



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 60

SALES OF MEDICAL MARIJUANA AND RELATED PRODUCTS

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 persons who make sales of medical marijuana and related products pursuant to the Maine Medical Use of Marijuana Program (“MMMP”), including both registered caregivers and registered dispensaries. 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 Title 36, Part 3 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. Affidavits referenced in this bulletin can be viewed on MRS’ website at www.maine.gov/revenue/forms/sales/salesforms.htm while bulletins can be viewed at www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm.

The Maine Medical Use of Marijuana Act is found in Title 22, Chapter 558-C of the Maine Revised Statutes. Both Title 22 and related rules may be viewed at www.maine.gov/dhhs/dlrs/mmm/index.shtml.

Retailers unable to access the internet may request copies of applicable laws, rules, bulletins, and affidavits directly from MRS using the contact information at the end of this bulletin.

1. GENERALLY

Medical marijuana dispensaries and primary caregivers registered with the Maine Department of Health and Human Services are retailers involved in making taxable sales of prepared marijuana (and in some cases other products). Retailers are required to register as retailers with MRS and are responsible for collecting and remitting Maine sales tax. (See Section 2 below.)

A person who grows medical marijuana will likely be engaged in “commercial agricultural production” and may be eligible for sales tax exemptions on some of its purchases. (See Section 3 below.)

A retailer that prepares certain related products may also be engaged in the production of tangible personal property and may be eligible for the “manufacturing” exemption on some purchases. (See Section 4 below.)

Dispensaries and primary caregivers, like all retailers, are responsible for accruing and remitting use tax on many items that they purchase for use in their business. (See Section 5 below.)

2. SALES

Registered primary caregivers may be engaged in the sale of marijuana, tinctures, topical treatments and other preparations, and paraphernalia. All of these products are subject to sales and use tax at the general sales tax rate (currently 5.5%). The statutory exemption for sales of prescription medicines does not apply to sales of medical marijuana. See 36 M.R.S. § 1760(5). See Section 6 below for information on sales tax returns and payments.

“Sale price” includes “any consideration for services that are part of a retail sale.” See 36 M.R.S. § 1752(14)(A). The taxable sale price includes the full value of all compensation received in connection with cultivating marijuana for a patient, including the preparation and demonstration of use of the product sold, without any deduction for the cost of materials used or the services provided. See Instructional Bulletin No. 39 (“Sale Price Upon Which Tax is Based”) for more information.

A. Marijuana and Related Products

Sales tax at the general sales tax rate must be collected on the value of marijuana and all other products sold by a dispensary or primary caregiver, including tinctures, ointments, salves, and paraphernalia.

B. Food Products

Sales of food prepared by the retailer, including so-called “medibles,” are subject to sales tax at a separate “prepared food rate” (currently 8%). “Prepared food” includes food products that are prepared by the retailer and are designed for immediate consumption “without further preparation.” “Without further preparation” means that the product does not require cooking of any kind and does not need to be mixed with other products before being consumed. Toasting, microwaving or otherwise heating a product for palatability is not considered cooking the product.

Examples of prepared food are candies, cookies, pies, cakes, muffins, breads, bars, butters, and oils prepared by the retailer. See Instructional Bulletin No. 27 (“Sales of Prepared Food”) for more information.

Note: “Medibles” are not “grocery staples” because they are not ordinarily consumed for human nourishment.

C. Exclusions from Sale Price

The taxable sale price does not include separately stated charges for shipping goods to the purchaser by common or contract carrier or by mail. For more information, see Instructional Bulletins No. 39 (“Sale Price upon Which Tax is Based”).

D. Free Gifts to Customers

Retailers may give away promotional products. For example, a retailer may give a free T-shirt to a new customer. In these instances, the retailer is responsible for use tax on the cost of the goods given away. Gifts of general merchandise are subject to use tax at the general sales tax rate. Gifts of prepared food are subject to use tax at the prepared food rate. See Instructional Bulletin No. 39 (“Sale Price upon Which Tax is Based”).

E. Returned Merchandise

When an item is returned by a customer, the sales tax is generally refundable to the retailer only when a full refund of the sale price has been provided to the customer. See 36 M.R.S. § 1752(14)(B)(3). If a product is returned and the customer receives only a partial refund of the sale price, no sales tax is refundable to the customer, unless the partial refund is made pursuant to a warranty. For more information, see Instructional Bulletin No. 53 (“Repairs and Warranties”).

