MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
INSTRUCTIONAL BULLETIN NO. 39

SALE PRICE UPON WHICH TAX IS BASED

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 determining the sale price upon which tax is based.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although Maine Revenue Services ("MRS") bulletins 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 Title 36 of the Maine Revised Statutes ("M.R.S."). Both Title 36 and all MRS rules may be seen by clicking on "Laws and Rules" on the MRS website: www.maine.gov/revenue.

Sales tax is imposed on the value of tangible personal property and taxable services sold at retail in this State, as well as on the value of products transferred electronically in certain circumstances. Value is measured by the sale price. Sales tax is also imposed on certain casual sales. See 36 M.R.S. §§ 1764, 1811. Use tax is imposed on purchases where sales tax is due but not paid at the time of purchase. See 36 M.R.S. § 1861. The amount of tax is determined by applying the tax rate to the sale price, as defined in 36 M.R.S. § 1752(14).

This bulletin explains what must be included in the sale price on which sales or use tax liability is based.

1. GENERALLY

A. THE SALE PRICE ON WHICH SALES TAX IS BASED INCLUDES:

(1) The full price, valued in money, whether paid in money or otherwise, including the value of traded in property.

(2) The amount charged for any services that are a part of the sale, such as assembly, alteration, or fabrication charges, whether separately stated or not. See Section 5 below.

(3) Federal manufacturers' or importers' excise taxes (e.g., with respect to automobiles, tires, firearms, sporting goods, etc.) and alcohol and tobacco excise taxes, even though the federal tax is separately stated. 36 M.R.S. §§ 1752(14)(A), (B)(6).

(4) All consideration received for the rental of living quarters in this State, including consideration for any service charge, other charge, or amount required to be paid as a condition for occupancy, whether received by the owner, occupant, manager, or operator of the living quarters; a room remarketer; a person that operates a transient rental platform; or another person on behalf of any of those persons.

Any amount paid to or credited to a retailer as consideration for the sale in the form of a third-party payment, reimbursement, or other compensation is part of the sale price subject to tax.

B. THE SALE PRICE ON WHICH SALES TAX IS BASED DOES *NOT* INCLUDE:

(1) Discounts allowed by the retailer and taken by the purchaser. See Section 4 below.

(2) Separately stated charges for labor or services involved in installing, applying, or repairing the property sold. See Section 6(A) below.

(3) Separately stated charges for transportation of goods to the purchaser by common or contract carrier or by mail. See Section 6(B) below.

(4) Certain charges made in lieu of tips. See Section 6(C) below.

(5) Any charge, deposit, fee or premium imposed by a law of this State, including but not limited to the recycling assistance fee, the motor vehicle oil premium, the lead acid battery deposit, and the "lemon law" arbitration and consumer mediation service fees.

(6) Certain forfeited room deposits or cancellation fees charged or collected by hotels and other persons engaged in the rental of living quarters. See Instructional Bulletin No. 32 ("Rentals of Living Quarters") for more information.

(7) Any amount charged for the disposal of used tires.

(8) Any amount charged for a paper or plastic single-use carry-out bag. See Section 6(E) below.

(9) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax.

(10) The amount of a paint stewardship assessment imposed pursuant to 38 M.R.S. §2144 (for sales of paint occurring on or after December 1, 2018).

See 36 M.R.S. § 1752(14)(B).

2. RETAILER TO ADD AMOUNT OF TAX TO SALE PRICE

Every retailer must add the amount of the tax to the sale price of the tangible personal property or taxable service sold and may state the amount of the tax separately from the sale price on price display signs, sales or delivery slips, bills, and statements that advertise or indicate the sale price of that property or those services. If the retailer does not state the amount of the tax separately from the sale price, the retailer must include a statement on the sales slip or invoice presented to the purchaser that the stated price includes sales tax. In the event a retailer does not provide its customers with a sales slip or invoice, the retailer must clearly state on display signs, menus, or other advertisements of the retailer's products or services that sales tax is included in the advertised sale price. See 36 M.R.S. § 1753.

The sales tax added to the sale price constitutes a part of the price of the property or service sold, is a debt of the purchaser to the retailer until it is paid, and is recoverable at law by the retailer from the purchaser in the same manner as the purchase price. The tax computation must be carried to the 3rd decimal place, rounded down to the next whole cent whenever the 3rd decimal is less than 5 and rounded up to the next whole cent whenever the 3rd decimal is 5 or greater. When several purchases are made together and at the same time, the retailer may elect to compute the tax on each item individually or on the total amount of the several items, except that purchases taxed at different rates must be separately totaled. See 36 M.R.S. § 1812.

