



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 15

AUCTIONEERS

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 auctioneers. 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.”). Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the left side of the MRS website: www.maine.gov/revenue.

MRS affidavits can be found at www.maine.gov/revenue/forms/sales/salesforms.htm or by contacting MRS at the address found at the end of this bulletin. Informational bulletins can be found at www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm.

An auctioneer who makes sales of tangible personal property in this State is required by the Sales and Use Tax Law to register as a seller and to collect and report sales tax on taxable sales. It makes no difference whether the goods sold belong to the auctioneer, or whether the sales are made at the premises of the auctioneer or another location.

1. EXEMPT SALES

A. Government Agencies. Sales made directly to the federal government, the State of Maine or any political subdivision of the State of Maine (such as counties, cities, towns, or plantations), or to any agency or instrumentality of the above governments, are exempt from sales tax. See Rule 302 (Sales to Government Agencies and Exempt Organizations) and Instructional Bulletin No. 36 (Exempt Organizations and Government Agencies) for more information on documentation requirements and responsibilities of the retailer when making sales to governmental agencies. Sales to other states or foreign countries or their subdivisions are not exempt from Maine sales tax.

B. Exempt Organizations. The Sales and Use Tax Law provides exemptions for various organizations, such as hospitals, schools, regularly organized churches or houses of religious worship, and certain other organizations. When selling to exempt organizations, the seller should require the customer to furnish a certificate of exemption. See Rule 302 (Sales to Government Agencies and Exempt Organizations) and

Instructional Bulletin No. 36 (Exempt Organizations and Government Agencies) for more information on additional documentation requirements.

- C. Livestock.** Sales of livestock, the products of which ordinarily constitute food for human consumption, are presumed to be for resale and therefore nontaxable. These sales may be made free of tax without obtaining resale certificates. Examples of nontaxable sales are sales of hatching eggs, sales of poultry, and sales of cattle, swine, and sheep.

This presumption does not apply to sales of livestock, the products of which ordinarily do not constitute food for human consumption. Sales of birds and animals customarily sold only as pets, horses, and animals sold only for fur are taxable.

- D. Sales for Resale.** A sale for resale in the form of tangible personal property is not taxable. When selling for resale, the auctioneer should require the customer to furnish a resale certificate in substantially the form set forth in Rule 301 (Sales for Resale and Sales of Packaging Materials). Otherwise, the burden of proving that a sale was for resale is upon the person making the sale. See Rule 301 and Instructional Bulletin No. 54 (Resale Certificates) for additional information regarding sales for resale.

- E. Charity Auctions.** Sales tax does not apply to charity auctions where the services of the auctioneer are donated without charge, unless the sales are in the ordinary course of business by the person or organization for whom the sales are made.

- F. Commercial Agricultural Production, Commercial Fishing, Commercial Aquacultural Production, and Commercial Wood Harvesting.** Sales of depreciable machinery and equipment for use directly and primarily in commercial agricultural production (including nurseries and greenhouses), commercial fishing, commercial aquacultural production, and commercial wood harvesting and sales of repair parts for that machinery and equipment, are exempt when made to a person who has been issued a Certificate of Exemption card by MRS.

Retailers making tax exempt sales to those engaged in these commercial activities must obtain a copy of the purchaser's exemption card and an exemption affidavit. The sales invoice must be clearly marked as tax exempt. See Instructional Bulletin No. 59 ("Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing and Commercial Wood Harvesting") and Rule 323 ("Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing, and Commercial Wood Harvesting").

2. GOVERNMENT PROPERTY

Liquidation sales of tangible personal property conducted by an auctioneer by order of the bankruptcy court, the Small Business Administration, or the Internal Revenue Service are subject to the sales tax. Sales by an auctioneer of seized or surplus tangible personal property for an agency of the State of Maine or a local government are also subject to the sales tax.

3. BUILDINGS

A sale of a building separately from the land upon which it sits is considered a sale of real property if the terms of the sale are that the building will be removed by the purchaser. In this situation, the sale is not subject to sales tax.

If the building is to be removed by the seller for conveyance to the purchaser as tangible personal property, the sale is considered a sale of tangible personal property, and is subject to sales tax.

4. COMBINED SALES OF REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY

If an auctioneer also holds a real estate license and sells a building along with its contents as a realtor, the sale is considered a sale of real property and the auctioneer is not required to collect any sales tax. If the sale is made through auction, the auctioneer must reasonably estimate a breakdown between the real property and the tangible personal property and collect sales tax on the portion of the sale price attributable to the tangible personal property.

5. SALE PRICE AND ADDING TAX TO THE SALE PRICE

The sale price on which sales tax is based includes:

- i. The full price, valued in money, whether paid in money or otherwise and
- ii. The amount charged for any services that are part of the sale, such as broker fees and buyer premiums.

A seller may not advertise or hold out to the public that the tax will not be charged or that the tax will be absorbed by the seller or that, if charged, it will be refunded. The law does not require that the sales tax be separately stated, nor does it prohibit the use of a tax-included price. If a retailer does not state the amount of the tax separately from the sale price of property or services, the retailer must include a statement on the sales slip or invoice to the purchaser that the stated price includes the Maine sales tax. The terms of a sale at auction may indicate that sales tax will be added to the amount bid or that the amount bid will include sales tax. See Instructional Bulletin No. 39 (Sale Price Upon Which Tax is Based) for more detail regarding calculating the sale price.

6. 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:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1060
AUGUSTA, ME 04332-1060
TEL: (207) 624-9693
TTY: 7-1-1**

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