



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 9

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## CASUAL AND INFREQUENT SALES

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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 the subject of casual and infrequent sales. 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 Part 3 of MRSA (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” on the MRS website.

### 1. CASUAL SALES GENERALLY

A "casual sale" is an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character. Casual sales of tangible personal property and taxable services are not subject to sales or use tax, except those listed in Section 2 below.

The following are examples of casual sales.

- A. Isolated sales of a nonrecurring nature made by a person who is not engaged in the business of selling tangible personal property or taxable services. Example: A family sells a swing set that the family’s children have outgrown (but see Section 4 below).
- B. Sales of tangible personal property originally acquired for use or other consumption by a retailer or seller, which is not of the same kind as that sold in the regular course of any business engaged in by that retailer or seller. Example: A curtain shop selling used filing cabinets.
- C. Sales made by a personal representative in the settlement of an estate, unless those sales continue the operation of a retail business or are made by a retailer. Note: Sales by an auctioneer are not considered casual in nature.
- D. The sale of an entire business by the owner (but see Section 3B below).
- E. Judicial sales, executions, etc., unless made by a registered retailer.
- F. Sales by a person engaged in a business or occupation such as manufacturing or farming of used machinery, fixtures, equipment or similar items when the seller is not engaged in the business of selling those items.

G. Sales, including sales of meals, by a civic, religious, or fraternal organization at bazaars, fairs, rummage sales, picnics, or similar events, provided that the organization is not registered or required to be registered as a retailer.

## **2. TAXABLE CASUAL SALES**

Section 1764 of the Sales and Use Tax Law imposes tax on the casual rental of living quarters in a hotel, rooming house, tourist camp, or trailer camp. For information on the casual rental of living quarters, see Instructional Bulletin No. 32.

Section 1764 also imposes tax on the casual sale of the following kinds of property, unless the sale is to a corporation, partnership limited liability company, or limited liability partnership when the seller is the owner of 50% or more of the common stock of the corporation or of the ownership interests in the partnership, limited liability company, or limited liability partnership:

- A. Motor vehicles (including snowmobiles and all-terrain vehicles)
- B. Trailers
- C. Special mobile equipment (except farm tractors, lumber harvesting vehicles or loaders, and lawn and garden tractors)
- D. Truck Campers; and
- E. Watercraft

If a watercraft or motor vehicle is sold at casual sale and the seller does not report and pay tax on the transaction, tax will be collected from the purchaser by the registering agency as a prerequisite to registration.

## **3. TAXABLE TRANSACTIONS SIMILAR TO CASUAL SALES**

The following are examples of transactions that may appear to resemble casual sales but are treated by the law as retail sales. Sales of the kinds listed below are subject to tax in the same way as other retail sales.

- A. A sale made in the ordinary course of business by a registered retailer on behalf of the owner, even though the owner is not in the business of making such sales. A retailer has the same duties when making sales of property belonging to another as when selling the retailer's own goods. These are generally known as consignment sales.
- B. The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease, or rental in the ordinary course of business, except when:
  - (1) The sale is to an affiliated entity and the transferee, or ultimate transferee in a series of transactions among affiliated entities, purchases the assets for resale, lease, or rental in the ordinary course of business; or
  - (2) The sale is to a person that purchases the assets for resale, lease, or rental in the ordinary course of business or that purchases the assets for transfer to an affiliate, directly or through a series of transactions among affiliated entities, for resale, lease, or rental by the affiliate in the ordinary course of business.

For purposes of this provision, “affiliate” or “affiliated” includes both direct and indirect affiliates.

C. Retail sales by a manufacturer, wholesaler, processor, or jobber of the kinds of property ordinarily produced or sold by that business, even though retail sales are infrequent and comprise only a small fraction of the total sales of that business.

Example: A manufacturer ordinarily sells its manufactured products at wholesale exempt from sales tax. Occasionally a sale is made to the manufacturer's employees. A sale to an employee is a taxable retail sale.

D. Sales that are an integral part of a business, such as the sale of repossessed personal property by a bank or finance company, even though the sale of tangible personal property is not the primary activity of that business.

E. Sales by lessors of personal property previously rented or leased.

#### **4. YARD SALES, LAWN SALES, AND GARAGE SALES**

When individuals dispose of their own used household items by selling them at a yard sale or similar event, or selling them after placing an advertisement in the classified section of a newspaper, and they are not in the business of selling property of the type involved, they are making casual sales and are not required to register as retailers or to collect sales or use tax from their customers. If the property sold is a motor vehicle, watercraft, trailer, or special mobile equipment, the purchaser is responsible for payment of the tax directly to the State.

Sales that are operated on a continuing basis or that include items produced or acquired for resale by the seller are not casual sales. Persons who operate businesses of this type are required to register as retailers under the Sales and Use Tax Law and to collect, report, and remit Maine sales tax in the same way as other retailers. If used household items are intermingled with items produced or acquired for resale, all sales are subject to tax.

#### **5. 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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