3. TRADE-INS, CORE CHARGES AND INSTALLMENT SALES

Pursuant to the definition of "sale price," tax applies not only to cash sales, but also to credit sales and to transactions where the sale price is paid in part or in whole by barter, rendition of services, or any other valuable consideration.

A. TRADE-INS.

(1) General rule. When a person sells property, and allows a credit for property that is traded-in, sales tax applies to the entire sale price, including the allowance for the trade-in. Thus, if a person sells a refrigerator for $800, and the customer pays $700 in cash and the retailer accepts $100 by way of allowance on a traded-in refrigerator, tax is based on the full sale price of $800.

(2) Exception. The Sales and Use Tax law provides an exception to the general rule above for the following categories of property: motor vehicles, watercraft, aircraft, chain saws, special mobile equipment, trailers, and truck campers. See 36 M.R.S. § 1765. When one or more items within a category is traded in toward the purchase of another item in the same category (motor vehicle traded for motor vehicle or watercraft for watercraft, for example), the sales or use tax is levied only on the difference between the sale price of the purchased item and the allowed trade-in value of the item or items taken in trade. For more information on trade-in allowances, see Instructional Bulletin No. 24 ("Vehicle Dealers").

B. CORE CHARGES. Customers who purchase property that can be reconditioned and resold by the retailer are sometimes encouraged to bring their used property to the retailer by the imposition of a "core charge" on the original purchase, which may then be refunded or credited to the customer when the used property is brought back to the retailer. The core charge is part of the sale price of the new property being purchased and is subject to sales tax. Core charges are not allowable as trade-in credits.

> Example: An alternator may be sold for $80 plus a stated core charge in the amount of $10. The total sale price subject to tax is $90. If a used alternator is traded-in at the same time as the purchase of the new alternator, the sale price subject to tax remains at $90 even though a $10 credit is allowed. If the used alternator is returned to the retailer at a later date and the customer is refunded the $10 core charge, no refund of sales tax is allowed. The definition of "sale price" does not exclude an allowance of this sort.

C. INSTALLMENT AND LAYAWAY SALES. A sale is treated as being completed when delivery of the property is made (even if full payment has not been made at that time). With an installment sale, the property is delivered to the customer, and then the customer makes payment over time. Sales tax must therefore be collected in full when delivery is made.

In the context of a layaway sale where the property has not yet been delivered to the purchaser, a layaway payment is a deposit and tax is not collected each time a payment is made. Sales tax is not collected until the product is delivered to the purchaser. The sale price includes the total amount of all layaway payments made. A layaway service fee is a charge for a service that is part of the sale, and therefore included in the taxable sale price when the sale is completed. If a layaway sale arrangement is cancelled and the layaway service fee is retained by the retailer, the fee is not taxable. A fee charged for the cancellation of a layaway sale arrangement is not taxable.

4. DISCOUNTS

Discounts allowed and taken on sales are not included in the sale price. Thus, if a 2% allowance is made for payment within a stated time, *and this allowance or discount is taken by the customer*, tax applies to the stated price less the discount, or the amount actually paid. 36 M.R.S. § 1752(14)(B)(1).

> Example: Two customers purchase $100 worth of taxable goods, with 2% being allowed for prompt payment. Customer A pays promptly and thus takes the 2% discount: tax is based on a sale price of $98. Customer B does not pay promptly and does not take the 2% discount: tax is based on a sale price of $100.

If interest is charged on overdue accounts, tax *does not* apply to the interest.

A reduction in the selling price to the customer that is paid or reimbursed to the retailer by a third party is not an allowable discount against the sale price of a transaction subject to tax.

A. COUPONS.

(1) Manufacturers' coupons. The sale price on which tax is based is the total selling price before deducting manufacturers' coupons. When a retailer accepts a manufacturers' coupon, the retailer does not recognize any loss in the profit made on the sale. The retailer is reimbursed for the face value of the coupon by the manufacturer. In other words, the purchaser uses the coupon like cash and the retailer receives the cash when the coupons are redeemed with the manufacturer.

> Example: A customer purchases laundry detergent and redeems a $0.25 coupon issued by the manufacturer. The sale price of the detergent is $2.29. Sales tax is computed on $2.29, i.e., the price without deduction for the value of the coupon.

