



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 31

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## SALE OF MANUFACTURED HOUSING

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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 taxpayers with respect to sales of manufactured housing. 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.

### 1. GENERALLY

The Maine Sales and Use Tax Law provides an exemption for sales of used manufactured housing. (See 36 MRSA § 1760, sub-§ 40) For sales of new manufactured housing, the law provides a partial exemption: sales or use tax applies only to the portion of the sale price that represents the cost of materials that are included in the sale price. However, the exemption may not exceed 50% of the sale price. No sales or use tax applies to sales of manufactured housing that has been permanently incorporated into real property by the seller; however, the tax does apply to the purchase of the housing in the form of tangible personal property by the person who incorporates it into real property. The term “manufactured housing” is defined in the Manufactured Housing Act (10 MRSA Chapter 951). The term includes both mobile homes (those units described in paragraph A or C of 10 MRSA § 9002(7)) and modular homes (those units described in paragraph B of 10 MRSA § 9002(7)), but does not include park model homes. The term also excludes units that are designed and constructed primarily for temporary living quarters for recreation, camping or travel.

### 2. SALE OF NEW MOBILE AND MODULAR HOMES

**A. Mobile homes.** A sale of a new mobile home is generally considered a sale of tangible personal property. The seller of the mobile home may purchase the home exempt from tax by furnishing the supplier with a resale certificate as provided in Rule 301, and should collect tax from the customer when it sells the home. See also Instructional Bulletin No. 54 (“Resale certificates”).

**B. Modular homes.** Sales of new modular homes are considered sales of real property if the seller, or an employee or agent of the seller, does more than deliver the home to the location of the customer. In that situation, the seller must pay sales tax when purchasing the home if the supplier is registered to collect Maine sales tax. If the supplier does not collect the sales tax, the seller is responsible for payment of use tax directly to the State. The sales or use tax paid by the seller represents a cost that may be considered in determining the sale price of the home, but the tax should not be listed separately on the invoice to the customer.

When the customer takes delivery of a modular home at the location of the seller, or when the seller delivers the home to the location of the customer but does not install or erect it, the sale is one of tangible personal property. The seller should buy tax-free and collect tax from the customer in the same way as when selling a mobile home.

### **3. SALE PRICE OF NEW MOBILE AND MODULAR HOMES**

**A. New Mobile Homes.** All costs included in the sale price of a new mobile home other than the cost of materials are exempt from sales tax. If the cost of materials cannot be determined by the retailer, or if the cost of materials is less than 50% of the sale price, the retailer may not exempt more than 50% of the retail price. The sale of related but incidental products such as steps, decking or skirting does not fall within the 50% exemption; such items are taxable at 100% of the sale price.

**B. New Modular Homes Installed by the Manufacturer.** A sale of new modular housing by a manufacturer that is installed on a foundation by the manufacturer prior to passage of title to the customer is considered a sale of real property. The manufacturer, as the last purchaser of tangible personal property used in the construction of the real property, is liable for use tax based on the purchase price of materials used in the construction of the modular home.

**C. New Modular Homes Installed by the Seller.** A sale of new modular housing that is installed on a foundation by a seller who is not the manufacturer, prior to passage of title to the customer, is considered a sale of real property. The seller, as the last purchaser of the home in the form of tangible personal property, is liable for use tax based on the cost of materials included in the purchase price of the modular home. If the cost of materials cannot be determined by the seller, or if the cost of materials is less than 50% of the sale price, the seller is liable for sales or use tax based on 50% of the purchase price of the modular home. Purchases by the seller of other materials that are incorporated into real property by the seller, such as foundation work, steps, septic systems and similar items, are subject to sales or use tax based on 100% of the sale price.

**D. New Modular Homes Installed by the Customer.** A sale of new modular housing that is installed on a foundation by the customer is considered a sale of tangible personal property. If the seller is registered to collect Maine sales tax, the seller must collect tax from the customer based on the cost of materials included in the sale price of the home. If the cost of materials cannot be determined by the retailer, or if the cost of materials is less than 50% of the sale price, the retailer may not exempt more than 50% of the retail price. The sale price of a mobile or modular home includes furniture and appliances installed by the manufacturer of the mobile or modular home and any services that are a part of the sale. For more information on the meaning of "sale price," see Instructional Bulletin No. 39.

### **4. EXEMPT SALES**

**A. Sales to Government Agencies.** Sales made directly to the federal government, the State of Maine and political subdivisions of the State of Maine are exempt from sales tax. (See 36 MRSA § 1760, sub-§ 2) Sales to other states and their agencies and subdivisions are taxable. Sales to foreign countries and their missions and personnel may or may not be exempt from Maine sales tax. For more information on this subject, see the web site maintained by the US Department of State, Office of Foreign Missions, Tax Program at <http://www.state.gov/ofm/tax/> or call Maine Revenue Services. For more information on government and exempt organization sales generally, see Rule 302 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”).

**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. For more information, see Rule 302 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”). 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 organizations only when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does not apply to purchases by the clergy, staff or employees of exempt organizations.

