



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION SALES TAX INSTRUCTIONAL BULLETIN 54

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## RESALE CERTIFICATES

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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 the administration and proper use of annual resale certificates. Taxpayers are solely responsible for reviewing and complying with Maine statutory laws. Portions of the applicable Sales and Use Tax Law can be found at the end of the bulletin in Attachment #1. Particular attention should be given to Maine Revenue Services Rule 301 (“Sales for Resale”). As you read this bulletin, you should bear in mind that the burden of proving that a purchase qualifies for exemption rests with the purchaser.

Retailers purchasing tangible personal property or taxable services for resale are allowed to purchase those items exempt from sales tax provided the retailer presents to the seller a valid Maine resale certificate.

### 1. “RETAILER CERTIFICATE” VERSUS “RESALE CERTIFICATE”

#### A. Retailer Certificate

There are two certificates issued by Maine Revenue Services which are not to be confused. When a person applies to MRS for a sales tax registration, the person is issued a “*retailer certificate*” (previously referred to as a “seller’s certificate). This certificate:

- acknowledges that the person is registered with MRS for the collection and remittance of sales and use tax
- displays the sales tax registration number assigned to that person
- must be conspicuously displayed at the retailer’s place of business and
- cannot be transferred or assigned.

#### B. Resale Certificate

A “*Resale Certificate*”, a separate and different document from the “*Retailer Certificate*”, is issued only to taxpayers that qualify to receive one. This is the certificate that allows a retailer to make purchases for resale without paying the Maine Sales Tax on such purchases. A “*Resale Certificate*” will only be issued by MRS on initial application if the applicant meets the qualifications to receive one as discussed below. A copy of this “*resale certificate*” must be provided to a retailer’s supplier to support a claim that a purchase is exempt from sales tax since the goods or services will be resold by the retailer. (A facsimile of this certificate can be found at the end of this bulletin.)

## **2. ISSUANCE OF A RE SALE CERTIFICATE**

### **A. Provisional Resale Certificate**

When a retailer first applies for a sales tax registration, the retailer will be issued a provisional resale certificate provided the applicant expects to make \$3,000 or more in gross sales over the next year. This certificate is valid from the date of issuance to December 31<sup>st</sup> of the third year from the date of issuance. If the certificate is issued between October 1<sup>st</sup> and December 31<sup>st</sup>, the certificate will be valid until December 31<sup>st</sup> of the fourth year from the date of issuance.

### **B. Renewal of Resale Certificate**

MRS will conduct annual reviews of all registered retailers to determine whether retailers, including retailers having provisional certificates, qualify to receive a renewal of their "*Resale Certificate*", for the next period. "*Resale Certificates*" are automatically renewed, provided the retailer meets the qualifications to receive one if:

- the retailer's account is active and
- the retailer has reported \$3,000 or more in gross sales during the previous 12 months.

### **C. Incorrect Information on "Resale Certificate"**

If the information on any of these certificates is incorrect, such as spelling errors or mailing address, the retailer should contact MRS to correct the information. Please be aware that the business codes available to be issued by MRS are limited and may not exactly reflect the business type of the purchaser.

## **3. RETAILERS WITH ANNUAL GROSS SALES OF LESS THAN \$3,000**

In order to qualify to receive a "*Resale Certificate*", the retailer must have reported \$3,000 or more in gross sales during the previous 12 months. Those retailers not receiving a "*Resale Certificate*" must pay sales tax at the time of purchase even if the goods will be resold by the retailer.

### **A. Claiming Credit for Tax Paid**

When a retailer has paid a sales tax on goods that have been placed in inventory for resale, the retailer may claim a credit on the sales tax return for that period. If the credit exceeds the amount due that period, the retailer may elect to carry the credit to the next period or receive a refund. The line entitled "Credit For Sales Tax Paid on Goods Resold" must be used for this purpose.

## **B. Qualifying Prior to the Annual Review**

If a retailer does not qualify to receive a “*Resale Certificate*” but subsequently makes sales sufficient to qualify, the retailer may petition MRS in writing to reevaluate its account. The petition must provide documentation, such as the subsequent filing of a sales tax return, to support the fact that gross sales for the previous 12 months equal or exceed \$3,000.

