



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 58

COMMERCIAL WOOD HARVESTING

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 addresses issues commonly faced by taxpayers involved in commercial wood harvesting.

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 the Maine Revised Statutes, Title 36, Part 3. Both Title 36 and all MRS rules may be seen by clicking on “Laws & Rules” at the top of the MRS website.

1. GENERAL INFORMATION

Effective July 1, 2013, persons engaged in commercial wood harvesting are authorized by 36 MRSA § 2013 and by MRS Rule 323 to use a certificate of exemption in order to purchase electricity and depreciable machinery and equipment without paying Maine sales and use tax. Rule 323 includes definitions, exclusions to qualifying activities, establishes guidelines for the issuance of the certificate, and places restrictions on the use of the certificate.

“Commercial wood harvesting” means the commercial severance and yarding of trees for sale or for processing into logs, pulpwood, bolt wood, wood chips, stud wood, poles, pilings, biomass or fuel wood or other products commonly known as forest products. 36 MRSA § 2013(1)(B-1). “Commercial wood harvesting” begins with the severance of trees and includes all activities thereafter that are an integral and essential part of commercial wood harvesting up to, but not including, the loading of forest products for transport to market.

A lessor that purchases items to be leased to another person for use directly and primarily in commercial wood harvesting must pay tax to the seller and apply to MRS for refund of the tax paid.

2. CERTIFICATE OF EXEMPTION

A. Issuance

A certificate of exemption, in the form of a card, will be issued to qualifying persons who submit a properly completed application to MRS. As proof that the person is engaged in commercial wood harvesting, the application must be accompanied by one of the following from the person’s most recent filing under the United States Internal Revenue Code:

- If a sole proprietor, Schedule C
- If a corporation, Form 1120 or Form 1120S, Pages 1 -3
- If a partnership, Form 1065, Pages 1 & 2
- If Canadian, Form T2042 or T2125

Upon the issuance of an exemption card, the purchaser may use the card to purchase electricity and qualifying machinery, equipment and repair parts free of tax (but see Paragraph C below for restrictions). The purchaser must provide the seller with a copy of the exemption card and a completed affidavit of exemption (see Paragraph B below).

Exemption cards are valid for a maximum of four years and may be used only by the person or persons named on the certificate.

B. Burden of Proof – Affidavit of Exemption

A completed affidavit of exemption, together with a copy of the exemption card, must be presented to the seller in order to document that a purchase is exempt from tax.

The burden of proving that a sale is to a person that has been issued an exemption card is on the person making the sale. This burden of proof will be met if the seller obtains from the purchaser a signed affidavit of exemption and a copy of a valid exemption card issued to the purchaser by MRS.

The seller must retain an affidavit and a copy of the exemption card held by each person to whom exempt sales are made, but need not obtain a separate affidavit or copy of the card for each individual sale. Invoices must be appropriately marked to indicate that they are exempt sales. This requirement is satisfied by the purchaser's exemption number and the words "Maine Sales Tax Exempt."

By signing this affidavit, the purchaser is attesting to the fact that the items being purchased from the seller qualify for exemption. If non-exempt items are purchased, the purchaser will be subject to a use tax assessment. Misuse of the affidavit may result in the cancellation of the exemption certificate and intentional misuse may subject the purchaser to criminal prosecution.

C. Exceptions

Certificates of exemption will not be issued to the following persons:

1. Wood harvesters who are in their first year of operation and are unable to provide a copy of their applicable federal form. Persons in this category must pay tax to their suppliers on all purchases. When the Federal Income Tax Return is filed and a copy of the applicable federal form is available, the person may apply to MRS for an exemption card. Once the card is issued, the person may begin using the card on an ongoing basis. The person may apply to MRS to obtain a refund of tax paid on qualifying purchases made during the first year of operation.
2. Persons who are primarily engaged in a related but non-qualifying business activity. Persons in this category must pay tax to their suppliers on all purchases and apply to MRS for refunds on qualifying machinery and equipment.

