



MAINE REVENUE SERVICES

(Formerly the Maine Bureau of Taxation)

SALES/EXCISE TAX DIVISION

GENERAL INFORMATION BULLETIN

September 19, 1997

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NO. 86

This bulletin contains important information about recent developments and issues that affect everyone who pays Maine sales and use taxes. Please read it carefully.

Topics discussed in this issue

New name for the Bureau of Taxation

Significant Law changes

Custom computer programming

Biotechnology

Special mobile equipment

Hay & Horses

Wildlife shelters

TRAC leases

Items of General Interest

What if you have not received a sales tax return

Burden of proof of exempt sale is on the seller

Sales to government employees

Sales to exempt organizations

New Initiatives - Internet filing

Updated listing of bulletins

finances. Our new name will become more apparent as we continue our transition throughout the rest of this year.

CUSTOM COMPUTER PROGRAMMING EXEMPTED

Since July 1986, the creation of a custom computer program, including modifications to programs, was a taxable event. Recent legislation repealed custom computer programming as a taxable service effective October 1, 1997. A custom computer software program is software that is written or prepared exclusively for a particular customer and does not include "canned" or pre written software which is held for general or repeated sale. A canned software program that has been modified to meet a particular customer's needs is a custom program to the extent of the modification provided the amount charged is separately stated. Any contracts for the creation of custom computer programming on or after October 1 will be exempt. Canned software programs continue to be taxable.

(Chapter 557, P.L. 1997)

BIOTECHNOLOGY IS PRODUCTION

Machinery and equipment used in the production of tangible personal property is exempt from sales and use tax. However, biological processes have been specifically excluded by definition from the term "production". Recent legislation amended the definition of "production" effective October 1, 1997, to include biological processes if they are part of an integrated manufacturing process. The same legislation also expanded the exemption for machinery and equipment used by the

BUREAU OF TAXATION IS NOW THE MAINE REVENUE SERVICE

Governor King approved legislation changing the Maine Bureau of Taxation to Maine Revenue Services ("M.R.S."). This new name more appropriately identifies our agency as our functions broaden to serve other state agencies. Our new organization is already processing unemployment tax returns previously handled by the state's labor department. M.R.S. will assume many new duties in the future ranging from park passes to judicial

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biotechnology industry in research and development.

(Chapter 557, P.L. 1997)

SPECIAL MOBILE EQUIPMENT INCLUDES FARM TRACTORS AND LUMBER HARVESTING VEHICLES

The statute allows trade-in credits for farm tractors, lumber harvesting vehicles and special mobile equipment. However, in order to receive this credit, the item traded must be of the same kind as that being purchased, i.e. tractor for tractor, skidder for skidder, etc. Realizing that farm tractors and lumber harvesting vehicles would, by definition, also qualify as "special mobile equipment", legislation, effective September 19, 1997, amended the trade-in credit provisions of the statute to include farm tractors and lumber harvesting vehicles within the definition of special mobile equipment. The result allows a taxpayer to receive a trade-in credit when exchanging any type of special mobile equipment for other special mobile equipment i.e. farm tractor for front end loader, skidder for grader, etc.

Casual sales of farm tractors and lumber harvesting equipment remain exempt while other special mobile equipment is taxable.

(Chapter 133, P.L. 1997)

RAISING HORSES IS AGRICULTURAL PRODUCTION

Products such as feed, hormones, antibiotics, medicines and litter used in agricultural production are exempt from tax. Since Maine Revenue Services has historically not considered the raising of horses to be an agricultural activity, those products were taxable if purchased for horses. Effective September 19, 1997, the statute is amended to include the "raising and keeping of equines" as agricultural production. As a result, the exemption for the products mentioned above will apply to horses as well. The same legislation also provides an exemption for hay and organic bedding materials for all farm animals.

(Chapter 550, P.L. 1997)

EXEMPT ANIMAL SHELTERS INCLUDE THOSE WHICH HOUSE WILDLIFE

Sales to incorporated nonprofit animal shelters are exempt from tax. Maine Revenue Services has interpreted these shelters as only those which house and care for domestic animals. The statute was amended effective September 19, 1997 to also include those which house wildlife.

(Chapter 545, P.L. 1997)

"TRAC" LEASES ARE LEASES NOT SALES

Recent legislation enacting Chapter 209-A in Title 10, the Commerce and Trade statute, has an effect on the application of sales and use tax to TRAC leases. Maine Revenue Services had considered TRAC leases as sales since 1985 pursuant to a Maine Supreme Judicial Court decision in Hannaford Bros. Co., et al. v. State Tax Assessor. The amendment clarifies that TRAC leases are not sales. While, the above statute language is not codified in Title 36 and does not explicitly deal with the sales and use tax, the State Tax Assessor has determined that the new law does demonstrate an intent on the part of the Legislature to treat these transactions as true leases for sales tax purposes.

Therefore, effective September 19, 1997, TRAC leases will no longer be considered sales.

(Chapter 352, P.L. 1997)

SALES TAX RETURN NOT RECEIVED?

Retailers are responsible for filing returns based on a certain filing frequency. Maine Revenue Services preprints returns and mails them by the end of the month preceding the due date. Since they are mailed 3rd Class Bulk, they are not forwarded in the event you have moved. This is only one, but probably the major reason why a return may not have been received. In any event, a retailer must file a return by the due date. If a preprinted form has not been received, you may call the Sales Tax Division for a replacement. However, if time does not permit this, a facsimile return should be filed by using a standard 8 1/2" x 11" piece of paper. Non-receipt of a preprinted form is not a reason for abating interest and penalties if the return is filed late.

