



# MAINE REVENUE SERVICES

## SALES, FUEL & SPECIAL TAX DIVISION

### INSTRUCTIONAL BULLETIN NO. 60

---

#### SALES OF MEDICAL MARIJUANA AND RELATED PRODUCTS

---

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by persons who make sales of medical marijuana and related products pursuant to the Maine Medical Use of Marijuana Program ("MMMP"), including both registered caregivers and registered dispensaries.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services ("MRS") do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of Title 36 of the Maine Revised Statutes ("M.R.S."). Title 36, MRS rules, and affidavits and bulletins referenced in this bulletin can be viewed on the MRS website, [www.maine.gov/revenue](http://www.maine.gov/revenue).

The Maine Medical Use of Marijuana Act is found in 22 M.R.S., Chapter 558-C. Title 22, related rules, and other forms and applications related to the MMMP are available on the MMMP's website, [www.maine.gov/dafs/bbm/mmmp](http://www.maine.gov/dafs/bbm/mmmp).

## 1. GENERALLY

Medical marijuana dispensaries and caregivers registered with the Maine Office of Marijuana Policy ("OMP") are retailers involved in making taxable sales of harvested marijuana (and in some cases other products). Registered caregivers and dispensaries (referred to throughout this bulletin as "MMMP sellers") are required to register as retailers with MRS and are responsible for collecting and remitting Maine sales tax. (See Section 2 below.)

A person who grows medical marijuana will likely be engaged in "commercial agricultural production" and may be eligible for the related sales tax exemption on eligible purchases. (See Section 3 below.)

A retailer that prepares certain related products may also be engaged in the production of tangible personal property and may be eligible for the "manufacturing" exemption on eligible purchases. (See Section 4 below.)

A person who produces medical marijuana products from harvested marijuana that has been provided to that person by a qualifying patient, caregiver, or dispensary is engaged in fabrication and would be required to register with MRS for service provider tax. (See Section 5 below.)

MMMP sellers, like all retailers, are responsible for accruing and remitting use tax on many items that they purchase for use in their business. (See Section 6 below.)

## 2. SALES

MMMP sellers may be engaged in the sale of marijuana, tinctures, topical treatments and other preparations, and paraphernalia. Retail sales of all of these products are subject to sales and use tax at the "general sales tax rate" (currently 5.5%). The statutory exemption for sales of prescription medicines does not apply to sales of medical marijuana. See 36 M.R.S. § 1760(5). See Section 7 below for information on sales tax returns and payments.

"Sale price" includes "any consideration for services that are part of a retail sale." See 36 M.R.S. § 1752(14)(A). The taxable sale price includes the full value of all compensation received for cultivating marijuana for a patient, including the preparation and demonstration of use of the product sold, without any deduction for the cost of materials used or the services provided. See Instructional Bulletin No. 39 ("Sale Price Upon Which Tax is Based") for more information.

**A. MARIJUANA AND RELATED PRODUCTS.** Sales tax at the general sales tax rate must be collected on the value of harvested marijuana and all other marijuana products sold by a MMMP seller, including tinctures, ointments, salves, and paraphernalia.

**B. FOOD PRODUCTS.** Sales of food prepared by a MMMP seller, including so-called "medibles," are subject to sales tax at a separate "prepared food rate" (currently 8%). "Prepared food" includes food products that are prepared by the retailer and are designed for immediate consumption "without further preparation." "Without further preparation" means that the product does not require cooking of any kind and does not need to be mixed with other products before being consumed. Toasting, microwaving, or otherwise heating a product for palatability is not considered cooking the product.

Examples of prepared food are cookies, pies, cakes, muffins, breads, bars, butters, and oils prepared by the retailer. See Instructional Bulletin No. 27 ("Sales of Prepared Food") for more information.

Although many food products are considered "grocery staples" and are exempt from sales tax, food products containing any amount of marijuana or marijuana product are excluded from the definition of "grocery staples" and are therefore taxable. See 36 M.R.S. § 1752(3-B)(H).

**C. EXCLUSIONS FROM SALE PRICE.** The taxable sale price does not include separately stated charges for shipping goods to the purchaser by common or contract carrier. For more information, see Instructional Bulletin No. 39 ("Sale Price upon Which Tax is Based").

