



MAINE REVENUE SERVICES SALES FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 12

GROCCERS

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 that make sales of grocery products. 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 MRSA (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

This bulletin does not apply to retail locations that primarily sell prepared food. The Maine Sales and Use Tax Law provides at Title 36, section 1811 that sales of prepared foods are taxable at a separate rate that is higher than the generally applicable sales tax rate. Every person that makes sales of prepared food, regardless of the type of establishment, must charge sales tax at the higher rate on all sales of prepared food. For more information, see Instructional Bulletin No. 27 (“Sales of Prepared Food”).

1. EXEMPT SALES

A. Nontaxable Items. There are several categories of products sold by grocers that are not subject to Maine sales tax. The following is a non-exclusive list of categories of tax-exempt items:

- (1) Grocery staples, defined as food products ordinarily consumed for human nourishment. See Section 2 of this Bulletin for exceptions.
- (2) Returnable containers when sold with the contents; and
- (3) Kerosene, dyed special fuel, wood pellets, 100% compressed wood products, or propane for home cooking or heating (see Instructional Bulletin No. 13 for more information).

B. Sales to Exempt Organizations. The Maine Sales and Use Tax Law provides exemptions for sales to various organizations such as hospitals, schools, regularly organized churches or houses of religious worship, and a number of other types of organizations. Organizations that qualify for exemption must obtain exemption certificates from Maine Revenue Services. Sales may be made tax-free to these organizations only

when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does **not** apply to the clergy, staff or employees of exempt organizations. See Rule 302 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”) for important information on sales to exempt organizations, including information on documentation required for exempt sales.

C. Government Sales. Sales made directly to the Federal government, to the State of Maine or any political subdivision of this State (including counties, cities, towns or plantations), to any unincorporated agency of them, or to any incorporated agency or instrumentality wholly owned by them, are exempt from sales tax. For important information on sales to governmental agencies, including the documentation that is required, see Rule 302 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”).

D. Sales for Resale. A grocer may make sales to other registered sellers for resale. Sales for resale to a purchaser holding a valid resale certificate are not taxable. When making sales for resale, the grocer should obtain a copy of the purchaser’s current resale certificate.

Sales for resale at casual sale, rather than in the regular course of business of a registered seller, are taxable. For example, the sale of soft drinks to a church group for resale at a bazaar, where the church group is not in the business of selling and is not registered under the Sales and Use Tax Law, is taxable.

E. Sales of Items Paid With Federal Food Stamps or WIC Purchases. Sales of items paid with federal electronic benefit transfer cards (“EBT cards”) or Women, Infants and Children (“WIC”) Special Supplemental Nutrition Program food cards distributed by the Department of Health and Human Services are exempt from sales tax. Items eligible for purchase with EBT cards that are not otherwise exempt under current law include soft drinks, ice, and cold sandwiches. When a retailer receives an EBT card as partial payment toward a purchase, the dollar value from the EBT card must be applied first to otherwise taxable items, eligible to be purchased with the card, in order to determine what portion is exempt from sales tax.

Example 1: A person purchases \$50.00 worth of groceries. Payment is made using \$40.00 from the EBT card and \$10.00 cash. The purchase includes \$40.00 of eligible items broken down as follows:

\$35.00 exempt items
\$5.00 eligible taxable items

In this example the dollar value from the EBT card (\$40.00) is first applied against the purchase of the eligible taxable items (\$5.00). Thus, the \$5.00 of eligible taxable items would be exempt.

Example 2: A person purchases \$10.00 worth of groceries, all eligible to be purchased with an EBT card. However, payment is made using \$3.00 from the EBT card and \$7.00 cash. The purchase is broken down as follows:

\$6.00 exempt items
\$4.00 eligible taxable items

In this example the dollar value from the EBT card (\$3.00) is first applied against the purchase of the eligible taxable items (\$4.00). Thus only \$3.00 of eligible taxable items are exempt. The remaining \$1.00 is taxable.

Purchases paid for with vouchers issued by any other agency, such as municipal public assistance vouchers, are taxed in exactly the same way as purchases paid for with cash.

F. Seeing-Eye Dogs. Sales of dog food and other goods that are essential for the care and maintenance of seeing-eye dogs used to aid any blind person are exempt from tax. Copies of sales slips or invoices should be kept to support the exemption with the name of the blind person who owns the seeing-eye dog noted on the sales slip or invoice.