## **4. RESPONSIBILITIES OF A RETAILER AS A “PURCHASER”**

The “*Resale Certificate*” issued to a retailer must be kept by the retailer as an original. Copies should be made of the certificate portion only and provided to the retailer’s suppliers at the time of purchase. When a person purchases goods and claims to the seller that the purchase is exempt because the goods are being purchased for resale, that person must document that claim by providing the seller with a copy of their valid “*Resale Certificate*”. Without such documentation, the seller is required to collect sales tax if applicable to the products being purchased.

If a retailer purchases items for resale on a continuous basis from a particular supplier, the retailer is not required to supply a copy of the resale certificate for each individual sale. Instead, the retailer can use its current valid “*Resale Certificate*” on file with the supplier as a blanket certificate to cover all subsequent purchases for resale, as long as the certificate remains valid. The retailer must state to the supplier at the time of each sale that the particular purchase is exempt for resale and is covered by the certificate on file. When new “*Resale Certificates*” are issued, the retailer is responsible for providing copies to its suppliers to replace the certificate on file. Failure to do so will require the supplier to charge tax on purchases until a valid certificate is received.

## **5. RESPONSIBILITIES OF A RETAILER AS A “SELLER”**

When a retailer receives resale certificates from its customers, the retailer must retain these certificates on file. These certificates must be kept for a minimum of 6 years. No customer can make a claim for resale by simply providing an identification number. Claims for any sales tax exemption must be documented.

Customers who claim that their purchase is for resale must document that claim with a valid “*Resale Certificate*” issued by MRS. The “*Resale Certificate*” must be properly completed and signed by the customer certifying that the merchandise being purchased will be resold by it. If the date of the sale falls within the applicable dates on the certificate, the certificate has been properly completed and the items purchased are items typically purchased for resale by the customer’s business type, the good faith of the seller will not be questioned. However, if the seller is aware of the fact that the customer is no longer in business or has reason to believe that the goods purchased will not be resold, the seller will be held responsible for the sales tax applicable to that transaction.

## **6. SALES TO OUT-OF-STATE RETAILERS THAT DO NOT HAVE A MAINE SALES TAX ACCOUNT**

Maine retailers sometimes make sales to non-residents who claim to be engaged in a retail business out-of-state. Sales for resale to these customers qualify for exemption but require some form of supporting documentation. An acceptable “resale certificate” for these customers to use could be the Multi-jurisdictional “Uniform Sales & Use Tax Certificate” issued by the Multistate Tax Commission. (A copy of this form can be found on MTC’s website at <http://www.mtc.gov/Resources.aspx?id=1592> ) On this form, the customer confirms it is in a retail business and provides the sales tax registration number from its home state. A copy of a “resale certificate” or similar document issued by the purchaser’s home state is **not** valid in Maine. See Rule 301 for acceptable alternative documentation that would support tax-free sales to a nonresident retailer.

If an out-of-state retailer does have a Maine Sales Tax account but is not entitled to receive a “*Resale Certificate*” it must pay the sales tax on the purchase of the merchandise and request a refund on its next sales tax return filed with MRS as described above.

## **7. 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:

**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 taken from 36 M.R.S.A.**

**§1752 Definitions**

**10. Retailer.** "Retailer" means any person who makes retail sales or who is required to register by section 1754-A or 1754-B or is registered under section 1756.

**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.

A. "Retail sale" includes:

(1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later; and

(2) Sale of products for internal human consumption to a person for resale through coin-operated vending machines when sold to a retailer whose gross receipts from the retail sale of tangible personal property derived through sales from vending machines are more than 50% of the retailer's gross receipts. The tax must be paid by the retailer to the State. [1989, c. 871, §5 (new).]

