2 cents is referred to as "breakage" and is retained by the retailer.

### **Bad Debts charged off<sup>49</sup>**

*The tax paid on sales represented by accounts charged off as worthless may be credited against the tax due on a subsequent return filed within 3 years of the charge-off, but, if any such accounts are thereafter collected by the retailer, a tax must be paid upon the amounts so collected. § 1811-A*

**Note:** This is not a refund provision. If a retailer has a bad debt that includes sales tax, the tax may be credited to the retailer. The amount must be claimed on a sales and use tax return filed within three years from the date the amount was actually charged off as worthless on the books of the retailer. Credit for charge-offs cannot be taken later than the 15th day of the 37th month after the uncollectible amount was charged off as worthless on the books of the retailer.

The amount claimed as a credit must actually be charged off as worthless on the books of the retailer. Bad-debt credits will be disallowed unless there is evidence that the retailer has done so. No credit is allowable for expenses incurred in attempting to collect any account receivable, or for that portion of a recovered amount that is retained by or paid to a third party as compensation for services rendered in collecting the account. A periodic accounting entry for bad debt allowances is not a charge off of a worthless account.

The credit may be claimed only with respect to taxable sales that were originally reported as taxable by the retailer, and on which tax has been paid by the retailer to the State. If the sales tax rate in effect at the time of the sale is different from the rate in effect at the time that the credit is claimed, the credit must reflect the rate that was in effect when the sale was made.

Retailers claiming the credit must maintain adequate and complete records showing the following information:

- i. Date of the original sale.
- ii. Name and address of the purchaser.
- iii. Amount the purchaser contracted to pay.
- iv. Amount on which the retailer paid tax to the State.
- v. All payments and other credits applied to the account of the purchaser (principal and interest).
- vi. Evidence that the uncollectible amount on which tax was paid to the State actually has been properly charged off as worthless on the retailer's books.

If a retailer subsequently collects any account (partially or in full) for which it has claimed a credit, any amount subsequently collected on that account by the retailer must be included in the return filed for the period in which the collection occurred. The tax on that

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<sup>49</sup> See also Instructional Bulletin 29



amount must be paid with that return, based on the tax rate that was in effect at the time of the original sale. If the tax rate in effect at the time of collection is different from the tax rate in effect at the time of the original sale, the amount of the collection and the date of the original sale should be noted in the retailer's books and records.

### **SPECIAL REFUNDS**

In addition to the many exemptions within the law, there are also refund provisions which, in effect, are exemptions; the major difference being that tax must be paid on all purchases and refunds sought directly from MRS. Exceptions are certain purchases made by commercial farmers, commercial fishermen, commercial wood harvesters, and commercial windjammers.

#### **Fish passage facilities**

*Taxes on the sale or use of materials used in the construction of fish passage facilities in new, reconstructed or redeveloped dams, when the fish passage facilities are built in accordance with plans and specifications approved by the Department of Inland Fisheries and Wildlife or the Department of Marine Resources, shall be refundable.*

*The State Tax Assessor shall refund sales or use tax paid on these construction materials upon the submission by a person of the following:*

- 1. Certification concerning construction. A certification from the Department of Inland Fisheries and Wildlife or the Department of Marine Resources that the fish passage facilities were constructed in accordance with approved plans and specifications; and*
- 2. Application for tax rebate. An application for a tax rebate which shall state at a minimum the construction materials purchased, its manufacturers, its cost, the use of which the purchaser has made of the materials and the seller from whom the purchase was made, and shall be accompanied by a copy of the purchase invoices. § 2014*

Sales tax paid on materials used in the construction of fish passage facilities in dams qualifies for refund provided the Department of Inland Fisheries and Wildlife or the Department of Marine Resources has certified the construction.

#### **Rental vehicle excise tax reimbursement**

- 1. Report. Annually, on or before September 1st, a vehicle owner or rental company engaged in the business of renting automobiles for a period of less than one year, in order to claim an excise tax reimbursement, shall file a report with the State Tax Assessor. The report must include the information required by the State Tax Assessor to determine the taxpayer's excise tax reimbursement entitlement. The State Tax Assessor may extend the September 1st filing deadline for a period not to exceed one year for good cause.*

**2. Reimbursement.** *The State Tax Assessor shall determine the reimbursement to be paid to a taxpayer filing a return pursuant to subsection 1. The reimbursement is the amount that is the smaller of:*

*A. The amount determined by computing the total excise tax credit entitlement during the most recently completed period from July 1st to June 30th for which a taxpayer has filed a return pursuant to subsection 1. An excise tax credit accrues for each vehicle excise tax paid in the prior completed period for which the associated Maine registration was surrendered prior to the expiration of the associated 12-month excise tax period, unless the excise tax was credited to another registration, in which case the 12-month period continues to run in association with the replacement registration. The amount of the credit is equal to the amount of the excise tax paid in order to register the original vehicle multiplied by a fraction, the numerator of which is the number of complete months short of 12 months during which the registration was surrendered and the denominator is 12; or*

*B. Three-tenths of the amount of tax paid to the State by the taxpayer resulting from the tax on the rental of automobiles for a period of less than one year during the most recently completed period from July 1st to June 30th.*

**3. Treasurer of State; notification.** *Upon the determination of the reimbursement amount to be paid to a vehicle owner or rental company, the State Tax Assessor shall inform the Treasurer of State of the determination and the Treasurer of State shall make the reimbursement. These reimbursements must be accounted for and paid as sales and use tax refunds. Unless the reimbursement is paid before November 1st of the year in which the report required in subsection 1 is filed or within 60 days of the filing of that report, whichever is later, interest at the rate provided in section 186 must be paid for the period of time that transpires after the deadline before payment is made. § 2015*

Those persons who are engaged in the business of renting automobiles on a short term basis (less than one year) may be eligible for a sales tax refund if a vehicle's registration is surrendered before the year has ended. The refund is the equivalent of the unused portion of any excise tax paid on the automobile's surrendered registration. For instance, if the excise tax paid on an automobile was \$400 and the vehicle's registration was surrendered after 9 months, the rentor may be eligible for a refund of \$100 (25% of \$400). The refund may not be more than 30% of the value of sales tax collected and paid by the rentor on the rental of automobiles for a period of less than one year during the review period.

### **Contractors of real property for qualified Pine Tree Zone business**

#### ***Pine Tree Development Zone businesses; reimbursement of certain taxes***

**1. Terms defined.** *As used in this section, the terms "qualified Pine Tree Development Zone business" and "qualified business activity" have the meanings given to them in Title 30-A, section 5250-I. For the purposes of this section, "primarily" means more than 50% of the time during the period that*

*begins on the date on which the property is first placed in service by the purchaser and ends 2 years from that date or at the time the property is sold, destroyed or otherwise permanently removed from service by the purchaser, whichever occurs first.*

*2. Reimbursement allowed. A reimbursement is allowed as provided in this section for a tax paid pursuant to this Part with respect to the sale or use of tangible personal property that is physically incorporated in and becomes a permanent part of real property that is owned by or sold to a qualified Pine Tree Development Zone business and that is used directly and primarily by that business in one or more qualified business activities.*

*3. Claim for reimbursement. Claims under this section for reimbursement of taxes are controlled by this subsection.*

*A. A claim for reimbursement under this section must be filed by the contractor or subcontractor with the State Tax Assessor within 3 years from the date on which the tangible personal property was incorporated into real property. The reimbursement claim must be submitted on a form prescribed by the assessor and must be accompanied by a statement from a qualified Pine Tree Development Zone business certifying, under penalties of perjury, that the personal property with respect to which the tax was paid by the claimant has been placed in use directly and primarily in a qualified business activity. All records pertaining to such certification and to the transactions in question must be retained for at least 6 years by the contractor or subcontractor, by the qualified Pine Tree Development Zone business and by the person, if any, that sold the real property in question to that business. The reimbursement claim must be accompanied by such additional information as the assessor may require. If a sales or use tax is included in the contractor's or subcontractor's contract price, the contractor or subcontractor shall file, at the request of the qualified Pine Tree Development Zone business, a claim for reimbursement in accordance with this section and pay the reimbursement to the qualified Pine Tree Development Zone business.*

*B. If, by agreement between the contractor or subcontractor and the qualified Pine Tree Development Zone business, the contractor or subcontractor assigns its right to claim and receive reimbursement, the qualified Pine Tree Development Zone business must file a claim for reimbursement in accordance with this subsection. A reimbursement may not be issued to a qualified Pine Tree Development Zone business under this paragraph unless the contractor or subcontractor has previously submitted to the bureau a certificate, signed by the contractor or subcontractor, releasing the contractor's or subcontractor's claim to the reimbursement. The certificate must be in a format prescribed by the assessor.*

*4. Limitations. The following are the limitations on reimbursements made pursuant to this section.*

*A. Reimbursements made by the assessor pursuant to this section are limited to taxes paid in connection with sales of tangible personal property that occur within a period of 10 years in the case of a*

*qualified Pine Tree Development Zone business located in a tier 1 location, as defined in Title 30-A, section 5250-I, subsection 21-A, and 5 years in the case of a qualified Pine Tree Development Zone business located in a tier 2 location, as defined in Title 30-A, section 5250-I, subsection 21-B, from the date the qualified Pine Tree Development Zone business receiving the property is certified pursuant to Title 30-A, section 5250-O or by December 31, 2028, whichever occurs first.*

*B. Reimbursement pursuant to this section of taxes paid in connection with the sale of tangible personal property subsequently attached to real property may not be made when those real property improvements:*

*(1) Are owned by more than one person prior to their acquisition by the qualified Pine Tree Development Zone business whose certification accompanies the reimbursement claim pursuant to subsection 3; or*

*(2) Have been used for a business purpose by a person other than the qualified Pine Tree Development Zone business whose certification accompanies the reimbursement claim pursuant to subsection 3.*

*5. Audit. The assessor has the authority to audit any claim filed under this section. If the assessor determines that the amount of the claimed reimbursement is incorrect, the assessor shall redetermine the claim and notify the claimant in writing of the redetermination. If the claimant has received reimbursement of an amount that the assessor concludes should not have been reimbursed, the assessor may issue an assessment for that amount within 3 years from the date the reimbursement claim was filed or at any time if a fraudulent reimbursement claim was filed. The claimant may seek reconsideration, pursuant to section 151, of the redetermination or assessment.*

*6. Payment of claims. The State Tax Assessor shall determine the benefit for each claimant under this section. The assessor shall pay the certified amounts to each approved applicant qualifying for the benefit under this section within 30 days after receipt of a properly completed claim. Interest is not allowed on any payment made to a claimant pursuant to this section. § 2016*

The PTDZ tax credits and benefits are available to certified businesses engaged in a qualified business activity. Contractors and sub-contractors are eligible for reimbursement of sales and use tax paid on tangible personal property affixed to realty owned by or to be sold to a qualified Pine Tree Development Zone business. To obtain certification, the business must apply to the Department of Economic and Community Development (“DECD”) and meet the requirements for qualified business activity. In general, in order to be certified, a business must be engaged in a targeted business sector (manufacturing, financial services, selected technologies); must intend to expand the base level of employment with qualified employees; and the qualified employees must be new fulltime employees who are hired by a Pine Tree Development Zone business for work directly in one or more qualified business activities. Contractors should refer to Instructional Bulletin No. 52 for further information about this program, including procedures for claiming reimbursement.

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**Contractors of real property for qualified community wind power generators**

*Qualified community wind power generator; reimbursement of certain taxes*

**1. Definitions.** *As used in this section, unless the context otherwise indicates, the following terms have the following meanings.*

**A.** *"Primarily" means more than 50% of the time during the period that begins on the date on which the property is first placed in service by the purchaser and ends 2 years from that date or at the time the property is sold, destroyed or otherwise permanently removed from service by the purchaser, whichever occurs first.*

**A-1.** *"Community wind power generation facility" means an electricity-generating facility at any one site with an instantaneous generating nameplate capacity of not more than 10 megawatts that is powered entirely by wind energy.*

**B.** *"Qualified community wind power generator" means a person that has been certified as a community wind power generator by the Public Utilities Commission pursuant to Title 35-A, section 3403, subsection 3.*

**2. Reimbursement allowed.** *A reimbursement is allowed as provided in this section for a tax paid pursuant to this Part with respect to the sale or use of tangible personal property that is physically incorporated in and becomes a permanent part of real property that is owned by or sold to a qualified community wind power generator and that is used directly and primarily in the generation of electricity at a community wind power generation facility in this State.*

**3. Claim for reimbursement.** *Claims under this section for reimbursement of taxes are controlled by this subsection.*

**A.** *A claim for reimbursement under this section must be filed by the contractor or subcontractor with the State Tax Assessor within 3 years from the date on which the tangible personal property was incorporated into real property. The reimbursement claim must be submitted on a form prescribed by the assessor and must be accompanied by a statement from a qualified community wind power generator certifying, under penalties of perjury, that the personal property with respect to which the tax was paid by the claimant has been placed in use directly and primarily in the generation of electricity in this State at a community wind power generation facility. All records pertaining to such certification and to the transactions in question must be retained for at least 6 years by the contractor or subcontractor, by the qualified community wind power generator and by the person, if any, that sold the real property in question to the qualified community wind power generator. The reimbursement claim must be accompanied by such additional information as the assessor may require. If a sales or use tax is included in the contractor's or subcontractor's contract price, the contractor or subcontractor shall file, at the request of the qualified community wind power generator, a claim for reimbursement in accordance with this section and pay the reimbursement to the qualified community wind power generator.*

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*B. If, by agreement between the contractor or subcontractor and the qualified community wind power generator, the contractor or subcontractor assigns its right to claim and receive reimbursement, the qualified community wind power generator must file a claim for reimbursement in accordance with this subsection. Reimbursement may not be issued to a qualified community wind power generator under this paragraph unless the contractor or subcontractor has previously submitted to the assessor a certificate, signed by the contractor or subcontractor, releasing the contractor's or subcontractor's claim to the reimbursement. The certificate must be in a format prescribed by the assessor.*

*4. Limitations. Limitations on reimbursements made pursuant to this section are governed by this subsection.*

*A. Reimbursements made by the State Tax Assessor pursuant to this section are limited to taxes paid in connection with sales of tangible personal property that occur within a period of 5 years from the date the qualified community wind power generator receiving the property is certified pursuant to Title 35-A, section 3403, subsection 3 or by December 31, 2011, whichever occurs first.*

*B. Reimbursement pursuant to this section of taxes paid in connection with the sale of tangible personal property subsequently attached to real property may not be made when those real property improvements:*

- (1) Are owned by more than one person prior to their acquisition by the qualified community wind power generator whose certification accompanies the reimbursement claim pursuant to subsection 3; or*
- (2) Have been used for a business purpose by a person other than the qualified community wind power generator whose certification accompanies the reimbursement claim pursuant to subsection 3.*

*5. Audit. The State Tax Assessor has the authority to audit any claim filed under this section. If the assessor determines that the amount of the claimed reimbursement is incorrect, the assessor shall redetermine the claim and notify the claimant in writing of the redetermination. If the claimant has received reimbursement of an amount that the assessor concludes should not have been reimbursed, the assessor may issue an assessment for that amount within 3 years from the date the reimbursement claim was filed or at any time if a fraudulent reimbursement claim was filed. The claimant may seek reconsideration, pursuant to section 151, of the redetermination or assessment.*

*6. Payment of claims. The State Tax Assessor shall determine the benefit for each claimant under this section and certify to the State Controller the amount to be transferred to the qualified community wind power generator reimbursement reserve account established, maintained and administered by the State Controller from General Fund undedicated revenue within the sales tax category. The assessor shall pay the certified amounts to each approved applicant qualifying for the benefit under this section within 30 days after receipt of a properly completed claim. Interest is not allowed on any payment made to a claimant pursuant to this section. § 2017*

Tax credits and benefits are available to certified businesses engaged as a qualified community wind power generator. Contractors and sub-contractors are eligible for reimbursement of sales and use tax paid on tangible personal property affixed to realty owned by or to be sold to a certified wind power generator. To obtain certification, the entity must apply to the Public Utilities Commission and meet certain requirements. In general, in order to be certified, the entity must construct a community wind power generator with a capacity of not more than 10 megawatts that is powered entirely by wind energy and the entity will own title or controlling interest in that generator. The entity must also demonstrate that construction of this generator would not be possible but for the tax credits and benefits available under this program. Contractors should contact Maine Revenue for further information about this program and procedures to claim reimbursement. The ability to make claims pursuant to this section expire after December 31, 2014.

#### **Certain supplies and equipment used out-of-state**

*A business that operates both within and without this State may request a refund of Maine sales tax paid at the time of purchase on tangible personal property that is placed in inventory in this State and subsequently withdrawn from inventory for:*

- 1. Use outside the State. Use at a fixed location of the business in another taxing jurisdiction;*
- 2. Fabrication, attachment or incorporation outside the State. Fabrication, attachment or incorporation into other tangible personal property for use at a fixed location of the business in another taxing jurisdiction; or*
- 3. Incorporation into real property. Incorporation into real property located in another taxing jurisdiction.*

*In order to be eligible for the refund, the tangible personal property on which sales tax was paid may not be used by the business prior to its withdrawal from inventory for any purpose other than storage or the fabrication, attachment or incorporation described in subsection 2. The business must also maintain inventory records by which the acquisition and disposition of such tangible personal property may be traced. A refund may not be made when the taxing jurisdiction to which the tangible personal property is removed levies a sales or use tax. Refunds under this section must be requested in accordance with section 2011. § 2012*

This section contains a number of qualifications in order to obtain a refund of tax paid. To summarize, if a business has a fixed location in Maine and in New Hampshire and purchases supplies and equipment in Maine, pays a tax and subsequently removes them to its place of business in New Hampshire for use in New Hampshire, a refund can be obtained.

#### **Parts and supplies for windjammers**

*1. Definition. For purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.*

- A. "Parts and supplies" means any products used directly and primarily for the operation, repair or maintenance of a windjammer,*

*including, but not limited to, sails, rope, wood, rigging, masts, paints, varnishes, undersealers, engines and pumps, and lubricants and fuel.*

*B. "Windjammer" means a United States Coast Guard-certified sailing vessel based in the State of traditional construction and designed to a historic standard that is used primarily for providing overnight passenger cruises along the Maine coast for a fee.*

*2. Refund authorized. The State Tax Assessor shall refund to a person that purchases parts and supplies for use in the operation, repair or maintenance of a windjammer the amount of sales tax paid with respect to those parts and supplies upon the person's presenting evidence that the purchase is eligible for a refund under this section.*

*The refund claim must be submitted on a form prescribed by the assessor and must be accompanied by a copy or copies of that portion of the purchaser's most recent filing under the Code indicating that the purchaser is engaged in the operation of a windjammer and such additional information as the assessor may require. An application for a refund under this subsection must be filed with the assessor within 36 months of the date of purchase.*

*3. Purchases made free of tax with certificate. Sales tax need not be paid on the purchase of parts and supplies for use in the operation, repair or maintenance of a windjammer if the purchaser has obtained a certificate from the assessor stating that the purchaser is engaged in the operation of a windjammer and authorizing the purchaser to purchase parts and supplies for use in the operation, repair and maintenance of a windjammer without paying Maine sales tax. The seller shall obtain a copy of the certificate together with an affidavit as prescribed by the assessor, to be maintained in the seller's records, attesting to the qualification of purchases for exemption pursuant to this section.*

*4. Audit. The assessor may audit a claim for refund filed under subsection 2 or the use of a certificate issued under subsection 3. If the assessor determines that the amount of the claimed refund is incorrect or that the certificate has been used inappropriately, the assessor may issue an assessment within 3 years from the date of purchase or the date the claim was filed, whichever is later, or at any time if a fraudulent claim was filed. The claimant may seek reconsideration of the assessment pursuant to section 151.*

*5. Payment of claims. The assessor shall pay the approved amount to qualified applicants under this section within 30 days after receipt of a properly completed claim. Interest is not allowed on any payment made to a claimant pursuant to this section. §2020*

A sales tax refund is available for the purchase of parts and supplies used primarily and directly in the operation, repair or maintenance of a windjammer that is based in Maine and used primarily for providing overnight passenger cruises along the Maine coast for a fee. The “products” within the meaning of the definition of “parts and supplies” fall within one of two categories. First, the term would include any tools (such as paint brushes) and any supplies (such as sandpaper) that are used directly and primarily for the operation, repair or maintenance of the vessel. The exemption would apply to these items provided that the “directly and primarily” test



is met. Second, the exemption also extends to any supply item that is required by any relevant official authority to be kept on board the vessel during its operation at sea. For example, if the Coast Guard has issued a written rule or regulation requiring bandages to be kept on board in the event of a medical emergency, bandages purchased for that purpose would be exempt from tax. The sales tax exemption does not extend to items that are used in the operation of the business but do not fall within one of the two categories discussed above.

Windjammer operators may apply to receive an exemption card to provide to vendors when purchasing parts and supplies, eliminating the need to request a refund.

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## TAXPAYER COMPLIANCE

### Sales and use taxes are “trust funds”

*All sales and use taxes collected by a person pursuant to Part 3, all taxes collected by a person under color of Part 3 which have not been properly returned or credited to the persons from whom they were collected, all taxes collected by or imposed on a person pursuant to chapter 451 or 459, all fees collected pursuant to chapter 719 and all taxes collected by a person pursuant to chapter 827 constitute a special fund in trust for the State Tax Assessor. The liability for the taxes or fees and the interest or penalty on taxes or fees is enforceable by assessment and collection, in the manner prescribed in this Part, against the person and against any officer, director, member, agent or employee of that person who, in that capacity, is responsible for the control or management of the funds or finances of that person or is responsible for the payment of that person's taxes. An assessment against a responsible individual pursuant to this section must be made within 6 years from the date on which the return on which the taxes were required to be reported was filed. An assessment pursuant to this section may be made at any time with respect to a time period for which a return has become due but has not been filed. § 177(1)*

Sales and use tax collected by the retailer is held in trust for the State Tax Assessor. This money, therefore, must be remitted to the Assessor and may not be used by the retailer for any other purpose. Collection of taxes that have not been paid is enforceable against any responsible individual employee or owner of the business.

Section 177(6) also requires payment of the trust fund tax incurred, and interest and penalties, at the time a business is purchased. Failure to do so will make the purchaser personally liable for any outstanding trust fund debt, and interest and penalties, unless the purchaser has obtained a receipt or certificate from the State Tax Assessor stating that the taxes have been paid or that no trust fund taxes, interest or penalties are due.

The statute provides for interest and penalties to be imposed in various situations.

