



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 20

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## Lease & Rental Transactions in Maine

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This bulletin is intended solely as advice to assist individuals 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.

The Sales and Use Tax Law requires that every lessor engaged in the leasing of tangible personal property located in this State be responsible for the sales/use tax in connection with the leasing of that property. The appropriate application of sales/use tax to any specific lease transaction will depend upon the terms of the lease. The following information applies to most property and is intended as a guideline for determining the appropriate tax application.

### 1. Types of Leasing Transactions

#### a. Straight (True) Lease

In a “straight” or “true” lease, the lessor enters into a lease agreement with a lessee for a stated period of time (including day-to-day, week-to-week, and similar leases) 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 in this State. The lessor is therefore liable for a sales/use tax, due at the point that the property enters this State (generally at the beginning of the lease), and based on the purchase price paid by the lessor for the property. If sales tax was not paid directly to the vendor when the property was purchased, the lessor must report the use tax directly to Maine Revenue Services. **No sales tax is charged to the lessee, nor are the lease payments subject to tax.** If the property is returned to the lessor and leased to another Maine customer, no additional use tax is due.

#### b. True Lease with Option to Purchase

In a true lease that offers the lessee an option to purchase the property at the conclusion of the term of the lease or at any time during the lease, the lessor is liable for a sales/use tax based on the purchase price of the property, just as in the “straight lease” situation described above. However, if the lessee has the option to purchase the property for a stated amount, fair market value or some other significant value, and elects to exercise the option, **a taxable sale occurs at that time** and sales tax must be charged at that time based on the option price, (unless exempt by statute) including any amounts previously paid as rentals and applied to that price.

**c. Lease in Lieu of Purchase, including automobiles**

A lease that is deemed by the State Tax Assessor to be a lease “in lieu of purchase” is treated as a sale for tax purposes. The sale occurs at the commencement of the lease. The sale price on which tax is based is the total of all of the projected lease payments. Finance charges which are separately stated may be excluded from the taxable base.

The Assessor will review the specific terms of a particular lease in order to determine whether it is a lease “in lieu of purchase.” A “lease in lieu” will generally be found under the following circumstances: when the terms of the lease create a security interest as currently defined by 11 M.R.S.A. § 1-201(37); when the lease contains a \$1.00 “buyout” clause; when the lessee must assume responsibility for the disposition of the property at the end of the lease term; and when the lease is a so-called TRAC (Terminal Rental Adjustment Clause) lease.

If a lease is determined to be a lease in lieu of purchase and the term of the lease is indeterminable in advance, sales tax should be collected on each lease payment as it is made. If a lease in lieu of purchase is for a determinable period, but with an option to continue for a further indeterminable term, sales tax should be collected up front on the determinable amount. When this period is complete, sales tax would then be collected on each subsequent lease payment as it is made.

**d. Rent-to-Own Businesses**

**i. Taxable rentals**

“Rent-to-own” businesses regulated by Title 9-A must apply the Maine Service Provider Tax on the rentals of certain specific products. Rentals of audio tapes, audio equipment and furniture, as defined by §2551(4), are subject to the service provider tax. (See attachments) The rental of video media, which includes tapes and DVD’s, and equipment is also subject to service provider tax. Tax must be applied to each rental payment as the payment is made. If a customer elects to purchase the product being rented, the Maine Sales Tax must be collected on the buy-out price at the time of the sale. The Maine Service Provider Tax is a tax imposed upon the provider of the rental services as opposed to the customer. However, statute allows for the provider to pass on the tax to the customer, but it must be separately stated and identified clearly as service provider tax.

When rent-to-own businesses make purchases of any of these products, the rental of which is subject to tax, the purchase should be made exempt from tax by issuing a resale certificate to the vendor.

**ii. Non-taxable rentals**

The rental of all other products not included in paragraph i above is exempt from service provider and sales tax. This includes, without limitation:

Electronic devices rented to businesses	Computers rented to businesses
Office equipment	Fixtures affixed to realty
Tools & equipment	Decorative furnishings

When rent-to-own businesses purchase any of these products, which will not be taxable upon rental, sales tax should be paid, based on the purchase price, at the point of purchase. If these products are purchased without paying sales tax for any reason, use tax must be reported directly to Maine Revenue Services based on the purchase price. No service provider or sales tax is collected on the rental payments of these products.