(2) Retailers' coupons. When a retailer issues a store coupon, the retailer is reducing the price of the item purchased with the coupon by an amount equal to the face value of the coupon. The retailer reduces its profit on the sale and the value of the coupon is not recovered from any other party. This type of coupon is a retailer's discount which is deducted from the sale price before computing the sales tax.

> Example: A drug store publishes its own store coupon offering $0.50 off the purchase of a particular shampoo. The shampoo sells for $2.89. Sales tax with presentation of the coupon is computed on $2.39, i.e., the price after deducting the value of the coupon.

(3) Coupon books. A coupon book is a collection of discount coupons for a variety of businesses, usually assembled by an organization and sold as a fund-raising activity. The sale of the coupon book is not a taxable transaction as it is not a sale of tangible personal property, but rather the sale of future discounts. The organization is responsible for paying tax on the printing and production costs of the book. Whether a redeemed coupon is excluded from the taxable sale price depends on if it is offered as a retailer's discount or manufacturer's discount. See examples (1) and (2) above.

B. REBATES. Rebates provided by manufacturers to purchasers of tangible personal property are not discounts allowed between the retailer and the purchaser. Sales tax is computed on the total sale price without any deduction for the manufacturer's rebate. The fact that the rebate is assigned by the purchaser to the retailer does not change this result.

C. GIFT CERTIFICATES. When a person purchases a gift certificate, the person is simply exchanging cash for a form of credit. No sales tax applies to the sale of a gift certificate because no tangible personal property or taxable service is being purchased at that time. Sales tax is collected when the certificate is redeemed (unless a specific exemption applies).

When a gift certificate is purchased for less than its face value, the difference between the face value and the purchase value may be treated as a retailer discount since that value will not be recovered from any other source. When the certificate is later redeemed, the retailer discount

would reduce the taxable sale price of the transaction provided the retailer is able to document or otherwise reliably establish the value paid for the certificate and is treating the difference as a retailer discount.

Example 1: A customer purchases a "Deal of the Day" certificate for use at a certain retailer, valued at $100, for $75. When the certificate is redeemed, the retailer, having made prior arrangements for this offer to occur, has documentation that the amount paid for the certificate was $75. If the person redeeming the certificate purchases tangible personal property with a total stated price of $150, $25 of the certificate ($100 value less the amount paid of $75) is treated as a retailer discount, reducing the taxable sale price to $125 ($150 - $25). The amount paid for the certificate, $75, is treated as cash toward payment of this transaction.

Example 2: A non-profit organization is given a $50 certificate by a retailer free of charge to use in a raffle contest. The winner of the raffle redeems the certificate on a taxable sale valued at $125. Provided the retailer has documentation that this certificate was provided free of charge and will not be reimbursed for the certificate value from any other source, the retailer can treat the $50 as a retailer discount and reduce the taxable sale price to $75 ($125 - $50).

D. BUY ONE, GET ONE FREE PROMOTIONS. In promotions where a customer purchases an item and receives another item of the same kind at no additional charge, the retailer is actually selling both products at the full sale price and offering a retailer's discount equal to the value of one of the items. Sales tax would apply to the actual sale price paid by the customer. Use tax is not applicable to the fully discounted item.

E. RETAILER GIVEAWAYS.

(1) Drawings, raffles, etc. When a retailer conducts a drawing or raffle, the retailer is responsible for payment of tax on the item being awarded based on the retailer's cost. This means that if the item is withdrawn from inventory, use tax accrues at the time of withdrawal and the retailer's cost would be reported as "other taxable purchases" on the sales tax return. A retailer purchasing the item specifically for this contest must pay sales tax to the vendor.

(2) Free gifts given to customers. In the event a retailer provides free gifts to all customers, such as calendars, pens, and key chains, or offers a promotion where certain products are given away free to the first 100 customers, the retailer is responsible for use tax, as discussed above, on the goods given away.

(3) Complimentary gift with purchase of an item. If a gift is made by a retailer to a customer at the time of, and in connection with, the purchase of specific merchandise, the gift is a part of the sale. For instance, with every purchase of a dining room set, a set of dishes is provided at no charge. Sales tax would apply to the actual sale price paid by the customer. Use tax is not applicable to the gift.

However, if the item being purchased is exempt from tax and the gift is a taxable item, the retailer is responsible for use tax on the gift. For instance, a bowl is given with each purchase of a package of cereal.