### INTEREST

*A person who fails to pay any tax, other than a tax imposed pursuant to chapter 105, on or before the last date prescribed for payment is liable for interest on the tax, calculated from that date and compounded monthly. The rate of interest for any calendar year equals the highest prime rate as published in the Wall Street Journal on the first day of September of the preceding calendar year or, if the first day of September falls on a weekend or holiday, on the next succeeding business day, rounded up to the next whole percent plus 3 percentage points. For purposes of this section, the last date prescribed for payment of tax must be determined without regard to any extension of time permitted for filing a return. A tax that is upheld on administrative or judicial review bears interest from the date on which payment would have been due in the absence of review. Any amount that has been erroneously refunded and is recoverable by the assessor bears interest at the rate determined pursuant to this section from the date of payment of the refund. A credit or reimbursement that has been allowed or paid pursuant to this Title and is recoverable by the*

*assessor bears interest at the rate determined pursuant to this section from the date it was allowed or paid. Interest accrues automatically, without being assessed by the assessor, and is recoverable by the assessor in the same manner as if it were a tax assessed under this Title. If the failure to pay a tax when required is explained to the satisfaction of the assessor, the assessor may abate or waive the payment of all or any part of that interest.*

*Except as otherwise provided in this Title, and except for taxes imposed pursuant to chapter 105, interest at the rate determined pursuant to this section must be paid on overpayments of tax from the date the return listing the overpayment was filed or the date payment was made, whichever is later. § 186*

Each fall the assessor determines the interest rate for the upcoming calendar year. Interest is compounded monthly. In order to stop interest from accruing, both the base tax and interest must be paid. The following are the rates in effect for past years:

<b>Calendar Year</b>	<b>Rate</b>
1999 through 2001	9 %
2002	8 %
2003	7 %
2004 (Jan-June)	6 %
2004 (July – Dec)	7 %
2005	8 %
2006	10 %
2007 & 2008	12 %
2009	8 %
2010 through 2016	7 %

**PENALTIES**

**Failure to file return**

*A person who fails to make and file any return required under this Title at or before the time the return becomes due is liable for one of the following penalties if the person's tax liability shown on that return or otherwise determined to be due is greater than \$25.*

*A. If the return is filed before or within 60 days after the taxpayer receives from the assessor a formal demand that the return be filed, or if the return is not filed but the tax due is assessed by the assessor before the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is \$25 or 10% of the tax due, whichever is greater.*

*B. If the return is not filed within 60 days after the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is \$25 or 25% of the tax due, whichever is greater. The period provided by this paragraph must*

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*be extended for up to 90 days if the taxpayer requests an extension in writing prior to the expiration of the original 60-day period.*

*C. If the return is not filed and the assessor makes a determination of jeopardy pursuant to section 145, the penalty is 25% of the tax due.*

*This subsection does not apply to a return required pursuant to chapter 459 that is administered pursuant to the International Fuel Tax Agreement.  
§ 187-B(1)*

#### **Failure to pay**

*The following penalties apply.*

*A. Any person who fails to pay, on or before the due date, any amount shown as tax on any return required under this Title is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid tax.*

*A-1. Any person who fails to make and file any return required under this Title at or before the time the return becomes due against whom the assessor has made an assessment of tax pursuant to section 141 and who has not paid the tax on or before the date specified in that assessment is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the tax remains unpaid, calculated retroactively from the original due date of the unfiled return, to a maximum in the aggregate of 25% of the unpaid tax.*

*B. Any person who fails to pay a tax assessment for which no further administrative or judicial review is available pursuant to section 151 and the Maine Administrative Procedure Act is liable for a penalty in the amount of 25% of the amount of the tax due if the payment of the tax is not made within 10 days of the person's receipt of notice of demand for payment as provided by this Title. This penalty must be explained in the notice of demand and is final when levied.*

*This subsection does not apply to taxes due pursuant to chapter 459 and administered pursuant to the terms of the International Fuel Tax Agreement.  
§ 187-B(2)*

If an existing debt is liquidated by use of an acceptable and successful repayment schedule that was initiated before or within the 10 days prescribed on the notice of demand for payment, the additional 25% charge for failure to pay will not be invoked.

#### **Negligence and fraud**

*A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to negligence or intentional disregard of this Title or rules adopted pursuant to this Title, but is not attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$25 or 25% of that portion of the underpayment, whichever is greater. A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$75 or 75% of that portion of the underpayment,*

*whichever is greater. For the purposes of this section, "negligence" means any failure to make a reasonable attempt to comply with the provisions of this Title. § 187-B(3-A)*

#### **Substantial understatement**

*A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to a substantial understatement of tax, without negligence or intentional disregard of this Title or rules adopted pursuant to this Title and without fraud with intent to evade the tax, is liable for a penalty of \$5 or 1% of that portion of the underpayment, whichever is greater, for each month or fraction of a month during which the failure to pay that portion of the underpayment continues, up to a maximum in the aggregate of \$25 or 25% of the underpayment, whichever is greater.*

*There is a substantial understatement of tax if the amount of the understatement on the return or returns for the period covered by the assessment exceeds 10% of the total tax required to be shown on the return or returns for that period or \$1,000, whichever is greater. For purposes of determining whether an understatement is substantial and calculating the amount of a substantial understatement that is subject to penalty under this subsection, the amount of an understatement is reduced by that portion of the understatement that is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for that treatment.  
§ 187-B(4-A)*

#### **Electronic funds transfer**

*Any person required by the assessor to remit taxes by electronic funds transfer that fails to remit electronically is liable for a penalty of the lesser of 5% of the tax due or \$5,000. For purposes of this section, a person fails to remit electronically when:*

*A. Two or more required payments in any consecutive 6-month period are either not made or are made by the person by means other than electronic funds transfer and the person has been notified in writing by the assessor of that person's noncompliance and of the fact that the penalty imposed by this section may be imposed; or*

*B. The person makes 2 or more required electronic payments in any consecutive 6-month period that do not comply with the specifications set forth in a rule issued by the assessor pursuant to section 193. § 187-B(5-A)*

#### **Electronic data submission**

*Any person required by the State Tax Assessor to file returns by electronic data submission that fails to file electronically is liable for a penalty of \$50. For purposes of this subsection, a person fails to file electronically when:*

*A. Two or more required returns in any consecutive 6-month period either are not filed or are filed by the person by means other than electronic data submission and the person has been notified in writing by the State Tax Assessor of that person's noncompliance and of the fact that the penalty authorized by this subsection may be imposed; or*

*B. The person files 2 or more required electronic returns in any consecutive 6-month period that do not comply with the specifications set forth in rules adopted by the State Tax Assessor pursuant to section 193. § 187-B(5-B)*

#### **Insufficient funds**

*Any person who makes payment of an amount due under this Title by means of a check or electronic funds transfer that is returned unpaid by the bank on which it is drawn because of insufficient funds or the closing or nonexistence of the account on which it is drawn is liable for a penalty of \$20 or 1% of the payment amount, whichever is greater. § 187-B(5)*

#### **Penalties not exclusive**

*Each penalty provided under this section is in addition to any interest and other penalties provided under this section and other law, except as otherwise provided in this section. Interest may not accrue on the penalty. This section does not apply to any filing or payment responsibility pursuant to Part 2 except that this section does apply to a filing or payment responsibility pursuant to the state telecommunications excise tax imposed under section 457. The penalties imposed under subsections 1 and 2 accrue automatically, without being assessed by the State Tax Assessor. Each penalty imposed under this section is recoverable by the assessor in the same manner as if it were a tax assessed under this Title. § 187-B(6)*

#### **Waiver or abatement of penalties**

*The assessor shall waive or abate or, in the case of those penalties that do not accrue automatically under subsection 6, refrain from imposing any penalty imposed by subsection 1, 2, 4-A, 4-B, 5-A or 5-B or by the terms of the International Fuel Tax Agreement if grounds constituting reasonable cause are established by the taxpayer or if the assessor determines that grounds constituting reasonable cause are otherwise apparent. Reasonable cause includes, but is not limited to, the following circumstances:*

- A. The failure to file or pay resulted directly from erroneous information provided by the Bureau of Revenue Services;*
- B. The failure to file or pay resulted directly from the death or serious illness of the taxpayer or a member of the taxpayer's immediate family;*
- C. The failure to file or pay resulted directly from a natural disaster;*
- D. A return that was due monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 12 months were timely;*
- E. A return that was due other than monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 3 years were timely;*
- F. The taxpayer has supplied substantial authority justifying the failure to file or pay; or*
- G. The amount subject to a penalty imposed by subsection 1, 2, 4-A or 5-A is de minimis when considered in relation to the amount otherwise*

*properly paid, the reason for the failure to file or pay and the taxpayer's compliance history.*

*Absent a determination by the assessor that grounds constituting reasonable cause are otherwise apparent, the burden of establishing grounds for waiver or abatement is on the taxpayer.*

*For purposes of this section, the term "person" includes an individual, corporation or partnership or any officer or employee of a corporation, including a dissolved corporation, or a member or employee of a partnership who, as the officer, employee or member, is under a duty to perform the act in respect of which a violation occurs. § 187-B(7)*

#### **Remedies not exclusive**

*Each remedy provided in this Title is not exclusive and is in addition to all other remedies prescribed in this Title for the enforcement and collection of any tax imposed by this Title. § 188*

#### **AUDITS**

The statute provides powers to the State Tax Assessor to conduct audits.

*Whenever necessary to the administration of this Title, the assessor may make, or cause to be made by an employee, an examination or investigation of the place of business, books and other documents and any other relevant personal property of any person who the assessor has reason to believe is liable for any tax imposed by this Title.*

*At the conclusion of an audit, the assessor or an agent shall conduct an audit conference with the taxpayer and shall give the taxpayer a written summary of the audit findings, including the legal basis for the audit findings and adjustments, along with copies of relevant bureau audit workpapers. § 112(4)  
The assessor is authorized to name any of the assessor's employees as agents to collect any tax imposed under this Title. § 112(6)*

#### **SECTION 2. Recordkeeping requirements generally; for registered retailers.**

*1. Every taxpayer, including every retailer required to be registered under Title 36 Chapter 211 and every service provider required to be registered under Title 36 Chapter 358, must maintain all records that are necessary to determine the correct tax liability. All required records must be made available on request by the State Tax Assessor or the assessor's authorized representatives as required by Title 36 Section 112(4).*

*2. A taxpayer that captures the required records in machine-sensible format must maintain those records for as long as is required by Title 36 section 135(1) and Section 9 of this rule. In the case of sales tax, this means at least 6 years. These records must upon request be made available to the assessor in machine-sensible format as described in Section 5, including permitting the transfer of the records onto a laptop or other computer in the possession and control of an agent of the assessor. Rule 103*

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**SECTION 3. Recordkeeping requirements — machine-sensible records**

*1.A. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the State Tax Assessor upon request. A taxpayer may discard duplicated records and redundant information provided that the taxpayer's responsibilities under this rule are met.*

*1.B. At the time of an audit, the retained records must be capable of being retrieved and converted to a standard record format. Rule 103*

**SECTION 5. Access to machine-sensible records**

*Unless the taxpayer and the State Tax Assessor agree on other means of providing access to machine-sensible records, upon the assessor's request the taxpayer must provide the assessor, either directly or through a third party, with all pertinent records in bulk and in a media form acceptable to the assessor or standard record format specified by the assessor, and with the transaction-level detail deemed necessary by the assessor to determine the correct tax liability. Rule 103*

**ASSESSMENTS**

*Except as otherwise provided by this Title, an amount of tax that a person declares on a return filed with the State Tax Assessor to be due to the State is deemed to be assessed at the time the return is filed and is payable on or before the date prescribed for filing the return, determined without regard to an extension of time granted for filing the return. When a return is filed, the assessor shall examine it and may conduct audits or investigations to determine the correct tax liability. If the assessor determines that the amount of tax shown on the return is less than the correct amount, the assessor shall assess the tax due the State and provide notice to the taxpayer of the assessment. Except as provided in subsection 2, an assessment may not be made after 3 years from the date the return was filed or 3 years from the date the return was required to be filed, whichever is later. The assessor may make a supplemental assessment within the assessment period prescribed by this section for the same period, periods or partial periods previously assessed if the assessor determines that a previous assessment understates the tax due or otherwise is imperfect or incomplete in any material respect. § 141(1)*

*"Notice" means written notification served personally, sent by certified mail or sent by first-class mail to the last known address of the person for whom the notification is intended. A person's last known address is the person's address as reported on the person's most recently filed Maine tax return or as otherwise specified by the person in written correspondence on file with the bureau, unless the bureau determines that a different address is the most current address for the person, in which case the bureau must use that address. Notice by first-class mail is deemed to be received 3 days after the mailing, excluding Sundays and legal holidays. If the State Tax Assessor is required by a provision of this Title to give notice by certified mail and attempts to do so but the mailing is returned with the notation "unclaimed" or "refused" or a similar notation, the assessor may then give notice by sending the notification by first-class mail. In the case of a joint income tax return, notice may be a single joint notice except that, if the assessor is notified by either spouse that separate*



*residences have been established, the assessor must mail a joint notice to each spouse. If the person for whom notification is intended is deceased or under a legal disability, and the assessor knows of the existence of a fiduciary relationship with respect to that person, notice must be sent by first-class mail to the last known address of the fiduciary. § 111(2)*

### **Exceptions to statute of limitations**

An audit typically looks at the previous 3 years of tax returns. However there are situations where a longer period of time may be reviewed.

*A. An assessment may be made within 6 years from the date the return was filed if the tax liability shown on the return, after adjustments necessary to correct any mathematical errors apparent on the face of the return, is less than ½ of the tax liability determined by the assessor. In determining whether the 50% threshold provided by this paragraph is satisfied, the assessor may not consider any portion of the understated tax liability for which the taxpayer has substantial authority supporting its position.*

*B. An assessment may be made at any time with respect to a time period for which a fraudulent return has been filed.*

*C. An assessment may be made at any time with respect to a period for which a return has become due but has not been filed. If a person who has failed to file a return does not provide to the assessor, within 60 days after receipt of notice, information that the assessor considers necessary to determine the person's tax liability for that period, the assessor may assess an estimated tax liability based upon the best information otherwise available. In any proceeding for the collection of tax for that period, that estimate is prima facie evidence of the tax liability. The 60-day period provided by this paragraph must be extended for an additional 60 days if the taxpayer requests an extension in writing prior to the expiration of the original 60-day period.*

*E. The time limitations for assessment specified in this section may be extended to any later date to which the assessor and taxpayer agree in writing. § 141(2)*

*If the State Tax Assessor determines that the collection of any tax will be jeopardized by delay, the assessor, upon giving notice of this determination to the person liable for the tax by personal service or certified mail, may demand an immediate return with respect to any period or immediate payment of any tax declared to be in jeopardy, or both, and may terminate the current reporting period and demand an immediate return and payment with respect to that period. Notwithstanding any other provision of law, taxes declared to be in jeopardy are payable immediately, and the assessor may proceed immediately to collect those taxes by any collection method authorized by this Title. The person liable for the tax may stay collection by requesting reconsideration of the declaration of jeopardy in accordance with section 151 and depositing with the assessor within 30 days from receipt of notice of the determination of jeopardy a bond or other security in the amount of the liability with respect to which the stay of collection is sought. A determination of jeopardy by the assessor is presumed to be correct, and the burden of showing otherwise is on the taxpayer. § 145*

### **Taxpayer bill of rights**

*The assessor shall prepare a statement describing in simple and nontechnical terms the rights of a taxpayer and the obligations of the bureau during an audit. The statement must also explain the procedures by which a taxpayer may appeal any adverse decision of the assessor, including reconsideration under section 151, appeals to the Maine Board of Tax Appeals and judicial appeals. This statement must be distributed by the bureau to any taxpayer contacted with respect to the determination or collection of any tax, excluding the normal mailing of tax forms. This paragraph does not apply to criminal tax investigations conducted by the assessor or by the Attorney General.*

*§ 112(7-A)*

The rights of a taxpayer are explained in a brochure published by MRS. A taxpayer receives a copy of the brochure with each billing or assessment. A copy can also be viewed at [www.maine.gov/revenue](http://www.maine.gov/revenue).

### **Review of decisions of State Tax Assessor**

*1. Petition for reconsideration. A person who is subject to an assessment by the State Tax Assessor or entitled by law to receive notice of a determination of the assessor and who is aggrieved as a result of that action may request in writing, within 60 days after receipt of notice of the assessment or the determination, reconsideration by the assessor of the assessment or the determination. If a person receives notice of an assessment and does not file a petition for reconsideration within the specified time period, a review is not available in Superior Court or before the board regardless of whether the taxpayer subsequently makes payment and requests a refund.*

*2. Reconsideration by division. If a petition for reconsideration is filed within the specified time period, the assessor shall reconsider the assessment or the determination as provided in this subsection.*

*A. Upon receipt by the assessor, all petitions for reconsideration must be forwarded for review and response to the division in the bureau from which the determination issued.*

*B. Within 90 days of receipt of the petition for reconsideration by the responding division, the division shall approve or deny, in whole or in part, the relief requested. Prior to rendering its decision and during the 90 days, the division may attempt to resolve issues with the petitioner through informal discussion and settlement negotiations with the objective of narrowing the issues for an appeals conference or court review, and may concede or settle individual issues based on the facts and the law, including the hazards of litigation. By mutual consent of the division and the petitioner, the 90 days may be extended for good cause, such as to allow further factual investigation or litigation of an issue by that or another taxpayer pending in court.*

*C. If the matter between the division and the petitioner is not resolved within the 90-day period, and any extension thereof, the petitioner may consider the petition for reconsideration denied. The petitioner may not consider the petition for reconsideration denied after either the reconsidered decision has been received by the petitioner or the expiration of 9 years following the filing of the petition for reconsideration, whichever occurs first. A petition for reconsideration considered denied pursuant to this paragraph constitutes final agency*

*action. A petitioner elects to consider the petition for reconsideration denied pursuant to this paragraph by:*

- (1) For a small claim request, filing a petition for review in Superior Court. For purposes of this subparagraph, "small claim request" has the same meaning as in paragraph E; or*
- (2) For all other requests:*

*(a) Filing a statement of appeal with the board; or*

*(b) Filing a petition for review in Superior Court.*

*D. A reconsideration by the division is not an adjudicatory proceeding within the meaning of that term in the Maine Administrative Procedure Act.*

*E. A reconsidered decision rendered on any request other than a small claim request constitutes the assessor's final determination, subject to review either by the board or directly by the Superior Court. A reconsidered decision rendered on a small claim request constitutes the assessor's final determination and final agency action and is subject to de novo review by the Superior Court. For purposes of this paragraph, "small claim request" means a petition for reconsideration when the amount of tax or refund request in controversy is less than \$1,000.*

*F. A person who wishes to appeal a reconsidered decision under this section:*

*(1) To the board must file a written statement of appeal with the board within 60 days after receipt of the reconsidered decision; or*

*(2) Directly to the Superior Court must file a petition for review in the Superior Court within 60 days after receipt of the reconsidered decision.*

*If a person does not file a request for review with the board or the Superior Court within the time period specified in this paragraph, the reconsidered decision becomes final and no further review is available.*

*G. Upon receipt of a statement of appeal or petition for review filed by a person pursuant to paragraph F, the board or Superior Court shall conduct a de novo hearing and make a de novo determination of the merits of the case. The board or Superior Court shall enter those orders and decrees as the case may require. The burden of proof is on the person, except as otherwise provided by law. § 151*

A person who disagrees with an assessment, a denial of a refund request, a denial of an exemption request or any other determination by the assessor, may request that the decision be reviewed. If a person wishes to take advantage of that right, a written request (“petition”) must be filed within 60 days of receipt of the notice. A form for this purpose can be found in the Appendix section of this guide as well as on MRS’ website at [www.maine.gov/revenue](http://www.maine.gov/revenue).

Once the petition is received, the assessor has 90 days in which to respond. Since the assessor will use this time in an attempt to resolve the issue, it is important to forward with the petition all pertinent information to be considered. If a person is still in disagreement with the assessor’s decision, an appeal can be filed with the Maine Superior Court or the Maine Board of Tax Appeals.

If the amount in controversy is less than \$1,000, the appeal must be made with the Superior Court within 60 days of receipt of the assessor’s decision. If the amount in controversy

is \$1,000 or more, an appeal can be made within 60 days of receipt of the assessor's decision to either the Superior Court or the Maine Board of Tax Appeals.

