



# MAINE REVENUE SERVICES

## SALES, FUEL & SPECIAL TAX DIVISION

### GENERAL INFORMATION BULLETIN

January 1, 2010

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NO. 99-A

*This bulletin contains important information about recent developments and issues that affect everyone who reports Maine sales, fuel and special taxes. Please read it carefully.*

#### *In This Issue ...*

Pages 1 - 4	Impact of Tax Reform on Sales, Use and Service Provider Tax
Page 5	Park Model Homes, Watercraft Sold to Nonresidents, Products used in Silviculture
Page 6	Cigarette and Tobacco Tax Law Changes
Page 6	Motor Fuel Tax Law Changes
Page 6	Premiums on Pre-packaged Motor Oil
Page 7	E-911 Prepaid Wireless Surcharge
Page 8	Filing Mandates & New Telecommunications Bulletin

### **RECENT LEGISLATIVE CHANGES**

#### ***Sales, Use and Service Provider Taxes***

#### **IMPACT OF TAX REFORM ON SALES, USE AND SERVICE PROVIDER TAXES**

##### **SUSPENDED PENDING REFERENDUM VOTE**

**Note: Although LD 1495 was enacted by the legislature, a People's Veto effort was successful in postponing the effect of this legislation and places a referendum question on the June 8, 2010 ballot. The following provides an overview of the sales, use and service provider tax changes proposed in the tax reform legislation. Details of the LD 1495 can be viewed at: [http://www.mainelegislature.org/legis/bills/bills\\_124th/chapters/PUBLIC382.asp](http://www.mainelegislature.org/legis/bills/bills_124th/chapters/PUBLIC382.asp)**

#### **Tax rates would increase as follows:**

- Sales tax increases from 10% to 12.5% on short term rentals of automobiles (less than 12 months).
- Sales tax increases from 7% to 8.5% on liquor served on-premises; store sales of beer, wine and liquor remain at 5%
- Sales tax increases from 7% to 8.5% on rentals of living quarters. Rentals at campgrounds remain at 7%.
- Sales tax increases from 7% to 8.5% on prepared food. All candy would be taxed at 8.5%. *Note: the definition of "candy" for sales tax purposes would change and is outlined below.*

**All rentals and leases of tangible personal property would be subject to the 5% sales tax.**

- Daily rentals of items such as small tools, party equipment, tuxedos, gowns, tables, chairs, tents, golf clubs, bowling shoes, ski equipment, heavy equipment, lawn and garden equipment, moving vans/trucks, office equipment, etc. would become taxable.
- Long term leases entered into prior to the effective date would not be affected. Renewals or extensions of these leases would become taxable under this new taxation.
- Long term leases entered into on or after the effective date would be taxable on the total of the rental payments. Payment of tax would be accelerated to the first month of the lease.

**Candy is defined as "a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces and that does not contain flour or require refrigeration."**

- The definition includes items such as fruit roll-ups, marshmallows, chocolate chips, cake decorations, caramel corn, caramel apples, and trail mix containing candy, but excludes any item containing flour, such as Twix® and Kit Kat® bars.

**Soft drink is defined as "any nonalcoholic beverage that contains natural or artificial sweeteners. Soft drink" does not include any beverage that contains milk or milk products, greater than 50% of vegetable or fruit juice by volume or flavored or unflavored soy milk, rice milk, almond milk, grain milk and similar milk substitutes."**

- In addition to continuing the sales tax on carbonated soda, the definition expands the sales tax to all beverages containing less than 51% vegetable or fruit juice, such as Gatorade, fruit punch drinks, and juice drinks/cocktails. The definition excludes all milk products.

**Meals served at retirement facilities would be exempt.**

**Any nonprofit organization holding a sales tax exemption certificate would no longer be able to purchase prepared food, rentals of living quarters or short-term rentals of automobiles free of sales tax.**

**Interstate and international telecommunications service provided to residential customers would be taxable.**

**A \$1 fee per passenger would be imposed on taxicab and limousine operators for each conveyance originating from or terminating at a commercial airport.**

## **Finally, sales tax would apply to the following services:**

### ***1. Amusement, entertainment and recreation services***

- Admission fees to entertainment venues and performances, including theaters, movies, lectures, concerts, festivals, amusement parks, water parks, fairgrounds, except for licensed agricultural fairs, race tracks, carnivals, circuses, sports activities, stadiums, amphitheaters, museums, planetariums, animal parks, petting zoos, aquariums, historical sites and convention centers;
- Fees charged for participation in or entry to miniature golf courses, billiard parlors, go-cart courses and paintball;
- Admission fees charged for exhibition shows such as auto, boat, camping, home, garden, animal and antique shows;
- Fees charged for scenic and sight-seeing excursions including aircraft, helicopter, balloon, blimp, watercraft, railroad, bus, trolley and wagon rides, whitewater rafting and guided recreation, but excluding scenic and sight-seeing excursions on federally navigable waters; and
- Entertainment services such as those provided by bands, orchestras, disc jockeys, comedians, clowns, jugglers, children's entertainers and ventriloquists.