2. TAXABLE SALES

A. Taxable Items. Most items sold by grocers that do not fall within the definition of “grocery staples” are subject to sales tax at the generally applicable sales tax rate specified in 36 MRSA§ 1811. In addition to items obviously not intended for human consumption, such as laundry and cleaning supplies and pet foods, the term “grocery staples” excludes water, alcoholic beverages, dietary supplements and substitutes, prepared food, and nonprescription medicines. Here is a non-exclusive list of items commonly sold by grocers that are subject to sales tax:

Agricultural Products

(for exempt sales to a Commercial Farmer, see Bulletin 14.)

Fertilizer
Pesticides, Insecticides,
Fungicides, etc.
Seeds (All)
Seedlings (All)

Alcohol

Beer, including non-alcoholic
Liquor
Wine, including non-alcoholic

Bathroom & Paper Products

Bathroom Tissue
Diapers
Facial Tissues
Paper Napkins & Towels
Sanitary Napkins & Tampons
Toothpaste & Toothbrushes

Cleaning Supplies

Ammonia
Bleach
Cleansers
Detergents
Scouring Agents (steel wool, etc.)
Scouring Powder (Comet, etc.)
Soap
Waxes & Polishes

Food Products

Candy and Confections (see ¶B below)
Fudge
Ice
Liquid Iced Tea or Coffee
(This includes flavored or with juice)
Soft Drinks (see ¶D below)
Water (all types)

Packaging

Food Wrap Products
Aluminum Foil
Baggies
Plastic Wrap
Waxed Paper & Bags

Household Items

Air Fresheners
Brooms, Brushes, Mops,
Sponges
Clothespins & Clothesline
Dyes
Light Bulbs
Matches
Trash Bags

Medical & Dietary Products

Cod Liver Oil
Dietary Substitutes (Slimfast,
etc.)
Dietary Supplements (see ¶E
below)
Dressings & Bandages
Drugs, except prescription
Health & Beauty Aids
Non-prescription Medicines,
Tonics & Vitamins

Prepared Food

(See ¶C below)

Miscellaneous

Powdered Bartender Mixers
(Not Frozen)
Pet Supplies, including Bird Seed
Charcoal Briquettes
Tobacco Products, Cigarettes & Cigars
Gourds
Video Media Sales & Rentals*
Clothing
Safety Supplies
Seasonal Products
(except grocery staples)

*Rentals of video media (videotapes and DVDs)
are subject to the Maine Service Provider Tax
(see Bulletin No. 55).

B. Candy and Confections. In addition to what would traditionally be considered candy or candy bars, there are some products on the market that are difficult to categorize as either a “grocery staple” or a “confection.” Here are some general guidelines regarding the taxability of such products.

Bars primarily containing candy or chocolate, such as Twix® bars and Kudo® bars, and “jelly-like” products primarily containing sugar, corn syrup, or other natural or artificial sweetener, such as Gummie Bears® and jelly beans, are classified as candy. “Primarily containing” is considered to refer to the first ingredient listed on the list of ingredients in the product. Products listing granola, cereal, oats, fruit, fruit juice or fruit extract as the primary ingredient, are not classified as candy, even if they are chocolate covered.

The term “candy and confections” includes many snack foods such as popcorn, potato chips, nuts, raisins, pretzels, etc., that are coated with chocolate, yogurt, caramel, or carob.

Candied and glazed fruit, fudge, chewing gum, and breath mints are also classified as “confections” subject to tax.

C. Prepared Food. Sales of prepared food are subject to Maine sales tax at the separate higher rate established by 36 MRSA§ 1811. See Instructional Bulletin No. 27 (“Sales of Prepared Food”) for details.

- (1) The definition of “prepared food” contains three categories:
 - a. All meals served on or off the premises of the retailer. This category includes sandwiches (whether prepared by the retailer or by someone else) and heated food.
 - b. All food and drink prepared by the retailer and ready for consumption without further preparation.

This category includes:

- i. Food products that are not individually prepackaged for resale and that are served from self-serve areas (such as salad bars and “coffee nooks”) designed to offer customers food for immediate consumption.
 - ii. Food prepared for sale in a heated state regardless of cooling that may have occurred, such as pizza, pieces of chicken, or rotisserie chicken.
 - iii. Bakery items such as cookies, donuts, bagels, etc. that are prepared by the retailer, except for bulk sales of grocery staples. (See subsection 2 below).
 - iv. Deli platters of cold cuts, cheeses, appetizers, finger rolls, and fruits or vegetables.
 - c. All food and drink sold by any retailer whose sales of prepared food comprise more than 75% of its total annual sales.
- (2) The definition of “prepared food” excludes “bulk sales of grocery staples,” which are exempt from sales tax regardless of the location from which they are sold. Some examples of food prepared by the retailer that qualify as bulk grocery staples are:
 - a. Pies, cakes, desserts, and bread and bread products, except those packaged as a single serving.
 - b. Donuts, muffins, pastries, cookies, etc. sold in quantities of 6 or more of like kind.
 - c. Products sold from the “deli case,” such as salads, luncheon meats, and cheeses, except sandwiches and food prepared for sale in a heated state regardless of cooling which may have occurred prior to the sale.
 - d. Ice cream packaged in quart or larger containers, maple syrup, jam, jellies, pickles, honey, and spaghetti sauce.

