



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN 36

Exempt Organizations and Government Agencies

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 to exempt organizations and government agencies. 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” on the MRS website.

The Sales and Use Tax Law provides specific exemptions for a number of different kinds of organizations and institutions, such as hospitals, schools, churches and libraries. **The sales and use tax law does not provide that all entities that qualify as a tax-exempt organization by Internal Revenue Service standards (i.e. 501(c)(3)) are exempt from the Maine sales and use tax.** There are many legitimate civic, charitable and fraternal organizations in Maine that do **not** qualify for exemption under the law and that consequently must pay sales and use tax on all of their purchases. If no specific statutory Maine sales tax exemption applies to an organization, its purchases are not exempt.

NOTE: All retailers should be sure to carefully review Rule 302 (“Sales to Government Agencies and Exempt Organizations”).

1. EXEMPTION CERTIFICATE APPLICATION PROCESS

Organizations and institutions that are entitled to sales/use tax exemption under the law may submit an application to MRS for a certificate of exemption. See Rule 302. The applicant must provide the information and any required documentation specified on the application form. The requirements for exempt status vary; the specific statutory provision in question must be reviewed in order to determine the criteria that must be met for each type of organization. Therefore, different supporting documents are required to accompany the application form for each specific organization. An organization may be asked to submit additional documentation before a determination can be made.

If MRS determines that the organization qualifies for a Maine sales tax exemption, a numbered exemption certificate is issued with the name and address of the organization. The certificate also identifies the exempt activity. When an otherwise qualifying entity is engaged in

both exempt and nonexempt activities, the exemption certificate will be issued only if it has been established to the satisfaction of the State Tax Assessor that the applicant has adequate accounting controls in place to limit the use of the certificate to exempt purchases.

If MRS determines that the organization does not qualify, a denial letter is issued. A decision by MRS to deny an application for issuance of an exemption certificate, or to revoke a certificate, constitutes a determination of the State Tax Assessor and is subject to a petition for reconsideration pursuant to 36 M.R.S.A. § 151.

2. USE OF EXEMPTION CERTIFICATE

The exemption certificate may be used only to purchase items that will be used **exclusively** by the exempt organization. Tax must be collected on the sale of any item that is not intended to be used by the organization primarily in the activity identified in the statutory exemption for which it qualifies and identified on the face of the certificate. An exemption certificate may **not** be used:

- A.** By members or employees of the exempt organization (including clergy) to purchase items for personal use;
- B.** To purchase items for resale by the organization; or
- C.** To purchase items for use by the organization in activities that are primarily commercial enterprises.

If the holder of an exemption certificate furnishes the certificate to a person for use in purchasing tangible personal property or taxable services that are physically incorporated in, and become a permanent part of, real property that is **not** used by the holder of the certificate primarily in the exempt activity, the State Tax Assessor may assess the unpaid tax against the holder of the exemption certificate.

An exempt organization may not authorize an affiliated organization or contractor to use its exemption certificate (but see Section 4 below for one exception involving contractors).

Sales to organizations that do not hold and provide to the vendor an exemption certificate issued by MRS will be deemed taxable. Misuse of exemption certificates by individuals or organizations may be subject to criminal prosecution.

3. PURCHASES BY (AND SALES TO) NON-GOVERNMENTAL EXEMPT ORGANIZATIONS

A. Responsibilities of retailer; good-faith requirement. Invoices of sales made to exempt organizations must be appropriately marked to indicate that they are exempt sales. The words “Maine Sales Tax Exempt” and the purchaser’s exemption number will satisfy this requirement. The retailer must keep a copy of the purchaser’s exemption certificate on file, but does not need to obtain a copy for each subsequent sales transaction. Exemption certificates must be taken by the retailer in good faith in order for the sale to be exempt from tax; that is, the seller must know or reasonably believe that the sale is exempt. The retailer is considered not to have met its burden of proving that a sale is exempt if it has, at the time of the sale, knowledge of facts that give rise to a reasonable inference that the purchaser is not the rightful holder of the exemption certificate that has been presented, that the exemption certificate has been revoked or

is otherwise invalid as of the time of the sale, or that the merchandise is not being purchased for the purpose of using it exclusively by the organization in the activity identified in the statutory exemption for which it qualifies and identified on the face of the certificate. For important additional information regarding specific documentation requirements that apply depending on the method of payment (cash, credit card, etc.), see Rule 302.

B. Responsibilities of purchaser. An exempt organization should make copies of its exemption certificate as soon as it receives it. In order to make a tax-exempt purchase, the organization must complete the bottom part of the exemption certificate and give a completed copy to the vendor from whom it is purchasing. Once a particular vendor has a copy of a completed exemption certificate on file for a qualifying organization, it does not need to obtain a copy of the certificate for each subsequent purchase.