#### ***It DOES NOT include:***

- Fees charged for admission to a licensed agricultural fair or charges for participation in any events or activities occurring at the fair organized by a school or incorporated nonprofit organization if all the proceeds from the event or activity are used for the charitable purposes of the school or organization;
- Fees charged by health clubs and fitness centers;
- Fees charged for lessons or training in dance, music, theater, arts and gymnastics, martial arts and other athletic pursuits; or
- Fees charged for admission to:
  - (a) Museums and aquariums operated by a governmental entity or incorporated, nonprofit organization;
  - (b) Concerts, dance productions, theatrical productions, sports activities or similar events or activities organized and performed by a school or incorporated, nonprofit organization, if all proceeds of the event or activity are used for the charitable purposes of that school or organization; or
  - (c) Festivals and special events organized by governmental entities, schools or incorporated, nonprofit organizations if all the proceeds of the festival or special event are directed to support a charitable purpose.

### ***2. Installation, repair and maintenance services***

Installation, repair and maintenance services of:

- jewelry
- cameras
- guns
- musical instruments
- electronic and mechanical equipment
- lawn and garden equipment
- computer hardware and office equipment
- vehicles and
- appliances;

Installation, repair and maintenance also means

- service and maintenance contracts for any of the above listed items
- tailoring
- clothing and shoe repair and
- furniture repair and restoration.

It DOES NOT apply to services performed on:

- computer software
- special mobile equipment
- aircraft
- watercraft or
- a truck or truck tractor registered in the name of a business as a commercial motor vehicle.

### ***3. Personal property services***

The following personal property services:

- dry cleaning;
- laundry and diaper services not including self-service laundry services;
- embroidery and monogramming;
- car washing;
- pressure cleaning and washing;
- pet services such as exercising, sitting, training, grooming and boarding for nonmedical purposes;
- picture framing;
- domestic services, including house cleaning and furniture and rug cleaning;
- interior decoration;
- meal preparation;
- butchering;
- art restoration;
- warehousing and storage, including rental of storage units and warehouse space, but not including warehousing and storage services provided to a business;
- moving services;
- vehicle towing; and
- boat mooring.

### ***4. Transportation and courier services***

"Transportation and courier services" means in-state transportation of persons or property by limousine and courier services. For the purposes of the new law, "limousine service" means livery service hired for a specific event. (*Chapter 382*)

#### ***EDUCATIONAL FORUMS***

Sales and use tax seminars are being held at 23 locations statewide between August 31<sup>st</sup> and October 22<sup>nd</sup>. They are free, do not require pre-registration and are offered in the afternoon and evening at each location. Information was mailed to all registrants in July but time schedules and locations can also be viewed on our website at [www.maine.gov/revenue](http://www.maine.gov/revenue).

## **PARK MODEL HOMES**

*L*egislation was introduced to change the way sales tax is applied to park model homes. The intent was to treat park model homes in the same manner as camper trailers rather than manufactured housing. During the legislative process, Maine Revenue Service (“MRS”) discovered that we had erred in previously advising taxpayers that park model homes were manufactured housing for sales tax purposes and subject to sales tax only on 50% of the selling price. MRS then confirmed with the Manufactured Housing Board that park model homes do not in fact meet the definition of manufactured housing as they do not meet HUD standards. The sales tax law was amended to remove restrictions on length in the definition of “trailer” as well as make minor modifications to allow for trade-in allowances.

Effective for all sales occurring on or after September 12, 2009, park model homes will no longer be recognized as manufactured housing and will be taxed in the same manner as all other camper trailers. Trade-ins of any trailer, truck camper or another park model home will be an allowable reduction in the taxable sale price of the new park model home. MRS will apply its previous advice to transactions occurring prior to September 12, 2009. (*Chapter 207*)

## **WATERCRAFT SOLD TO NONRESIDENTS**

*T*he sale of watercraft to a nonresident has been exempt from sales tax but the exemption required the nonresident to immediately remove the watercraft from Maine. This exemption was amended to remove the word “immediately” and allow the nonresident up to 30 days to remove the watercraft from Maine. The requirement that the watercraft not be used in Maine for more than 30 days within the first twelve months after purchase without the craft being subject to a use tax remains. This change is effective for transactions occurring on or after September 12, 2009. Dealers of watercraft are advised to begin using the revised affidavit, form ST-P-19AE, which can be found on our forms webpage at <http://www.maine.gov/revenue/forms/sales/salesforms.htm>. (*Chapter 361*)