F. Sale of Tangible Personal Property vs. Sale of Service

As noted above, “sale price” includes “any consideration for services that are part of a retail sale,” including growing services.

A customer may provide seeds to the primary caregiver or dispensary, which then grows and harvests the mature plants. The customer receives tangible personal property in the form of buds, tinctures, or other products. In this situation, the taxable sale price is the total amount charged for cultivating, harvesting, and selling tangible personal property to the customer.

3. COMMERCIAL AGRICULTURAL PRODUCTION

“Commercial agricultural production” means the commercial production of crops (including seeds), plants, trees, compost and livestock. See 36 M.R.S. § 2013(1)(A). This includes growing and harvesting marijuana plants pursuant to the MMMP. Persons engaged in commercial agricultural production may qualify to purchase certain items exempt from sales tax. The purchaser must provide the seller with a copy of a valid commercial agricultural certificate of exemption issued by MRS and a properly completed exemption affidavit.

MRS Rule 323 (“Commercial Agricultural Production and Commercial Fishing”) and Instructional Bulletin No. 59 (“Farming, Fishing and Wood Harvesting”) provide detailed information regarding the commercial agricultural production exemption, including information on how to obtain an exemption certificate. The rule includes definitions, explains exclusions to qualifying activities, establishes guidelines for the issuance of the certificate, and places restrictions on the use of the certificate. Although the vendor is relieved from the burden of charging a tax at the time of sale (provided that copies of the exemption card and affidavit are on file) the purchaser is subject to audit and will be assessed use tax, including interest and penalties, on any non-qualifying purchases.

A. Machinery and Equipment

Machinery and equipment used directly and primarily in commercial agricultural production qualifies for exemption from, or refund of, sales tax, provided that it is depreciable for federal income tax purposes. See 36 M.R.S. § 2013 and MRS Rule 323 (“Commercial Agricultural Production and Commercial Fishing”) for the definitions of “commercial agricultural production,” “directly,” “primarily,” “depreciable,” and “depreciable machinery and equipment.”

Machinery and equipment commonly used by dispensaries and primary caregivers that may qualify for exemption are grow lights and tents, timers, fans, soil mixers, sprayers, various tools, transplant machines, and grading tables.

B. Electricity

Electricity used in commercial agricultural production and support operations may be purchased exempt from sales tax. 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 the portion of electricity used in the qualifying activity.

For purposes of this exemption, “support activities” include storage operations, maintenance operations, and related administrative activities. Support activities **do not** include activities conducted in, or related to, a retail store, by a separate business, or in unrelated administrative activities. For more information, see MRS Rule 323 (“Commercial Agricultural Production and Commercial Fishing”).

C. Seed, Feed, and Fertilizer

Purchases of seed, fertilizer, defoliant, pesticides, insecticides, fungicides, and weed killers for use in commercial agricultural production are exempt from sales tax. See 36 M.R.S. § 1760(7-B). The exemption does not apply to purchases of items that are not for use in commercial agricultural production. Items purchased for use in a home garden or other noncommercial use are subject to tax. The exemption does not apply to the sale of a growing medium, such as potting soil. For more information, see Instructional Bulletin No. 14 (“Seed, Feed, Fertilizer and Other Items Used in Agricultural and Aquacultural Production”).

4. PRODUCTION (MANUFACTURING)

The term “manufacturer” means a person engaged in the production of tangible personal property for later sale or lease. A caregiver or dispensary engaged in the preparation of tinctures and ointments for sale pursuant to the MMMP may be engaged in production. Production does not include the acquisition of raw materials, storage and handling (pre- and post-production), transportation, or biological processes. (But see Section 3 above for information on “commercial agricultural production”).

Manufacturers qualify for sales tax exemption on machinery and equipment used “directly and primarily” in production, items consumed and destroyed in the production process,

and ingredient or component parts of the product being produced. See 36 M.R.S. §§ 1760(31), 1752(2-A), 1752(9-A), and 1760(74). Manufacturers also qualify for a sales tax exemption on 95% of the cost of fuel and electricity purchased for use at a manufacturing facility. (See Paragraph D below.)

For complete information on the manufacturing exemption, including when the production process begins and ends, what types of equipment qualify and are excluded, and which types of product are considered to be consumed and destroyed in the production process, see Instructional Bulletin No. 22 (“Manufacturers”).

Note: “Production” does not include the preparation of food products. Items of machinery or equipment used by a retailer in the preparation of food to be sold by the retailer are taxable. This includes refrigerators, ovens, and blenders used in the preparation of edible items.