5. CHARGES THAT ARE PART OF THE SALE PRICE

The definition of "sale price" includes "any consideration for services that are a part of a retail sale." See 36 M.R.S. § 1752(14)(A)(1). However, it excludes the "price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated." In other words, sales tax normally applies to the full charge for the goods sold, *including any charges for services that are a part of the sale*, except for separately stated charges for installing, applying, or repairing the property sold. See Section 6(A) below.

Example: When a caterer prepares and serves food for a reception, the caterer's charge covers not only the cost of the food, but also the cost of preparation and service. Tax applies to the entire charge by the caterer, since preparing and serving the food are services that are part of the sale. Even though the charges for preparation and serving are separately stated, tax still applies to these charges, since they are not charges for "installing or applying or repairing the property sold."

A. ALTERATION CHARGES. When a retailer offers goods for sale, and alters them at the customer's request, the amount charged for those alterations are part of the sale price on which tax is based, whether separately stated or not.

Example: A customer selects a coat. However, certain alterations are necessary before the coat is satisfactory as a piece of wearing apparel for the customer. The retailer or someone contracted by the retailer performs the alterations. The alterations cost an additional $10. The alteration charges are included in the sale price upon which tax is based, even though the alteration charges are separately stated.

B. ASSEMBLY CHARGES. Some types of furniture and equipment are sold either on a knocked down (or unfinished) or an assembled (or finished) basis; the assembled or finished item being priced correspondingly higher. Charges for assembling or finishing are part of the sale price upon which tax is based, whether separately stated or not.

C. CERTAIN DELIVERY CHARGES. A cash on delivery ("COD") charge constitutes payment for the service of collecting the purchase price from the purchaser. Handling charges, mileage charges, "wait charges," and fuel surcharges are services that are part of the sale. All of these charges are part of the sale price upon which tax is based, whether separately stated or not.

6. CHARGES THAT ARE EXCLUDED FROM THE SALE PRICE

The definition of "sale price" excludes the following charges:

A. CHARGES FOR INSTALLING OR APPLYING OR REPAIRING THE PROPERTY SOLD, IF SEPARATELY STATED. These charges, if separately stated, are not part of the taxable "sale price" and are not subject to sales tax. See 36 M.R.S. § 1752(14)(B)(4).

Example 1: Completed drapes are sold by a retailer, who also installs them at the home of the customer. Sales tax applies to the full charge for the drapes, including the charge for any hardware or other tangible personal property involved in the transaction. The installation charges, if separately stated, are not part of the taxable sale price.

Example 2: A customer brings a piece of furniture to a retailer to be stained or painted. The retailer should charge tax on the price of the paint or stain, but not on any separately stated charge for applying the paint or stain.

Example 3: A customer picks out the piece of furniture from the retailer's stock and has the retailer apply paint or stain prior to taking delivery. The total amount charged is taxable as the sale of tangible personal property.

In all the above examples, deduction of the service charges from the tax base depends on those charges being "separately stated." While it is preferable that these charges be separately stated on the invoice to the customer, this is not essential. There must, however, be a separate statement of these charges on record somewhere, either on a statement to the customer or in the records of the vendor.

B. CERTAIN TRANSPORTATION CHARGES.

Transportation charges are exempt from sales tax if *all three* of the requirements below are met:

(1) Shipment is made directly to the purchaser. It is not necessary that shipment be made directly from the location of the retailer. Transportation charges associated with a so-called "drop shipment" may be exempt if the other requirements are met. The cost of transporting the property sold to the location of the retailer ("freight-in") is always part of the taxable sale price of the property, whether or not it is separately stated to the customer.

Examples of situations in which *transportation charges are subject to tax* because they are not for shipment directly to the location of the purchaser are:

- "Home party" sales where the goods ordered at the party are shipped to the representative and then delivered by the representative to the customers;

- The cost of shipping property (such as inventory) from the manufacturer to the retailer ("incoming freight"), even though that cost is separately stated on the invoice to the customer; and

- Catalog or special-order sales made at a retail location where the goods are shipped to the retailer and picked up by the customer at the retail location.

(2) The transportation charges are separately stated. Any verifiable record showing the amount of the transportation charge as a separately stated item, such as a bill of lading, is acceptable evidence to substantiate the transportation charges. In the absence of a verifiable record, no reduction in the sale price subject to tax is allowed. An estimate of the cost of transportation, by either the retailer or the purchaser is not acceptable evidence to substantiate the transportation charge because it is not the actual amount charged. It is preferable, but not essential that the transportation charges be separately stated on the invoice of the retailer.