3. Lessors of wood harvesting equipment. There is no provision in the law whereby lessors may purchase items for lease to persons engaged in commercial wood harvesting exempt from tax. Accordingly, no exemption card will be issued to equipment lessors. When a lessor purchases items to be leased to another person for use directly and primarily in commercial wood harvesting, the lessor must pay tax to the seller and apply to MRS for refund of the tax paid.
4. Persons who are engaged primarily in any activity that does not constitute commercial wood harvesting. (See Rule 323, Section 2.)

3. USE OF EXEMPTION CERTIFICATE

A. Qualifying machinery and equipment

In order to qualify for this exemption, forestry specific machinery or equipment must meet three tests. Machinery or equipment must be:

1. Used directly in commercial wood harvesting;
2. Used primarily in commercial wood harvesting; and
3. Depreciable for Federal Income Tax purposes.

See 36 MRSA § 2013 and MRS Rule 323 for the definitions of “directly,” “primarily,” “depreciable,” and “depreciable machinery and equipment.”

Additionally, “primarily” means more than 50% of the time during the period that begins on the date on which the machinery or equipment is first placed in service by the purchaser and ends 2 years from that date or at the time that the machinery or equipment is sold, scrapped, destroyed or otherwise permanently removed from service by the taxpayer, whichever occurs first.

Some common items of forestry specific machinery and equipment that typically qualify for exemption are:

- Feller bunchers
- Felling heads
- Harvesters
- Skidders
- Mulchers (also known as masticators or brushcutters)
- Chainsaws
- Delimbers and chippers
- Forwarders
- Slashers

Repair and replacement parts for exempt machinery and equipment, including items such as batteries, filters, tires, starters, alternators, and belts, are also exempt.

Care should be exercised in determining whether a particular item qualifies under this exemption. Although the seller is relieved from the burden of charging a tax at the time of sale (provided that a copy of the exemption card and affidavit are on file) the

purchaser is subject to audit and will be assessed tax, including interest and penalties, on the purchase of non-qualifying machinery and equipment. The purchaser should write to MRS for a determination on questionable items.

B. Construction of Roads and Trails

The construction and maintenance of skid roads, skid trails, and winter haul roads qualify as commercial wood harvesting. The construction and maintenance of land management and travel roads is not considered commercial wood harvesting. Since construction equipment purchased for this activity is typically not equipment traditionally used in wood harvesting, sales tax should be paid to the vendor, or use tax should be paid directly to MRS (as in the case of a casual purchase), and the wood harvester would follow the refund procedure as explained in Section 4 of this bulletin.

For purposes of this bulletin, a “skid road” or “skid trail” is a route the construction of which requires minimal excavation, and that is primarily used for hauling or dragging forest products from the stump to the yard or landing. A “winter haul road” is a route or track across frozen ground or compacted snow and ice that is used primarily for access to a yard or landing, and does not include a road with a gravel surface. “Land management and travel roads” consist of a bed of exposed soil or gravel with other improvements which may include ditching, culverts, bridges, etc. These roads are at least semi-permanent and maintained to provide various uses including transport of forest products, forest management, agricultural, recreational, and other transport activities.

C. Electricity

Electricity used in commercial wood harvesting, and in support operations, may be purchased exempt from sales tax. This is true even if the electricity is used at a location remote from the woodland site where the actual wood harvesting is done – for example, at a business headquarters where equipment maintenance activities are performed. The exemption is applied on a meter-by-meter basis. If a single meter is supplying electricity that will be used in both qualifying and non-qualifying activities, tax should be paid to the utility provider and the purchaser should apply directly to MRS for a refund based on a pro-rata portion of the electricity used in the qualifying activity.

For purposes of this provision “support activities” include storage operations, maintenance operations, and related administrative activities. Support activities **do not** include activities conducted by a separate business, construction activities, and unrelated administrative activities.

