



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 18

STONECUTTERS AND MONUMENT DEALERS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

1. REGISTRATION.

Persons in this industry are engaged in the production of tangible personal property for retail sale. They are required to register as sellers with Maine Revenue Services and collect and remit sales tax to the State.

2. SALES.

a. Sales for Resale. When a retailer purchases tangible personal property for resale, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase such property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the supplier whether the purchase is for resale and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer. Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.

b. Sales to Exempt Organizations. Sales of any kind to the Federal Government, the State of Maine and political subdivisions of the State of Maine are exempt from tax. When making sales to government agencies, no evidence of exemption is required other than the invoice of the seller indicating a sale to an exempt governmental entity. Sales to other states or foreign countries or their subdivisions are not exempt from Maine sales tax.

The Maine Sales and Use Tax Law provides exemptions for sales to hospitals, regularly organized churches, schools and a number of other types of organizations. Organizations that qualify for exemption must obtain exemption certificates from Maine Revenue Services in accordance with Rule 302; and sales should be made tax free to these organiza-

tions 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.

c. Delivery to Customer Outside Maine. When goods are sold to an out-of-state resident and the seller delivers the goods to a point outside of Maine, the sale is exempt from tax. If the customer takes delivery in Maine, however, the tax applies regardless of the ultimate destination of the products.

3. PURCHASES.

a. Nontaxable Purchases. As manufacturers, stonecutters and monument dealers are not required to pay sales or use tax on the following purchases:

- i. Tangible personal property purchased for resale.
- ii. Tangible personal property which becomes an ingredient or component part of, or which is consumed or destroyed directly and primarily in the production of goods for later sale.
- iii. Machinery and equipment for use by the purchaser directly and primarily in the production of tangible personal property for later sale or lease.

In addition, manufacturers are entitled to a reduced rate of tax on fuel and electricity used at a manufacturing facility.

When purchasing items which are exempt under i, ii, or iii above, the supplier should be furnished with either a resale certificate, as previously discussed, or blanket certificate of exemption. For further information regarding the "Blanket Certificate of Exemption" please refer to Rule 303, "Sales to Industrial Users".

b. Taxable Purchases. Items that are used in the business, but do not fall within the exemptions outlined in Section 3 are taxable. Tax should be paid to the supplier at the time of purchase. If sales tax has not been paid to the supplier, a use tax should be reported and paid to the Sales Tax Division on the regular sales tax return. Examples of taxable purchases would be items used in administration, acquisition or storage of materials, rather than in the manufacturing area.

4. Sale of Services.

The addition of a name, date or inscription on property already owned by the customer is considered to be a service and as such, no tax will be passed on to the customer on the charge for such service. The stonecutter or monument dealer should pay a tax as a consumer on materials used in performing a service of this nature.

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 the:

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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.

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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 §1752 Definitions

2-A. Directly. "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.

6-A. Manufacturing facility. "Manufacturing facility" means a site at which is located machinery and equipment used directly and primarily in either the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof. It 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 not produced by the retailer.

7-B. Machinery and equipment. "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.

9-A. Primarily. "Primarily," when used in relation to production, means more than 50% of the time.

9-B. Production. "Production" means an operation or integrated series of operations engaged in as a business or segment of a business which 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 manufacturing, processing, assembling and fabricating operations which 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.

Production does not include biological processes, 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. The foregoing are examples of activities that are not included within the term "production."

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

A. "Retail sale" includes:

(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; and

(2) Sale of products for internal human consumption to a person for resale through coin-operated vending machines when sold to a retailer whose gross receipts from the retail sale of tangible personal property derived through sales from vending machines are more than 50% of the retailer's gross receipts. The tax must be paid by the retailer to the State. [1989, c. 871, §5 (new).]

B. "Retail sale" does not include:

(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 unless 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 on a short-term basis;

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

(6) The sale, to a person engaged in the business of providing cable television services, of cable converter boxes and remote-control units for rental or lease; or

(7) The sale, to a person engaged in the business of renting furniture, of furniture for rental.

14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) 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. PL 1987, c. 497, 24 (new).

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;
- (3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;
- (4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;
- (5) 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, motel, restaurant or other eating establishment to its employees as wages;
- (6) 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;
- (7) 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.
- (8) The fee imposed by Title 10, section 1169, subsection 11;
- (9) The fee imposed by section 4832, subsection 1; or
- (10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.

17. Tangible personal property. "Tangible personal property" means 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.

36 §1760, Exemptions

9-D. 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. For purposes of this subsection, "sale price" includes, in the case of electricity, any charge for transmission and distribution.

31. Machinery and equipment. Sales of machinery and equipment:

- A.** For use by the purchaser directly and primarily in either the production of tangible personal property intended to be sold or leased ultimately for final use or consumption, or the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof.. 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.

74. Property used in production. Sales of tangible personal property, other than fuel or electricity, that becomes an ingredient or component part of, or that is consumed or destroyed or loses its identity directly and primarily in either the production of tangible personal property for later sale or lease, other than lease for use in this State, or the production of tangible personal property pursuant to a contract with the United States Government or any agency of the United States Government. Tangible personal property is "consumed or destroyed" or "loses its identity" in that 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.