



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 32

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## RENTAL OF LIVING QUARTERS

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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 Maine Sales and Use Tax Law (Title 36 Part 3) 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. TAXABLE RENTALS

The Maine Sales and Use Tax Law imposes a tax on "rental of living quarters in any hotel, rooming house, tourist or trailer camp" including casual rentals. These terms are defined broadly enough to include any kind of living quarters provided for human use. Every person who manages or operates, in the regular course of business or on a casual basis, a hotel, rooming house, cottage, camp, condominium unit, vacation home, tourist camp or trailer camp, or who collects or receives rental payments on behalf of the owner, must register for and collect Maine sales tax on the rentals. For the purposes of the law and this bulletin, **the term "hotel" includes a motel** and any other building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.

### 2. EXEMPTIONS

**A. Casual Rentals for less than 15 days.** A person who has only one room or a single camp for rent is not considered a "retailer" and is not required to collect sales tax on those rentals, when that person rents for fewer than 15 days each calendar year. If the property has been placed in the hands of a real estate agent or other person engaged in the business of renting or managing rentals of living quarters, that agent must collect and report sales tax on the rental, regardless of the length of time the property is rented.

**B. Occupancy for 28 days or more.** Rental charged to any person who rents continuously for 28 days or more in the same hotel, rooming house, tourist camp or trailer camp is nontaxable if the living quarters are a person's primary residence, or if the rental is in connection with education or employment. If tax has been paid by the person during the initial 28-day period, that tax should be refunded by the retailer (lessor). If the retailer (lessor) has reported and paid the tax to the State, the retailer should take a corresponding credit on the Sales and Use Tax Return filed for the period in which the refund or credit occurred by adjusting the "Taxable Rentals" figure shown on the return.

(1) "**Continuous residence**" is determined by continuous rental of the quarters, rather than by actual occupancy of the quarters. Continuous residence is not interrupted merely

by changing rooms within the same hotel, rooming house, tourist camp or trailer camp nor by the fact that the rental unit may be occupied at various times by different individual persons, such as when an airline or construction company rents a room or block of rooms for employees that may come and go for work purposes provided that the rental of the unit is rented and paid for by one single entity for the qualifying 28 days and all of the other criteria are met.

(2) "**Primary residence**" means the residence maintained at the location in which the individual is domiciled. "Domicile" is the place where an individual has his or her true, fixed and permanent home, which is the location where an individual has the most legal ties, i.e. driver's license, voting registration, vehicle registration, ownership of real property, enrollment of children in school systems, etc.

Examples of situations where the tenant's primary residence is **not** the facility being rented are an out-of-state resident vacationing in Maine or a Maine resident with a home in Bangor who is vacationing on the coast.

Examples of situations where the tenant's primary residence **is** the facility being rented are a person renting a house, condominium or apartment (provided a primary residence is not maintained elsewhere) or an out-of-state resident who has moved to Maine and rents a room in a hotel while searching for a new home.

(3) "**In connection with education**" means in connection with education from an accredited secondary school or college at which the person is enrolled in a diploma or degree program. If a person claims that the rental is in connection with education, that person must provide the facility with a statement from the school that the tenant is enrolled in such a program.

(4) "**In connection with employment**" means that the tenant is residing away from the tenant's primary residence due to job requirements. For example, an electrical contractor in northern Maine has a job in southern Maine, a professor is temporarily reassigned to another college, or a representative of a company is temporarily assigned to Maine to oversee the installation and operation of its product. Seeking employment does not meet this requirement, nor would making occasional business contacts while vacationing in Maine. If a person claims that the rental is in connection with employment, that person must provide the facility with a statement from the employer that the travel is necessitated by the person's employment and the purpose of the employment.

**C. Living Quarters Furnished to Employees.** Tax does not apply to rentals of living quarters that are furnished by an employer to an employee, at premises controlled by the employer, and solely for the convenience of the employer. It does not matter whether there is any adjustment of the employee's wages for the value of the living quarters. This applies only to living quarters furnished to employees, not to meals sold to employees. (Tax does not apply to the value of meals furnished by the employer to employees at the place of employment if the value of the meals is allowed as a credit toward the wages of the employees.)

**D. Specific Exemptions.** The following rentals are exempt from tax:

- (1) Rentals of living quarters at a camp that is entitled to exemption from property tax as a literary and scientific or benevolent and charitable institution, or by a children's summer camp.
- (2) Rentals of living quarters at an institution licensed by the State for hospitalization or nursing care of human beings.
- (3) Rentals of living quarters to a student necessitated by the student's attendance at a primary or secondary school or college.
- (4) Rentals of living quarters to any Maine sales tax exempt organization. These include governmental agencies (that are not required to have a permanent exemption certificate) and other exempt agencies holding a Maine permanent exemption certificate. Payment for services in connection with these rentals must be made directly by the organization itself either by direct bill or by check or credit card in the name of the institution. If an employee of an exempt organization, including a federal or state employee, pays for the rental with cash or personal credit card, the rental is subject to tax even though the employee may be reimbursed for their expense.

## **2. OTHER CHARGES IN CONNECTION WITH RENTALS OF LIVING QUARTERS**

**A. Incidental Charges at Hotels.** When a hotel offers separate facilities or services (such as a golf course, tennis courts, telephones and pay-per-view movies) that are not a part of the rental of living quarters, and where any charges for those facilities or services are in fact extra and are paid only by persons who make use of them and are shown as a separate item on the bill, those charges are not subject to tax.