## **PRODUCTS USED IN SILVICULTURE**

*T*he exemption for certain products used in the commercial production of an agricultural crop was expanded to include the commercial production of a silvicultural crop. Effective September 12, 2009, sales of products such as fertilizer, defoliants, pesticides and weed killers for use in controlling the establishment, growth, composition, health, and quality of the forests as a commercial crop will be exempt from sales tax. (*Chapter 422*)

### ***FILE AND PAY YOUR RETURNS ELECTRONICALLY***

If you haven't tried Maine's easy way to file returns electronically, check out MRS' website at <http://www.maine.gov/revenue/netfile/gateway2.htm>.

While there, also check out EZ Pay; Maine's easy way to pay any tax debt. .

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## *Cigarette and Tobacco Taxes*

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### **RATE CHANGE ON SMOKELESS TOBACCO**

**E**ffective July 1, 2009, the tax rate on smokeless tobacco, including chewing tobacco and snuff, is \$2.02 per ounce except that packages containing less than one ounce is subject to a tax of \$2.02 per package. Previously the tax rate was 78% based on the wholesale sales price. (*Chapter 213*)

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## *Motor Fuel Taxes*

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### **FUEL EXCISE TAX RATES CHANGE**

**M**otor fuel excise tax rates are indexed annually on July 1. Effective July 1, 2009 the excise tax rate for gasoline increased to 29.5¢ per gallon. The excise tax rate on diesel fuel increased to 30.7¢ per gallon. This reflects the consumer price index increase of 1.038%.

In addition to these increases, amendments were made to the law to provide that products containing at least 10% gasoline or diesel are taxed at the full gasoline or diesel tax rates, rather than at a reduced rate as they previously were. For instance, E10 and B20 will now be subject to the same rate of tax as fuels containing 100% gasoline or diesel. (*Chapter 413*)

For a complete listing of all the fuel tax rates, see our website at <http://www.maine.gov/revenue/fueltax/fueltaxrates.htm>.

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## *Other Special Taxes and Fees*

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### ***PREMIUM ON BULK MOTOR VEHICLE OIL EXPANDED TO INCLUDE PRE-PACKAGED MOTOR OIL***

**R**ecent legislation expands the premium imposed on motor vehicle oil sold or distributed by motor vehicle oil dealers in the State to pre-packaged motor vehicle oil. A premium of 35¢ per gallon is effective on October 1, 2009. Like the premium imposed on bulk motor vehicle oil, the premium is imposed on motor vehicle oil dealers on their first sale or distribution of the prepackaged motor vehicle oil in this state. All premiums must be paid monthly to the State Tax Assessor.

The premium on prepackaged motor vehicle oil not only applies to crankcase oil but also to transmission, gear box, hydraulic and differential fluids/oils. The premium on bulk motor vehicle oil continues to apply only to crankcase motor oil. (*Chapter 213*)

The statute provides the following definitions:

*“Bulk motor vehicle oil” means all motor vehicle oil other than prepackaged motor vehicle oil.*

*“Prepackaged motor vehicle oil” means motor vehicle oil sold in a container with a volume not in excess of 5 gallons.*

*“Motor vehicle oil” means any lubricating oil that is reclaimable and classified for use in an internal combustion engine or the transmission, gear box, hydraulic reservoir or differential for a motor vehicle, including but not limited to natural, synthetic, and rerefined motor oils, whether or not in retail containers.*

*“Motor vehicle oil dealer” means any person, firm, or corporation engaged in the business of producing, packaging, or otherwise preparing motor vehicle oil for market, or selling, or distributing motor vehicle oil.*

If you are engaged in selling or distributing motor vehicle oil as defined above, the premium must be collected and remitted to the State Tax Assessor. The premiums will continue to be reported on line 14A of the sales tax return (Form ST-7). For more detailed information, please visit our website at <http://www.maine.gov/revenue/> or call (207) 624-9693.

A number of retailers continue to incorrectly charge their customers the \$1, \$2 or \$3 oil change fee that had been in place from October 1, 2007 thru August 1, 2008. Retailers are reminded that these fees have not been in place since August 1, 2008 and are advised to discontinue this erroneous collection. Current premiums are imbedded in the cost of the oil purchased by the retailer from their vendors and is not imposed on the ultimate consumers.