### **Board of Tax Appeals**

*For purposes of sections 151 and 151-D and section 191, subsection 2, paragraphs C, XX and YY, "board" means the Maine Board of Tax Appeals as established in Title 5, section 12004-B, subsection 10. § 111(I-C)*

*Appeals procedures. Appeals of tax matters arising under this chapter are conducted in accordance with this subsection.*

*A. If requested by a petitioner within 20 days of filing a statement of appeal, the appeals office shall hold an appeals conference to receive additional information and to hear arguments regarding the protested assessment or determination. The board shall set a rate of no more than \$150 as a processing fee for each petition that proceeds to an appeals conference. These fees must be credited to a special revenue account to be used to defray expenses in carrying out this section. Any balance of these fees in the special revenue account does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following years.*

*B. The appeals office shall provide a petitioner with at least 10 working days' notice of the date, time and place of an appeals conference. The appeals conference may be held with fewer than 10 working days' notice if a mutually convenient date, time and place can be arranged.*

*C. An appeals officer shall preside over an appeals conference. The appeals officer has the authority to administer oaths, take testimony, hold hearings, summon witnesses and subpoena records, files and documents the appeals officer considers necessary for carrying out the responsibilities of the board.*

*D. If a petitioner does not timely request an appeals conference, the appeals officer shall determine the matter based on written submissions by the petitioner and the division within the bureau making the original determination.*

*E. Both a petitioner and the assessor may submit to the appeals officer, whether or not an appeals conference has been requested, written testimony in the form of an affidavit, documentary evidence and written legal argument and written factual argument. In addition, if an appeals conference is held, both the petitioner and the assessor may present oral testimony and oral legal argument. The appeals officer need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. If the appeals officer considers it appropriate, the appeals officer may encourage the petitioner and the assessor to resolve disputed issues through settlement or stipulation. The appeals officer may limit the issues to be heard or vary any procedure adopted for the conduct of the appeals conference if the parties agree to that limitation.*

*F. Except when otherwise provided by law, a petitioner has the burden of proving, by a preponderance of the evidence, that the assessor has erred in applying or interpreting the relevant law.*

*G. The appeals officer shall exercise independent judgment. The appeals officer may not have any ex parte communications with or on behalf of any party, including the petitioner, the assessor or any other*

*employee of the Department of Administrative and Financial Services except those employees in the appeals office; however, the appeals officer may have ex parte communication limited to questions that involve ministerial or administrative matters that do not address the substance of the issues or position taken by the petitioner or the assessor.*

*H. The appeals officer shall prepare a recommended final decision on the appeal for consideration by the board based upon the evidence and argument presented to the appeals officer by parties to the proceeding. The decision must be in written form and must state findings of fact and conclusions of law. The appeals officer shall deliver copies of the recommended final decision to the board.*

*I. The board shall consider the recommended final decision on a timely basis. The board may not have any ex parte communication with or on behalf of any party, including the petitioner, the assessor or any other employee of the Department of Administrative and Financial Services except those employees in the appeals office; however, the board may have ex parte communication limited to questions that involve ministerial or administrative matters that do not address the substance of the issue or position taken by the petitioner or assessor. After considering the recommended final decision, the board may:*

- (1) Adopt the recommended final decision as delivered by the appeals officer;*
- (2) Modify the recommended final decision;*
- (3) Send the recommended final decision back to the same appeals officer, if possible, for the taking of further evidence, for additional consideration of issues, for reconsideration of the application of law or rules or for such other proceedings or considerations as the board may specify; or*
- (4) Reject the recommended final decision in whole or in part and decide the appeal itself on the basis of the existing record.*

*A determination by the board is not an adjudicatory proceeding within the meaning of that term in the Maine Administrative Procedure Act. The decision, as adopted, modified or rejected by the board or appeals officer pursuant to this paragraph is the final administrative decision on the appeal and is subject to de novo review by the Superior Court. Either the taxpayer or the assessor may appeal the decision to the Superior Court and may raise on appeal in the Superior Court any facts, arguments or issues that relate to the final administrative decision, regardless of whether the facts, arguments or issues were raised during the proceeding being appealed, if the facts, arguments or issues are not barred by any other provision of law. The court shall make its own determination as to all questions of fact or law, regardless of whether the questions of fact or law were raised before the division within the bureau making the original determination or before the board. The burden of proof is on the taxpayer.*

*A person who wishes to appeal a decision adopted under this paragraph to the Superior Court must file a petition for review within 60 days after receipt of the board's decision. If a person does not file a request for review with the Superior Court within the time period specified in this paragraph, the decision becomes final and no further review is available.*

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*Subject to any applicable requirements of the Maine Administrative Procedure Act, the board shall adopt rules to accomplish the purposes of this section. Those rules may define terms, prescribe forms and make suitable order of procedure to ensure the speedy, efficient, just and inexpensive disposition of all proceedings under this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.*

*Beginning in 2014 and annually thereafter, the board shall prepare and submit a report by January 1st on the activities of the board to the Governor, the assessor and the joint standing committee of the Legislature having jurisdiction over taxation matters. § 151-D(10)*

The Maine Board of Tax Appeals is an independent agency of the State of Maine within the Department of Administrative and Financial Services. If a person is in disagreement with the Board of Tax Appeals decision, any appeal must be filed with the Maine Superior Court within 60 days after receipt of the board's decision.

### **Collection action**

*If any tax imposed by this Title is not paid on or before its due date and no further administrative or judicial review of the assessment is available under section 151, the assessor, within 3 years after administrative and judicial review have been exhausted, may give the taxpayer notice of the amount to be paid, specifically designating the tax, interest and penalty due, and demand payment of that amount within 10 days of that taxpayer's receipt of notice. The notice must be given by personal service or sent by certified mail. The notice must include a warning that, upon failure of that taxpayer to pay as demanded, the assessor may proceed to collect the amount due by any collection method authorized by this Title. The notice must also describe the procedures applicable to the levy and sale of property under section 176-A, the alternatives available to the taxpayer that could forestall levy on property, including installment agreements, and the provisions of this Title relating to redemption of property and the release of the lien on property created by virtue of the levy. If the taxpayer has filed a petition for relief under the United States Bankruptcy Code, the running of the 3-year period of limitation imposed by this section is stayed until the bankruptcy case is closed or a discharge is granted, whichever occurs first. § 171(1)*

Service of the notice of demand for payment authorizes the State Tax Assessor to take collection actions as provided by law. These actions may include denial, suspension or revocation of certain licenses, liens, warrants to initiate court action, levies on wages, bank accounts or rights to receive money and seizure of cash, personal property or real estate.

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## MANUFACTURING<sup>50</sup>

### Production

*... an operation or integrated series of operations engaged in as a business or segment of a business that transforms or converts personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. "Production" includes film production.*

*"Production" includes manufacturing, processing, assembling and fabricating operations that meet the definitional requisites, including biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology. § 1752(9-B)*

The term "manufacturer" means a person that is engaged in the production of tangible personal property for later sale or lease. The question of exactly what is and what is not "production" has great importance when considering the sales and use tax exemptions available to manufacturers. **On this question, and on the manufacturing exemption generally, be sure to see Instruction Bulletin No. 22.**

In summary, in order for "production" to exist, a business must be engaged, in whole or in part, in the transformation of raw materials into a new and different product. Some common examples are:

- A paper mill converting wood chips into paper.
- A wood crafter converting lumber into finished furniture.
- A seamstress converting cloth material into a dress.

### Production begins...

*Production commences with the movement of raw materials to the first production machine after their receipt and storage at the production site (after receipt if the raw materials are not stored)... Rule 303*

The point at which production begins depends on whether or not the raw materials used in the production process are stored. If the materials are stored, production begins with the movement of the materials from storage to the first production machine. If the materials are not stored, production begins with the movement of the materials from point of delivery to the first production machine.

For example, a manufacturer of furniture receives rough sawn lumber and stores this lumber in a warehouse. The first production machine for this manufacturer will likely be a planer. Production begins when the rough lumber is removed from storage and brought to the planer. If this movement to the planer is accomplished mechanically, the machine in question is considered to be used in production.

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<sup>50</sup> See also Instructional Bulletin 22



In another example, a manufacturer of plastic widgets stores its plastic pellets in storage tanks. The first production machine is machinery that melts down the pellets into a liquid form. Production begins when the plastic pellets move toward the melting machine. If this is accomplished through a piping system, for instance, production begins when the pellets leave the storage tank and the piping system is considered part of production.

### **Production ends ...**

*...and ends with the completion of the finished product. Production includes any “in-line” packaging operation. Rule 303*

Production ends with the completion of the finished product before the product is stored for later delivery. This may include packaging operations – but only those that are part of a series of operations with the production line and the packaging is performed before the product is stored. Packaging operations that occur after the product has been placed in storage or that occur within the storage facility are not part of production.

For example, if a manufacturer of compact discs has within its production line a machine that inserts the discs into a jewel case and shrink-wraps each individual case, this packaging operation is part of production. In contrast, if the discs are instead sent to a storage room and later shrink-wrapped into packages of 10 and inserted into cardboard boxes for shipping to customers, this later packaging operation is not part of production.

### **Exclusions from production**

*The acquisition of raw materials, the transportation of raw materials or goods in process between production sites, and administrative and distributive operations do not constitute production. Rule 303*

*"Production" does not include biological processes except as otherwise provided by this subsection, wood harvesting operations, the severance of sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, or activities such as cooking or preparing drinks, meals, food or food products by a retailer for retail sale. § 1752(9-B)*

Machinery and equipment used in certain activities or operations is excluded from the definition of “production” for purposes of the Sales and Use Tax Law and as a result is taxable unless covered by a different exemption. Items used primarily in the following functions are not considered to be used in production and therefore generally **do not** qualify for exemption:

**Acquisition of raw materials.** Machinery or equipment used in the acquisition of raw materials, including wood-harvesting operations and severing sand, gravel, or other natural resources from soil or water.

*Examples of taxable items: Cameras used by newspaper photographers to record images on film for later selection and use in newspaper production; chain*

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*saws used to harvest wood for subsequent milling; excavation equipment used to extract clay from which bricks are later formed.*

**Storage and handling (pre- and post-production).** Machinery or equipment used in the storage or handling of exempt material prior to the movement of the materials between point of receipt or storage area and the first production operation, or after the completion of any in-line packaging operation.

*Examples of taxable items: A crane used primarily to unload logs from trucks into storage piles, prior to movement of the logs to a debarker or pulp grinder; an ice machine used primarily to keep fresh food cold during delivery, rather than to chill or freeze food as a step in the processing; a forklift used primarily to move palletized product from the palletizer to a warehouse pending shipment.*

**Product transportation/distribution.** Machinery or equipment used in the transportation of product on public ways between different production sites, or in the distribution of product to customers.

*Examples of taxable items: A truck used to carry packaged product to customers.*

**Biological processes.** Machinery or equipment used in connection with biological processes. A biological process is a natural process that occurs with little or no intervention from humans or machinery.

*Examples of taxable items: Equipment used in the hatching of eggs or in the growing of crops. (An exemption for certain biotechnology equipment is found later in this section.)*

**Activities by a retailer in connection with the preparation of food to be sold by the retailer.** Machinery or equipment used by a retailer in the preparation of food to be sold by the retailer.

*Examples of taxable items: Refrigerators, ovens and blenders used by a restaurant in the preparation of meals.*

**Administrative functions.** Machinery or equipment used in administrative, personnel, security, inventory control, administrative record keeping, ordering, billing, or similar support functions.

*Examples of taxable items: Computers used primarily for billing, payroll and business correspondence; telephone systems; security cameras.*

**Quality control.** Machinery or equipment used for quality control purposes (other than certain machinery and equipment used for testing or monitoring exempt materials).

**Maintenance/cleaning.** Machinery or equipment used to clean, repair, or maintain real or personal property in the manufacturing facility (other than certain attachments to exempt machinery and equipment).

*Examples of taxable items:* A floor polishing machine; welding equipment used to repair production piping; equipment used to sharpen the blades of saws used at a lumber mill; brooms and other cleaning supplies.

**Safety/fire protection.** Machinery or equipment used for fire protection or the protection and safety of workers or other persons (unless the equipment is attached to or incorporated into exempt machinery and equipment).

*Examples of taxable items:* A plexiglass screen (not attached to exempt equipment) used to protect passing workers and visitors from flying debris; fire extinguishers and fire sprinkler systems; an emergency shower and eyewash station; security systems; standard safety clothing and other standard safety items worn by employees.

**Non-specialized environmental controls (lighting, HVAC, etc.).** General plant lighting, heating, ventilation, air conditioning, or similar environmental control designed for the comfort or convenience of employees.

*Examples of taxable items:* A general building HVAC system used to cool and ventilate a room where wood workers assemble furniture; an office humidifier; thermostats used to control a boiler used primarily to heat a building.

**Certain electrical equipment.** Electrical equipment located prior to the last transformer at the manufacturing facility that steps electricity up or down to the voltage at which the electricity is primarily used by other exempt machinery and equipment, when the electricity has been purchased from or supplied by another person, with certain exceptions.

*Examples of taxable items:* In a meat packing plant that receives 34.5KV electricity from the grid and steps the electricity down with its own transformer to 12KV, then transmits the electricity with its own wires to a second transformer that reduces the voltage to 480 volts for use at that voltage by its production machinery, the first transformer would be taxable (the second transformer would be exempt).

## EXEMPTIONS

The Maine Sales and Use Tax Law provides the following categories of exemptions to manufacturers:

- A. Machinery and Equipment Used in Production
- B. Ingredients (Raw Materials)
- C. Items that are Consumed or Destroyed
- D. Fuel and Electricity
- E. Water Pollution Control Facilities
- F. Air Pollution Control Facilities
- G. Machinery and Equipment Used in Research

## Machinery and equipment

### *Sales of machinery and equipment:*

*For use by the purchaser directly and primarily in the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or in the production of tangible personal property pursuant to a contract with the Federal Government or any agency thereof, or, in the case of sales occurring after June 30, 2007, in the generation of radio and television broadcast signals by broadcast stations regulated under 47 Code of Federal Regulations, Part 73. This exemption applies even if the purchaser sells the machinery or equipment and leases it back in a sale and leaseback transaction. This exemption also applies whether the purchaser agrees before or after the purchase of the machinery or equipment to enter into the sale and leaseback transaction and whether the purchaser's use of the machinery or equipment in production commences before or after the sale and leaseback transaction occurs; § 1760(31)(A)*

*"Machinery and equipment" means machinery, equipment and parts and attachments for machinery and equipment, but excludes foundations for machinery and equipment and special purpose buildings used to house or support machinery and equipment. § 1752(7-B)*

*"Foundations"... includes permanent supports, such as those composed of concrete. Metal supports that can be dismantled and moved are considered part of the machinery or equipment they support and are therefore exempt if the machinery and equipment itself is exempt. Rule 303*

The exemption for production machinery and equipment found in § 1760(31) sets forth a number of requirements. The item being purchased must fall within the statutory definition of "machinery and equipment." The machinery or equipment in question must be (i) purchased for *use by the purchaser*; (ii) purchased for use *primarily in production*; (iii) purchased for use *directly in production*; and (iv) purchased for use in producing *tangible personal property* that is *intended to be sold or leased* ultimately for final use or consumption.

The term "machinery and equipment," includes both new and used machinery and equipment as well as parts and attachments for such machinery and equipment. (All parts are included, including repair and replacement parts).

The statutory definition excludes foundations for machinery and equipment that are permanent supports, such as most foundations composed of concrete. (Foundations that can be dismantled and moved, such as many steel supports, are considered part of the machinery and equipment that they support.) Also excluded from "machinery and equipment", are so-called "special purpose buildings" used to house or support machinery and equipment.

Examples of taxable items:

- Permanently affixed concrete pillars on which a piece of production machinery sets do not qualify as exempt machinery and equipment.
- A kiln that houses machinery and equipment used in the drying of finished lumber is a special purpose building and does not qualify as exempt machinery and equipment (in contrast to the piping, controls and

other equipment within the walls of the kiln, which does qualify as exempt machinery and equipment).

Examples of exempt items:

- Angle iron used to construct a support frame is exempt, provided the machinery or equipment it supports qualifies as production machinery or equipment.
- A movable concrete base is exempt, provided the machinery or equipment it supports qualifies as production machinery or equipment.

### **Use by the purchaser**

The purchaser of the machinery and equipment must also be the *user of machinery and equipment in the production process* in order to qualify for the exemption. *Lessors* of machinery and equipment under a true lease are not entitled to an exemption even though the lessee is using the machinery and equipment in production. The taxable “use” by the purchaser/lessor in this situation is the derivation of income through the leasing of the equipment. (But see the exception for “sale/leaseback” transactions, explained later in this section.)

In another example, if a subsidiary of the manufacturer purchases equipment and allows the parent manufacturer to use it in the manufacturer’s own production, the subsidiary does not enjoy the exemption since, as the purchaser, the subsidiary is not the user of the equipment in production.

### **Use primarily in production**

***“Primarily,” when used in relation to machinery or equipment used in production, means more than 50% of the time during the period that begins on the date on which the machinery or equipment is first placed in service by the purchaser and ends 2 years from that date or at the time that the machinery or equipment is sold, scrapped, destroyed or otherwise permanently removed from service by the taxpayer, whichever occurs first. § 1752(9-A)***

If an item of machinery or equipment has multiple uses, it must be used in an exempt activity more than 50% of its time in operation in order to qualify as exempt production machinery. For instance, a forklift may be used not only to move work in process between production machines, but also to load delivery vehicles, or to move raw material from one storage location to another storage location. In this example, only the time used in moving the “work in process” would qualify as “use in production.” The amount of time in this function would need to exceed 50% of its total use in order for the forklift to be exempt as “primarily” used in production.

## Use directly in production

*"Directly," when used in relation to production of tangible personal property, refers to those activities or operations which constitute an integral and essential part of production, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to production. § 1752(2-A)*

*"Directly"...excludes support operations, such as machine shops in which production equipment is maintained. Testing for quality control is directly in production only insofar as those testing devices are physically incorporated in machinery or equipment that is otherwise exempt. Rule 303*

“Directly” as defined above includes operations that are “integral and essential to production,” as contrasted with activities that are “simply incidental, convenient or remote to production.” For instance, a wood planer in a furniture manufacturer’s facility is clearly essential to the production of the finished furniture, while items in a machine shop used to maintain and repair production machinery are only “incidental” to production and are therefore not exempt. The term “directly” does not include support operations. Machinery and equipment used in the following operations is therefore taxable:

- Administrative operations;
- Storage and warehouse operations;
- Maintenance operations (including not only those operations occurring in an area devoted solely to maintenance, but also maintenance activities occurring in the production area itself);
- Receiving and shipping operations;
- Heating and lighting, including in production areas (except specialized lighting as discussed later in this section);
- Safety and fire protection (including those activities required by state or federal agencies); and
- Transportation on public ways between production sites.

The following is a non-exclusive list of activities considered to be “directly” in production:

**Acting on raw materials.** The processing of raw material at the production site, or the holding of raw material as it is being processed.

**Examples:** A wood planer acting on rough lumber to plane and reduce thickness; machinery that mixes raw materials before the raw material is added to the production line; a printing press that acts upon paper and ink in producing a printed product for sale; a rock crusher that crushes rock which is then further processed in a kiln as a part of the manufacture of cement for sale; a freezer used to flash-freeze vegetables in the production of frozen vegetables for sale.

**Processing or holding exempt materials.** The processing of other exempt materials, or holding of such materials as they are being processed, so that they or the materials resulting from the processing can be used or reused in a production process or in connection with the operation of exempt machinery or equipment. “Exempt materials”

means work in process and materials the purchase of which by the taxpayer would be exempt in whole or in part under 36 MRSA § 1760(9-D) (fuel and electricity used at a manufacturing facility), 36 MRSA § 1760(9-G) (fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale), or 36 MRSA § 1760(74) (property that becomes an ingredient or component part of, or that is consumed or destroyed or loses its identity in production of, tangible personal property) and may include without limitation raw materials, electricity, fuel, water, ice, steam, air, oil, gas, chemicals, gases, catalysts, grinding or blasting materials, reagents, lubricants, solvents, acids, printing plates, color separations, tagging materials and other substances and materials used in connection with the operation of exempt machinery and equipment.

**Examples:** A lime kiln that prepares chemicals for use in a kraft pulping process at a paper manufacturing facility; equipment that deionizes or demineralizes water for use by other exempt machinery and equipment; a chipper for wood used to fuel a boiler used to supply steam or electricity to saws and planers at a lumber mill.

**Handling or moving exempt materials.** The handling, moving or transmitting of exempt materials from one production machine to another; or between a storage area (or point of receipt if there is no storage) and the first production operation; or between a production operation and a temporary holding area prior to further production operations. (However, transportation of raw materials or work in process on public ways between different production sites is not considered an activity “directly” in production.)

**Examples:** A forklift used to move lumber from planer to sanding machine; a conveyor system that moves work in process from one production machine to another, or from a storage pile at the point of receipt to the first production machine; piping used to move oil from a storage tank to a boiler used to generate electricity to power the other exempt machinery and equipment at a potato processing plant; conveyors used to move lime from storage at the point of receipt to a lime kiln used to prepare chemicals for use in a kraft pulping process at a paper manufacturing facility.

**Protection or temporary holding of exempt materials or work in process.** Machinery and equipment that preserves, protects, or temporarily holds exempt materials (including work in process) between different production operations or that is used to temporarily hold exempt materials. “Temporary holding” includes (1) equipment or functions designed to avoid delays in production resulting from reasonably anticipated fluctuations in rate of supply or use of the stored items, and (2) equipment such as a tank, chest or tower used to hold exempt material previously processed and awaiting delivery to other production equipment for further processing or use. An item of equipment is presumed

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to be for “temporary holding” if it holds work in process or exempt material only for periods of less than 24 hours.

**Examples:** Steel racks used in temporary holding of finished lumber that is to be sized and cut; a holding tank used in temporary holding of raw material between two production machines; racks or “skids” used by a printer in the temporary holding of pages of printed material pending printing of additional pages, inserts or covers needed to produce the final product; bins used in sorting and temporary holding of yarns produced by a fabric manufacturer for subsequent use in weaving fabric; a tank used to hold a 12-hour supply of an exempt process chemical for use in the event of an interruption of supply.

**Removal of waste products from production machinery.** Removal of waste or by-products from the immediate vicinity of exempt machinery and equipment, for the purpose of permitting that machinery and equipment to operate continuously.

**Examples:** A conveyor used to remove chips and sawdust from the planer; an ash grate for a boiler used to produce steam and electricity to power manufacturing equipment at the same facility; a blanket wash application system for a printing press; a dryer hood and exhaust fan used to remove excessive moisture from a production machine.

**Control of exempt production machinery.** Manually or automatically controlling, or monitoring for the purpose of manually or automatically adjusting or controlling, the operation of exempt production machinery.

**Examples:** Process control computers, such as a computer that controls the cuts of a band saw; a temperature gauge for a boiler that produces steam or electricity used by other exempt equipment; a valve used to control the flow of gas used in welding; a camera used to monitor the shape of the plume of flame in a kiln used in a production operation to ensure that the kiln is functioning properly.

**Testing or monitoring.** Testing or monitoring exempt materials (including work in process) if the equipment used for this purpose is physically attached to exempt machinery and equipment, or is used to test every item or batch of product or exempt material.

**Examples:** A moisture meter that verifies the moisture content of 100% of the lumber used in making furniture; a chart recorder used to monitor the pH of water to be used in process or work in process held within a tank; a color density meter used to determine whether each batch of product meets color specifications for top grade product; a full volume detector used to ensure that the product container is properly filled and sealed.

**In-line packaging operations (pre-storage).** Packaging operations that are part of a series of operations within the production line and that are performed before the final product is stored. (However, packaging operations that occur after the product has been placed in storage or that occur within a separate storage facility are not part of production.)



**Examples:** Machinery and equipment used to insert a video disc into a jewel case and shrink-wrap it; equipment used to sort and count product for packaging; equipment used to box, bottle, can, or label product.

**Machinery and equipment that controls the production environment.** Controlling the production environment by means of *specialized* plant lighting, ventilation, air purification or prevention of contamination, humidity or temperature regulation, or similar environmental control essential to a particular production process.

**Examples:** Air handling equipment used for a “clean room” in a computer chip manufacturing facility; equipment used to reduce contamination or to control temperature and humidity in a clean room; equipment used to monitor air quality in a clean room; air conditioning equipment connected or otherwise directed to computers used to control a manufacturing process; thermometers and humidity meters used to monitor the environment for process control computers or exempt electrical equipment.