Fruit baskets are also generally considered to be a “bulk sale of a grocery staple.” This is true even if the basket contains a *de minimis* amount of otherwise taxable items, such as candy or small trinkets. If the fruit basket contains taxable

items of significant value the seller must either collect sales tax on the price of the basket, or separately and reasonably account for the taxable and nontaxable portions and collect tax on the taxable items.

D. Soft drinks. “Soft drink” means any nonalcoholic carbonated beverage that contains one or more natural or artificial sweeteners.

E. Dietary supplements. “Dietary supplements” are products taken by mouth that contain one or more dietary ingredients intended to supplement the diet, and include but are not limited to products whose packaging bears a U.S. Food and Drug Administration “supplement facts” panel. The “dietary ingredients” in these products may include vitamins, minerals, herbs or other botanicals, amino acids, and substances such as enzymes, organ tissues, glandulars, and metabolites. Dietary supplements can be extracts or concentrates, and may be found in many forms such as tablets, capsules, softgels, gelpcaps, liquids, or powders.

Energy bars, such as Power Bars®, Luna Bars®, Genisoy Bars®, Matrix® and Tiger Milk® bars, etc. are classified as dietary supplements and are therefore subject to tax.

3. PURCHASES BY GROCERS

A. Purchases for Resale. A retailer may make tax-free purchases of tangible personal property that it intends to resell only if the retailer holds a current valid resale certificate and presents it to the supplier at the time of the purchase. See Rule 301 and Instructional Bulletin No. 54 (“Resale Certificates”) for details.

B. Packaging Materials. Purchases by retailers of containers and packaging materials used to package the goods that they sell are not taxable. This includes items such as paper or plastic bags, styrofoam trays and plastic wrap that are used by grocers to package their products and are transferred to the customer at the time of the retail sale of the products. The supplier should be furnished with a current valid resale certificate, or if the retailer does not hold a current valid resale certificate, then the retailer should furnish the supplier with an Exemption Certificate for Packaging Materials. See Rule 301 for details.

C. Withdrawals from Inventory. A retailer that takes taxable items from stock for personal or business use becomes liable for use tax based on the cost of the items. Withdrawals from inventory must be reported as taxable purchases on the Sales and Use Tax Return covering the period in which the withdrawal occurred.

4. COUPONS

A. Manufacturers’ Coupons. When a customer presents a coupon issued by the manufacturer or producer of a certain item in full or partial payment of the sale price of that item, the value of the coupon allowed against the price of the item does not reduce the taxable sale price of the item. The seller receives reimbursement for the value of the coupon from the manufacturer and is made whole for the entire transaction. If the item is subject to tax, the tax must be computed based on the entire selling price of that item before deducting the value of the coupon.

Example: A customer purchases a bag of dog food that ordinarily sells for \$3.99. When paying for the dog food, the customer presents a coupon issued by the manufacturer of the dog food, good for fifty cents off the price of a bag of that company's dog food. The customer is charged \$3.99 less the 50 cent coupon. The tax on this sale is based on the sale price of \$3.99.

B. Store Coupons. When a discount is allowed by the seller and actually taken by the purchaser, the amount of the discount reduces the taxable sale price of the item. In contrast to the manufacturer's coupon, the seller will not receive reimbursement for the value of the coupon and is willing to recognize a lesser value for the transaction.

Example: A certain store includes in its newspaper advertisement a coupon good for 10% off the price of a package of light bulbs. The light bulbs are priced at \$2.99 per package. A customer presents the store coupon when buying a package of the light bulbs and is charged \$2.69. The tax due from that customer is based on the sale price of \$2.69. A second customer purchases the same package of light bulbs but does not present the coupon and is charged the regular price of \$2.99. The tax due from that second customer is based on the sale price of \$2.99.

5. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

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Or visit our website at www.maine.gov/revenue

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