A. Directly and Primarily

To qualify for exemption, production machinery and equipment must be used directly and primarily within the production process. Generally, this means the machinery or equipment will be acting on the raw materials used in production. Depending on the process, exempt machinery and equipment may include items such as drying racks. See Instructional Bulletin No. 22 (“Manufacturers”) for details.

B. Consumed and Destroyed

Tangible personal property, other than fuel or electricity, that is consumed or destroyed or loses its identity in the production process is exempt from tax. These are items that have a normal life expectancy of less than one year in the use to which they are applied. For more information, see MRS Rule 303 (“Sales to Industrial Users”) and Instructional Bulletin No. 22 (“Manufacturers”).

C. Ingredients and Component Parts

Ingredient or component parts of the item being produced are exempt from tax. This category includes all raw materials that get physically converted into, or physically attached to the finished product, including tags and labels. See Instructional Bulletin No. 22 (“Manufacturers”) for details.

D. Fuel and Electricity Used at a Manufacturing Facility

Ninety-five percent of the cost of fuel and electricity used at a “manufacturing facility” is exempt. The remaining 5% is subject to the general sales tax rate. A manufacturing facility is a site where production machinery is located. See 36 M.R.S. § 1752(6-A). This partial exemption includes not only the machinery and equipment used directly in production, but all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production. This partial exemption applies to all types of fuel, including #2 heating fuel, diesel fuel, oxygen, acetylene, and wood chips. See Instructional Bulletin No. 22 (“Manufacturers”) for details.

A manufacturing facility does not include a site at which a retailer is primarily engaged in making retail sales of items that it does not produce itself.

5. PURCHASES

Items purchased by a retailer for use in its business are subject to tax unless a specific exemption applies. A primary caregiver or dispensary must therefore either pay sales tax, or accrue use tax, on items that do not fall within one of the exempt categories explained elsewhere in this bulletin. Taxable items will include such items as gloves and other articles of clothing, scales and balances, and containers used for storing medical marijuana.

A. Purchases for Resale

Retailers may make purchases of items for resale to customers. Items that will be resold in the form of tangible personal property may be purchased exempt from tax by providing a copy of a properly completed resale certificate to the vendor. See Instructional Bulletin No. 54 (“Resale Certificates”) for more information on making purchases for resale.

B. Purchases of Packing, Packaging and Shipping Materials

Certain packaging and shipping materials that go with the product to the customer may be purchased exempt from tax. See 36 M.R.S. § 1760(12-A). Examples include bags, twine, tape, containers, and labels. Retailers should provide their vendor with a resale or exemption certificate to make a tax-exempt purchase of packaging materials as provided in MRS Rule 301 (“Sales for Resale and Sales of Packaging Materials”).

Packaging materials used by a business to transport its own goods from one location of the business to another location of the business or used to store goods in inventory are taxable to the retailer. For more information, see MRS Rule 301 (“Sales for Resale and Sales of Packaging Materials”) and Instructional Bulletin No. 23 (“Packing, Packaging and Shipping Materials”).

6. REPORTING AND PAYMENT OF TAX

Sales and Use Tax returns must be filed on a monthly basis, except that those retailers whose total tax liability normally is less than \$600 per month may request authorization to file on a less frequent basis. Tax returns are due on the 15th of the month immediately following the reporting period. If the 15th of the month falls on a weekend or holiday, the return is due on the next business day. Payment of the amount due must be made when the return is filed. See MRS Rule 304 (“Sales Tax Returns and Payments”) for more information.

Tax returns are required to be filed electronically. Go to www.maine.gov/revenue/ and click on “Electronic Services.” Retailers unable to electronically file may request a waiver from MRS to file paper returns. See MRS Rule 104 (“Filing of Maine Returns”) for more information.

7. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law as it applies to registered dispensaries and registered primary

caregivers. It is not intended to be all-inclusive. Guidance for specific situations related to Sales and Use Tax can be obtained by contacting the Sales Tax Division at (207) 624-9693 or sales.tax@maine.gov. Questions regarding the Medical Marijuana Act and the MMMP should be directed to the Department of Health and Human Services at (207) 287-4325.

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Maine Medical Use of Marijuana Program regulations and application materials are available at www.maine.gov/dhhs/dlrs/mmm/index.shtml or may be obtained in written format by contacting the MMMP program at (207) 287-4325 or toll-free at 1-855-355-4325. A written request can be mailed to:

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Division of Licensing and Regulatory Services
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