**Certain electrical equipment.** The last transformer at the manufacturing facility that steps electricity up or down to the voltage at which the electricity is primarily used by other exempt machinery and equipment, and wiring, switches and other electrical equipment between that transformer and other exempt machinery and equipment; and machinery and equipment used to avoid electrical damage to such transformer or other exempt machinery and equipment or to ensure uninterrupted power supply to exempt machinery and equipment, including by means of providing back-up or emergency power or surge protection.

**Examples:** In a meat packing plant that receives 34.5KV electricity from the grid and steps the electricity down with its own transformer to 12KV, then transmits the electricity with its own wires to a second transformer that reduces the voltage to 480 volts for use at that voltage by its production machinery, the second transformer would be exempt.

### **Tangible personal property intended for sale or lease**

*... personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program. "Tangible personal property" includes any product transferred electronically. § 1752(17)*

To be eligible for exemption, machinery or equipment must be used in the production of tangible personal property that is intended to be sold or leased ultimately for final use or consumption.

The product being produced must also be sold or leased *as tangible personal property*. Machinery and equipment used to produce property that will be sold as *real property*, or that will

be used by the producer rather than sold, does **not** qualify for exemption. (For more on this topic, see Instructional Bulletin No. 28, "Installing Tangible Personal Property in Real Property".)

Examples:

- A cabinetmaker who produces and installs kitchen cabinets and passes title to the cabinets after installation, is selling real property, not tangible personal property. The cabinetmaker's purchase of machinery and equipment does not qualify for exemption.
- A cabinetmaker who produces and installs kitchen cabinets and passes title to the cabinets before installation is engaged in selling tangible personal property. The cabinetmaker's purchase of machinery and equipment does qualify for exemption.
- A retailer that manufactures free-standing shelving units for its own use is not selling the shelves. The retailer's purchase of machinery and equipment to build the shelves does not qualify for exemption.

### **Ingredients or component parts**

*Sales of tangible personal property that becomes an ingredient or component part of tangible personal property for later sale or lease, other than lease for use in this State, or that becomes an ingredient or component part of tangible personal property produced pursuant to a contract with the Federal Government or any agency of the Federal Government. § 1760(74)(A)*

An exemption is provided for tangible personal property that becomes an ingredient or component part of the item being produced. This category includes all raw materials that get physically converted into, or physically attached to the finished product, including tags and labels.

### **Items that are consumed or destroyed**

*Sales of tangible personal property, other than fuel or electricity, that is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale or lease, other than lease for use in this State, or that is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property produced pursuant to a contract with the Federal Government or any agency of the Federal Government.*

*For purposes of this subsection, tangible personal property is "consumed or destroyed" or "loses its identity" in production if it has a normal physical life expectancy of less than one year as a usable item in the use to which it is applied. § 1760(74)(B)*

*1. Tangible personal property that has a normal physical life expectancy of less than one year is exempt if it falls within one of the following categories:*

- A. Items that are integrated with and essential to the operation of exempt production machinery and equipment. Items under this*

*category will normally include but not be limited to such items as abrasives, coolants, lubricants, filtering materials, etc.*

*B. Items that come in contact with, or are added to, the raw product during production, but that are later extracted or dissipated and do not become a component part of the tangible personal property produced. Items under this category will normally include but not be limited to such items as catalysts, chemicals, solvents, liquids, etc.*

*C. Items that come in contact with the products produced and that are an integral and essential part of production. Items under this category will normally include but not be limited to abrasives, polishing agents, stencil materials, tagging materials, etc.*

*2. Tangible personal property that is consumed and destroyed is taxable if it falls within one of the following categories:*

*A. Items consumed or destroyed prior to the commencement of the production process or after production has ended as provided in § 1752(9-B) of the law and Section 1(1) of this rule.*

*B. Items consumed or destroyed in the course of contact with machinery and equipment that is not "directly" in production as provided in § 1752(2-A) of the law and Section 1(3) of this rule.*

*Items under this category will normally include but not be limited to the following:*

*(1) Cleaning supplies, including floor sweeping compounds, soaps, etc., regardless of where used;*

*(2) Steam used to heat buildings, including the production area;*

*(3) Personal apparel used by employees, including aprons, gloves, hair nets, ear plugs, face shields or masks, etc.;*

*(4) Light bulbs, flash lights and batteries, used for lighting;*

*(5) Chemicals or supplies of any kind used in quality control and research laboratories; and*

*(6) Supplies used in maintenance of production machinery and equipment, including abrasives, files, grinding oil, etc.*

**Rule 303**

An exemption also applies to tangible personal property, other than fuel or electricity, that is consumed or destroyed or loses its identity in the production process. These are items that have a normal life expectancy of less than one (1) year in the use to which they are applied. "Life expectancy" means physical life expectancy without regard to obsolescence. An item that is obsolete only over a longer period of time is not considered "consumed or destroyed."

Examples of items that are consumed or destroyed in the production process:

- Items that are essential to the operation of production machinery and equipment, such as lubricants;
- Items that come in contact with raw material but does not become part of the finished product, such as solvents.
- Items that come in contact with raw material and are no longer of use afterwards, such as sandpaper.

Examples of items that are not consumed or destroyed in the production process:

- Items that are consumed or destroyed before production begins, such as lubricants for a chain saw used to harvest trees to be manufactured into lumber;
- Items that are consumed or destroyed after production ends, such as lubricants for a forklift used primarily to move finished product from storage to trucks for shipment to customers.
- Items that are not used “directly” in production.

### **Fuel and electricity**

*Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. § 1760(9-D)*

*"Manufacturing facility" means a site at which are located machinery and equipment used directly and primarily in either:*

- A. The production of tangible personal property intended to be sold or leased ultimately for final use or consumption; or*
- B. The production of tangible personal property pursuant to a contract with the Federal Government or any agency of the Federal Government.*

*"Manufacturing facility" includes the machinery and equipment and all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production. "Manufacturing facility" does not include a site at which a retailer is primarily engaged in making retail sales of tangible personal property that is not produced by the retailer. § 1752(6-A)*

95% of the cost of the fuel and electricity is exempt when purchased for use at a “manufacturing facility”, while the remaining 5% is subject to the general sales tax rate.

A manufacturing facility is a site where production machinery is located. This includes not only the machinery and equipment used directly in production, but all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production. Separate electric meters, fuel tanks or heating systems need not be maintained for the purpose of separating production areas from non-production areas.

A manufacturing facility does not include a site at which a retailer is primarily engaged in making retail sales of items that it does not produce itself. Thus, for example, a hardware store is not a “manufacturing facility,” and is not entitled to the 95% energy exemption, merely because it has a key cutting machine on the premises.

This partial sales tax exemption applies to all types of fuel, including No. 2 heating fuel, diesel fuel, oxygen, acetylene, and wood chips.

#### **Water pollution control facility**

*Sales of water pollution control facilities, certified as such by the Commissioner of Environmental Protection, and sales of parts or accessories of a certified facility, materials for the construction, repair or maintenance of a certified facility and chemicals or supplies that are integral to the effectiveness of a certified facility.*

*As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.*

*A. "Disposal system" means any system used primarily for disposing of or isolating industrial or other waste and includes thickeners, incinerators, pipelines or conduits, pumping stations, force mains and all other constructions, devices, appurtenances and facilities used for collecting or conducting water borne industrial or other waste to a point of disposal, treatment or isolation, except that which is necessary to the manufacture of products.*

*B. "Facility" means any disposal system or any treatment works, appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling or eliminating water pollution caused by industrial or other waste, except septic tanks and the pipelines and leach fields connected or appurtenant thereto.*

*C. "Industrial waste" means any liquid, gaseous or solid waste substance capable of polluting the waters of the State and resulting from any process, or the development of any process, of industry or manufacture.*

*D. "Treatment works" means any plant, pumping station, reservoir or other works used primarily for the purpose of treating, stabilizing, isolating or holding industrial or other waste. § 1760(29)*

In order to qualify for this exemption, a facility must be certified by the Commissioner of the Department of Environmental Protection (DEP) as a facility that is engaged in disposing, isolating or treating of water-borne industrial or other waste. Once a facility has been certified by DEP, an exemption is allowed for any materials used in the construction, repair or maintenance of the facility, as well as for any machinery and equipment used primarily for reducing, controlling or eliminating water pollution. This includes, but is not limited to, thickeners, incinerators, pipelines or conduits, pumping stations, force mains and all other constructions, devices, appurtenances and facilities used for collecting or conducting water borne industrial or other waste. It does not include supplies other than maintenance materials and pollution control chemicals. It also does not include septic tanks and the pipelines and leach fields connected to septic tanks.

## Air pollution control facility

*Sales of air pollution control facilities, certified as such by the Commissioner of Environmental Protection, and sales of parts or accessories of a certified facility, materials for the construction, repair or maintenance of a certified facility and chemicals or supplies that are integral to the effectiveness of a certified facility.*

*As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.*

*A. "Facility" means any appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling, eliminating or disposing of industrial or other air pollutants.*

*Facilities such as air conditioners, dust collectors, fans and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions shall not be deemed air pollution control facilities for purposes of this subsection.*

*§ 1760(30)*

In order to qualify for this exemption, a facility must be certified by the Commissioner of Environmental Protection (DEP) as a facility that is engaged in reducing, controlling, eliminating or disposing of industrial or other air pollutants. Once a facility has been certified by DEP, an exemption is allowed for any materials used in the construction, repair or maintenance of the facility as well as for any machinery and equipment used primarily for reducing, controlling or eliminating air pollutants. This does not include machinery or equipment installed for the benefit of people, such as air conditioners, dust collectors, fans and similar items; nor does it include facilities designed or installed for the reduction or control of automobile exhaust emissions.

## Research and development

*Sales of machinery and equipment for use by the purchaser directly and exclusively in research and development in the experimental and laboratory sense ... "Research and development" does not include the ordinary testing or inspecting of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. § 1760(32)*

As with the exemption for production machinery, this exemption has several requirements that must be satisfied:

- The item being purchased must be machinery and equipment;
- It must be used by the purchaser in research and development;
- It must be used *directly* in research and development; and
- The machinery or equipment must be used *exclusively* in research and development.

“Research and development” for the purposes of this exemption is limited to the experimental and laboratory sense of that term. It does not include the ordinary testing or inspecting of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, or promotions. It also does not include research done in connection with literary, historical or similar projects.

### **Contracts with U.S. Government**

***Sales of machinery and equipment:***

***For use by the purchaser directly and primarily ... in the production of tangible personal property pursuant to a contract with the Federal Government or any agency thereof .... § 1760(31)(A)***

The exemptions mentioned in this section also apply to those entities engaged in the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof.

### **Biotechnology**

***"Production" includes manufacturing, processing, assembling and fabricating operations that meet the definitional requisites, including biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology. § 1752(9-B)***

Although the term “production” as defined in § 1752(9-B) excludes biological processes generally, it does include “biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology”. As a result, the exemptions mentioned above also apply to entities engaged in biotechnological applications.

These applications include recombinant DNA techniques, biochemistry, molecular and cellular biology, immunology, genetics and genetic engineering, biological cell fusion techniques and new bioprocesses using living organisms or parts of organisms to produce or modify products, improve plants or animals, develop microorganisms for specific uses, identify targets for small-molecule pharmaceutical development, transform biological systems and useful processes and products or to develop microorganisms for specific uses.

***... sales of machinery, equipment, instruments and supplies for use by the purchaser directly and primarily in biotechnology applications, including the application of technologies such as recombinant DNA techniques, biochemistry, molecular and cellular biology, immunology, genetics and genetic engineering, biological cell fusion techniques and new bioprocesses using living organisms or parts of organisms to produce or modify products, improve plants or animals, develop microorganisms for specific uses, identify targets for small-molecule pharmaceutical development, transform biological systems and useful processes and products or to develop microorganisms for specific uses. Equipment and supplies used for biotechnology include but are not limited to microscopes, diagnostic testing materials, glasswares, chemical***

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*reagents, computer software and technical books and manuals. "Research and development" includes testing and evaluation for the purposes of approval and compliance with regulatory standards for biotechnological products or materials. "Research and development" does not include the ordinary testing or inspecting of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. § 1760(32)*

With respect to research and development in biotechnological applications, the exemption is not limited to machinery and equipment. It also includes instruments and supplies, such as microscopes and diagnostic testing materials.

### **Fuel oil and coal**

*Fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale.  
§ 1760(9-G)*

This exemption is for the use of fuel oil or coal in those situations where the by-products that result from the burning of the fuel or coal becomes an ingredient of tangible personal property being produced for sale.

## **OTHER ISSUES INVOLVING MANUFACTURERS**

### **Leasing machinery and equipment**

Generally speaking, the exemption for production machinery and equipment does not apply to machinery and equipment being leased. The exemption provided to a manufacturer does not extend to the lessor of equipment even though the equipment will be used in production. Furthermore, the lessor is generally liable for use tax on the cost of the equipment being leased.

The following are exceptions to this general application:

### **Sale/leaseback transactions**

*A. ....This exemption applies even if the purchaser sells the machinery or equipment and leases it back in a sale and leaseback transaction. This exemption also applies whether the purchaser agrees before or after the purchase of the machinery or equipment to enter into the sale and leaseback transaction and whether the purchaser's use of the machinery or equipment in production commences before or after the sale and leaseback transaction occurs; and*

*B. To a bank, leasing company or other person as part of a sale and leaseback transaction, by a person that uses the machinery or equipment as described in paragraph A, whether the original purchaser's use of the machinery or equipment in production commences before or after the sale and leaseback transaction occurs.*

*§ 1760(31)*



If machinery and equipment that qualifies for exemption is purchased by a manufacturer and subsequently sold to and leased back from a lessor, the sales/use tax exemption still applies. It is immaterial whether the original purchase and subsequent sale/leaseback transaction occur simultaneously or at some time in the future. It is also immaterial whether or not actual use of the machinery and equipment is made by the manufacturer before the sale/leaseback transaction occurs.

**Lease “in lieu of purchase.”**

A lease that is determined by the State Tax Assessor to be a lease “in lieu of purchase” is a “sale” as defined in § 1752(13). As a sale, machinery and equipment being purchased pursuant to a lease in lieu of purchase meets the requirement of “purchase by the user” and would be exempt provided it meets the other requirements of exemption. For more on this topic, see Instructional Bulletin No. 20 (“Lease & Rental Transactions in Maine”).

**Interim Rentals.**

Machinery and equipment being rented under the “interim rental” provision of the statute (§ 1758) is treated as a sale, with the lessor being the retailer, the rental payment being the sale price and lessee being the purchaser/consumer. An interim rental, therefore, meets the requirement of “purchase by the user” and is exempt provided it meets the other applicable requirements of the law.

**Transportation**

As noted above, machinery and equipment must be used “directly” in production in order to qualify for exemption. Thus transporting work in process between production machines is a qualifying activity. However, transportation of raw material to the production site, transportation of work in process on public ways between production sites and transportation of finished products to customers are all non-qualifying activities.

Certain vehicles used in interstate or foreign commerce may be exempt pursuant to § 1760(41), depending upon the circumstances. For more information on this subject, see the “Exemptions” section of this guide and Rule 318 (“Instrumentalities of Interstate or Foreign Commerce”).

**By-products and recovered raw materials**

The manufacturing process generally results in a certain amount of waste. In many situations this waste must be disposed of, but in certain manufacturing environments it can be recycled, sold as a by-product or used as an ingredient of another product.

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Removing waste from a production machine is an activity that is considered “directly” in production. Machinery and equipment that handles or processes the product after that point may or may not qualify for exemption.

Examples of **exempt** activities involving by-products and recovered raw materials:

- Re-cycling the by-product or recovered raw material back into production. This activity is “directly” in production and machinery and equipment used primarily for this purpose is exempt.
- Using the by-product or recovered raw material as an ingredient in the production of another product. This activity is also considered “directly” in production and machinery and equipment used primarily for this purpose is exempt.

Example of a **taxable** activity involving by-products:

- Selling the by-product “as is.” In this case, removing the waste from the production machine is “directly” used in production, but machinery and equipment used after this point is **not** used directly in production since nothing more is done to the by-product to change its form, character, or composition.

### **Tangible personal property vs. real property**

The purchase by a construction contractor of materials for the construction of real property (buildings, fixtures attached to buildings, etc.) or for incorporation into real property does not qualify for the machinery and equipment exemption.

Examples of such items are:

- Wires, conduits, outlets and other electrical items installed to facilitate the use of the building *as a building* rather than for purposes of a particular production process;
- Heating and air conditioning units (including ductwork) installed to facilitate the use of the building *as a building*, rather than for purposes of a particular production process such as that previously described;
- Special purpose buildings;
- Permanent foundations composed of concrete.

If machinery and equipment is purchased as tangible personal property *before* being incorporated into realty and, as tangible personal property, meets all of the other requirements of exemption, the machinery and equipment would qualify for exemption.

Since this type of arrangement between the contractor and the purchaser is the exception, rather than the norm, manufacturers are cautioned that proper contractual terms are necessary for correct application of the exemption. For more information on this topic, see Instructional Bulletin No. 28 (“Installing Tangible Personal Property in Real Property”).

### **Exempt purchase documentation**

A manufacturer claiming that the purchase of tangible personal property qualifies for exemption must provide its vendor with a “Blanket Certificate of Exemption.” (See Appendix.) The manufacturer should indicate on this certificate the grounds for exemption by checking off the appropriate category. The vendor should retain this certificate in its file to document the

exempt sale. If multiple purchases are made from one vendor, the certificate may act as a “blanket” certificate, covering all subsequent purchases of like items. Remember that it is the **responsibility of the purchaser** to understand all requirements of the law before claiming any exemption. If your business is audited, MRS need not prove that a purchase does not qualify for exemption; you must prove that it does.

### **Direct pay permit**


Pursuant to Rule 308, certain manufacturers and utilities that commonly acquire a substantial amount of tangible personal property under circumstances making it impractical to determine at the time of purchase whether the use will be taxable or exempt, may qualify for a “direct payment permit” issued by MRS. This permit allows the manufacturer to purchase most items of tangible personal property without paying tax -- but the purchaser then becomes accountable directly to the State for payment of appropriate use tax. The direct pay permit must be provided to the vendor at the time of purchase to document the exempt sale and, as with the blanket certificate of exemption, need only be provided once to cover subsequent purchases of like items. See Rule 308 for more information and qualifications.

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# SAMPLE RETAILER CERTIFICATE

	<b>STATE OF MAINE MAINE REVENUE SERVICES</b>
	<i>THIS REGISTRATION CERTIFICATE FOR A</i> <b>RETAILER</b>
<i>is issued under the provisions of MRSA, Title 36, Part 3, §1754-B to:</i>	
ACCOUNT NAME TAXPAYER NAME ADDRESS CITY, ME ZIP	
<b>Registration Number:</b> 0123456	<b>Date Issued:</b> JULY 28 2011
Business Code: 050 Filing Frequency: SEASONAL	<b>SAMPLE COPY NOT FOR USE</b>



## IMPORTANT INFORMATION CONCERNING THIS RETAILER'S CERTIFICATE

This certificate must be available for inspection by the State Tax Assessor, the Assessor's representatives and agents and authorized municipal officials. This retailer's certificate verifies that this retailer and this retail location hold a valid Maine sales tax account and is authorized to collect and remit the sales tax on behalf of the State of Maine. This certificate has no expiration date. If you cease to do business in Maine please return this certificate to Maine Revenue Services.

**IMPORTANT PLEASE NOTE:** This retailer's certificate may NOT be used to purchase merchandise for resale tax exempt (in Maine). A resale certificate is a separate document. If you qualify to receive a resale certificate, one has been printed and mailed to you.

**SAMPLE COPY - NOT FOR USE**

# SAMPLE RESALE CERTIFICATE

	<b>STATE OF MAINE MAINE REVENUE SERVICES RESALE CERTIFICATE</b>	
THIS CERTIFICATE IS VALID JULY 28 2011 THRU DECEMBER 31 2013		
<u>Business Name and Location Address</u>	<u>Certificate Number</u>	<u>Business Type</u>
ACCOUNT NAME ADDRESS CITY, ME ZIP	0123456	DRY GOODS
<p>This is to certify that the above named business is authorized to purchase tangible personal property for resale during the period identified on this certificate. <b>This certificate cannot be reassigned or transferred and can only be used by the above business or its authorized employees. This certificate is void if the business has ceased operating or if the certificate has been altered.</b></p> <p>The above named business certifies that the following items will be resold as tangible personal property in the ordinary course of their business.</p> <p>_____</p> <p>_____</p> <p>_____</p>		
Presented to: _____ (Insert name of seller on photocopy) (date)		Presented by: _____ Authorized Signature (purchaser) (date)

SAMPLE COPY  
NOT FOR USE

## DO NOT WRITE ON THIS ORIGINAL FORM

The document printed above is your new Resale Certificate. **Retain this copy as an original in your file.** This certificate is valid only for the period indicated.

Prior to the expiration of this certificate, Maine Revenue Services will automatically renew and reissue a new resale certificate for the next period if:

- your account is active and
- you have reported \$3,000 or more in gross sales during the previous 12 months

Make copies of this original, fill in the appropriate data and provide it to the vendors from whom you purchase goods for resale.

If you cease doing business, this certificate is void and must be returned to Maine Revenue Services.

Use of a resale certificate to purchase goods not intended for resale is a criminal offense.

If you have any questions regarding this document, please call (207) 624-9693.

**SAMPLE COPY - NOT FOR USE**

**SAMPLE EXEMPTION CERTIFICATE**



Maine Revenue Services  
Augusta, Maine

**PERMANENT EXEMPTION CERTIFICATE**

This Exemption Certificate  
is issued under the provisions of Title 36, Part 3 MRSA

Entity name and address  
would appear here

Registration Number :  
Date Effective:  
Date Issued:

Form ST-2  
1095886120731

**SAMPLE COPY - NOT FOR USE**

Description of type of organization would appear here.

**Note to the Organization:** This certificate is not to be used in activities that are mainly commercial enterprises including, but not limited to, purchases of items which will be resold by the organization. A copy of this certificate with the certification completed below, must be provided to your vendors in order to purchase goods exempt from tax. It is only necessary to provide one copy to the vendor. Subsequent purchases should indicate that the purchase is exempt from tax. In order to be exempt, the sale must be billed directly to and paid for directly by the organization named on the exemption certificate. **This certificate cannot be used for purchases when payments are made with cash, personal checks, or personal credit cards.**

**Note to the Vendor:** This certificate must be taken in good faith from the taxpayer named above. Your good faith may be questioned if you have knowledge of facts which give rise to a reasonable inference that the purchaser is not the holder of the exemption certificate or that the merchandise is not to be used exclusively by the organization. This certificate is valid only if the following certification is completed.