**iii. Option to Purchase**

If a customer elects to purchase a product being rented, the buyout price would be subject to sales tax. There is **no credit allowed** for the sales/use tax previously paid by the lessor on the original purchase of the product nor for the service provider tax paid by the lessor on the lease payments. If a customer elects to continue renting a product through to the end of the term of the contract and the terms of the contract are such that at the end of the rental term, after the last payment is made, the customer will own the item, then the last rental payment is deemed to represent the “sales price,” upon which sales tax would be due.

**e. Interim Rentals**

A retailer that purchases tangible personal property for resale, then removes the property from inventory to rent for a short time, would normally be required to pay a use tax based on its cost of the property. However §1758 of the Sales/Use Tax law allows the retailer, in lieu of paying this use tax, to collect a sales tax on the rental price of the property. These types of rentals are referred to as “interim rentals.” The criteria to qualify for this provision are:

- i.** The property must be held as resale property; and
- ii.** The property cannot be rented to one individual for more than 12 months

If retailers wish to execute interim rental transactions, adequate records must be maintained 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 taxpayer makes any other taxable use of the property, including the rental to one customer for more than a year, the taxpayer becomes liable for the use tax based on the purchase price of the property less the amount of tax collected on the rentals.

This provision is not applicable to taxpayers **in the business** of renting property or who maintain a separate rental fleet of products.

#### **f. “Sale/Leaseback” Transactions**

A “sale/leaseback” transaction exists when a taxpayer purchases property, sells the property to a leasing entity, then leases the property “back” from the lessor. This type of financing arrangement is generally a combination of three separate transactions. The application of sales tax upon these transactions is dependent upon a number of factors and, due to the complexity of these factors, each such arrangement must be analyzed based on its own set of facts. Generally, however, the transaction will transpire as follows:

- i.** The original purchase of the property by the taxpayer is the first transaction. This transaction is generally a taxable transaction, unless a statutory exemption applies.
- ii.** The sale of the property from the taxpayer to the leasing entity is the second transaction. This is generally considered to be a casual sale, which is not typically subject to tax unless it is an item listed in Section 1764 of the Sales Tax Law.
- iii.** The lease of the property back to the taxpayer is the third transaction. The application of the sales tax to the lease of the property back to the taxpayer is determined primarily by the type of lease executed between the leasing entity and the taxpayer.

## **2. Rental/Lease of Specific Products**

### **a. Rental of Video Media & Equipment**

Rentals of video tapes, video games, DVD’s and video equipment used to record or playback video tapes or games by any retailer are subject to the Maine Service Provider Tax. Late charges and movie passes, since they represent payment for rentals, are also taxable. Fees charged for rewinding tapes are a non-taxable service.

The statutory definitions of “video media” and “video equipment” specifically exclude commercial video tape and equipment rentals so that movies rented to theaters are not subject to tax.

The statutory definition of “retail sale” specifically excludes the “sale of video media or video equipment, to a person engaged in the business of renting video tapes and video equipment.” Therefore, video rental businesses need not pay sales tax on their video products purchased for subsequent rental. If these products are eventually sold after having been rented for a period of time, such sales are subject to sales tax.

## **b. Automobiles**

For this provision, automobile includes 4-wheel pick up trucks and passenger vans, but does not include vehicles with more than 4 wheels, motorcycles, campers, motor homes or cargo vans.

### **i. Short-term rentals of automobiles**

The Sales and Use Tax Law imposes a 10% tax on all short-term rentals of automobiles. “Short-term” means a period of less than one year. A person that makes short-term rentals of automobiles may purchase the automobile free of tax and must collect tax on each rental payment. All rental payments made pursuant to rental agreements executed in Maine are subject to tax regardless of where such automobiles are to be used.