The cost of transportation is not "separately stated" when it is combined with charges for other services as in a "shipping and handling" charge.

(3) The transportation is by means of common carrier, contract carrier, or the United States mail. A charge for delivery in the retailer's own vehicle is part of the sale price subject to tax. Charges for transportation from the retailer to the purchaser are not excludible if the retailer delivers the goods in the retailer's own vehicle rather than shipping them by common or contract carrier or mail. There are no circumstances under which the retailer of tangible personal property can be a common or contract carrier with respect to that property.

Certain costs that may be associated with transportation are part of the sale price and are subject to sales tax. For example, cash on delivery ("COD") charges are not transportation charges. A COD charge constitutes payment for the service of collecting from the purchaser and is therefore included in the sale price and subject to sales tax. Handling charges, mileage charges, "wait charges" and fuel surcharges are also included in the sale price and subject to sales tax even if they are separately stated from a charge for transportation.

When a sale has both taxable and exempt components (e.g., a restaurant buying both food and supplies), transportation charges may be partially exempt from tax if a proration is done. However, if the cost of the taxable items are 10% or less of the total invoice, the taxable portion of the transaction is considered *de minimis* and the transportation charges are exempt. 36 M.R.S. § 1752(14)(B)(7).

C. SERVICE CHARGES IN LIEU OR TIPS. The definition of "sale price" does not include an "amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when the amount is to be disbursed by a hotel, restaurant or other eating establishment to its employees as wages." See 36 M.R.S. § 1752(14)(B)(5).

When a customer provides a tip for an employee of a retailer, the tip is not part of the sale price and is not subject to sales tax only if 1) the amount of the tip provided is wholly in the discretion or judgment of the customer, and 2) the full amount of the tip is turned over by the retailer to

the employee as wages. These requirements apply whether the tip is given directly to the employee in cash or added by the customer to a charge account.

An amount or flat percentage charged or collected in lieu of a gratuity, and designated as a service charge by the retailer, is not part of the taxable sale price only if all of the service charge is disbursed by the retailer to employees as wages. Otherwise, the service charge must be included in the retailer's gross receipts subject to tax even though a portion of the amount or flat percentage is paid over to the employees.

D. MAINTENANCE AND SERVICE CONTRACTS. Charges for maintenance or service contracts, with the exception of contracts involving automobiles or trucks, are not part of the taxable sale price provided the contract is optional to the customer and the charge is separately stated. See Instructional Bulletin No. 53 ("Repairs & Warranties") for more information.

E. CHARGES TO CUSTOMERS FOR PACKAGING MATERIALS. If a retailer charges its customer a fee for paper or plastic single-use carry-out bags, the charge for the bag is not subject to sales tax. See 36 M.R.S. § 1752(14)(B)(10). For example, if a grocery store charges a customer 5 cents for each of the 10 bags used in packaging the customer's goods, no tax applies to the 50-cent charge. A charge for any type of packaging material other than a "paper or plastic single-use carry-out bag" is taxable unless the customer is otherwise exempt.

7. RETURN OF MERCHANDISE

The definition of "sale price" excludes allowances made on defective merchandise that is returned to the retailer pursuant to warranty and returned property when a full refund is given. See 36 M.R.S. § 1752(14)(B)(2), (3).

A. RETURNS PURSUANT TO WARRANTY. When an adjustment of price is made by a retailer on the return of defective merchandise covered by a warranty, the adjustment may be deducted on a subsequent sales tax return of the retailer if the original sale was taxable and was reported as such by the retailer.

> Example: A tire is sold with a 30-month warranty, with the terms of the warranty providing an adjustment based upon period of use. Assume the tire was sold for $100, with an adjustment of $3 per month for the period by which the tire did not fail to meet the warranty. The tire is returned for failure after 24 months. The adjustment is $72 ($3 times 24 months of nonfailure). The purchaser would be entitled to a refund of $28 ($100 - $72) plus sales tax on this amount. The retailer would deduct $28 on its next sales tax return.

Usually these adjustments are made pursuant to a written warranty, as in the example above. However, the warranty is not required to be in writing as there are certain warranties that are implied by law. For example, if a customer returns merchandise because it is defective, an adjustment of sales tax liability may be allowed, even though the merchandise was not covered by an express written warranty.