**PERMANENT EXEMPTION CERTIFICATE**

I HEREBY CERTIFY: That the above exemption certificate is valid, that the tangible personal property described herein which I shall purchase from \_\_\_\_\_ will be used exclusively by the organization named above for purposes for which it is organized.

**Description of property to be purchased:**

\_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Date**

**SAMPLE COPY - NOT FOR USE**





# MAINE REVENUE SERVICE SALES, FUEL & SPECIAL TAX DIVISION

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## DIRECT PAY PERMIT

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No. \_\_\_\_\_

It having been determined that the conduct of the business of the taxpayer noted below is such that it would be impractical for it to pay sales and use taxes separately under the Maine Sales and Use Tax Law on purchases made by it, that payment of sales and use taxes to the State would not be jeopardized by permitting the taxpayer to report and pay sales and use taxes directly, and the taxpayer having obligated itself to report and pay sales and use taxes directly, retailers selling to the taxpayer named below are hereby relieved of collecting sales and use taxes from it.

Except as noted below, the taxpayer shall file a copy of this permit with each retailer and shall place the direct payment permit number on all purchase orders and contracts covering the purchase of tangible personal property; which shall be sufficient evidence to retailers to relieve them from collecting sales or use taxes thereon.

Name of Taxpayer \_\_\_\_\_ **SAMPLE COPY - NOT FOR USE** \_\_\_\_\_

Address of Taxpayer \_\_\_\_\_ \_\_\_\_\_

Date \_\_\_\_\_

**SAMPLE COPY - NOT FOR USE**

\_\_\_\_\_  
Director, Sales & Use Tax Section

Copies of this permit or the permit number shall not be used in connection with:

- A. The purchase of tangible personal property by other than the holder of this permit.
- B. The purchase of prepared food or beverages.
- C. The purchase of occupancy at hotels, motels, etc.
- D. The purchase of telephone or telegraph service.
- E. Rentals or leases, other than leases in lieu of purchase, of tangible personal property.
- F. The purchase of tangible personal property which will become incorporated into the real estate of the permit holder prior to passage of title.

Form ST-P-3



**Maine Revenue Services  
Sales and Use Tax Return**  
See instructions on Reverse Side of Taxpayer Copy



\*1103101\*

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Registration No.	Business Code	Period Begin	Period End	Due Date

**1 Entire Information**

**SAMPLE COPY - NOT FOR USE**

**OUT OF BUSINESS?** Date closed: \_\_\_\_\_

**OWNERSHIP OR NAME CHANGE?** Date \_\_\_\_\_

Explanation \_\_\_\_\_

**SAMPLE COPY - NOT FOR USE**

**SOLD?** Date \_\_\_\_\_

ADDRESS CHANGE?: Check here and make the appropriate changes to the preprinted address.

ST-7 Revised 10/2013

**SALES BREAKDOWN**

Gross Sales	1.	_____
Deductions: Exempt Sales	2a.	_____
Bad Debts	2b.	_____
Industrial Energy Sales	3.	_____
Taxable Sales	4.	_____

**SALES**

Sales of Prepared Food Subject to 8% tax	5.	_____	@ 8%	5A.	_____
Sales Subject to 5.5% tax	6.	_____	@ 5.5%	6A.	_____

**RENTALS**

Long Term Rentals of Autos	7.	_____	@ 5.5%	7A.	_____
Rentals of Lodging	8.	_____	@ 8%	8A.	_____
Short Term Rentals of Autos	9.	_____	@ 10%	9A.	_____

**TAXABLE SALES**

Add lines 5, 6, 7, 8 & 9 Total must agree with Line 4	10.	_____	Add lines 5A-9A.	10A.	_____
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**USE TAX**

Industrial Energy Purchases	11.	_____	@ 5.5%	11A.	_____
Other Taxable Purchases	12.	_____	@ 5.5%	12A.	_____

**PLEASE SEE REVERSE SIDE TO COMPLETE THE RETURN**



\*1103102\*

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**PREMIUMS & FEES**

Tires & Lead-Acid Batteries 13.	_____	@ \$1	13A.	_____
Gasoline Engine Oils @ \$1.10 per gallon			14A.	_____
Diesel Engine Oils @ 35 cents per gallon			14B.	_____
All Other Motor Vehicle Oil Premiums @ 35 cents per gallon			14C.	_____
E-911 Prepaid Wireless Fee			15A.	_____

**TOTAL DUE**

Total Tax and Fees Due with this Return.	Add lines 10A through 15A	16.	_____
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**CREDITS**

Credit Carry Forward From Prior Period	17.	_____
Credit For Sales Tax Paid on Goods Purchased for Resale	18.	_____

**AMOUNT DUE**

Line 16 less lines 17 and 18. Use line 20 if the result is a credit amount.	19.	_____
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**CREDIT DUE**

If Line 16 less lines 17 and 18 is a credit amount, enter the amount to the right.		20.	_____
If you wish a refund rather than a carry forward to the next period, check here	<input type="checkbox"/>		

**SAMPLE COPY - NOT FOR USE**

**SAMPLE COPY - NOT FOR USE**

Make check or money order payable to the STATE TREASURER. Send your remittance with your return postmarked by the due date printed on the front of the return to MAINE REVENUE SERVICES, PO BOX 1065, AUGUSTA, ME 04332-1065. Please record your registration number on your check. Failure to file a return on or before the due date will result in interest and penalty charges. Billings will be issued shortly after the processing of your return. If you have questions, please contact 207-624-9693. Keep a copy of this return for your records.

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone #

### Specific Instructions for the Sales and Use Tax Return

Please note: This return must be filed even if there are no taxable sales to report.

**Important: DO NOT REPORT any of the following sales or services on this return. They will be reported on the Service Provider Tax return. Sales of extended cable or satellite TV services, fabrication services, video rentals, telecommunication services. Services provided through a contract with DHHS: Private non-medical institution/personal home care, community support for persons with mental health diagnoses, community support for persons with mental retardation or autism; home support services, group residential services for persons with brain injuries.**

**Line 1 - Gross Sales.** Enter the total amount of ALL sales and services, including sales for resale and all other exempt sales. Do not include in this amount sales tax charged to customers, nor the value of returned merchandise for which a full credit or refund was given to the customer.

**Line 2a - Exempt Sales.** Enter the total amount of sales on which no tax was charged. Include in this line items sold with a valid resale certificate, wholesale sales, items sold to a consignment shop or group shop, services that were not taxable, items sold to entities that hold a valid Permanent Exemption Certificate issued by Maine Revenue Services, or customer refunds that were reported as sales in previous periods.

**Line 2b - Bad Debts.** Enter the total amount of bad debts actually charged off on the books of this retailer. The deduction may be made only with respect to taxable sales which were originally reported as taxable by this retailer, and on which tax has been paid by this retailer to the State. (See Instructional Bulletin #29 for more information on bad debt deductions.)

**Line 3 - Industrial Energy Sales.** If you have sold fuel or electricity to a manufacturing facility, enter 95% of those sales here.

**Line 4 - Sales Subject to Tax.** Subtract lines 2a, 2b, and 3 from line 1. This amount represents all taxable sales that are detailed in lines 5 through 9.

**Line 5 - Prepared Food Sales.** Enter the total sales for the period that represents sales of food and drink prepared by the retailer. Multiply this amount by 8% and enter the result in line 5A.

**Line 6 - Sales Subject to 5.5% tax.** Enter all sales subject to 5.5% tax. Multiply this amount by 5.5% and enter the result in line 6A. Include all sales of extended warranties on automobiles and trucks.

**Line 7 - Long Term Rentals of Automobiles.** Enter all taxable rentals of automobiles for 12 months or more. Multiply this amount by 5.5% and enter the result in line 7A.

**Line 8 - Rentals of Lodging.** Enter the total taxable rentals charged for living quarters in hotels, motels, rooming houses and tourist or trailer camps. Multiply this amount by 8% and enter the result in line 8A.

**Line 9 - Short Term Rentals of Automobiles.** Enter the total taxable rentals charged for short-term rentals of automobiles (rentals for less than 12 months). Multiply this amount by 10% and enter the result in line 9A.

**Line 10 & 10A - Total lines 5 through 9 and 5A through 9A.** Total of lines 5 through 9 must agree with line 4 (Sales Subject to Tax).

**Line 11 - Industrial Energy Purchases.** Enter 5% of your purchases of fuel and electricity used at a manufacturing site on which the Maine sales tax or its equivalent has not been paid. Multiply this amount by 5.5% and enter the result in line 11A.

**Line 12 - Other Taxable Purchases.** Enter the amount of taxable purchases, other than fuel and electricity reported in line 11, on which Maine sales tax or its equivalent has not been paid. This includes items that were withdrawn from inventory for use by the business, items purchased in a non-taxing jurisdiction for use in Maine, and items that were purchased with a Maine Resale Certificate that have been deemed taxable. Multiply this amount by 5.5% and enter the result on line 12A.

**Line 13 - Tires and Lead-Acid Batteries.** Enter the total number of tires and lead-acid batteries sold during this period that are subject to the recycling assistance fee. Multiply this amount by \$1.00 and enter the result on line 13A.

**Line 14A - Gasoline Engine Oils.** Enter the premiums on sales of gasoline engine crankcase oil sold in a container with a volume of 5 gallons or less.

**Line 14B - Diesel Engine Oils.** Enter the premiums on sales of diesel engine crankcase oil.

**Line 14C - All Other Motor Vehicle Oil Premiums.** Enter the premiums on sales of other motor vehicle oil sold in containers with a volume of 16 gallons or less.

**Line 15A - E-911 Prepaid Wireless Fee.** The amount of the prepaid wireless fee due is equal to the number of prepaid wireless card transactions (whether sold individually or as part of a phone package) times 98 cents. For example: 100 cards sold X .98 is \$98. Enter this value on Line 15A. Note: If you are a retailer who is not a prepaid wireless telecommunications service provider, you may multiply this amount by .97 (\$98 X .97 = \$95.06) and report the lower value.

**Line 16 - Total Due.** Total lines 10A through 15A.

**Line 17 - Credit Carry Forward from Prior Period.** If your prior return resulted in a credit balance and you have received a notice from Maine Revenue Services confirming this credit, enter the amount of your credit here.

**Line 18 - Credit for Sales Tax Paid on Goods Purchased for Resale.** If you have purchased goods during this period on which you have paid your supplier a sales tax and those goods have been sold or are in inventory waiting to be resold, enter the amount of sales tax paid on those goods here.

**Line 19 - Amount Due.** Subtract lines 17 and 18 from line 16. (If the result is a credit amount, use line 20.)

**Line 20 - Credit Due.** If the result of subtracting lines 17 and 18 from line 16 is a credit, enter that amount here. This credit will automatically be forwarded to the next open period. If you wish this credit to be refunded to you, you must check the box in line 20.

# SPT

## Maine Revenue Services Service Provider Tax



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Registration No.

Business Code

Period Begin

Period End

Due Date

1. Entity Information

**SAMPLE COPY - NOT FOR USE**

**SAMPLE COPY - NOT FOR USE**

2.  **OUT OF BUSINESS?** Date closed: \_\_\_\_\_

3.  **OWNERSHIP OR NAME CHANGE?** Date \_\_\_\_\_  
Explanation \_\_\_\_\_

4.  **SOLD?** Date \_\_\_\_\_

ADDRESS CHANGE? Make corrections above and check here

<b>Services</b>	Gross Services	1.	_____
	Exempt Services	2a.	_____
	Bad Debts	2b.	_____
	Taxable Services	3.	_____
<b>Breakdown of Taxable Services</b>	Extended Cable TV & Satellite TV	4.	_____
	Fabrication	5.	_____
	Video Rentals	6.	_____
	Rent-to-Own	7.	_____
	Telecommunications	8.	_____
	Private Non-Medical Institution	9.	_____
	CSS - MHD	10.	_____
	CSS - MRA	11.	_____
	Home Support Services	12.	_____
	Brain Injuries	13.	_____
<b>Total Services</b>	Add lines 4 thru 13. Total must agree with Line 3.	14.	_____
<b>Total Tax</b>	Line 14 @ 5%	15.	_____
<b>Credits</b>	Credit Carry Forward From Prior Period	16.	_____
<b>Amount Due</b>	Line 15 less line 16. Use line 18 if the result is a credit amount.	17.	_____
<b>Credit Due</b>	If line 15 less line 16 is a credit amount, enter the amount to the right. If you wish a refund rather than a carry forward to the next period, check here <input type="checkbox"/>	18.	_____

Signature/Title

Print Name

Date

Phone #

**Instructions for the Service Provider Tax Return**

**Please note: The return must be filed even if there are no taxable services to report.  
FOR FURTHER INFORMATION ON SERVICE PROVIDER TAX SEE INSTRUCTIONAL BULLETIN 55**

**Line 1 – Gross Services.** Enter the total amount of ALL services, including any services that are for resale or exempt. Do not include Service Provider Tax in this amount.

**Line 2a. – Exempt Services.** Enter the total amount of services which are exempt from the Service Provider Tax. Include in this line services sold with a valid resale certificate, sold to an exempt organization with a valid permanent exemption certificate, services that are not subject to the service provider tax, and services rendered outside this State.

**Line 2b. – Bad Debts.** Enter the total amount of bad debts actually charged off on the books of this service provider. The deduction may be made only with respect to taxable services which were originally reported as taxable by this service provider, and on which tax has been paid by this service provider to the State.

**Line 3 – Taxable Services.** Subtract Line 2a and 2b from Line 1.

**Line 4– Extended Cable TV Service.** Enter the taxable amount of cable and satellite TV service provided that is above and beyond the basic amount.

**Line 5 – Fabrication Services.** Enter the taxable amount of fabrication services provided on this line. (For more information on fabrication services see Instructional Bulletin 46)

**Line 6 – Video Rentals.** Enter the taxable amount of video media and equipment rentals on this line.

**Line 7 – Rent-to-Own.** Enter the taxable amount of rental of furniture, audio media and equipment pursuant to a rental-purchase agreement.

**Line 8 – Telecommunications.** Enter the taxable amount of telecommunications services, installation, maintenance and repair of telecommunications equipment and ancillary services.

**For the services listed on Lines 9-13, the provider must be licensed through the DHHS.**

**Line 9 – Private Non-Medical Institution or Personal Home Care.** Enter the taxable amount of Private Non-Medical Institution or Personal Home Care services.

**Line 10 – CSS – MHD.** Enter the taxable amount of Community Support Services for persons with Mental Health Diagnoses.

**Line 11 – CSS – MRA.** Enter the taxable amount of Community Support Services for persons with Mental Retardation or Autism.

**Line 12 – Home Support Services.** Enter the taxable amount of Home Support Services.

**Line 13 - Group Residential Services for People with Brain Injuries.** Enter the taxable amount of Residential Services for People with Brain Injuries.

**Line 14 – Total Services.** Enter the total of line 4 thru line 13. This is the total services subject to tax. Line 3 must equal Line 14.

**Line 15 – Total Tax.** Line 14 @ 5%

**Line 16 – Credits.** If there was a prior return that resulted in a credit balance and you received a notice from Maine Revenue Services confirming the credit amount, enter the amount of your credit here.

**Line 17 – Amount Due.** Line 15 minus Line 16. Use Line 18 if result is a credit.

**Line 18 – Credit Due.** When Line 15 minus Line 16 is a credit, enter the amount on here. If you wish this credit to be refunded to you, you must check the box in line 18.

**Make the check or money order payable to the STATE TREASURER. Send your remittance with your return postmarked by the due date printed on the top of the return. Please record your registration number on your check. Failure to file a return on or before the due date will result in interest and penalty charges. Billings will be issued shortly after the processing of your return.**

**Please mail your return with payment to Maine Revenue Services, Sales, Fuel & Special Tax Division, PO Box 1065, Augusta, ME 04332-1065. Questions? Call 624-9693.**

**Keep a copy of the return for your records.**





**Maine Revenue Services**  
**Use Tax Return**  
 See instructions on Reverse Side of Taxpayer Copy



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\*1102700\*

Registration No.

Business Code

Period Begin

Period End

Due Date

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1. Entity Information

**SAMPLE COPY - NOT FOR USE**

2.	<input type="checkbox"/>	OUT OF BUSINESS? Date closed: _____
3.	<input type="checkbox"/>	OWNERSHIP OR NAME CHANGE? Date _____
Explanation _____		
4.	<input type="checkbox"/>	SOLD? Date _____

**SAMPLE COPY - NOT FOR USE**

ADDRESS CHANGE?: Check here and make the appropriate changes to the preprinted address.

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<b>Use Tax</b>	Industrial Energy Purchases 1. _____	Tax @ 5.5%	1A. _____
	Other Taxable Purchases 2. _____	Tax @ 5.5%	2A. _____
<b>Recycling Fees</b>	Tires and Lead-Acid Batteries 3. _____	Fees @ \$1	3A. _____
<b>Total Due</b>	Total Tax and Fees Due with this Return	Add lines 1A through 3A.	4. _____
<b>Credits</b>	Credit Carry Forward From Prior Period		5. _____
<b>Amount Due</b>	Line 4 minus line 5. Use line 7 if the result is a credit amount.		6. _____
<b>Credit Due</b>	If line 4 minus line 5 is a credit amount, enter the amount to the right. If you wish a refund rather than a carry forward to the next period, check here <input type="checkbox"/>		7. _____

Signature/Title

Print Name

Date

Phone #

## Specific Instructions for the Use Tax Return

**Note:** It is not necessary to file this return for periods in which no tax is due.

**Line 1 - Industrial Energy Purchases.** Enter 5% of your purchases of fuel and electricity used at a manufacturing site on which the Maine sales tax or its equivalent has not been paid. Multiply this amount by 5.5% and enter the result in line 1A.

**Line 2 - Other Taxable Purchases.** Enter the amount of taxable purchases, other than fuel and electricity reported in line 1, on which Maine sales tax or its equivalent has not been paid. This includes items that were withdrawn from inventory for use by the business, items purchased in a non-taxing jurisdiction for use in Maine, and items that were purchased with a Maine Resale Certificate that have been deemed taxable. Multiply this amount by 5.5% and enter the result on line 2A.

**Line 3 - Tires and Lead-Acid Batteries.** Enter the total number of tires and lead-acid batteries purchased during this period that are subject to the recycling assistance fee. Multiply this amount by \$1.00 and enter the result on line 3A.

**Line 4 - Total Due.** Total lines 1A through 3A.

**Line 5 - Credit Carry Forward from Prior Period.** If your prior return resulted in a credit balance and you have received a notice from Maine Revenue Services confirming this credit, enter the amount of your credit here.

**Line 6 - Amount Due.** Subtract line 5 from line 4. (If the result is a credit amount, see line 7.)

**Line 7 - Credit Due.** If the result of subtracting line 5 from line 4 is a credit, enter that amount here. This credit will automatically be forwarded to the next open period. If you wish this credit to be refunded to you, you must check the box in line 7.

Make check or money order payable to the STATE TREASURER. Send your remittance with your return postmarked by the due date printed on the top of the return to Maine Revenue Services, PO Box 1065, Augusta, Maine 04332-1065. Please record your registration number on your check. Failure to file a return on or before the due date will result in interest and penalty charges. Billings will be issued shortly after the processing of your return. Please contact 207-624-9693 if you have questions.

**Keep copy of return for taxpayer records**



# UNIFORM SALES & USE TAX EXEMPTION/RESALE CERTIFICATE—MULTIJURISDICTION

The below-listed states have indicated that this form of certificate is acceptable as a resale/exemption certificate for sales and use tax, subject to the notes on pages 2-4. The issuer and the recipient have the responsibility to determine the proper use of this certificate under applicable laws in each state, as these may change from time to time.

Issued to Seller: \_\_\_\_\_

Address: \_\_\_\_\_

I certify that:

Name of Firm (Buyer): \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

is engaged as a registered

Wholesaler

Retailer

Manufacturer

Seller (California)

Lessor (see notes on pages 2-4)

Other (Specify) \_\_\_\_\_

and is registered with the below listed states and cities within which your firm would deliver purchases to us and that any such purchases are for wholesale, resale, ingredients or components of a new product or service<sup>1</sup> to be resold, leased, or rented in the normal course of business. We are in the business of wholesaling, retailing, manufacturing, leasing (renting), selling (California) the following:

Description of Business: \_\_\_\_\_

General description of tangible property or taxable services to be purchased from the Seller: \_\_\_\_\_

State	State Registration, Seller's Permit, or ID Number of Purchaser	State	State Registration, Seller's Permit, or ID Number of Purchaser
AL <sup>1</sup>	_____	MO <sup>16</sup>	_____
AR	_____	NE <sup>17</sup>	_____
AZ <sup>2</sup>	_____	NV	_____
CA <sup>3</sup>	_____	NJ	_____
CO <sup>4</sup>	_____	NM <sup>4,18</sup>	_____
CT <sup>5</sup>	_____	NC <sup>19</sup>	_____
DC <sup>6</sup>	_____	ND	_____
FL <sup>7</sup>	_____	OH <sup>20</sup>	_____
GA <sup>8</sup>	_____	OK <sup>21</sup>	_____
HI <sup>4,9</sup>	_____	PA <sup>22</sup>	_____
ID	_____	RI <sup>23</sup>	_____
IL <sup>4,10</sup>	_____	SC	_____
IA	_____	SD <sup>24</sup>	_____
KS	_____	TN	_____
KY <sup>11</sup>	_____	TX <sup>25</sup>	_____
ME <sup>12</sup>	_____	UT	_____
MD <sup>13</sup>	_____	VT	_____
MI <sup>14</sup>	_____	WA <sup>26</sup>	_____
MN <sup>15</sup>	_____	WI <sup>27</sup>	_____

I further certify that if any property or service so purchased tax free is used or consumed as to make it subject to a Sales or Use Tax we will pay the tax due directly to the proper taxing authority when state law so provides or inform the Seller for added tax billing. This certificate shall be a part of each order which we may hereafter give to you, unless otherwise specified, and shall be valid until canceled by us in writing or revoked by the city or state.

Under penalties of perjury, I swear or affirm that the information on this form is true and correct as to every material matter.

Authorized Signature: \_\_\_\_\_  
(Owner, Partner or Corporate Officer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## INSTRUCTIONS REGARDING UNIFORM SALES & USE TAX CERTIFICATE

To Seller's Customers:

In order to comply with most state and local sales tax law requirements, the Seller must have in its files a properly executed exemption certificate from all of its customers (Buyers) who claim a sales/use tax exemption. If the Seller does not have this certificate, it is obliged to collect the tax for the state in which the property or service is delivered.