**D. FREE GIFTS TO CUSTOMERS.** Retailers such MMMP sellers may give away promotional products. For example, a retailer may give a free T-shirt to a new customer. In these instances, the retailer is responsible for paying use tax on the cost of the goods given away. Gifts of general merchandise are subject to use tax at the general sales tax rate. Gifts of prepared food are subject to use tax at the prepared food rate. See Instructional Bulletin No. 39 ("Sale Price upon Which Tax is Based").

A registered caregiver may transfer marijuana plants and harvested marijuana to a qualifying patient, another caregiver or a dispensary for no remuneration (see 22 M.R.S. § 2423-A(2)(K)). These transfers are subject to use tax at the general sales tax rate, based on the caregiver's cost of the item.

**E. RETURNED MERCHANDISE.** When an item is returned by a customer, the sales tax is generally refundable to the retailer only when a full refund of the sale price has been provided to the customer. See 36 M.R.S. § 1752(14)(B)(3). If a product is returned and the customer receives only a partial refund of the sale price, no sales tax is refundable to the customer, unless the partial refund is made pursuant to a warranty. For more information, see Instructional Bulletin No. 53 ("Repairs and Warranties").

**F. SALE OF TANGIBLE PERSONAL PROPERTY VERSUS SALE OF A SERVICE.** As noted above, "sale price" includes "any consideration for services that are part of a retail sale," including growing services.

A customer may provide seeds to an MMMP seller, which then grows and harvests the mature plants. The customer receives tangible personal property (e.g., buds or flower). In this situation, the taxable sale price is the total amount charged for cultivating, harvesting, and selling tangible personal property to the customer.

A person, including an MMMP seller or marijuana manufacturing facility, who produces medical marijuana products (including marijuana extract) from harvested marijuana that has been provided to that person by a qualifying patient, caregiver, or dispensary is engaged in fabrication services. (See Section 5 below.)

**G. PRODUCTS SOLD FOR RESALE.** An MMMP seller may make sales for resale to another MMMP seller, such as a registered caregiver operating a caregiver retail store. Sales for resale to a purchaser that holds a valid resale certificate are not taxable. When making sales for resale, the seller must obtain a copy of the purchaser's current resale certificate. For more information, see Rule 301 ("Sales for Resale and Sales of Packaging Materials") and Instructional Bulletin No. 54 ("Resale Certificates").

### **3. COMMERCIAL AGRICULTURAL PRODUCTION**

"Commercial agricultural production" means the commercial production of crops (including seeds), maple syrup, honey, plants, trees, compost and livestock. See 36 M.R.S. § 2013(1)(A). This term includes growing and harvesting marijuana plants pursuant to the MMMP. MMMP

sellers engaged in commercial agricultural production may qualify to purchase certain items exempt from sales tax. The purchaser must provide the seller with a copy of a valid commercial agricultural certificate of exemption issued by MRS and a properly completed exemption affidavit.

MRS Rule 323 ("Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing, and Commercial Wood Harvesting") and Instructional Bulletin No. 59 ("Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing, and Commercial Wood Harvesting") provide detailed information regarding the commercial agricultural production exemption, including information on how to obtain an exemption certificate. The rule includes definitions, explains exclusions to qualifying activities, establishes guidelines for the issuance of the certificate, and places restrictions on the use of the certificate. Although the seller is relieved from the burden of charging a tax at the time of sale (provided that copies of the exemption card and affidavit are on file) the purchaser is subject to audit and will be assessed use tax, including interest and penalties, on any non-qualifying purchases.

**A. MACHINERY AND EQUIPMENT.** Machinery and equipment used directly and primarily in commercial agricultural production qualifies for exemption from, or refund of, sales tax, provided that it is depreciable for federal income tax purposes. See 36 M.R.S. § 2013 and MRS Rule 323 for the definitions of "commercial agricultural production," "directly," "primarily," "depreciable," and "depreciable machinery and equipment."

Machinery and equipment commonly used by MMMP sellers that may qualify for exemption are grow lights and tents, timers, fans, soil mixers, sprayers, various tools, transplant machines, and grading tables.