B. "Retail sale" does not include:

(1) Any casual sale;

(2) Any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business;

(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented on a short-term basis;

(4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;

(5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more; or

(6) The sale, to a person engaged in the business of providing cable television services, of cable converter boxes for rental or lease; or

The sale, to a person engaged in the business of renting furniture, or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105.

**13-A. Sales at retail.** "Sale at retail" means retail sale.

**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.

#### **§ 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:

- A.** Every seller of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business;
- B.** Every seller of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders, by means of one or more salespeople within this State, for retail sales within this State;
- C.** Every lessor engaged in the leasing of tangible personal property located in this State that does not maintain a place of business in this State but makes retail sales to purchasers from this State;
- D.** Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate;
- E.** Every agent, representative, salesperson, solicitor or distributor that receives compensation by reason of sales of tangible personal property or taxable services made outside this State by a principal for use, storage or other consumption in this State;
- 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;
- G.** Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The following activities do not constitute a substantial physical presence for the purpose of this paragraph:

(1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd-party common carrier;

(2) Attending trade shows, seminars or conventions in this State;

(3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;

(4) Maintaining a bank account or banking relationship in this State; or

(5) Using a vendor in this State for printing, drop shipping or telemarketing services; and

**H.** Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of the owner of that property or the provider of those services.

**2. Registration certificates.** Application forms for sales tax registration certificates must be prescribed and furnished free of charge by the assessor. The assessor shall issue a registration certificate to each applicant that properly completes and submits an application form. A separate application must be completed and a separate registration certificate issued for each place of business. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning of that term in the Maine Administrative Procedure Act. Each application for a registration certificate must contain a statement as to the type or types of items that the applicant intends to purchase for resale, and each retailer registered under this section must inform the assessor in writing of any changes to the type or types of items that it purchases for resale.

When a retailer maintains a place of business in this State, the registration certificate must be conspicuously displayed at that place of business. In the case of a retailer that does not have a fixed place of business and makes sales from one or more motor vehicles, each motor vehicle constitutes a place of business.

**2-A. Making sales after revocation.** A person whose sales tax registration certificate has been revoked by the assessor pursuant to section 1757 who continues to make retail sales in this State commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

**2-B. Provisional resale certificates; new accounts.** The assessor shall issue a provisional resale certificate to each applicant for initial registration that states on its application that it expects to make annual gross sales of \$3,000 or more. A provisional resale certificate issued between January 1st and September 30th is effective for the duration of the calendar year in which it is issued and the 2 subsequent years. A provisional resale certificate issued between October 1st and December 31st is effective until the end of the 3rd succeeding calendar year. Each certificate must contain the name and address of the retailer, the expiration date of the certificate and the certificate number. If a vendor has a true copy of a retailer's resale certificate on file, that retailer need not present the certificate for each subsequent transaction with that vendor during the period for which it is valid.

**2-C. Annual resale certificates; contents; presentation to vendor.** The assessor shall periodically review the status of each retailer registered under this section. On or before the date of expiration of a resale certificate, the assessor shall issue to each registered retailer with gross sales of \$3,000 or more during the 12 months preceding the assessor's review a resale certificate effective for the next 3 calendar years. Any subsequent annual resale certificate issued is



effective for the next 5 calendar years. Each certificate must contain the name and address of the retailer, the expiration date of the certificate and the certificate number. If a vendor has a true copy of a retailer's resale certificate on file, that retailer need not present the certificate for each subsequent transaction with that vendor during the period for which it is valid.

**3. Failure to register.** A person who is required by this section to register as a retailer with the assessor and who makes retail sales in this State without being so registered commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

### **§ 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, tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 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 tax imposed upon the sale and distribution of gas, water or electricity, or telecommunications services, 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. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary.

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.

### **36 § 1811-B. Credit for tax paid on purchases for resale**

A retailer registered under section 1754-B may claim a credit for sales tax imposed by chapters 211 to 225 if the retailer has paid the sales tax on an item that it subsequently resells. The credit may be claimed only on the return on which the sale of the item is reported. The credit must be claimed on a return filed within 5 years from the date on which the retailer purchased the item and may not be claimed if the item was used by the retailer prior to its sale.