If the Buyer is entitled to a sales tax exemption, the Buyer should complete the certificate and send it to the Seller at its earliest convenience. If the Buyer purchases tax free for a reason for which this form does not provide, the Buyer should send the Seller its special certificate or statement.

Caution to Seller:

In order for the certificate to be accepted in good faith by the Seller, Seller must exercise care that the property or service being sold is of a type normally sold wholesale, resold, leased, rented, or incorporated as an ingredient or component of a product manufactured by Buyer and then resold in the usual course of its business. A Seller failing to exercise care could be held liable for the sales tax due in some states or cities. Misuse of this certificate by Seller, lessee, or the representative thereof may be punishable by fine, imprisonment, or loss of right to issue a certificate in some states or cities.

Notes:

1. Alabama: Each retailer shall be responsible for determining the validity of a purchaser's claim for exemption.
2. Arizona: This certificate may be used only when making purchases of tangible personal property for resale in the ordinary course of business, and not for any other statutory deduction or exemption. It is valid as a resale certificate only if it contains the purchaser's name, address, signature, and Arizona transaction privilege tax (or other state sales tax) license number, as required by Arizona Revised Statutes § 42-5022, *Burden of proving sales not at retail*.
3. California:
  - a) This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to the provisions of Title 18, California Code of Regulations, Section 1668 (Sales and Use Tax Regulation 1668, Resale Certificate).
  - b) By use of this certificate, the purchaser certifies that the property is purchased for resale in the regular course of business in the form of tangible personal property, which includes property incorporated as an ingredient or component of an item manufactured for resale in the regular course of business.
  - c) When the applicable tax would be sales tax, it is the Seller who owes that tax unless the Seller takes a timely and valid resale certificate in good faith.
  - d) A valid resale certificate is effective until the issuer revokes the certificate.
4. Colorado, Hawaii, Illinois, and New Mexico: these states do not permit the use of this certificate to claim a resale exemption for the purchase of a taxable service for resale.
5. Connecticut: This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to Conn. Gen. State §§12-410(5) and 12-411(14) and regulations and administrative pronouncements pertaining to resale certificates.
6. District of Columbia: This certificate is not valid as an exemption certificate. It is not valid as a resale certificate unless it contains the purchaser's D.C. sales and use tax registration number.
7. Florida: The Department of Revenue no longer accepts out-of-state sales tax exemption certificates.
8. Georgia: The purchaser's state-of-registration number will be accepted in lieu of Georgia's registration number when the purchaser is located outside Georgia, does not have nexus with Georgia, and the tangible personal property is delivered by drop shipment to the purchaser's customer located in Georgia.

9. Hawaii: allows this certificate to be used by the seller to claim a lower general excise tax rate or no general excise tax, rather than the buyer claiming an exemption. The no-tax situation occurs when the purchaser of imported goods certifies to the seller, who originally imported the goods into Hawaii, that the purchaser will resell the imported goods at wholesale. If the lower rate or no-tax does not in fact apply to the sale, the purchaser is liable to pay the seller the additional tax imposed. See Hawaii Dept. of Taxation Tax Information Release No. 93-5, November 10, 1993, and Tax Information Release No. 98-8, October 30, 1998..
10. Illinois: Use of this certificate in Illinois is subject to the provisions of 86 Ill. Adm. Code Ch.I, Sec. 130.1405. Illinois does not have an exemption for sales of property for subsequent lease or rental, nor does the use of this certificate for claiming resale purchases of services have any application in Illinois.

The registration number to be supplied next to Illinois on page 1 of this certificate must be the Illinois registration or resale number; no other state's registration number is acceptable.

“Good faith” is not the standard of care to be exercised by a retailer in Illinois. A retailer in Illinois is not required to determine whether the purchaser actually intends to resell the item. Instead, a retailer must confirm that the purchaser has a valid registration or resale number at the time of purchase. If a purchaser fails to provide a certificate of resale at the time of sale in Illinois, the seller must charge the purchaser tax.

While there is no statutory requirement that blanket certificates of resale be renewed at certain intervals, blanket certificates should be updated periodically, and no less frequently than every three years.

11. Kentucky: a) Kentucky does not permit the use of this certificate to claim a resale exclusion for the purchase of a taxable service.
  - b) This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to the provisions of Kentucky Revised Statute 139.270 (Good Faith).
  - c) The use of this certificate by the purchaser constitutes the issuance of a blanket certificate in accordance with Kentucky Administrative Regulation 103 KAR 31:111.
12. Maine: This state does not have an exemption for sales of property for subsequent lease or rental.
13. Maryland: This certificate is not valid as an exemption certificate. However, vendors may accept resale certificates that bear the exemption number issued to a religious organization. Exemption certifications issued to religious organizations consist of 8 digits, the first two of which are always “29”. Maryland registration, exemption, and direct pay numbers may be verified on the website of the Comptroller of the Treasury at [www.marylandtaxes.com](http://www.marylandtaxes.com).
14. Michigan: This certificate is effective for a period of four years unless a lesser period is mutually agreed to and stated on this certificate. It covers all exempt transfers when accepted by the seller in “good faith” as defined by Michigan statute.
15. Minnesota: a) Minnesota does not allow a resale certificate for purchases of taxable services for resale in most situations.
  - b) Minnesota allows an exemption for items used only once during production and not used again.
16. Missouri: a) Purchasers who improperly purchase property or services sales-tax free using this certificate may be required to pay the tax, interest, additions to tax, or penalty.
  - b) Even if property is delivered outside Missouri, facts and circumstances may subject it to Missouri tax, contrary to the second sentence of the first paragraph of the above instructions.
17. Nebraska: A blanket certificate is valid for 3 years from the date of issuance.
18. New Mexico: For transactions occurring on or after July 1, 1998, New Mexico will accept this certificate in lieu of a New Mexico nontaxable transaction certificate and as evidence of the deductibility of a sale of tangible personal property provided:
  - a) this certificate was not issued by the State of New Mexico;
  - b) the buyer is not required to be registered in New Mexico; and
  - c) the buyer is purchasing tangible personal property for resale or incorporation as an ingredient or component of a manufactured product.
19. North Carolina: This certificate is not valid as an exemption certificate if signed by a person such as a contractor who intends to use the property. Its use is subject to G.S. 105-164.28 and any administrative rules or directives pertaining to resale certificates.

20. Ohio: a) The buyer must specify which one of the reasons for exemption on the certificate applies. This may be done by circling or underlining the appropriate reason or writing it on the form above the state registration section. Failure to specify the exemption reason will, on audit, result in disallowance of the certificate.
- b) In order to be valid, the buyer must sign and deliver the certificate to the seller before or during the period for filing the return.
21. Oklahoma: Oklahoma would allow this certificate in lieu of a copy of the purchaser's sales tax permit as one of the elements of "properly completed documents" which is one of the three requirements which must be met prior to the vendor being relieved of liability. The other two requirements are that the vendor must have the certificate in his possession at the time the sale is made and must accept the documentation in good faith. The specific documentation required under OAC 710-:65-7-6 is:
- a) Sales tax permit information may consist of:
    - (i) A copy of the purchaser's sales tax permit; or
    - (ii) In lieu of a copy of the permit, obtain the following:
      - \* Sales tax permit number; and
      - \* The name and address of the purchaser;
  - b) A statement that the purchaser is engaged in the business of reselling the articles purchased;
  - c) A statement that the articles purchased are purchased for resale;
  - d) The signature of the purchaser or a person authorized to legally bind the purchaser; and
  - e) Certification on the face of the invoice, bill, or sales slip, or on separate letter, that said purchaser is engaged in reselling the articles purchased.
- Absent strict compliance with these requirements, Oklahoma holds a seller liable for sales tax due on sales where the claimed exemption is found to be invalid, for whatever reason, unless the Tax Commission determines that purchaser should be pursued for collection of the tax resulting from improper presentation of a certificate.
22. Pennsylvania: This certificate is not valid as an exemption certificate. It is valid as a resale certificate only if it contains the purchaser's Pennsylvania Sales and Use Tax eight-digit license number, subject to the provisions of 61 PA Code §32.3.
23. Rhode Island: Rhode Island allows this certificate to be used to claim a resale exemption only when the item will be resold in the same form. It does not permit this certificate to be used to claim any other type of exemption.
24. South Dakota: Services which are purchased by a service provider and delivered to a current customer in conjunction with the services contracted to be provided to the customer are claimed to be for resale. Receipts from the sale of a service for resale by the purchaser are not subject to sales tax if the purchaser furnishes a resale certificate which the seller accepts in good faith. In order for the transaction to be a sale for resale, the following conditions must be present:
- (a) The service is purchased for or on behalf of a current customer;
  - (b) The purchaser of the service does not use the service in any manner; and
  - (c) The service is delivered or resold to the customer without any alteration or change.
25. Texas: Items purchased for resale must be for resale within the geographical limits of the United States, its territories, and possessions.
26. Washington: a) Blanket resale certificates must be renewed at intervals not to exceed four years;
- b) This certificate may be used to document exempt sales of "chemicals to be used in processing an article to be produced for sale."
  - c) Buyer acknowledges that the misuse of the tax due, in addition to the tax, interest, and any other penalties imposed by law.
27. Wisconsin: Wisconsin allows this certificate to be used to claim a resale exemption only. It does not permit this certificate to be used to claim any other type of exemption.



**MAINE REVENUE SERVICES**  
**SALES, FUEL & SPECIAL TAX DIVISION**

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**Resale Certificate for Packaging Materials**

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I hereby certify that I am engaged in the business of \_\_\_\_\_  
and; that the packaging materials which I shall purchase from \_\_\_\_\_  
will be used by me:

- For packing or packaging **and** shipping or transporting tangible personal property
  
- For use in packing, packaging or shipping tangible personal property sold by me
  
- For use in packing, packaging or shipping tangible personal property on which I have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning

**Description of property to be purchased:**

---

Purchaser \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Signature \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ST-A-120

9/28/11



# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

## INDUSTRIAL USERS BLANKET CERTIFICATE OF EXEMPTION

For purchases of Tangible Personal Property for Use in Production  
Under Sections 1760(9-D), (29), (30), (31), (32), and (74) of the Maine Sales and Use Tax Law.

I hereby certify that the Purchaser listed below holds valid Seller's Registration Certificate No. \_\_\_\_\_, issued pursuant to the Sales and Use Tax Law, is engaged in the production of \_\_\_\_\_, and that tangible personal property to be purchased from \_\_\_\_\_ is exempt for the reason(s) indicated below:

- [ ]a. To become an ingredient or component part of tangible personal property either in the production of tangible personal property for later sale or lease, other than lease for use in this State, or in the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof. § 1760(74)
- [ ]b. To be consumed or destroyed or to lose its identity directly and primarily either in the production of tangible personal property for later sale or lease, other than lease for use in this State, or in the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof. § 1760(74)
- [ ]c. Constitutes machinery and equipment, or repair or replacement parts, to be used by me directly and primarily in either the production of tangible personal property for sale or lease, the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof or in the generation of radio and television broadcast signals by broadcast stations regulated under 47 Code of Federal Regulations, Part 73. § 1760(31)
- [ ]d. Constitutes machinery and equipment, or repair or replacement parts, to be used by me directly and exclusively in research and development in the experimental and laboratory sense or machinery, equipment, instruments and supplies to be used by me directly and primarily in biotechnology applications. § 1760(32)
- [ ]e. Is fuel or electricity for use at a manufacturing facility (95% of the sale price is exempt)  
Meter/Account Number(s) \_\_\_\_\_ § 1760(9-D)
- [ ]f. To be used as part of or for the construction, repair or maintenance of a water or air pollution control facility, certified as such by the Commissioner of the Department of Environmental Protection. § 1760(29)-(30)

On behalf of the Purchaser listed below, I further certify that the Purchaser assumes full liability for payment to the State of Maine of any use taxes, together with penalties and interest, that may later be determined to be due on any purchases covered by this certificate because of a taxable use of the property.

\_\_\_\_\_  
NAME OF PURCHASER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**NOTICE TO RETAILERS:** Retailers making exempt sales covered by this certificate must appropriately mark or stamp all invoices to indicate they are exempt sales. For items a through d and f above, the words "Maine Sales Tax Exempt" will satisfy this requirement. For item e above, the words "Fuel/electricity used at a manufacturing facility" will satisfy this requirement.

The certificate may also be used for occasional exempt purchases rather than blanket use by filling out as far as applicable, striking out the word "Blanket" and listing on the reverse side the date of order and the quantity and description of the tangible personal property ordered; or by incorporating the purchase order by reference to this certificate, as by listing date and order number.

ST-A-117



# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

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## AFFIDAVIT OF EXEMPTION

For purchases of electricity or depreciable machinery or equipment for use in commercial agricultural production, commercial fishing or commercial aquacultural production, and fuel used in a commercial fishing vessel pursuant to Section 2013 of the Maine Sales and Use Tax Law.

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I hereby certify that I hold a valid exemption certificate, No. \_\_\_\_\_, issued pursuant to Section 2013 of the Sales and Use Tax Law, that I am engaged in commercial agricultural production of \_\_\_\_\_ or in the commercial fishing of \_\_\_\_\_ or commercial aquacultural production of \_\_\_\_\_ and that the electricity or depreciable machinery or equipment or fuel to be purchased from \_\_\_\_\_ is exempt for the reason(s) indicated below:

- ( ) a. Depreciable machinery or equipment used directly and primarily in commercial agricultural production;
- ( ) b. Depreciable machinery or equipment used directly and primarily in commercial fishing;
- ( ) c. Depreciable machinery or equipment used directly and primarily in commercial aquacultural production;
- ( ) d. Repair parts for depreciable machinery or equipment qualifying for exemption under (a) (b) or (c) above.
- ( ) e. Electricity for use in commercial agriculture, commercial fishing or commercial aquaculture.  
Utility Account No. \_\_\_\_\_
- ( ) f. Fuel purchased for use in a commercial fishing vessel.

I also certify that the depreciable machinery or equipment purchased through this affidavit will be used by me directly and primarily in commercial agricultural production, commercial fishing or commercial aqua-cultural production and is 100% depreciable for Federal Income Tax purposes; or that the electricity purchased will be used in qualifying activities or support operations; or that the fuel will only be used in a commercial fishing vessel.

I further certify that I assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.

\_\_\_\_\_  
Name of Individual or Corporation

\_\_\_\_\_  
Business Name (if different)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SEE NEXT PAGE FOR ADDITIONAL INFORMATION**

## GENERAL RESTRICTIONS FOR USE OF THIS AFFIDAVIT OF EXEMPTION

This affidavit is to be retained in the records of the seller to document the qualification of exemption of any sale claimed exempt under 36 M.R.S.A. § 2013(3). **It must be accompanied by a copy of the purchaser's Certificate of Exemption issued by Maine Revenue Services, valid at the time of sale.** A copy of the Certificate and Affidavit need to be obtained by the seller on each subsequent purchase. However, if the purchaser indicates that a certain purchase is exempt pursuant to this affidavit, the invoice must be appropriately marked to indicate the exempt sale. The words "Commercial Agricultural Exemption", "Commercial Fishing Exemption" or "Commercial Aquacultural Exemption" will satisfy this requirement.

This affidavit must be taken in good faith by the seller. The good faith of the seller will be questioned if the seller knows, or has reason to know, that the person making the purchase is not the holder of the Certificate of Exemption, or that the machinery or equipment purchased will not be used by the purchaser directly and primarily in commercial agricultural production, commercial fishing or commercial aquacultural production or that the electricity purchased will not be used by the purchaser for qualifying activities or support operations.

This affidavit is valid for purchases of depreciable machinery or equipment, including repair parts for qualifying machinery or equipment, used directly and primarily in commercial agricultural production, commercial fishing or commercial aquacultural production and fuel purchased on or after October 1, 2011 for a commercial fishing vessel. In addition the affidavit should be used when purchasing electricity for commercial agricultural production, commercial fishing, and commercial aquacultural production. This affidavit is not to be used for the purchase of the following items:

- (1) Machinery or equipment not 100% depreciable for Federal Income Tax purposes.
- (2) Items not commonly used in commercial agricultural production, commercial fishing or commercial aquacultural production, such as lawn and garden tractors, fork lift trucks, lag tractors, backhoe tractors, computers etc.
- (3) Motor vehicles including all terrain vehicles (ATVs) and snowmobiles.
- (4) Attachments for motor vehicles such as fertilizer bodies and potato bulk bodies.
- (5) Trailers.
- (6) Materials to be incorporated into real property such as building materials, heating systems and ventilating systems.
- (7) Silos.

### Misuse of Affidavit of Exemption

Purchasers who avoid payment of tax through deliberate misuse of this affidavit of exemption will be subject to prosecution.

### Additional Information

Please refer to Sales/Excise Tax Section Instruction Bulletin No. 45 (Commercial Agricultural Production), Bulletin No. 44 (Commercial Fishing) or Bulletin No. 49 (Commercial Aquacultural Production) for further details regarding qualifications and requirements. Requests for information on specific situations should be in writing, should contain full information as to the situation in question and should be directed to:

MAINE REVENUE SERVICES  
SALES/EXCISE TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, MAINE 04332-1060  
TEL. NO. (207) 624-9693

Or visit our website at: [www.state.me.us/revenue](http://www.state.me.us/revenue)





# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

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## Certificate of Exemption To Purchase an Automobile, Camper Trailer or Motor Home for Lease or Rental

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I hereby certify that I hold valid Seller's Registration Certificate No. \_\_\_\_\_ issued pursuant to the Maine Sales and Use Tax Law, that I am engaged in the business of renting automobiles for less than a year, leasing automobiles for a year or more, or renting or leasing camper trailers or motor homes, and that I will report the tax based on the lease or rental on my Maine Sales and Use Tax Return. The property described below which I shall purchase from \_\_\_\_\_ will be used for (check one):

- rental of an automobile for less than a year; integral parts or accessories are exempt when used in an automobile which is rented on a short-term basis.
- lease of an automobile for a year or more; integral parts and accessories **are not exempt** when used in an automobile being leased for a year or more.
- rental or lease of a camper trailer or motor home; parts and accessories **are not exempt** when used in a camper trailer or motor home being rented or leased.

When the vehicle described above is used for any other purpose it is understood that I am required by the Maine Sales and Use Tax Law to report and pay tax based on the purchase price of such property.

Description of property: \_\_\_\_\_

Purchaser \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_



# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

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## Contractor's Exempt Purchase Certificate

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I hereby certify:

That I am engaged in the performance of a construction contract for the following exempt organization, activity or government agency:

\_\_\_\_\_

Full name of agency, entity or organization

\_\_\_\_\_

Address of agency, entity or organization

\_\_\_\_\_

Location and nature of project

That the above agency, entity or organization either holds exemption certificate no. \_\_\_\_\_ issued by Maine Revenue Services, Sales, Fuel & Special Tax Division or is to the best of my knowledge and belief exempt from the sales and use tax because it is an agency of the federal government, the State of Maine or a political subdivision of the State of Maine; or involved in an otherwise sales tax exempt activity.

That this certificate is issued to cover purchases of materials that will be permanently incorporated into the real property belonging to the exempt organization, entity or government agency indicated above.

Seller's Certificate Number of contractor, if applicable \_\_\_\_\_

Date \_\_\_\_\_

Contractor's Name \_\_\_\_\_

By \_\_\_\_\_

Address \_\_\_\_\_



# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

## AFFIDAVIT OF EXEMPTION FOR IMMEDIATE REMOVAL

**For a Motor Vehicle (including all-terrain vehicles and snowmobiles),  
Camper trailer (including a slide-in truck camper), Aircraft or Semitrailer  
Sold to a Legal Resident of another State or to a Resident business with fixed locations outside the State**

I certify that this sale is exempt from sales tax, pursuant to 36 MRSA §1760(23-C) of the Maine Sales and Use Tax Law.

Make \_\_\_\_\_ Model \_\_\_\_\_ Year \_\_\_\_\_

VIN \_\_\_\_\_

Date of Sale \_\_\_\_\_ Sale Price \$ \_\_\_\_\_ Trade-in: Type of Vehicle \_\_\_\_\_ \$ \_\_\_\_\_

Purchaser's Name – (please print) last name \_\_\_\_\_ first \_\_\_\_\_ middle \_\_\_\_\_

Purchaser's Address – (please print) street address, PO Box number, etc. \_\_\_\_\_ city \_\_\_\_\_ State \_\_\_\_\_

The purchaser has stated to me at the time of sale that the purchaser is a legal resident of another state or a resident business with fixed locations outside the state and intends to remove the vehicle from Maine immediately upon delivery. If any information available to me indicates otherwise, I have retained evidence in addition to this affidavit which indicates that the purchaser has established legal residence in another state, such as records of permanent home, employment, tax registrations, federal identification number or driver's license from another state.

I declare under the penalties of perjury that all statements made by me herein are true, to the best of my knowledge and belief, and hereby authorize Maine Revenue Services to furnish a copy of this affidavit to the state which the purchaser declares herein to be their residence and/or to the state to which the vehicle is being removed.

Dealer's Name \_\_\_\_\_ Sales Tax # \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_ I am a non-resident

I \* \_\_\_\_\_ hereby certify that my legal residence\*\* or commercial domicile is in the state of \_\_\_\_\_ and that I will remove the vehicle to the state of \_\_\_\_\_ immediately upon delivery.

I do not claim Maine residency on any current income tax returns, homestead property exemptions or licenses; to verify this my social security number or EIN is \_\_\_\_\_ and my date of birth or date of incorporation is \_\_\_\_\_.

\_\_\_\_ I am a resident business

I hereby certify that I am organized under the laws of the State of Maine with EIN \_\_\_\_\_ or have my principle place of business in the State of Maine and that I also conduct business activity from a fixed location or locations outside this state. The address of the sole or primary fixed business location outside of Maine is \_\_\_\_\_.

I will remove the vehicle to the state of \_\_\_\_\_ immediately upon delivery and will use the vehicle exclusively in business activities outside of the State of Maine.

I make this statement to allow the sale of the above described vehicle to me without payment of the Maine sales tax, otherwise applicable. If I register the vehicle in Maine within 12 months of the date of purchase (or in the case of a resident business, I use the vehicle in Maine within 12 months of purchase), I will pay the Maine use tax at the time of registration based on the original purchase price. I declare under the penalties of perjury that the statements made herein are true to the best of my knowledge and belief and hereby authorize Maine Revenue Services to furnish a copy of this affidavit to the state of my legal residence and/or to the state to which the vehicle is being removed.