The “value of rental for a period of less than one year” is the total rental charged to the lessee for time and mileage including any other fees or services associated with the rental of the property. Examples of separately stated fees associated with the rental of the vehicle that are taxable, include but are not limited to the following:

- a. maintenance and service contracts
- b. drop-off or pick-up fees
- c. airport surcharges
- d. intercity fees
- e. one way charges
- f. collision damage or loss damage waiver (“CDW” or “LDW”) charges
- g. young driver charges
- h. additional driver charges
- i. additional keys
- j. mileage fees
- k. cost recovery fees, such as license recovery fees, concession recovery fees, title or registration fees, and other governmental fees
- l. rentals of additional equipment such as infant seats, ski racks or GPS systems
- m. standard/automatic cleaning fees

Examples of separately stated fees, rentals or sales that are not part of the taxable rental of the vehicle, include, but are not limited to the following:

- charges for goods or services after rental has terminated, such as additional cleaning fees or sales of fuel
- reimbursement of toll charges
- sales of optional insurance coverage for the protection of the lessee or the lessee’s personal effects, such as additional liability insurance (“ALI”), personal accident insurance (“PAI”), personal effects protection (“PEP”)

## **ii. Long-term rentals of automobiles**

The Sales and Use Tax Law imposes a 5% tax on automobiles rented or leased for 12 months or more. The tax is due in the month in which the lease begins. The tax base consists of the total monthly lease payments plus the equity of any trade-in plus any cash down payment. Total monthly lease payments are arrived at by multiplying the dollar amount of each lease payment by the number of payments in the lease term. Taxes, such as excise taxes 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. Trade-in equity is the value of any trade-in which reduces the cost of the lease. For long-term lease transactions trade-in credits are not allowed. Cash down payment represents any initial cash payment which is a cost reduction to the lease. Cash down payment includes rebates applied to the lease. It does not include pre-payment of lease payments or sales tax, excise tax, registration fees and other required “up front” costs which are disbursed by the lessor.

Out of state residents that enter into a long term lease of an automobile with a Maine dealer can sign an “Immediate Removal Affidavit” stating that they are going to immediately remove the automobile from the State. If such an affidavit is signed and presented to the dealer in good faith, the dealer is not required to collect sales tax on the lease transaction.

## **c. Software Licenses**

Software licenses are generally treated as leases and 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

Software licenses that must be renewed on an annual basis are considered to be one year licenses. The software is taxable to the lessor based upon the lessor’s purchase price at the time of the original licensing transaction. The lease amount and each subsequent renewal would not have any sales/use tax consequence.

If the software license is perpetual or for 10 years or more (with no annual renewals), it will be considered to be a lease in lieu of purchase. The lessor’s purchase would be tax-free for resale, and the lessor would be required to collect a sales tax from the lessee at the commencement of the lease based upon the total amount of the lease payments. (Finance charges which are separately stated may be excluded from the taxable base.)

### **3. Leases to Exempt Organizations/Activities**

The purchase of tangible personal property that is leased to an exempt organization, or for purposes of an exempt activity under the terms of straight leases or leases with options to purchase, is taxable to the lessor based on the purchase price. The fact that the property is being rented by an exempt organization or for an otherwise exempt activity does not relieve the lessor from its use tax responsibilities. Since the tax is imposed upon the lessor, who does not have an exemption from tax, the exemption granted by the legislature to the lessee does not “carry through” to the lessor.

Two exceptions are explicitly provided for in the statute:

- a.** Certain purchases of depreciable machinery and equipment for lease to customers who are engaged in commercial agricultural production, commercial fishing or commercial aquacultural production, are eligible for a refund of sales tax.
- b.** Purchases of portable classrooms or tangible personal property to be physically incorporated in a portable classroom for lease to schools entitled to exemption under §1760-16.

Leases in lieu of purchase to exempt organizations, and leases in lieu of purchase of property engaged in an exempt activity (i.e., manufacturing) are exempt from sales tax. These transactions are considered “sales” with the tax being imposed upon the lessee, as opposed to the lessor. Therefore, if the lessee is an exempt organization or involved in an exempt activity, its own exemption would apply.

If repair or replacement parts for leased property are purchased by the lessee and the lessee is an exempt organization or engaged in an exempt activity, the lessee may purchase these repair or replacement parts tax exempt.

Other taxable services, such as leasing automobiles or rent-to-own furniture, where the tax is imposed directly upon the lessee are exempt if the lessee is an exempt organization.

### **4. Other**

#### **a. Assignments (lessor)**

If a lease is assigned to a third party by a lessor, it is necessary to analyze the transaction in order to determine the appropriate sales tax application. If, for example, title to the assets is transferred from one lessor to another lessor, this constitutes a taxable transaction between the two lessors. However, if only the financing arrangements are being assigned by the lessor, then no taxable transaction has occurred. Since leases in lieu of purchase are considered sales (title being retained by the lessee) no sales tax would be incurred by a lessor’s assignment of such a lease.