Tax-exempt purchases made using the exemption certificate may be paid for directly by the exempt organization with a check drawn on the organization's account or a credit or debit card issued in its name. A tax-exempt purchase may also be paid for with cash, personal check or personal credit or debit card, but only if payment is accompanied by a purchase order in the name of the exempt organization, in which case the purchase order must be kept by the vendor in order to document the exempt sale. See also Section 5(B) below.

4. SALES TO (OR PURCHASES BY) CONTRACTORS PERFORMING WORK FOR EXEMPT ORGANIZATIONS

Contractors, including those from outside the State of Maine, are often employed by Maine sales tax exempt organizations to perform work that results in additions or improvements to real property.

A resident or nonresident contractor may purchase items exempt from Maine sales tax that will be **incorporated into the real estate** of an exempt organization, but only if a Contractor's Exemption Certificate (STP-72) is completed by the contractor and supplied to the vendor. Whenever possible the Maine Sales Tax Exemption Certificate number of the exempt organization should be supplied on the Contractor's Exemption Certificate. An exemption number for governmental agencies need not be supplied, but the governmental agency should be written on the Contractor's Exemption Certificate.

Any other purchases made by the contractor for use on such a job are subject to the Maine sales/use tax. Taxable purchases include, but are not limited to: consumables, tools, supplies, equipment, equipment rentals, fuel, safety equipment, apparel, and temporary structures. **Any purchases made by the contractor that are not to be incorporated into the real estate owned by the Maine tax-exempt organization are subject to the Maine sales/use tax.**

Out of state contractors that perform contracts in Maine are responsible for Maine sales/use tax on the cost of any tools, supplies or equipment purchased for use on those jobs. If such property is brought into Maine without having paid any Maine sales/use tax, the contractor must register with Maine Revenue Services and report and remit any use taxes due. Tools and equipment that have been previously owned and used by the contractor for more than 12 months outside the State of Maine would not be subject to Maine sales/use tax.

5. SALE TO INDIVIDUAL VS. SALE TO EXEMPT ORGANIZATION

A. Generally. Vouchers or similar official documents are sometimes issued by tax-exempt organizations or government agencies to needy individuals or students for items such as books, clothing and appliances. When such a voucher is issued by an exempt organization to an individual for redemption at a retail location for a taxable product, the sale is considered to be a taxable sale from the retailer to the individual redeeming the voucher, and sales tax must be collected, reported and remitted by the retailer.

B. Employees. Occasionally an exempt organization or government agency will authorize its own employee to make a purchase of an item of tangible personal property to be used on the job, such as protective or safety equipment or clothing. When an employee of the exempt organization or agency presents a retailer with a purchase order or other authority issued by the exempt organization and accepted in good faith by the retailer, the sale will generally qualify as an exempt sale to that organization provided that the sale price does not exceed the amount stated in the purchase order. If the retailer is not presented with a purchase order or other authority, the sale is considered to be a sale to the individual, not a sale to the exempt organization. The following rules also apply:

(1) If the sale price exceeds the dollar amount of the purchase order and the employee pays the difference with his or her own funds, the entire sale is considered to be a sale to the individual, not a sale to the exempt organization.

(2) If the employee is making a personal purchase together with a purchase covered by a purchase order or other authority as described above, the retailer should make two separate sales. But even if the retailer includes more than one item in the same transaction, only the item or items that are identified in the purchase order or other authority (and that are within the dollar limit stated thereon) are considered to be sold to the exempt organization. For example, if the employee has a purchase order or other authority to purchase “footwear” with a value up to \$100 and actually purchases both a pair of shoes for \$80 and a jacket for \$60, only the shoes may be sold exempt from sales tax; the full value of the jacket is taxable since it is considered to be sold to the individual employee.

6. SALES TO (OR PURCHASES BY) GOVERNMENTAL AGENCIES

All sales to the federal government, the State of Maine and any county, city, town or municipality in the State of Maine are exempt from the Maine sales/use tax. This category includes school districts; water, power, parking or other districts established by legislative act as quasi-municipal corporations; village corporations; and the Maine Turnpike Authority.

Governmental agencies are not required to obtain a Maine Sales/Use Tax Exemption certificate. Sales made to governmental agencies exempt from Maine sales/use tax must be documented by listing the name of the governmental agency on the invoice or sales slip. For important additional information regarding specific documentation requirements that apply depending on the method of payment (cash, credit card, etc.), see Rule 302.

Although governmental agencies are not required to obtain a Maine Sales/Use Tax Exemption Certificate, MRS will issue a certificate to any agency that requests one. Many governmental agencies request that an exemption number be issued to them for the convenience

of their vendors. Also, an agency of state or local government may request a letter from MRS confirming its exempt status.