Tax does apply to the amount billed for extra services that are a part of the rental of a room in a hotel or boarding house, whether or not separately stated. Some examples of services that are considered a part of the rental of living quarters include extra charges for use of a cot or crib or for use of cooking facilities.

**B. Forfeited deposits or cancellation fees.** A deposit is typically required in order to hold a room that is booked in advance. If the patron cancels or fails to show up on the scheduled day, the deposit, or a portion of the deposit, is generally forfeited. Effective August 23, 2006, the Maine Sales and Use Tax Law provides that if a patron cancels his or her reservation **on or prior to** the scheduled date of arrival and the establishment retains a "cancellation fee", that fee is not subject to Maine sales tax. However, if the patron fails to show on the scheduled date of arrival, any amount forfeited to the establishment is treated as rental of living quarters and is subject to the 7% tax.

**C. Rentals of Public Rooms.** Rental by a hotel of a dining room, assembly room or other area not intended for use as living quarters is not taxable. When a hotel rents a room designed as living quarters, the rental is considered taxable regardless of the use actually made of the room by the person renting it.

**D. Rentals of Video Media and Video Equipment.** The Maine service provider tax applies to rentals of video media, video games and video equipment for noncommercial playback. A hotel that rents any of these items must calculate and pay to the State the service provider tax on the charge for these rentals. Such taxable rentals include not only rentals of movie

and game video media and video equipment, but also rentals of video equipment for use at business conferences, seminars and the like.

Businesses engaged in both the rental of video media and video equipment and the rental of living quarters are required to obtain a Maine Service Provider account as well as a Maine Sales Tax account. Rentals of video products are subject to the service provider tax (not the sales tax imposed on lodging) and should be reported on a service provider tax return rather than on the sales tax return. Purchases of video media and video equipment for rental by a hotel are not taxable.

**E. Tent and Trailer Space.** The rental of space for the pitching of tents or the parking of motor homes, travel trailers and camper trailers is taxable. The rental price includes all service charges paid to the lessor, whether or not those charges are separately collected or stated. If the tents or trailers themselves are rented, that rental is also taxable.

### **3. PURCHASES**

On purchases by a hotel of tangible personal property used in the business, including items such as soap, towels and paper products intended for use by hotel occupants as well as office supplies, cleaning and maintenance supplies and similar items, tax must be paid to the supplier on the purchase. If these items are purchased outside the state and the tax is not collected by the supplier, use tax on these items must be reported on the sales and use tax return.

### **4. 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 1065  
AUGUSTA, ME 04332-1065  
TEL: (207) 624-9693  
TTY: NexTalk (888) 577-6690**

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**ATTACHMENT #1**  
**Excerpts from Maine Revised Statutes, Title 36**

**Part 3 (SALES AND USE TAX)**

**§1752. Definitions**

**4. Hotel.** "Hotel" means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.

**6. Living quarters.** "Living quarters" means sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space.

**12. Rooming house.** "Rooming house" means every house, cottage, condominium unit, vacation home, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

**14-E. School.** "School" means a public or incorporated nonprofit elementary, secondary or postsecondary educational institution that has a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year and that keeps and furnishes to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank.

**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.

**19. Tourist camp.** "Tourist camp" means a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation.

**20. Trailer camp.** "Trailer camp" means a place where space is offered with or without service facilities to the public for tenting or for the parking and accommodation of automobile trailers which are used for living quarters and the rental price shall include all service charges paid to the lessor.

**§1754-B. Registration of sellers**

**1. Persons required to register.** Except as otherwise provided in this section, the following persons, other than casual sellers, shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part: ...

F. Every person that manages or operates in the regular course of business or on a casual basis a hotel, rooming house or tourist or trailer camp in this State or that collects or receives rents from a hotel, rooming house or tourist or trailer camp in this State; ...

## §1760. Exemptions

**17. Camps.** Rental charged for living quarters, sleeping or housekeeping accommodations at camps entitled to exemption from property tax under section 652, subsection 1.

**18. Certain institutions.** Rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization or nursing care of human beings.

**19. Schools.** Rental charged for living quarters, sleeping or housekeeping accommodations to any student necessitated by attendance at a school.

**20. Continuous residence; refunds and credits.** Rental charged to any person who resides continuously for 28 days or more at any one hotel, rooming house, tourist or trailer camp if:

- A. The person does not maintain a primary residence at some other location; or
- B. The person is residing away from that person's primary residence in connection with employment or education.

Tax paid by such person to the retailer under section 1812 during the initial 28-day period must be refunded by the retailer. If the tax has been reported and paid to the State by the retailer, it may be taken as a credit by the retailer on the return filed by the retailer covering the month in which the refund was made to the tenant.

**75. Certain meals and lodging.** Meals or lodging provided to employees at their place of employment when the value of those meals or that lodging is allowed as a credit toward the wages of those employees.

## §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.

The tax imposed upon the sale and distribution of gas, water or electricity 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.

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.

#### **Part 4, Chapter 358 - SERVICE PROVIDER TAX**

##### **§2551. Definitions**

**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**

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

- A. Extended cable television services;
- B. Fabrication services;
- 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;
- E. Telecommunications services;
- F. The installation, maintenance or repair of telecommunications equipment;
- G. Private nonmedical institution services;
- H. Community support services
- I. Day habilitation services;
- J. Personal support services; and
- K. Residential training services.