\_\_\_\_\_  
Signature of Purchaser \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

\* Name of Business, if other than an individual

\*\* An individual's fixed permanent home (domicile)

Enclose affidavit with the Maine Sales and Use Tax Return, and the Dealer's and Lessor's Supplemental Report



# MAINE REVENUE SERVICES

## SALES, FUEL & SPECIAL TAX DIVISION

### AFFIDAVIT OF EXEMPTION

#### Watercraft and/or Materials Incorporated in Watercraft when Sold to a Resident of Another State

(check one box)    Sale of Watercraft                     Repairs to Watercraft

I certify this sale is exempt or partially exempt from sales tax pursuant to 36 MRSA §1760(25) of the Maine Sales and Use Tax Law.

Make \_\_\_\_\_ Model \_\_\_\_\_ Year \_\_\_\_\_ VIN \_\_\_\_\_

Date of Sale \_\_\_\_\_ Sale Price \$ \_\_\_\_\_ Trade-in: Model \_\_\_\_\_ \$ \_\_\_\_\_

Purchaser's Name – (please print) last name \_\_\_\_\_ first \_\_\_\_\_ middle \_\_\_\_\_

Purchaser's Address – (please print) street address, PO Box number, etc. \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

The purchaser has stated to me at the time of sale that the purchaser is a legal resident of another state, and (check one box)  
 I will remove the watercraft from Maine within 30 days of delivery thus qualifying for 100% exemption or  
 I will keep the watercraft in Maine (for a purpose other than temporary storage) for more than 30 days during the 12-month period following the date of sale listed above thus qualifying for 60% exemption.

If any information available to me indicates that the purchaser may be a Maine resident, I have retained evidence in addition to this affidavit that indicates that the purchaser has established legal residence in another state, such as records of permanent home, employment, tax registrations, federal identification number or driver's license from another state.

I declare under the penalties of perjury that all statements made by me herein are true, to the best of my knowledge and belief, and hereby authorize Maine Revenue Services to furnish a copy of this affidavit to the state that the purchaser declares herein to be the purchaser's residence and/or to the state to which the vehicle is being removed.

Dealer's Name \_\_\_\_\_ Sales Tax # \_\_\_\_\_ Signature \_\_\_\_\_

I\*, \_\_\_\_\_, hereby certify that my legal residence\*\* or state of incorporation is in the state of \_\_\_\_\_, and that: (check one box)

- I will remove the watercraft to the state of \_\_\_\_\_ within 30 days of delivery to me or
- I will keep the watercraft in Maine for more than 30 days during the 12-month period following the date of sale listed above.

I do not claim Maine residency on any current income tax returns, homestead property tax exemptions, or licenses; to verify this, my Social Security Number or EIN is \_\_\_\_\_, and my date of birth or date of incorporation is \_\_\_\_\_.

If I have indicated above that I will remove the watercraft from Maine within 30 days of delivery, I make this statement to allow the sale to me of the above-described watercraft and/or of any materials incorporated into the watercraft by the above named seller without payment of the Maine sales tax. If the watercraft is subsequently present in Maine (for a purpose other than temporary storage) for more than 30 days during the 12-month period following its purchase, or is registered in Maine without also being registered in another state, or is documented with the U.S. Coast Guard with a location in Maine within 12 months of its purchase, I will make payment of use tax to the State of Maine based on 40% of the original purchase price. I declare under the penalties of perjury that the statements made herein are true to the best of my knowledge and belief and hereby authorize Maine Revenue Services to furnish a copy of this affidavit to the state of my legal residence and/or to the state to which the watercraft is being removed.

Signature of Purchaser \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

\*Name of Business, if other than an individual  
\*\*One's fixed permanent home or state of "domicile"



# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

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## AFFIDAVIT OF EXEMPTION (To support out-of-state delivery)

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The undersigned hereby certifies that the item described below is sold exempt from Maine sales tax because it was delivered to the purchaser outside the State of Maine by contract or common carrier or by the seller.

Type of Property \_\_\_\_\_

mobile home, motor vehicle, boat, etc.

Make \_\_\_\_\_ Year \_\_\_\_\_ Model No. \_\_\_\_\_

Serial No. \_\_\_\_\_ Sales Price \$ \_\_\_\_\_ Trade in \$ \_\_\_\_\_

Date of Sale \_\_\_\_\_ Date of Delivery \_\_\_\_\_

The property described above was delivered to: Name of Purchaser \_\_\_\_\_

Legal Address of Purchaser \_\_\_\_\_

Street

City

State

Place of Delivery \* \_\_\_\_\_

Street

City

State

I hereby authorize Maine Revenue Services to furnish a copy of this affidavit to the state in which the purchaser declares herein as his legal address and/or to the state in which delivery was made.

Name of Seller \_\_\_\_\_ Sales Tax Cert. No. \_\_\_\_\_

Address \_\_\_\_\_

Signature of Seller \_\_\_\_\_

Signature of Person Making Delivery \_\_\_\_\_

The person shown above as seller or making delivery \_\_\_\_\_

Name of person

personally came to me, who being duly sworn, did depose and say that the statements contained herein are true and correct.

Signed: \_\_\_\_\_

Justice of the Peace-Notary Public

Date: \_\_\_\_\_

My commission expires: \_\_\_\_\_

INSTRUCTIONS: This form, when completed, is to be forwarded by the dealer to the Sales Tax Section with the dealer's monthly sales tax report on which this sale is claimed to be exempt.

\*If delivery was by common or contract carrier employed by dealer, or was delivered directly from the factory to a point outside Maine by someone other than the dealer, please explain manner of delivery, giving name and address of delivery carrier, on back of this sheet. In such cases the dealer should retain in his files documentary evidence of such delivery.



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

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## Affidavit for Out of State Use of Promotional Materials

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The undersigned hereby certifies that the advertising or promotional materials printed on paper, being purchased from \_\_\_\_\_ are being purchased, in whole or in part, solely for subsequent use outside the State of Maine. In the event that the property is used for any purpose other than solely outside the State of Maine, it is understood that the undersigned is required by Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property.

If only a portion of the materials being purchased qualify for exemption under the above provision, it is certified that \_\_\_\_\_\* of the materials will be solely for subsequent use outside the State of Maine. The undersigned will pay the appropriate Maine State Sales Tax on the remaining taxable portion of the transaction directly to the vendor listed above.

Purchaser \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

\*This blank must be completed with a specific quantity, percentage or dollar value

ST-A-118

12/20/99



# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

## INTERSTATE COMMERCE EXEMPTION AFFIDAVIT For purchasers & retailers of vehicles, railroad rolling stock, aircraft & watercraft

**INSTRUCTIONS TO RETAILER:** This form requires the signature of both the retailer (Part A) and purchaser (Part B on page 2). It is very important that the retailer understand the qualifications for this exemption as indicated on page 2 so as not to misinform the purchaser. This form, when completed, is to be forwarded by the retailer with the monthly sales tax report on which the sale is claimed to be exempt. A copy of this affidavit should also be provided to the purchaser.

### PART A – STATEMENT BY RETAILER

The undersigned hereby certifies that the vehicle described below is sold exempt from the Maine sales and use tax as an instrumentality of interstate or foreign commerce in accordance with 36 MRSA, Section 1760, subsection 41.

( ) Motor Vehicle     ( ) Trailer     ( ) Railroad Rolling Stock     ( ) Aircraft     ( ) Watercraft

Make \_\_\_\_\_ Year \_\_\_\_\_ Model No. \_\_\_\_\_ V.I.N. \_\_\_\_\_

The property checked above was purchased from \_\_\_\_\_ of \_\_\_\_\_  
Name of seller Street Address

\_\_\_\_\_ , on \_\_\_\_\_  
City State Purchase Date

\_\_\_\_\_  
Purchase Amount Trade-in Credit Net Purchase Amount

**The purchaser stated to me at the time of sale that this property will be placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days (90 days with good cause) after the date of the sale and that it will be used by the purchaser as an instrumentality of interstate or foreign commerce not less than 80% of the time for the next 2 years.**

I declare under the penalties of perjury that all statements made by me herein are true to the best of my knowledge and belief.

Name of Seller \_\_\_\_\_ Sales Tax Registration No. \_\_\_\_\_

Address \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_

(See page 2 for Part B, Statement by Purchaser)

**INSTRUCTIONS TO PURCHASER:** This statement is your certification that you qualify for the exemption mentioned on page 1 of this form. Please read and understand the following requirements of this exemption. Your signature on this affidavit will acknowledge that you have read this form in its entirety.

1. The property must be used by the purchaser in interstate or foreign commerce. **If the purchaser is using the Federal Motor Carrier Safety Administration (FMCSA) Interstate Operating Authority of another person, this exemption does not apply. A lessor of property used by the lessee as an instrumentality of interstate or foreign commerce does not qualify for exemption.**
2. The property must be placed in use in interstate or foreign commerce within 30 days (90 days with good cause) from the date of purchase. Good cause does not exist when the extension is required because of the taxpayer's negligence or failure to make a good faith effort to place the vehicle in interstate or foreign commerce within 30 days.
3. The property must be used not less than 80% of the time in interstate or foreign commerce for two years from the date of purchase.
4. **If the property is withdrawn from interstate or foreign commerce within two years so that it will not be used 80% of the time in interstate or foreign commerce for the 2-year period, the purchaser is required to report and pay the use tax to Maine Revenue Services, based on the original purchase price.**
5. Failure to return this affidavit properly completed will subject the purchaser to the Maine use tax. Purchasers who avoid payment of tax through deliberate misuse of the exemption certificate may be subject to prosecution.
6. The use of this vehicle is subject to audit by Maine Revenue Services. The audit would be to review the records of the owner with regard to the eligibility for exemption. The owner must maintain adequate records so that an accurate review is possible. Unless the owner is able to adequately document the claim for exemption, use tax along with appropriate interest and penalties will be assessed.

**PART B – STATEMENT BY PURCHASER**

\_\_\_\_\_  
Name of Owner (Individual, Partners' Names, or Corporate Name) Telephone No.

Business Address \_\_\_\_\_  
Street City State

I hereby certify that I will place in use, as an instrumentality of interstate or foreign commerce, the above-described property within 30 days (90 days with good cause) from the date of purchase, and that I will use it not less than 80% of the time as an instrumentality of interstate or foreign commerce for the next 2 years.

I understand that I make this statement to allow the purchase in Maine of the above-described property without payment of the Maine sales tax otherwise applicable, and I declare under the penalties of perjury that these statements are true to the best of my knowledge and belief.

I further certify that, if I do not use this property as an instrumentality of interstate or foreign commerce within 30 days (90 days with good cause) and for not less than 80% of the time for the next two years, I assume full responsibility for reporting and paying use tax to Maine Revenue Services, based on the original purchase price of the property.

Please check applicable statement:

- FMCSA Interstate Operating Authority No. \_\_\_\_\_ has been issued to me.
- I only haul \_\_\_\_\_ which are exempt from FMCSA licensing requirements.
- I only haul \_\_\_\_\_ which are products sold by me in my business.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Purchaser  
Title \_\_\_\_\_  
(Owner, Partner, or Officer of Corporation)





**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION**

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**AFFIDAVIT REGARDING PURCHASES OF ELECTRICITY  
DEPRECIABLE MACHINERY OR EQUIPMENT AND REPAIR PARTS  
USED IN COMMERCIAL WOOD HARVESTING**

---

I hereby certify that I hold a valid exemption certificate No. \_\_\_\_\_, and further certify under penalty of perjury that the purchases listed below will be used directly and primarily in commercial wood harvesting.

*See reverse side for definitions of qualifying activities and equipment.*

The purchases made in connection with the Affidavit are:

- a. Depreciable machinery and equipment used directly and primarily in commercial wood harvesting.
- b. Repair parts for machinery and equipment used directly and primarily in commercial wood harvesting.
- c. Electricity

**I declare these purchases are exempt from Maine sales and use tax under 36 MRSA §2013. I understand that I assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.**

_____ NAME OF PURCHASER	_____ BUSINESS NAME, IF DIFFERENT		
_____ ADDRESS	_____ CITY	_____ STATE	_____ ZIP
_____ SIGNATURE	_____ TITLE	_____ DATE	

Misuse of Affidavit of Exemption

Purchasers who avoid payment of tax through deliberate misuse of this affidavit of exemption will be subject to prosecution.

**This Affidavit is not valid for purchases made before July 1, 2013**

This affidavit is to be retained in the records of the seller to document the qualification of exemption of any sale claimed exempt under 36 M.R.S.A. § 2013(4). It must be accompanied by a copy of the purchaser's Certificate of Exemption issued by Maine Revenue Services, valid at the time of sale. A copy of the Certificate and Affidavit need not be obtained by the seller on each subsequent purchase. However, if the purchaser indicates that a certain purchase is exempt pursuant to this affidavit, the invoice must be appropriately marked to indicate the exempt sale. The words "Commercial Wood Harvesting" will satisfy this requirement.

This affidavit must be taken in good faith by the seller. The good faith of the seller will be questioned if the seller knows, or has reason to know, that the person making the purchase is not the holder of the Certificate of Exemption, or that the machinery or equipment purchased will not be used by the purchaser directly and primarily in commercial wood harvesting or that the electricity purchased will not be used by the purchaser for qualifying activities or support operations.

This affidavit is valid for purchases of depreciable machinery or equipment, including repair parts for qualifying machinery or equipment, used directly and primarily in commercial wood harvesting purchased on or after July 1, 2013. In addition the affidavit should be used when purchasing electricity for commercial wood harvesting.

This affidavit is not to be used for the purchase of the following items:

- (1) Machinery or equipment not 100% depreciable for Federal Income Tax purposes.
- (2) Items not commonly used in commercial wood harvesting, such as lawn and garden tractors, fork lift trucks, lag tractors, backhoe tractors, computers etc.
- (3) Motor vehicles including all-terrain vehicles (ATVs) and snowmobiles or attachments for motor vehicles.
- (4) Trailers.
- (5) Materials to be incorporated into real property such as building materials, heating systems and ventilating systems.

Definitions:

“Commercial wood harvesting” means the commercial severance and yarding of trees for sale or for processing into logs, pulpwood, bolt wood, wood chips, stud wood, poles, pilings, biomass or fuel wood or other products commonly known as forest products. 36 MRSA §2013, sub-1.B-1.

“Depreciable machinery and equipment” means, except as otherwise provided by this paragraph, that part of the following machinery and equipment for which depreciation is allowable under the Code and repair parts for that machinery and equipment:

(4) New or used machinery and equipment for use directly and primarily in commercial wood harvesting, including, but not limited to, chain saws, skidders, delimiters, forwarders, slashers, feller bunchers and wood chippers. 36 MRSA §2013, sub-C(4).

“Depreciable machinery and equipment” does not include a motor vehicle as defined in section 1752, subsection 7 or a trailer as defined in section 1752, subsection 19-A.

Additional Information

See Sales Tax Instruction Bulletin No. 58 for further details regarding qualifications and requirements, available on our website at [www.maine.gov/revenue](http://www.maine.gov/revenue).

Requests for information on specific situations should be in writing, should contain full information as to the situation in question and should be directed to:

Maine Revenue Service  
Sales, Fuel and Special Tax Division  
P.O. Box 1060  
Augusta, ME 04332-1060

Assistance is also available by calling (207) 624-9693 weekdays, between the hours of 8AM and 5 PM.



**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
REQUEST FOR SALES TAX REFUND**

**To ensure prompt processing of this application, please fill in all applicable lines and attach all pertinent information.**

Name \_\_\_\_\_ Social Security # \_\_\_\_\_

Address \_\_\_\_\_ Federal ID # \_\_\_\_\_

City/State/Zip \_\_\_\_\_ Contact Person \_\_\_\_\_

Telephone # \_\_\_\_\_

AMOUNT OF REFUND REQUEST \$ \_\_\_\_\_ (Additional information may be required)

**WHAT SHOULD BE INCLUDED WITH THE APPLICATION?**

- 1. If tax was paid to a retailer and not directly to Maine Revenue Services, the refund(s) should be obtained from the retailer. If the retailer refuses to issue the refund, documentation indicating such from the retailer must be included with this application.**
2. Cover letter explaining the reason for the refund request.
3. Proof tax was paid. (copies of invoices, etc.)
4. Any other pertinent information.
5. If the refund is for tax paid on a motor vehicle, boat or other vehicle please send a copy of the registration, including: Year; Make; Model; VIN number; Plate number; Place and Date of registration.

*\* Refunds are disallowed when an application is received more than 3 years after the date of over payment.*

*\* This refund request is considered incomplete until all requested additional information has been timely received.*

*\* Failure to provide additional information could result in a denial of your request.*

I certify under the pains and penalty of perjury that the statements made in this application and any attachments thereto are true, accurate and complete to the best of my knowledge and belief.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Mail Application & Documentation to:  
**Maine Revenue Services  
Sales, Fuel & Special Tax Division  
P.O. Box 1060  
Augusta, ME 04332-1060**



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

## PINE TREE DEVELOPMENT ZONE Application For Refund of Sales or Use Tax

**PLEASE NOTE:** Tangible personal property must be used directly and primarily by net new employees in a qualified business activity. Bulk purchases used by both net new and existing employees must be prorated. Refunds are limited to 3 years from the date of purchase or incorporation into real property owned by a certified Pine Tree Development Zone (PTDZ) business, whichever is later.

Return this application form with a schedule of purchases to:  
Maine Revenue Service, P.O. Box 1060, Augusta, ME 04332-1060

**SECTION 1: (For refund requests by PTDZ business.)**

Name and address of Pine Tree Development Zone business:	PTDZ Certificate # _____
_____	Social Security # _____
_____	Federal ID # _____
_____	Contact Person _____
_____	Telephone # _____
Tax Map Location _____	Amount of Refund Request _____

- This is a refund request for tangible personal property purchased by our PTDZ business and used directly and primarily in our qualifying business activity.
  - The property was used exclusively by net new employees.
  - The property was used by \_\_\_\_\_ net new employees and \_\_\_\_\_ existing employees.

**OR**

- This is a refund request for tangible personal property incorporated into our real property located at \_\_\_\_\_ by a contractor/subcontractor for which the contractor/subcontractor has released their right to claim a refund. *Section 3 must be completed by each contractor or subcontractor assigning its right to claim refund.*

Description of construction project \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By signing below, I certify under the pains and penalty of perjury that the materials on which tax was paid were placed into use directly and primarily in a qualified business activity or were materials incorporated into the real property owned by this certified Pine Tree Development Zone business. The statements made in this application including any attachments are true, accurate and complete to the best of my knowledge and belief.

Signature _____	Date _____
Print Name _____	Title _____

**PINE TREE DEVELOPMENT ZONE**  
**Application For Refund of Sales or Use Tax**

Page 2

**SECTION 2: (For refund requests from a contractor or subcontractor.)**

Name and address of contractor or subcontractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Social Security # \_\_\_\_\_  
Federal ID # \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Telephone # \_\_\_\_\_

Amount of Refund Request \_\_\_\_\_

Name of Pine Tree Development Zone business: \_\_\_\_\_

Pine Tree Development Zone Certificate #: \_\_\_\_\_

Description of construction project \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Location of construction project \_\_\_\_\_  
(Physical address and tax map location)

I understand this refund will be paid directly to the contractor or subcontractor named above. I certify under the pains and penalty of perjury that the materials on which tax was paid were incorporated into real property of the above named Pine Tree Development Zone business at the location described above. The statements made in this application including any attachments are true, accurate and complete to the best of my knowledge and belief.

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

Date \_\_\_\_\_  
Title \_\_\_\_\_

**SECTION 3: CERTIFICATE RELEASING CONTRACTOR'S/SUBCONTRACTOR'S CLAIM**

By this certificate the undersigned irrevocably releases its right to claim and receive reimbursement under 36 MRS § 2016 for sales or use tax paid with respect to tangible personal property which was physically incorporated into the real property owned by or sold to \_\_\_\_\_ ("PTDZ Business"), such real property being located at \_\_\_\_\_.

\_\_\_\_\_  
Authorized Signature of Contractor                      Print Name & Title                      Date



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

## AFFIDAVIT OF EXEMPTION FOR 28 DAY CONTINUOUS RENTAL AT A HOTEL, ROOMING HOUSE, TOURIST, OR TRAILER CAMP

36 MRSA §1760(20) of the Maine Sales and Use Tax Law provides a sales tax exemption for:

*Rental charged to any person who resides continuously for 28 days or more at any one hotel, rooming house, tourist camp or trailer camp if:*

- A. The person does not maintain a primary residence at some other location; or*
- B. The person is residing away from that person's primary residence in connection with employment or education.*

*Tax paid by such a person to the retailer under section 1812 during the initial 28-day period must be refunded by the retailer. If the tax has been reported and paid to the State by the retailer, it may be taken as a credit by the retailer on the return filed by the retailer covering the month in which the refund was made to the tenant.*

### This section to be completed by the tenant

I, \_\_\_\_\_, hereby certify that my primary residence is \_\_\_\_\_ and that my rental of living quarters is exempt from sales tax for the following reason:

**Rental of living quarters constitutes my primary residence** ("Primary residence" means the residence maintained at the location in which the individual is domiciled. "Domicile" is the place where an individual has his or her true, fixed and permanent home, which is typically the location where an individual has the most legal ties, i.e. driver's license, voting registration, vehicle registration, ownership of real property, enrollment of children in school systems, etc.)

Tenant: Please complete the following questionnaire:

My previous address was \_\_\_\_\_

Date that I left previous address \_\_\_\_\_

Current mailing address \_\_\_\_\_

Drivers License Number \_\_\_\_\_ Vehicle Plate Number \_\_\_\_\_

Current Telephone Number \_\_\_\_\_

Social Security Number \_\_\_\_\_ Date of Birth \_\_\_\_\_

**Rental is in connection with Education** ("In connection with education" means in connection with education from an accredited secondary school or college at which the person is enrolled in a diploma or degree program.)

Tenant: Please provide the facility with a statement from the school that you are enrolled in such a program.

### **Rental is in connection with employment**

Tenant: Please provide the facility with a statement from the employer that the travel is necessitated by your employment and the purpose of your employment.