Sales to other states and their agencies and subdivisions are taxable. Sales to foreign countries may or may not be exempt from Maine sales or use tax depending on the particular country in question, and also possibly depending on the amount of the purchase price. The same is true for sales to foreign diplomatic personnel. For more information on sales to foreign missions and their personnel, consult 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.

7. SALES TO EMPLOYEES OF STATE OR FEDERAL GOVERNMENT

A. Generally. For purchases made with cash, check or personal credit card, see the rules set forth in Section 5(B) above.

B. Government-issued credit cards. Certain employees of State of Maine and Federal government agencies are issued specific credit cards that display the name of the employee together with the name of the agency. Sales that are paid for with credit cards that are billed to and paid for directly by the governmental agency are exempt from the Maine sales/use tax. The retailer is considered not to have met its burden of proving that a sale is exempt if it has, at the time of the sale, knowledge of facts that give rise to a reasonable inference that the card is being used to make a personal purchase that is not tax-exempt or for any other purpose other than an official government purpose. For important additional information regarding specific documentation requirements that apply depending on the method of payment (cash, credit card, etc.), see Rule 302.

1. State employees. The State of Maine issues only two official corporate liability credit cards for the use of State employees, with billing directly to the State. These are known as State of Maine Procurement Cards. Both are MasterCard issued by US Bank; one card is a “standard card” for the purchase of supplies and other forms of tangible personal property, and the other is a “travel card” for travel expenses such as lodging and automobile rental. The use of State of Maine Procurement Cards is subject to rules established and administered by the State of Maine, Department of Administrative and Financial Services, Division of Purchases. For more information, contact the MRS Sales, Fuel and Special Tax Division. Purchases made by Maine state employees with any other type of credit card are subject to the Maine sales tax.

2. Federal Employees. Certain credit cards issued by the federal government to its employees are direct-billed to the federal government and are therefore exempt from Maine sales tax. SmartPay and SmartPay 2 cards issued by Citibank, JPMorgan Chase Bank or US Bank fall in this category, and purchases made with these cards may be tax-exempt (see below for details). The use of these cards is subject to rules established and administered by the U.S. General Services Administration (GSA). For more information, contact the MRS Sales, Fuel and Special Tax Division. Other federally-issued cards are billed to employees who are later reimbursed, and in such cases the sales are taxable.

There are several different types of GSA SmartPay2 cards. Bank Identification Numbers (BINs), which can be found as the **first four numbers** in the sequence of the card, are used to identify each type of card. The BINs for each type of card are noted below.

Fleet charge card with notation “For Official Government Fleet Use Only.” Purchases are centrally billed and exempt from sales tax.

MasterCard	5565 or 5568
VISA	4486, 4614, 4716
Voyager	8699
WEX	690046, 04980, 04950

Purchase charge card with notation “For Official US Government Purchases Only - US Government Tax Exempt.” Purchases are centrally billed and exempt from sales tax.

MasterCard	5568 or 5565
VISA	4716, 4614 or 4486

Travel charge card with notation “For Official Government Travel Only.” Purchases with cards that have a 0, 6, 7, 8 or 9 in the sixth digit are exempt; all others are taxable sales.

MasterCard	5568 or 5565
VISA	4486 or 4614

Integrated charge card (combination of two or more of the above) with notation “For Official Government Use Only.” Fleet and purchase type transactions are exempt; travel purchases are exempt if sixth digit is a 0, 6, 7, 8 or 9.

Debit and Prepaid cards:

MasterCard	5564, 5568 or 5565
VISA	4614

Facsimiles of these cards, and assistance for businesses and vendors that accept these cards, may be seen at: <https://smartpay.gsa.gov>

8. CHURCHES AND HOUSES OF RELIGIOUS WORSHIP

A. Generally; criteria applied. The following criteria are applied by the State Tax Assessor in determining whether a religious organization is a “regularly organized church or house of religious worship” for purposes of the sales/use tax exemption provided by 36 M.R.S.A. § 1760(16). These criteria are not exclusive. No single factor is controlling, and all of the listed criteria may not be relevant to a given determination. Any other facts and circumstances that may bear upon an organization's claim that it is a church or house of religious worship are also taken into consideration.

1. A distinct legal existence.
2. A recognized creed and form of worship.
3. A definite and distinct ecclesiastical government.
4. A formal code of doctrine and discipline.
5. A distinct religious history.

6. A membership not associated with any other church or denomination.
7. An organization of ordained ministers.
8. Ordained ministers selected after completing prescribed studies.
9. A literature of its own.
10. Established places of worship.
11. Regular congregations.
12. Regular religious services.
13. Sunday schools for religious instruction of the young.
14. Schools for the preparation of its ministers.

B. Availability to the public. The means by which its religious purposes are accomplished are what separate a church or house of worship from other forms of religious enterprise. To qualify as a church or house of religious worship, an organization must be reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine.

9. 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:

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Or visit our website at www.maine.gov/revenue**

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