D. Restrictions on Use of Exemption Card

The certificate of exemption may not be used to purchase any of the following items:

1. Non-qualifying machinery and equipment;
2. Motor vehicles, trailers, attachments for motor vehicles or trailers, motor vehicle repair parts, snowmobiles, and ATVs;

3. Consumable tools and supplies, other than repair parts, such as motor oil and other lubricants, coolants, solvents, cleaning supplies, clothing, hydraulic fluid, welding supplies, and welding gases;
4. Fuels;
5. Items incorporated in real property such as fencing, storage buildings, silos, special purpose buildings, heating or ventilation systems, and construction materials;
6. Items that are not 100% depreciable as commercial wood harvesting equipment (but see Section 4, Paragraph A below);
7. Items that are not (as determined by MRS) commonly used in or not solely designed for commercial wood harvesting, such as lawn and garden tractors, construction equipment, farming equipment, fork lift trucks, log loaders, utility vehicles and computers (but see Section 4, Paragraph B below); or
8. Electricity servicing separate businesses or non-qualifying activities.

4. REFUNDS OF TAX TO USER

An application for a refund of sales or use tax may be made by a user of depreciable machinery or equipment in any of the following circumstances:

A. Items purchased under Section 3, Paragraph D (6) above that qualify as depreciable machinery and equipment but are not 100% depreciable. If during its total time in use, a unit of machinery and equipment is used more than 50% of the time but less than 100% of the time directly in commercial wood harvesting, and is only partially depreciable under the United States Internal Revenue Code, any reimbursement of the sales tax will be prorated accordingly.

EXAMPLE: If a unit of machinery or equipment is 60% depreciable under the Internal Revenue Code because it is used only 60% of the time in commercial wood harvesting, 60% of the sales tax will be refunded, provided that the other requirements of 36 MRSA § 2013 are satisfied. If the unit is depreciable at 50% or less under the Internal Revenue Code because it is used 50% or less of the time in commercial wood harvesting, the purchaser will not be entitled to any refund of sales or use tax paid;

B. Items purchased under Section 3, Paragraph D (7) above that cannot be purchased exempt with the exemption certificate, but are actually used directly and primarily in a qualifying activity. Multi-use equipment qualifies for refund if it meets the conditions required for exemption as discussed in this bulletin. In order to qualify for a refund, reasonable documentation of the percentage of use in commercial wood harvesting is required.

C. Electricity and depreciable machinery and equipment used in commercial wood harvesting by a person who does not qualify for an exemption certificate;

D. A portion of electricity is being used in qualifying activities, when one meter is supplying electricity for both qualifying and non-qualifying activities.

An application for refund must be submitted on an official form supplied by MRS. The application must be completely filled out and must include a copy (duplicate) of the invoice showing that the tax was paid and to whom. A copy of the applicable form that was a part of the purchaser's most recent filing under the Internal Revenue Code must be attached, showing that the purchaser is engaged in commercial wood harvesting and that the purchased machinery or equipment is depreciable for that purpose.

Persons who have previously received a refund of tax paid on depreciable machinery or equipment, or who have been issued an exemption card valid on the date of purchase, need not submit a copy of the applicable form with subsequent applications unless there has been a change in the business, or unless specifically requested to do so by MRS.

Please note that supporting documents such as invoices and schedules will not be returned to the applicant. However, the applicant may request that copies of the documents be made and provided to the applicant.

Applications for refund must be filed with the State Tax Assessor within 36 months of the date of purchase.

5. REFUND OF TAX TO LESSOR

Lessors of machinery and equipment for lease to another person for use directly and primarily in commercial wood harvesting may make application for refund of Maine sales or use tax in the same manner as persons purchasing such machinery or equipment for their own use. The application must be accompanied by a copy of the lease agreement as well as a copy of the invoice showing that the tax was paid and to whom, a copy of the lessee's certificate of exemption valid on the date of execution of the lease and a properly executed (by the lessee) affidavit of exemption. If the lessee has not been issued a certificate of exemption, a copy of the applicable form from the lessee's most recent filing under the Internal Revenue Code must be submitted in support of the lessor's application for refund, either by the lessor or by the lessee directly to MRS.

Please note that supporting documents such as invoices and schedules will not be returned to the applicant. However, the applicant may request that copies of the documents be made and provided to the applicant.

Application for refund must be filed with the State Tax Assessor within 36 months of the date of execution of the lease.

6. TAX PAID TO ANOTHER JURISDICTION

There is no provision in the Maine Sales and Use Tax Law for refund of sales or use tax paid to another state or to a foreign country. No such refunds will be made.

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:

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