#### **NEW E-9-1-1 SURCHARGE ON SALES OF PREPAID WIRELESS**

Maine Revenue Service (MRS) issued General Information Bulletin 99 in September 2009 recapping legislative changes from bills enacted by the First Regular Session of the 124th Legislature. That bulletin contained information about a prepaid wireless E-9-1-1 surcharge to become effective January 1, 2010.

Maine Revenue Service announced the rate would be 30¢ per retail transaction, collected by the seller from the prepaid wireless customer, based on the enactment of LD 1056, which became Public Law 400. However, Maine Revenue Service has concluded that a conflicting bill, LD 264, which was enacted as Public Law 416. Public Law 416 sets the rate for statewide E-9-1-1 surcharges at 37¢ per month or 30-day increment of service per customer.

**Retailers should begin collecting 37¢ per retail transaction beginning January 1, 2010, and not the 30¢ per retail transaction previously identified.**

The surcharge is applied to purchases of prepaid wireless service from a wireless service provider and also on any prepaid wireless service sold by a retailer, such as in the form of a prepaid wireless card (not to be confused with a prepaid calling card).

The prepaid wireless E-9-1-1 surcharge must be collected by the seller from the prepaid wireless consumer with respect to each retail transaction occurring in this State. A retail transaction that is effected in person by a prepaid wireless consumer at the business location of the seller is treated as occurring in this State if that business location is in this State. If the sale does not take place at the retailer’s business location, the taxation of the sale is determined in the same manner as prepaid calling service (that is, at the customer’s billing address).

The amount of the prepaid wireless E-9-1-1 surcharge must be separately stated on an invoice, receipt or similar document that is provided to the prepaid wireless consumer by the seller when practicable. In circumstances in which disclosure of the E-9-1-1 surcharge on an invoice, receipt or similar document is not practicable, the seller must otherwise make information available to the consumer regarding the

amount of the E-9-1-1 prepaid surcharge.

Like sales tax, the surcharge is the liability of the consumer: however the seller is responsible for its collection. The surcharge is to be remitted to the State Tax Assessor in the same manner as sales tax. A seller who is not a prepaid wireless telecommunications service provider may deduct and retain 3% of prepaid wireless E-9-1-1 surcharges that are collected by the seller from consumers.

A new line for this remittance will be included on the sales tax return beginning with the January 2010 return. The 3% collection allowance mentioned in the previous paragraph should be deducted prior to entering the amount on the return. Documentation to support the amount of surcharge collected, as well as the allowance computation, must be retained in the retailer's records. The calculation of sales tax is not to include the surcharge. (*Chapters 400 and 416*)

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### *Other Items of Interest*

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#### MANDATES

*E*ffective January 1, 2010 all sales, use and service provider accounts who report on a quarterly basis will be required to file their returns electronically. This is the second of four phase-in periods as provided in Rule 104 for requiring the electronic data submission of tax returns. Rule 104 can be viewed at <http://www.maine.gov/revenue/rules/homepage.html>. Monthly accounts were affected April 1, 2009. Quarterly accounts are being added January 1, 2010, semi-annual accounts in 2011 and annual accounts in 2012.

*PLEASE NOTE: Waivers are available for retailers that cannot file using either the internet or via the telephone.* Furthermore, Maine Revenue Services ("MRS") realizes that not all retailers may have a computer and/or internet access. There is no requirement that a retailer make any purchases of additional equipment. MRS is developing a TeleFile system to accept sales, use and service provider tax returns over the telephone. Until such time as this system is available, waivers will be provided to businesses requesting to use the TeleFile system.

Quarterly accounts were mailed information in June 2009 and will receive follow up information with their 3<sup>rd</sup> and 4<sup>th</sup> quarter returns. The January-March return due on April 15, 2010, will be the first return affected by this change.

#### NEW TELECOMMUNICATIONS BULLETIN

*A* new instructional bulletin has been created for those engaged in the area of Telecommunications. Persons selling or installing telecommunications equipment as well as those selling telecommunications services will find this bulletin informative. The bulletin is #56 and can be viewed on our website at <http://www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm>.

This bulletin is provided as a taxpayer service by Maine Revenue and is only a summary of recent legislative developments. Taxpayers are urged to review Maine statutory law to determine the actual effect of the changes described herein, as this bulletin has no legal or precedential effect. Go to <http://janus.state.me.us/legis/ros/lom/lomdirectory.htm> under "2009 Laws of Maine as enacted by the 124<sup>th</sup> Legislature" (when available) to find the chapters referenced in this bulletin. Additional questions about these and other issues you may have should be directed to: Maine Revenue Services, Sales, Fuel and Special Tax Division, P. O. Box 1065, Augusta, ME 04333-1065. Tel: (207) 624-9693 TTY: NexTalk 1-888-577-6690.