**b. Prior Use Out of State**

Property that is used outside of Maine more than 12 months prior to being used in Maine is not subject to use tax. This would include leases executed outside of Maine since lessors are the “users” of the leased property. If a lessee subsequently makes use of the leased property in Maine, no use tax is due from the lessor. The storage or warehousing of property does not constitute “use” outside of Maine for purposes of this provision.

**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:

**MAINE REVENUE SERVICES  
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**ATTACHMENT #1**  
**Excerpts taken from 36 M.R.S.A.**

**§1752. Definitions**

**1-B. Automobile.** “Automobile,” for purposes of subsection 17-B, means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks.

**13. Sale.** “Sale” means 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.

**17-B. Taxable service.** “Taxable service” means the rental of living quarters in a hotel, rooming house, tourist or trailer camp; the transmission and distribution of electricity; the rental or lease of an automobile; the sale of an extended service contract on an automobile that entitles the purchaser to specific benefits in the service of the automobile for a specific duration; and the sale of prepaid calling service.

**§1758. Use tax on interim rental of property purchased for resale**

**1. Definition.** As used in this section, unless the context otherwise indicates, the term "rentals" includes any receipts derived from the use of property that is rented or leased.

**2. Generally; tax imposed on rental payments.** This section governs the taxation of tangible personal property that is purchased for resale in this State, other than at casual sale, and upon which no sales tax has been paid pursuant to chapters 211 to 225 when the property is rented or leased after purchase on an interim basis by the purchaser to another person prior to being sold. In lieu of the use tax otherwise imposed by section 1861, a tax is imposed at the same rate as that provided in the case of sales taxes by section 1811 upon all rentals received by the purchaser for the use of that property.

**3. Exceptions.** The purchaser is liable for a use tax on the property based on the purchase price less the aggregate amount of tax paid pursuant to this section on the rentals received by the purchaser in the following circumstances:

A. When the purchaser, after first renting tangible personal property purchased for resale, subsequently makes any use of that property other than as set forth in subsection 2; or

B. When the purchaser rents the property for a period of 12 months or more to any one person.

**4. Other sections applicable.** The tax on rentals imposed by this section is subject to section 1812 and all other pertinent provisions of this Part and for the purposes of this Part is treated the same as the sales tax imposed by section 1811 with the lessor deemed to be the retailer, the lease payments deemed to be the sale price and the lessee deemed to be the purchaser and consumer.

**§1760. Exemptions**

**23-C. Certain vehicles purchased or leased by nonresidents.** Sales or leases of the following vehicles to a nonresident if the vehicle is intended to be driven or transported outside the State immediately upon delivery.

- A. Motor vehicles, except
  - (1) Automobiles rented for a period of less than one year; and
  - (2) All-terrain vehicles and snowmobiles as defined in Title 12, section 13001;
- B. Semitrailers;
- C. Aircraft; and
- E. Camper trailers, including truck campers.

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.

Notwithstanding section 1752-A, for purposes of this subsection, the term "nonresident" may include an individual, an association, a society, a club, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, a domestic or foreign corporation and any other legal entity.

**§ 1764. Tax against certain casual sales**

The tax imposed by chapters 211 to 225 must be levied upon all casual rentals of living quarters in a hotel, rooming house or tourist or trailer camp and upon all casual sales involving the sale of trailers, truck campers, motor vehicles, special mobile equipment except farm tractors and lumber harvesting vehicles or loaders, watercraft or aircraft except those sold for resale at retail sale or to a corporation, partnership, limited liability company or limited liability partnership when the seller is the owner of a majority of the common stock of the corporation or of the ownership interests in the partnership, 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.

### **§1811. Sales tax**

A tax is imposed on the value of all tangible personal property 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, including 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. 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 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. As used in this section "loaner vehicle" has the same meaning as in section 1752, subsection 11, paragraph B, subparagraph (8).

The tax imposed upon the sale and distribution of gas, water or electricity, or telecommunications services, by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary.

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 5% of 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.

### **§2551 Definitions**

4. **Furniture.** "Furniture" means the following 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.

**21. Video media; video equipment.** "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.

**§ 2552 Tax imposed.** (Partial provision)

1. Rate. A tax at the rate of 5% is imposed on the value of the following services sold in this State:

C. Rental of video media and video equipment;

D. Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;