While an adjustment of sales tax liability may be made when merchandise is returned pursuant to warranty, whether written or not, an adjustment cannot be made where the merchandise is returned to the retailer because the purchaser merely finds it to be unsatisfactory or unsuitable. Unless the *full* purchase price is refunded (see Paragraph B below), no adjustment of sales tax can be made when merchandise is returned because the purchaser finds it to be unsatisfactory.

> Example: A customer purchases a snow blower and after using it for a short time finds it is not powerful enough to meet the customer's particular needs. There is neither failure to meet a written warranty nor any defect in the machine. The customer returns it to the dealer and is allowed 85% of the original purchase price as a refund. There is no adjustment permitted so far as sales tax is concerned.

B. RETURN OF MERCHANDISE AND REFUND OF FULL PURCHASE PRICE. When merchandise is returned by the customer and the *full* purchase price is refunded, either in cash or by credit toward other purchases, the retailer may deduct the original sale price of the item on a subsequent sales tax return if the original transaction was taxable and was reported as such by the retailer. See 36 M.R.S. § 1752(14)(B)(3). In this case, applicable sales tax would also be refunded to the customer.

If, in connection with returned merchandise, the retailer makes a standard service charge (sometimes called a "restocking fee"), the transaction is a refund of the full purchase price, as long as the service charge is separately shown and identified on the invoice to the customer or in the records of the retailer. The customer would be entitled to a refund of the entire sales tax paid on the original transaction.

> Example: A retailer makes a standard service charge of $1 in all cases where merchandise is returned by the customer for refund. The invoice or credit memo to the customer indicates "purchase price refunded $30, less service charge $1 - net $29." The retailer treats this as a refund of the full purchase price and also refunds the sales tax originally paid on the $30 sale.

With the exception of a standard service charge, the retailer must refund the entire purchase price in order to qualify for this exclusion from sale price. For example, if an item has been used by the customer and the retailer therefore refunds less than the full purchase price (and the transaction does not involve an express or implied warranty), no adjustment of sales tax is permitted.

8. SALES MADE THROUGH VENDING MACHINES

Sales of merchandise through vending machines are retail sales. The term "vending machine" does not include a "snack box," self-serve kiosk, or self-serve retail establishment that requires purchasers to be on their honor in paying for the selected item.

The taxable status of products sold through vending machines depends upon the overall business activity of the retailer and the type of products being sold. A retailer may be engaged in other activities besides vending machines, such as a lunch counter or a cafeteria.

A. WHEN 50% OR LESS OF RETAILS SALES ARE THROUGH VENDING MACHINES. Vending machine operators who receive 50% or less of their gross receipts from retail sales through vending machines must report their entire vending machine sales based on the sale price. The retailer may sell products in vending machines with the sales tax amount included in the stated sale price. The retailer must include a statement on display signs or other advertisements that the price of the product includes sales tax.

B. WHEN MORE THAN 50% OF RETAIL SALES ARE THROUGH VENDING MACHINES.

(1) Sales of items for internal human consumption. "Products for internal human consumption" are defined to include sandwiches, chips, ice cream, candy, soft drinks, and other food items. Also included within the definition are the paper plates, cups, utensils, and packaging materials for these items. "Products for internal human consumption" does not include chewing gum, alcoholic beverages, medicines, vitamins, dietary supplements, or cigarettes. See 36 M.R.S. § 1752(5-A).

Products for internal human consumption sold through vending machines are exempt from sales tax when the gross receipts of the vending machine operator are more than 50% of the total gross receipts from all sales of tangible personal property. See 36 M.R.S. § 1760(34). Instead, the products are subject to use tax at the retailer's cost. Purchases of items for internal human consumption are reported as "other taxable purchases" on the sales tax return if the purchaser has not paid the sales tax to the vendor at the time of purchase. The exemption from sales tax on the sale of these products applies only to items for internal human consumption.

(2) Sales of other tangible personal property. Items not "for internal human consumption" are retail sales that are taxed on the sale price and are included in "gross sales" on the sales tax return. Tax applies to the sale price of cigarettes, toys, gum, health and beauty aids, and other goods not for "internal human consumption." The retailer should purchase these items free of tax by presenting the vendor with a resale certificate. The retailer may sell products in vending machines with the sales tax amount included in the stated sale price. The retailer must include a statement on display signs or other advertisements that the price of the product includes sales tax.

9. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the sales and use tax law faced by retailers. It is not intended to be all-inclusive. Requests for information on specific situations must be in writing, must contain full information as to the transaction in question, and must be directed to:

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