**B. FUEL AND ELECTRICITY.** Fuel and electricity used in commercial agricultural production and support operations may be purchased exempt from sales tax. This exemption is applied on an account basis for fuel purchases and a meter-by-meter basis for electricity purchases. If a single fuel tank or single meter supports both qualifying and non-qualifying activities, tax must be paid to the fuel or utility provider and the purchaser must apply directly to MRS for a refund based on a pro-rated portion of the fuel or electricity used in the qualifying activities.

For purposes of this provision, "support activities" include storage operations, maintenance operations, and related administrative activities. Support activities do not include activities conducted in, or related to, a retail store, by a separate business, or in unrelated administrative activities.

**C. SEED, FEED, AND FERTILIZER.** Purchases of seed, fertilizer, defoliant, pesticides, insecticides, fungicides, and weed killers for use in commercial agricultural production are exempt from sales tax. See 36 M.R.S. § 1760(7-B). The exemption does not apply to purchases of items that are not for use in commercial agricultural production. Items purchased for use in a home garden or other noncommercial use are subject to tax. The exemption does not apply to the sale of a growing medium, such as potting soil. For more information, see

Instructional Bulletin No. 14 ("Seed, Feed, Fertilizer and Other Items Used in Agricultural and Aquacultural Production").

#### **4. PRODUCTION (MANUFACTURING)**

The term "manufacturer" means a person engaged in the production of tangible personal property for later sale or lease. An MMMP seller or marijuana manufacturing facility engaged in the preparation of tinctures and ointments for sale pursuant to the MMMP may be engaged in "production." Production does not include the acquisition of raw materials, storage and handling (pre- and post-production), transportation, or biological processes. (But see Section 3 above for information on "commercial agricultural production").

Manufacturers qualify for sales tax exemption on machinery and equipment used "directly and primarily" in production, items consumed and destroyed in the production process, and ingredient or component parts of the product being produced. See 36 M.R.S. §§ 1760(31), 1752(2-A), 1752(9-A), and 1760(74). Manufacturers also qualify for a sales tax exemption on 95% of the cost of fuel and electricity purchased for use at a manufacturing facility. (See Paragraph D below.)

**Note:** "Production" does not include the preparation of food products by a retailer for retail sale. Items of machinery or equipment used by a retailer in the preparation of food to be sold by the retailer are taxable. This category of taxable items includes refrigerators, ovens, and blenders used in the preparation of edible items.

For more information on the manufacturing exemption, including when the production process begins and ends, what types of equipment qualify, and which types of products are considered to be consumed and destroyed in the production process, see Instructional Bulletin No. 22 ("Manufacturers") and MRS Rule 303 ("Sales to Industrial Users").

**A. DIRECTLY AND PRIMARILY.** To qualify for exemption, production machinery and equipment must be used directly and primarily within the production process. Generally, to qualify for this exemption, the machinery or equipment will be acting on the raw materials used in production. Depending on the process, exempt machinery and equipment may include items such as drying racks.

**B. CONSUMED AND DESTROYED.** Tangible personal property, other than fuel or electricity, that is consumed or destroyed or loses its identity in the production process is exempt from tax. This exemption includes items that have a normal life expectancy of less than one year in the use to which they are applied.

**C. INGREDIENTS AND COMPONENT PARTS.** Ingredient or component parts of the item being produced are exempt from tax. This category includes all raw materials that get physically converted into, or physically attached to the finished product, including tags and labels.

**D. FUEL AND ELECTRICITY USED AT A MANUFACTURING FACILITY.** Ninety-five percent of the cost of fuel and electricity that is purchased and used at a “manufacturing facility” is exempt. The remaining 5% is subject to the general sales tax rate. For purposes of this exemption, a manufacturing facility is a site where production machinery is located. See 36 M.R.S. § 1752(6-A). This partial exemption 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. This partial exemption applies to all types of fuel, including #2 heating fuel, diesel fuel, oxygen, acetylene, and wood chips.

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.

## **5. FABRICATION**

"Fabrication services" means the production of tangible personal property for consideration for a person who furnishes, either directly or indirectly, the materials used in that production. Any person, including a registered caregiver, dispensary, or a marijuana manufacturing facility, may be a fabricator if the person extracts marijuana concentrate or produces marijuana products from marijuana provided by and returned to their customer.

Unlike the sales and use tax, the service provider tax is a levy on the seller of the service, not the purchaser. The service provider is not required to "pass the tax on" to the purchaser, but is permitted to do so. If a service provider does include the tax on the customer's bill, it must be shown as a separate line item and identified as "service provider tax."