**C. Refund of Purchase Price.** The sales tax does not apply to an allowance made upon the return of merchandise pursuant to warranty, or to the price of property returned by customers when the full purchase price is refunded. (See 36 MRSA § 1752, sub-§ 14) If a defective mobile or modular home or defective part is returned or replaced pursuant to a written or unwritten warranty, the amount refunded or applied toward the price of the replacement is not subject to tax. If a mobile or modular home is returned to the seller for any reason and the customer receives a refund of the full purchase price, the customer is also entitled to a refund of the sales tax.

**D. Sales Where Out-Of-State Delivery is Made by Dealer.** When a mobile or modular home is sold in Maine but delivered by the seller to the customer at a point outside the State of Maine, the sale is exempt from Maine sales tax. (See 36 MRSA § 1760, sub-§ 82) The dealer must complete the “Affidavit of Exemption (to support out-of-state delivery)” (form ST-MV-36) and file this affidavit with the Dealer’s Supplemental Sales Report (form ST-MV-8) on which the sale is reported. This affidavit must be signed by the person making delivery, not by the customer, and must be completed at the time of delivery. If the customer subsequently relocates the home in Maine, the customer may become liable for use tax based on the original purchase price. There is no exemption in the Maine Sales and Use Tax Law for the sale of a mobile or modular home to a customer who intends to remove it from Maine for use outside the State.

**E. Sales for Resale.** A retailer who sells mobile homes, or who sells modular homes as tangible personal property, may purchase them tax-free if it furnishes the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. The retailer 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 may be subject to prosecution.**

Sales of modular homes to the consumer are ordinarily in the form of real property. A retailer who purchases modular homes that will be resold as real property must pay sales tax to the supplier as indicated above.

## **5. REPAIRS TO MOBILE HOMES BEING HELD FOR RESALE**

Parts that are used to recondition a used mobile home in order to restore it to a salable condition, where the sale of the used mobile home will be in the form of tangible personal property, are not taxable when purchased by the retailer since they are purchased for resale. The retailer may purchase these parts tax-free if it furnishes the supplier with a resale certificate as provided in Rule 301.

## **6. REPORTING SALES OF MOBILE AND MODULAR HOMES**

In addition to the Sales and Use Tax Return (form ST-7), manufactured housing dealers must report their sales of mobile and modular homes on a “Dealer’s Supplemental Sales Report” (form ST-MV-8). Both taxable and exempt sales of mobile and modular homes must be reported.

## **7. RENTALS OF MOBILE AND MODULAR HOMES**

Rentals of mobile and modular homes for use at the location of the lessee will be considered rentals of tangible personal property. The lessor is subject to sales or use tax based on the cost of the unit unless the rental qualifies as an interim rental of tangible personal property being held for resale, or unless the lease is deemed by the State Tax Assessor to be a “lease in lieu of purchase”. For more information about interim rentals, and about rentals of tangible personal property generally, see Instructional Bulletin No. 20 (“Lease and Rental Transactions in Maine”).

Rentals of mobile or modular homes at a location provided by the lessor are considered rentals of living quarters. For more information on rentals of living quarters, see Instructional Bulletin No. 32.

The subsequent sale of a mobile or modular home that has been rented on interim basis is considered a sale of a new mobile or modular home.

## **8. MOBILE HOME REGISTRATION**

Manufactured housing dealers that are subject to the Maine Sales and Use Tax must provide their customers with a “Dealer’s Certificate” showing either that the sales tax due on the home to be registered has been collected by the dealer, or that the sale of the home is not subject to tax. A properly completed “Dealer’s Certificate” must be submitted by the customer to the Secretary of State as a prerequisite to any original registration. The Certificate must be signed by the dealer or an authorized representative, and the dealer's Seller’s Registration Number must be indicated.

It is the responsibility of manufactured housing dealers to collect and report the applicable sales tax on all retail sales made in this State, unless the purchaser qualifies for one of the tax exemptions discussed in Section 4 of this Bulletin. A dealer may not allow customers to pay the use tax directly to the Secretary of State at the time of registration, and the dealer will be held accountable for the tax on all taxable retail sales.

Application for registration in Maine of a mobile home purchased outside this State is considered evidence of intent to use the mobile home in this State. The purchaser must pay the applicable tax to the Secretary of State or establish that no tax is due as a prerequisite to registration.

## **9. BUILDING PERMITS FOR MANUFACTURED HOUSING**

Any person applying for a permit to locate any form of new manufactured housing in Maine must show proof either that the home was purchased from a dealer registered to collect the Maine sales tax, or that Maine use tax has been paid directly to Maine Revenue Services. The city, town or plantation in which the home will be located may not allow the construction or location of new manufactured housing by anyone other than a dealer registered as a seller under the Maine Sales and Use Tax Law without either a bill of sale from a registered dealer or certification that the tax was paid to Maine Revenue Services. The permit is deemed to be not approved or invalid until payment of the sales or use tax has been made to the dealer or certified by the State Tax Assessor.

If the person siting the manufactured housing in the municipality needs to obtain a building permit in order to prepare the site for the home before the home has been purchased, and is therefore unable to provide a bill of sale when applying for the building permit, a contract for a future sale of manufactured housing by a person registered to report Maine sales or use tax which otherwise meets the above requirements is sufficient evidence to allow issuance of a building permit by the municipality.

## **10. 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 04332-1065  
TEL: (207) 624-9693  
TTY: 1-888-577-6690**

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