**Need to contact us?
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Augusta, Maine 04333-1065
TEL: (207) 287-2336
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BURDEN OF PROOF ON EXEMPT SALE IS ON THE SELLER

The sales tax law provides a number of exemptions for various organizations in addition to sales for resale. However, the burden of proving a sale is exempt is upon the seller. The seller is relieved of this burden of proof only if the seller requires from the purchaser the proper exemption certificate. Other retailers purchasing goods for resale must provide the seller with a resale certificate. Exempt organizations must provide the seller with the exemption certificate issued by Maine Revenue Services. A seller has not met the burden of proof, for instance, if only a sales tax number is accepted without a resale certificate or if a verbal statement is received in lieu of an exemption certificate. Without proper documentation, the seller should tax the transaction.

SALES TO GOVERNMENT EMPLOYEES

Occasionally we receive reports of state or federal government employees attempting to make purchases without paying Maine sales tax, on the basis that they are engaged in government business or that they will be reimbursed for the cost of the purchases by a government agency. There is no exemption in the Maine Sales and Use Tax Law for purchases of this kind, except as stated below, and retailers will be held responsible for collecting and remitting the sales tax on sales to government officials and employees.

Certain employees of the federal government have been issued special credit cards, known as "I.M.P.A.C." (International Merchant Purchase Authorization Card) cards, to be used for making routine purchases of equipment and supplies for governmental purposes. Since purchases with the IMPAC card are billed directly to and paid for by the US Government, they are exempt from Maine sales tax. The IMPAC card states "United States of America, I.M.P.A.C., For Official Use Only. U. S. Government Tax Exempt" and has the employee's name and expiration date embossed on the front.

Beware that there are other government credit cards other than IMPAC. For instance, M.R.S. is aware of an American Express card which states "United States Government. For Official U.S.

Government Travel Only" and has the employee's name and department. Although for official government use, the purchases are billed to the individual identified on the card. These are not sales to the federal government and such sales are taxable.

CASH SALES TO EXEMPT ORGANIZATIONS

On a similar note, we have had inquiries regarding instances where members of schools, churches, hospitals and other exempt organizations purchase goods with cash, personal check or personal credit card and claim that the purchase is for the organization and exempt from tax. Maine Revenue Services had contacted a number of retailers and instructed them that such sales were to be treated as taxable. After further consideration, M.R.S. has determined that if the purchaser presents a purchase order from the organization issued to the retailer for the specific purchase, the sale would be exempt. The purchase order, along with the organization's exemption certificate, must be kept by the seller to document the exempt sale.

Otherwise, sellers are advised that cash sales will be considered taxable. Purchases by exempt organizations which pay with an organization check, organization credit card or through an established store credit account continue to be

exempt provided the seller has obtained the organization's exemption certificate.

Sales and use tax bulletins are available on the Web. Check out Maine Revenue Services' Web Page @ <http://www.state.me.us/revenue>

--- NEW INITIATIVES --- INTERNET FILING OF SALES/USE TAX RETURNS

Maine Revenue Services is in the development stage of creating the ability to file your sales and use tax return through the Internet. Although details are not available at the time of this printing, a special notice will be inserted in your sales and use tax mailing when this functionality does become available.

UPDATED LISTING OF SALES AND USE TAX BULLETINS

The following is a complete up-to-date alphabetical listing of the many bulletins issued by the

Sales/Excise Tax Division. **Free copies are available on request.**

LISTING OF SALES AND USE TAX BULLETINS

Bulletin Number	Title	Last Revision Date
38	Advertising Agencies and Graphic Designers	July 1, 1990
15	Auctioneers	September 1, 1997
11	Barbers and Beauticians	December 1, 1990
9	Casual and Infrequent Sales	September 1, 1997
33	Children's Summer Camps	February 11, 1991
4	Contractors and Subcontractors	January 19, 1991
25	Coupons and Gifts	September 1, 1997
29	Deduction for Bad Debts	January 28, 1991
44	Depreciable Machinery and Equipment - Fishing	July 1, 1993
45	Depreciable Machinery and Equipment - Farmers	July 1, 1993
49	Depreciable Machinery and Equipment - Aquaculture	September 1, 1997
46	Fabrication Services	January 18, 1991
16	Financial Institutions	April 1, 1991
21	Florists	February 1, 1989
2	Funeral Directors	November 1, 1990
12	Grocers	April 9, 1992
28	Installing Tangible Personal Property in Real Property	September 1, 1997
41	Medicines, Medical Equipment and Prosthetic Devices	July 1, 1990
35	Nonresident Woods Operators	November 1, 1963
42	Original Registration of Vehicles	August 1, 1991
47	Original Registration of Watercraft, Snow, and ATV's	July 3, 1995
23	Packing, Packaging and Shipping Materials	September 1, 1997
3	Photographers and Photofinishers	November 19, 1990
17	Printers, Engravers and Bookbinders	June 30, 1995
10	Radio and Television Repair	December 1, 1990
48	Recycling Assistance Fee	September 1, 1997
43	Registration of Out-of-State Sellers	under revision
32	Rentals of Living Quarters	September 1, 1997
27	Sales of Prepared Food	September 1, 1997
13	Sales of Fuel and Utilities	May 1, 1997

31	Sales of Mobile and Modular Homes	September 1, 1997
39	"Sale Price" Upon Which Tax is Based	January 18, 1991
14	Seed, Feed, Fertilizer, etc.	September 1, 1997
1	Service Stations and Auto Repair Shops	September 1, 1997
5	Shoe Repair	November 19, 1990
8	Small Sales and Sales by Coin Operated Vending Machines	August 1, 1991
18	Stonecutters and Monument Dealers	November 29, 1990
30	Transportation Charges	February 11, 1991
24	Vehicle Dealers	January 1, 1995
34	Vehicles Used in Interstate or Foreign Commerce	February 19, 1991
6	Watch and Jewelry Repair	November 27, 1990