Any person who fabricates marijuana concentrate or marijuana products is required to register with MRS for the service provider tax. See 36 M.R.S. § 2552(2) and Instructional Bulletin No. 46 ("Fabrication Services") for more information on fabrication services.

## **6. PURCHASES**

Items purchased by a retailer for use in its business are subject to tax unless a specific exemption applies. An MMMP seller or marijuana manufacturing facility must therefore either pay sales tax, or accrue use tax, on items that do not fall within one of the exempt categories explained elsewhere in this bulletin. Taxable items will include items such as gloves and other articles of clothing, scales and balances, and containers used for storing medical marijuana.

**A. PURCHASES FOR RESALE.** Retailers may make purchases of items for resale to customers. Items that will be resold in the form of tangible personal property may be purchased exempt from tax by providing a copy of a properly completed resale certificate to the seller of such items. See Instructional Bulletin No. 54 ("Resale Certificates") for more information on making purchases for resale.

A registered caregiver or dispensary may transfer marijuana plants and harvested marijuana to a qualifying patient, another registered caregiver, or a registered dispensary for no remuneration. When these products are withdrawn from inventory, use tax would be due at the applicable sales tax rate, based on the cost of the items to the caregiver or dispensary. Edible marijuana products prepared by the retailer would be subject to use tax at the prepared food rate on the retailer's cost of ingredients when they are withdrawn from inventory and transferred for no remuneration.

**B. PURCHASES OF PACKING, PACKAGING, AND SHIPPING MATERIALS.**

Certain packaging and shipping materials that go with the product to the customer may be purchased exempt from tax. See 36 M.R.S. § 1760(12-A). Examples include bags, twine, tape, containers, and labels. Retailers should provide the seller of such materials with a resale or exemption certificate to make a tax-exempt purchase of packaging materials as provided in MRS Rule 301 ("Sales for Resale and Sales of Packaging Materials").

Packaging materials used by a business to transport its own goods from one location of the business to another location of the business or used to store goods in inventory are taxable to the retailer. For more information, see MRS Rule 301 ("Sales for Resale and Sales of Packaging Materials") and Instructional Bulletin No. 23 ("Packing, Packaging and Shipping Materials").

**7. REPORTING AND PAYMENT OF TAX**

Sales and Use Tax returns must be filed on a monthly basis, except that those retailers whose total tax liability usually is less than \$600 per month may request authorization from MRS to file on a less frequent basis. Tax returns are due on the 15th of the month immediately following the reporting period. If the 15th of the month falls on a weekend or holiday, the return is due on the next business day. Payment of the amount due must be made when the return is filed. See MRS Rule 304 ("Sales Tax Returns and Payments") for more information.

Tax returns are required to be filed electronically. Go to [www.maine.gov/revenue](http://www.maine.gov/revenue) and click on "File and Pay." Retailers unable to electronically file may request a waiver from MRS to file paper returns. See MRS Rule 104 ("Filing of Maine Tax Returns") for more information.

## **8. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law as it applies to MMMP sellers and marijuana manufacturing facilities. It is not intended to be all-inclusive. Guidance for specific situations related to Sales and Use Tax can be obtained by contacting the Sales Tax Division at (207) 624-9693 or [sales.tax@maine.gov](mailto:sales.tax@maine.gov).

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, ME 04332-1060  
TEL: (207) 624-9693  
TTY: 7-1-1  
[www.maine.gov/revenue](http://www.maine.gov/revenue)**

Questions regarding the Medical Marijuana Act and the MMMP should be directed to the Office of Marijuana Policy at (207) 287-3282. MMMP regulations and application materials are available at [www.maine.gov/dafs/omp/medical-use](http://www.maine.gov/dafs/omp/medical-use). A written request can be mailed to:

**Maine Medical Use of Marijuana Program  
Division of Administrative and Financial Services  
State House Station #162  
Augusta, ME 04333-0162  
Tel: (207) 287-3282  
[www.maine.gov/dafs/omp/medical-use](http://www.maine.gov/dafs/omp/medical-use)**

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission, to access to, or operation of its programs, services or activities.

**Issued: August 1, 2016**  
**Last Revision: February 24, 2020**

(Published under Appropriation 010-18F-0002-07)