



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 8

SMALL SALES AND SALES BY COIN-OPERATED VENDING MACHINES

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 issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

1. SMALL SALES.

a. Collection of sales tax. The law states that sales tax shall be added to the sales price as provided in §1812. Unless an exception exists in §1752(11) or an exemption exists in §1760, sales tax applies.

In sales of multiple items, the tax must be added to the total price. For instance, if the sale includes six 15 cent items, tax is on the 90 cent sale. The bracket system provides for the retailer to recover an amount equivalent to what is due the State. For example assume three separate sales are made as follows:

<u>Amount of Sale</u>	<u>Amount of Tax Added</u>
55 cents	3 cents
85 cents	5 cents
35 cents	2 cents
<hr/>	<hr/>
\$1.75	10 cents

When all the sales are totaled, sales tax is due on \$1.75. The actual amount collected, 10 cents, provides the retailer with enough tax to pay the amount due the State, 9 cents ($\$1.75 \times 5\%$).

b. Reporting of sales tax. A retailer computes monthly sales tax by multiplying taxable sales by 5%. In the example above, the tax collected (10 cents) is more than the actual tax due ($\$1.75 \times 5\%$ or 9 cents). A retailer may find that the tax due in the sales tax return is less than the actual tax collected from customers. This excess collection provided by the bracket system is "breakage". The retailer retains "breakage" as compensation for the collection of tax.

There is no provision in the law to waive the reporting of, or consider sales of 9 cents or less, as exempt. Consequently, all sales of 9 cents or less are required to be included in the total gross sales on the retailer's sales and use tax return.

2. SALES MADE THROUGH COIN-OPERATED VENDING MACHINES

The taxable status of products sold through vending machines depends upon the product being sold and the type of business activity of the retailer. "Coin operated vending machines" do not include "snack boxes" which require purchasers to be on their honor in paying for the selected item.

A. Types of Products Sold

1. Sales of tangible personal property

Items sold through vending machines, except those excluded in (b) below, are retail sales. Tax applies to the sale price of cigarettes, toys, gum, health and beauty aids, and other goods not for "internal human consumption." The retailer would purchase these items free of tax by presenting the supplier with a resale certificate.

2. Sales of items for internal human consumption

In certain situations, sales of this type are treated differently than sales of tangible personal property. §1752(5-A) defines "internal human consumption." Items that come within the scope of this definition are sandwiches, chips, ice cream, candy, soft drinks and other food items. Also included within this definition are the paper plates, cups, utensils and packaging materials for these items. For purposes of §1752(5-A), chewing gum is **not** for "internal human consumption."

B. Types of Business Activities

A retailer may sell a combination of items mentioned in (A) above. Or the retailer may be engaged in other activities besides vending machines such as a lunch counter or a cafeteria. The following discusses the two categories that a vending machine operator would fall into and the tax consequences of each.

1. WHEN MORE THAN 50% OF RETAIL SALES ARE THROUGH COIN-OPERATED VENDING MACHINES.

For retailers in this situation only, vending machines sales of products for internal human consumption are not taxed on the selling price. However the products are taxed at the retailer's cost. The Law allows the purchase of these items free of tax for resale if the supplier is provided a resale certificate. Purchases are then reported as "taxable purchases" on the sales tax return. This exemption applies only to items for internal human consumption. Other items sold through vending machines are taxed on their selling price. Include these sales in "gross sales" on the sales tax return.

2. WHEN 50% OR LESS OF RETAIL SALES ARE THROUGH COIN-OPERATED VENDING MACHINES.

Vending machine operators who receive 50% or less of their gross receipts from retail sales through vending machines do not qualify for the exemption in §1760(34). Such retailers must report their entire vending machine sales based on the selling price.

3. RESALE CERTIFICATES

When a retailer purchases items for resale, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase items for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover future purchases. However, the retailer must state to the supplier whether or not the purchase is for resale. The retailer will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.**

4. 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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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 §1752, Definitions

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

5-A. Internal human consumption. "Products for internal human consumption" mean edible products sold for human nutrition or refreshment and containers or instruments provided simultaneously for the consumption of these products. It does not include spirituous, malt or vinous liquors, medicines, tonics, vitamins, dietary supplements or cigarettes.

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.

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

36 §1760, Exemptions

34. Coin-operated vending machines. Sales of products for internal human consumption when sold through coin-operated vending machines by a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines.

36 §1812, Adding tax to sale price

1. Computation. Every retailer shall add the sales tax imposed by chapters 211 to 225, or the average equivalent of that tax, to his sale price, except as otherwise provided, and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price.

When the sale price exceeds \$1, the tax to be added to the price shall be the scheduled amount for each whole dollar plus the scheduled amount for each fractional part of \$1.

2. Several items. When several purchases are made together and at the same time, the tax shall be computed on the total amount of the several items, except that purchases taxed at 6% and 7% shall be separately totaled.

3. Breakage. Breakage under this section shall be retained by the retailer as compensation for the collection.