



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 28

INSTALLING TANGIBLE PERSONAL PROPERTY IN REAL ESTATE

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.

Certain trades such as carpenters, plumbers, electricians and landscapers involve the incorporation or installation of tangible personal property into real property. Legally, when the personal property has been installed, it becomes real property. If title to the tangible personal property does not pass to the customer until it has been installed in the customer's real property, the seller is then making sales of real property. The seller may, however, arrange for title to pass to the property owner before the materials are affixed to the customer's real property.

Maine Revenue Services will consider any person whose business ordinarily involves installation of tangible personal property into real property, whether on a lump-sum or on a time-and-materials basis, to be passing title to the materials AFTER they are affixed to real property unless there is clear evidence to the contrary.

1. PASSAGE OF TITLE AFTER INSTALLATION

An installer who works on a lump-sum or labor-and materials basis, passing title to the materials AFTER they are affixed to real property should:

- i. Pay sales tax as a consumer when purchasing materials.
- ii. NOT add to the bill to the customer any sales tax as such.
- iii. NOT report and pay sales tax directly to the State on the amount charged for materials.
- iv. If materials are purchased from a supplier located outside the State who does not collect the Maine sales tax, report and pay use tax directly to the State based on the cost of materials.

2. PASSAGE OF TITLE BEFORE INSTALLATION

An installer who works on a labor-and-materials basis, passing title to the materials BEFORE they are affixed to real property should:

- i. Purchase materials tax-free, using a resale certificate.
- ii. Separately state to the customer the amount charged for labor and materials, and collect sales tax based on the charge for materials when billing the customer.
- iii. Report and pay sales tax directly to the State on the amount charged for the materials.

3. EXAMPLES

EXAMPLE #1-A carpenter agrees to install a window for a lump sum. The carpenter furnishes labor and materials. The carpenter buys the sash and casing from a building supply house. This is a taxable sale to the carpenter, since title will not pass to the customer until the window is installed and has become real property. The carpenter should not purchase the materials tax-free for resale, nor should the carpenter add sales tax to the lump-sum charge to the customer.

EXAMPLE #2-A carpenter agrees to install a window on a time-and-materials basis, passing title to the materials AFTER they are installed. The carpenter buys the materials and gives the customer an itemized bill for labor and materials. The sale to the carpenter is taxable, since title will not pass to the customer until the window is installed and has become real property. The carpenter should not purchase the materials tax-free for resale, nor should the carpenter make a separate charge to the customer for sales tax.

EXAMPLE #3-A carpenter agrees to install a window on a time-and-materials basis, passing title to the materials BEFORE they are installed. The carpenter buys the materials tax-free, furnishing the supplier with a resale certificate. The carpenter should add sales tax to the bill to the customer, based on the materials charge only, and remit the tax to the State as a retailer.

EXAMPLE #4-The property owner purchases the window sash and casing from the building supply house. This is a taxable sale, tax being based on the charge for the sash and casing. If the property owner hires a carpenter to install the window, the carpenter does not collect or pay sales tax on the charge for installing the window.

4. PREFABRICATED ITEMS INSTALLED IN BUILDINGS

Persons who prefabricate and install complete items such as cabinets, counters and cases in the customer's premises should collect and report sales tax on the full amount charged to the customer, except installation charges if separately stated, in the following cases:

i. Installations in commercial buildings: where the prefabricated item is necessary for use in a particular trade or activity rather than for use of the building as a building, such as store counters, store cabinets, restaurant booths, signs, etc.

i. Installations in dwellings: where the prefabricated item is removable and would not be considered part of the dwelling if the dwelling were sold, such as some types of china cabinets, bookcases, etc.

Persons who prefabricate and install complete items should pay tax on the materials purchased, and should not collect tax on the charge to the customer, in the following cases:

i. Installations in commercial buildings or dwellings: where the items are necessary to the use of the building as a building, such as heating, lighting and plumbing systems.

ii. Installations in dwellings: kitchen cabinets and other items which after installation would be considered a part of the dwelling were the dwelling to be sold.

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

36 §1752. Definitions

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

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.

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.

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;

17. Tangible personal property. "Tangible personal property" means personal property that 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. "Tangible personal property" includes any computer software that is not a custom computer software program.

36 §1760. Exemptions

No tax on sales, storage or use shall be collected upon or in connection with:

61. Construction contracts with exempt organizations. Sales of tangible personal property, to a construction contractor, which are to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided. In order to qualify for this exemption, the contractor must have entered into a construction contract with the exempt organization prior to the purchase of the tangible personal property.

Relevant Rules:

#301 - Sales for Resale and Sales of Packaging Materials

#302 - Government Agencies, Exempt Organizations and Sales Thereto

#305 - Reports and Payments