I make this statement to allow the renting of the living quarters to me without payment of the Maine sales tax, otherwise applicable. I declare under the penalties of perjury that the statements made herein are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Tenant Date \_\_\_\_\_

### This section to be completed by the facility

*(Note: Any break in the rental period will result in a new stay. A new affidavit must be completed for each stay that a tenant claims a sales tax exemption.)*

First Day of current rental period (mm/dd/yy) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Tenant states to me at the time of sale that the rental of living quarters at this facility constitutes one of the following:

- Tenant's primary residence       Rental is in connection with Education       Rental is in connection with employment

Tenants Name – (please print)      last name      first      middle \_\_\_\_\_

The tenant has provided documentation, as outlined above, verifying the reason for the exemption from sales tax. I declare under the penalties of perjury that all statements made by me herein are true, to the best of my knowledge and belief.

Signature \_\_\_\_\_ Title \_\_\_\_\_  
(Hotel Employee)



## MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

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### AFFIDAVIT REGARDING LEASE OF AUTOMOBILE FOR SERVICE CUSTOMER

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**Individual Certificate**

I hereby certify that the undersigned new vehicle dealer (“Dealer”) holds a valid Retailer’s Registration Certificate, No. \_\_\_\_\_, issued pursuant to the Maine Sales and Use Tax Law, and that the short-term rental from \_\_\_\_\_ described below is to one of our service customers pursuant to a manufacturer’s or new vehicle dealer’s warranty.

Rental agreement # \_\_\_\_\_  
Rental agreement date \_\_\_\_\_  
Lessee Name \_\_\_\_\_  
Service Order # \_\_\_\_\_

**Blanket Certificate**

I hereby certify that the undersigned new vehicle dealer (“Dealer”) holds a valid Retailer’s Registration Certificate, No. \_\_\_\_\_, issued pursuant to the Maine Sales and Use Tax Law, and that all short-term rentals from \_\_\_\_\_ will be for our service customers pursuant to a manufacturer’s or new vehicle dealer’s warranty.

I further certify that the rental fee in either case will be paid by the Dealer. I understand that the Dealer may be liable for payment to the State of Maine of any rental tax, together with interest and penalties, if the above mentioned rental(s) ultimately does not meet the requirements of the sales tax exemption found in 36 MRSA §1760, sub-§92.

\_\_\_\_\_  
NAME OF DEALER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME AND TITLE



# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

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## AFFIDAVIT REGARDING PURCHASES OF CERTAIN PRODUCTS FOR USE IN COMMERCIAL AGRICULTURAL PRODUCTION, COMMERCIAL FISHING, AQUACULTURAL PRODUCTION AND ANIMAL AGRICULTURE

---

I present this affidavit to \_\_\_\_\_ and certify under penalty of perjury that purchases made by me from this retailer constitute:

- a. Seed, fertilizers, defoliants, pesticides, or weed killers to be used by me in commercial agricultural production. "Commercial agricultural production" means commercial production of crops, plants, trees, compost and livestock.
- b. Bait for commercial fisherman.
- c. Feed, hormones, pesticides, antibiotics or medicine to be used by me in aquacultural production.
- d. Breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides, or litter for use in animal agricultural production, including the raising and keeping of equines.
- e. Organic bedding materials for farm animals.
- f. Antiseptics and cleaning agents to be used by me in commercial animal agricultural production.
- g. Materials to be used in the construction, repair or maintenance of an animal waste storage facility.

**I declare these purchases are exempt from Maine sales and use tax. I agree to assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.**

\_\_\_\_\_  
NAME OF PURCHASER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

NOTICE TO RETAILERS: Retailers making exempt sales covered by this certificate must appropriately mark or stamp all invoices to indicate whether they are exempt sales.

Misuse of Affidavit

Purchasers who avoid payment of tax through deliberate misuse of this affidavit of exemption may be subject to criminal prosecution.



## GENERAL RESTRICTIONS FOR USE OF THIS AFFIDAVIT OF EXEMPT USE

This affidavit is to be retained in the records of the seller to document any sale claimed to be exempt under 36 M.R.S.A. § 1760, sub-§§ (7-A), (7-B), (7-C), (78) and (81). A copy of this affidavit does not need to be obtained by the seller on each subsequent purchase. However, if the purchaser indicates that a certain purchase is believed to be exempt pursuant to this affidavit, the invoice must be appropriately marked to indicate the exempt sale.

This affidavit must be taken in good faith by the seller. The good faith of the seller will be questioned if the seller knows, or has reason to know, that the person making the purchase is not using the products for the intended exempted purpose.

This affidavit is valid only for purchases of the products identified under (a) through (g) on the reverse side. This affidavit may not be used for the tax-free purchase of the following items:

- (1) Machinery, equipment, repair parts and supplies
- (2) Products used in non-commercial agricultural production
- (3) Bait for non-commercial fishermen
- (4) Materials for construction, repair or maintenance of an animal waste storage facility for which a certified nutrient management plan is not in place.

### Additional Information

Please see Sales, Fuel & Special Tax Division Instructional Bulletin No. 45 (Commercial Agricultural Production), Bulletin No. 44 (Commercial Fishing) or Bulletin No. 49 (Commercial Aquacultural Production) for details regarding other exemptions available to commercial farmers and fishermen and Bulletin No. 14 (Seed, Feed, Fertilizer and other Items Used in Agricultural and Aquacultural Production) for details regarding agricultural and aquacultural products in general.

Requests for more information on specific situations should be in writing, contain full details as to the situation in question and should be directed to:

Maine Revenue Services  
Sales Tax Division  
P. O. Box 1060  
Augusta, Maine 04332-1060

Assistance is also available by calling (207) 624-9693 weekdays, between the hours of 8AM and 5 PM.

Visit our website at [www.maine.gov/revenue](http://www.maine.gov/revenue).



**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION**

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**AFFIDAVIT REGARDING PURCHASES OF PARTS & SUPPLIES  
FOR A COMMERCIAL WINDJAMMER**

---

I hereby certify that I hold a valid exemption certificate No. \_\_\_\_\_, and further certify under penalty of perjury that the purchases listed below are parts or supplies to be used directly and primarily for the operation, repair or maintenance of a commercial windjammer that provides overnight passenger cruises along the Maine coast.

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I understand that I assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the purchased items.

**Title 36 §2020(1) Definitions**

1.A. "Parts and supplies" means any products used directly and primarily for the operation, repair or maintenance of the windjammer, including, but not limited to, sails, rope, wood, rigging, masts, paints, varnishes, undersealers, engines and pumps, and lubricants and fuel.

1.B. "Windjammer" means a United States Coast Guard-certified sailing vessel based in the State of traditional construction and designed to a historic standard that is used primarily for providing overnight passenger cruises along the Maine coast for a fee.

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NAME OF PURCHASER

---

DATE

---

ADDRESS

---

CITY

---

STATE

---

ZIP

---

SIGNATURE

---

TITLE



# MAINE REVENUE SERVICES

## SALES, FUEL & SPECIAL TAX DIVISION

**AFFIDAVIT OF EXEMPTION**  
**For Qualified Snowmobiles and Trail Grooming Equipment**  
**sold to snowmobile clubs incorporated under the provisions of Title 13-B used directly and**  
**exclusively for the grooming of snowmobile trails.**

I certify this sale is exempt from sales tax, pursuant to 36 MRSA §1760, sub-90 of the Maine Sales and Use Tax Law.

Description of Property Purchased: \_\_\_\_\_

Make \_\_\_\_\_ Model \_\_\_\_\_ Year \_\_\_\_\_ VIN \_\_\_\_\_

Date of Purchase \_\_\_\_\_ Sale Price \$ \_\_\_\_\_ Trade-in: Kind of Vehicle \_\_\_\_\_ \$ \_\_\_\_\_

Corporate Name \_\_\_\_\_

Corporate Address \_\_\_\_\_ city \_\_\_\_\_ state \_\_\_\_\_

Corporate Officer's Signature \_\_\_\_\_ Date \_\_\_\_\_

I make this statement to allow the sale of the above described vehicle/equipment to me without collection of Maine sales tax, which would otherwise be applicable. I declare under the penalties of perjury that the equipment purchased will be used **directly and exclusively** for the grooming of snowmobile trails. The statements made herein are true to the best of my knowledge and belief.

Seller's Name \_\_\_\_\_ Sales Tax # \_\_\_\_\_

Signature of Seller \_\_\_\_\_ Date \_\_\_\_\_

The purchaser states to me at the time of sale that they are an incorporated snowmobile club under the provisions of Title 13-B and is purchasing a snowmobile(s) and/or snowmobile trail grooming equipment to be used **directly and exclusively** for the grooming of snowmobile trails.



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

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## Affidavit For Purchase of Adaptive Equipment

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I hereby certify the equipment purchased pursuant to this affidavit will be installed in or on a motor vehicle to make that vehicle operable or accessible by a person with a disability.

The person with a disability has been issued a valid disability plate or placard issued by the Secretary of State pursuant to Title 29-A, section 521.

Plate/placard number \_\_\_\_\_

Expiration date \_\_\_\_\_

I further certify that I assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.

Description of property: \_\_\_\_\_

Purchaser \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_



# MAINE REVENUE SERVICES SALES, FUEL AND SPECIAL TAX DIVISION

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## Affidavit for Purchase of Free Publications and Inserts to Publications

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I hereby certify that the printed materials being purchased from \_\_\_\_\_  
\_\_\_\_\_ are being purchased, solely for:

- a. Distribution without charge as a free publication.  
Name of publication: \_\_\_\_\_

*... "publication" means a printed paper material, including without limitation newspapers, magazines and trade journals and employee, client and organization newsletters, issued at average intervals not exceeding 3 months that manifests a continuity of identity from issue to issue by a front page masthead bearing the name, date, volume and issue number of the publication and by a continuity of style, format, themes and subject matter.*

*... "publication" does not include printed paper materials consisting primarily of advertisements or the promotion of a single seller's products or services.*

*(36 M.R.S.A. § 1760(14-A))*

- Check if this is for a single purchase. Invoice # \_\_\_\_\_
- Check if this is to be treated as a blanket affidavit for the periodic printing of the publication named above.

- b. Inclusion in a publication.  
If only a portion of the materials being purchased will be included in a publication, I hereby certify that \_\_\_\_\_\* of the materials qualify for exemption. I will pay the appropriate Maine Sales Tax on the remaining taxable portion of the transaction directly to the vendor listed above.

I declare this purchase is exempt from Maine sales and use tax. I agree to assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.

Purchaser \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

\*This blank must be completed with a specific quantity or percentage.

## Maine Revenue Services Petition for Reconsideration

CASE # \_\_\_\_\_

Petition must be filed within 60 days after you receive the Notice of Assessment, Letter of Denial or other determination.  
[www.maine.gov/revenue](http://www.maine.gov/revenue) (207) 624-9620

<b>STEP A PRINT OR TYPE NAME ADDRESS &amp; ID NUMBERS</b>	PETITIONER LAST NAME	FIRST NAME & INITIAL	SOCIAL SECURITY NUMBER									
	ADDITIONAL PETITIONER (IF APPLICABLE) LAST NAME	FIRST NAME & INITIAL	SOCIAL SECURITY NUMBER									
	BUSINESS NAME (if business entity taxpayer)		FEDERAL IDENTIFICATION NUMBER									
	NUMBER & STREET ADDRESS		TELEPHONE NUMBER									
	CITY/TOWN, STATE & ZIP CODE		CHECK IF CONTACT IS TO BE WITH REPRESENTATIVE. IF CHECKED, COMPLETE POWER OF ATTORNEY SECTION ON NEXT PAGE OR ATTACH COPY OF FORM 2848ME. MAINE REVENUE SERVICES MAY ALSO SEND COPIES TO PETITIONER OR CONTACT PETITIONER REGARDING COMMUNICATIONS WITH REPRESENTATIVE.									
	REPRESENTATIVE'S NAME (if any)											
	REPRESENTATIVE'S NUMBER & STREET ADDRESS											
	REPRESENTATIVE'S CITY/TOWN, STATE & ZIP CODE		REPRESENTATIVE'S TELEPHONE NUMBER									
<b>STEP B TAX YEAR AND TAX TYPE</b>	TAX YEAR(S) _____ OR TAXABLE PERIOD BEGINNING _____ AND ENDING _____ <div style="display: flex; justify-content: space-around; font-size: small;"> <span>MO DAY YEAR</span> <span>MO DAY YEAR</span> </div> TAX TYPE/BENEFITS (CHECK BOX OR BOXES THAT APPLY) <table style="width: 100%; margin-top: 5px;"> <tr> <td style="text-align: center;">INDIVIDUAL INCOME TAX</td> <td style="text-align: center;">SALES/USE/SERVICE PROVIDER</td> </tr> <tr> <td style="text-align: center;">CORPORATE INCOME TAX</td> <td style="text-align: center;">OTHER _____</td> </tr> </table>			INDIVIDUAL INCOME TAX	SALES/USE/SERVICE PROVIDER	CORPORATE INCOME TAX	OTHER _____					
INDIVIDUAL INCOME TAX	SALES/USE/SERVICE PROVIDER											
CORPORATE INCOME TAX	OTHER _____											
<b>STEP C FACTS &amp; ISSUES</b>	REASON FOR PETITION. Provide relevant facts and your issue or issues. Attach additional sheets if necessary. Attach supporting documentation.											
<b>STEP D ACTION REQUESTED</b>  Check appropriate boxes	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                     RECONSIDER AN ASSESSMENT- ENTER AMOUNT IN DISPUTE:                 </td> <td style="width: 50%; border: none;">                     RECONSIDER A DENIAL OF A REQUEST FOR REFUND OR EXEMPTION                 </td> </tr> <tr> <td style="border: none;">                     DISPUTED TAX \$ _____                 </td> <td style="border: none;">                     RECONSIDER OTHER DETERMINATION - EXPLAIN                 </td> </tr> <tr> <td style="border: none;">                     DISPUTED INTEREST \$ _____                 </td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">                     DISPUTED PENALTIES \$ _____                 </td> <td style="border: none;"></td> </tr> </table>			RECONSIDER AN ASSESSMENT- ENTER AMOUNT IN DISPUTE:	RECONSIDER A DENIAL OF A REQUEST FOR REFUND OR EXEMPTION	DISPUTED TAX \$ _____	RECONSIDER OTHER DETERMINATION - EXPLAIN	DISPUTED INTEREST \$ _____		DISPUTED PENALTIES \$ _____		
RECONSIDER AN ASSESSMENT- ENTER AMOUNT IN DISPUTE:	RECONSIDER A DENIAL OF A REQUEST FOR REFUND OR EXEMPTION											
DISPUTED TAX \$ _____	RECONSIDER OTHER DETERMINATION - EXPLAIN											
DISPUTED INTEREST \$ _____												
DISPUTED PENALTIES \$ _____												
<b>STEP E REQUIRED DOCUMENTS</b>	Enclose a copy (or a summary, including notice date) of the Notice of Assessment, Letter of Denial or other determination upon which this petition for reconsideration is requested. If a representative is being used, the Power of Attorney section in the instructions must be completed unless a Power of Attorney has already been filed with Maine Revenue Services.											
<table style="width: 100%; border: none;"> <tr> <td style="width: 5%; text-align: center;">X</td> <td style="width: 70%; border-bottom: 1px solid black;">SIGNATURE OF PETITIONER (IN INK)</td> <td style="width: 25%; border-bottom: 1px solid black;">DATE</td> </tr> <tr> <td style="text-align: center;">X</td> <td style="border-bottom: 1px solid black;">SIGNATURE OF ADDITIONAL PETITIONER (IN INK)</td> <td style="border-bottom: 1px solid black;">DATE</td> </tr> <tr> <td style="text-align: center;">X</td> <td style="border-bottom: 1px solid black;">SIGNATURE OF REPRESENTATIVE (IN INK)</td> <td style="border-bottom: 1px solid black;">DATE</td> </tr> </table>				X	SIGNATURE OF PETITIONER (IN INK)	DATE	X	SIGNATURE OF ADDITIONAL PETITIONER (IN INK)	DATE	X	SIGNATURE OF REPRESENTATIVE (IN INK)	DATE
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X	SIGNATURE OF ADDITIONAL PETITIONER (IN INK)	DATE										
X	SIGNATURE OF REPRESENTATIVE (IN INK)	DATE										

Maine Revenue Services  
Petition for Reconsideration  
Instructions

Complete your request by typing or legibly printing in the spaces provided.

Step A: Complete the required information for each taxpayer petitioning for reconsideration and for any representative(s) acting for the taxpayer(s). A taxpayer does not need to have a representative to file a petition for reconsideration. If there are more than one additional taxpayers petitioning for reconsideration or additional representatives, attach an additional sheet with the required information.

Maine Revenue Services will communicate directly with the taxpayer with respect to this petition unless the taxpayer requests (by checking the box in Step A of the Petition) that communications relative to this petition should be directly with the taxpayer's listed representative. Maine Revenue Services may also contact the taxpayer regarding any communications with the taxpayer's representative.

Step B: Enter the tax year(s) or tax period(s) that is the subject of your petition. Check the appropriate box(es) to indicate what tax(es) or benefits you are appealing.

Step C: The taxpayer has the burden to prove that the assessment, denial or determination is incorrect. State specifically the reasons upon which the petition is based. Attach additional sheets if necessary. Attach supporting documentation. **Note:** You may request reconsideration of penalties for reasonable cause. Reasonable cause includes erroneous information provided by MRS, death or serious illness of the taxpayer or member of the taxpayer's immediate family, a natural disaster, etc. For more information, see 36 M.R.S.A. § 187-B(7).

Step D: Describe the action that you are requesting Maine Revenue Services to take.

Step E: Enclose a copy (or a summary, including notice date) of the Notice of Assessment, Letter of Denial or other determination, whichever is applicable. If a representative is being used, the Power of Attorney section below must be completed unless a Power of Attorney has already been filed with Maine Revenue Services.

Signature(s) Box: The completed Petition for Reconsideration form may be signed either by taxpayer(s) petitioning for reconsideration or by an authorized representative(s) acting for the taxpayer(s) under an existing power of attorney. (In the case of a taxpayer corporation, the form must be signed by an authorized officer of the corporation or an authorized representative(s) acting under a power of attorney.)

Keep a copy of this document for your records. **File your petition with:**  
Division Reconsideration Maine  
Revenue Services PO Box 1060  
Augusta, ME 04332-1060

**NOTE: The date of filing is the mailing postmark date or, if otherwise delivered, the date this form is received by Maine Revenue Services. You must file the petition within 60 days of receiving the Notice of Assessment, Letter of Denial or other determination. You have the right to pay the outstanding liability at any point after a Notice of Assessment is issued to prevent further interest or penalty from accruing. However, payment of the liability is not required to pursue this petition.**

**Power of Attorney.** I (we), the taxpayer(s) signing this petition hereby appoint the following individual(s) as representative(s) to represent the taxpayer(s) before any office of Maine Revenue Services for the matters associated with this petition.

---

SIGNATURE OF TAXPAYER

NAME OF REPRESENTATIVE (PRINT)

---

PTIN OF REPRESENTATIVE

PHONE NUMBER OF REPRESENTATIVE

---

ADDRESS OF REPRESENTATIVE

CITY/TOWN

STATE

ZIP

(To authorize additional representative(s), attach copies of Form(s) 2848ME.)

## LISTING OF SALES AND USE TAX BULLETINS

Bulletin #	Title	Last Revision Date
38	Advertising Agencies and Graphic Designers	February 19, 2014
15	Auctioneers	October 1, 2013
11	Barbers and Beauticians	December 1, 1990
9	Casual and Infrequent Sales	October 1, 2013
4	Contractors and Subcontractors	January 19, 1991
25	Coupons and Gifts	September 1, 1997
29	Deduction for Bad Debts	January 22, 2014
44	Depreciable Machinery and Equipment - Fishing	October 1, 2011
45	Depreciable Machinery and Equipment - Farmers	July 1, 2013
49	Depreciable Machinery and Equipment - Aquaculture	July 1, 2002
36	Exempt Organizations	April 18, 2104
46	Fabrication Services	October 1, 2013
16	Financial Institutions	April 1, 1991
21	Florists	October 1, 2013
2	Funeral Directors	January 8, 2009
12	Grocers	October 1, 2013
28	Installing Tangible Personal Property in Real Property	September 1, 1997
20	Lease and Rental Transactions	October 1, 2013
22	Manufacturers	October 15, 2000
41	Medicines, Medical Equipment and Prosthetic Devices	July 1, 2014
57	Motor Vehicle Oil Premiums	September 1, 2012
42	Original Registration of Vehicles	October 9, 2013
47	Original Registration of Watercraft, Snowmobiles and ATV's	October 9, 2013
23	Packing, Packaging and Shipping Materials	September 1, 1997
3	Photographers and Photofinishers	July 28, 2008
52	Pine Tree Development Zones	November 23, 2005
17	Printers and Publishers	June 4, 2014
48	Recycling Assistance Fee	January 8, 2009
43	Registration of Out-of-State Sellers	October 9, 2013
32	Rentals of Living Quarters	January 17, 2012
54	Resale Certificates	October 9, 2013
27	Sales of Prepared Food	March 26, 2012
13	Sales of Fuel and Utilities	October 1, 2013
31	Sales of Manufactured Housing	November 30, 2010
39	"Sale Price" Upon Which Tax is Based	October 1, 2013
14	Seed, Feed, Fertilizer, etc.	September 20, 2013
55	Service Provider Tax	June 16, 2014
1	Service Stations and Auto Repair Shops	October 9, 2013
18	Stonecutters and Monument Dealers	November 29, 1990
56	Telecommunications Services	September 20, 2013
30	Transportation Charges	November 30, 2010
24	Vehicle Dealers	July 1, 2014
51	Veterinarians	May 10, 2005
53	Warranties, Service Contract and Maintenance Agreements	October 9, 2013
58	Wood Harvesting	July 1, 2013



## LISTING OF SALES AND USE TAX RULES

<b>Rule Number</b>	<b>Title</b>	<b>Last Revision Date</b>
102	Electronic Funds Transfer	July 11, 2015
103	Record Keeping and Retention	March 30, 2008
104	Filing of Maine Tax Returns	April 22, 2013
110	Requests for Advisory Rulings	August 13, 2011
301	Sales for Resale and Sales of Packaging Materials	January 29, 2007
302	Sales to Government Agencies and Exempt Organizations	June 13, 2010
303	Sales to Industrial Users	January 29, 2007
304	Sales Tax Returns and Payments	July 23, 2002
308	Direct Payment Permits	January 29, 2007
318	Instrumentalities of Interstate or Foreign Commerce	November 25, 2008
321	Meals Provided in the Wild	November 12, 2006
323	Commercial Agricultural Production and Commercial Fishing	February 4, 2014
401	Service Provider Tax – Return and Payment of Tax	November 26, 2006

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