

Chapter 302: SALES TO GOVERNMENTAL AGENCIES AND EXEMPT ORGANIZATIONS

SUMMARY: Establishes administrative rules regarding tax-exempt sales and explains the circumstances under which a retailer or service provider will be relieved of its burden of proving that sales to an entity described in 36 M.R.S. §§ 1760 or 2557, including an agency or instrumentality of the federal government or of the State of Maine, are exempt from Maine sales, or use, or service provider tax.

SECTION 1. Exempt sales generally; burden of proof

1. ~~Generally Sales and Use Tax.~~ Sales to certain organizations and governmental agencies are exempt from sales and use tax pursuant to 36 M.R.S. § 1760. ~~Pursuant to 36 M.R.S. § 1760-C, an exemption provided by 36 M.R.S. § 1760 to a person based upon its charitable, nonprofit, or other public purposes applies only if the property or service purchased is intended to be used by the person primarily in the activity identified by the particular exemption.~~ The burden of proving a sale is to an organization that is exempt under 36 M.R.S. § 1760 is on the person making the sale. The retailer is relieved of this burden of proof if it satisfies the provisions of this rule.

2. Certain purchases subject to tax. Pursuant to 36 M.R.S. § 1760-C, an exemption provided by 36 M.R.S. § 1760 to a person based upon its charitable, nonprofit, or other public purposes applies only if the property or taxable service purchased is intended to be used by the person primarily in the activity identified by the particular exemption. If property or taxable services that were purchased exempt are used primarily in an activity or activities not identified by the particular exemption, use tax liability accrues.

An exemption based on charitable, nonprofit, or other public purposes does not apply to any purchase for use by an exempt organization in its capacity as a retailer. For example, an exempt organization's purchase of a cash register for its gift shop is subject to tax.

~~2. Service Provider Tax.~~ Sales to certain organizations and governmental agencies are exempt from service provider tax pursuant to 36 M.R.S. § 2557. Pursuant to 36 M.R.S. § 2560, an exemption provided by 36 M.R.S. § 2557 to a person based upon its charitable, nonprofit, or other public purposes applies only if the service purchased is intended to be used by the person primarily in the activity identified by the particular exemption. The burden of proving a sale is to an organization that is exempt under 36 M.R.S. § 2557 is on

~~the person making the sale. The service provider is relieved of this burden of proof if it satisfies the provisions of this rule.~~

SECTION 2. Exemption and resale certificates

A non-governmental entity must hold an exemption certificate or resale certificate issued by Maine Revenue Services in order to make tax-free purchases. If the State Tax Assessor determines that an applicant qualifies to make tax-free purchases, the State Tax Assessor shall issue a numbered certificate that identifies the name and address of the applicant, the tax or taxes from which it is exempt or not subject to, and the relevant exempt activity or activities. The certificate may be used by the holder only when purchasing property or taxable services intended to be used by the holder primarily in the exempt activity or activities. When an otherwise qualifying organization is engaged in both exempt and nonexempt activities, the exemption certificate is to be issued only if the State Tax Assessor finds that the organization has adequate internal controls in place to limit the use of the certificate to exempt purchases. A decision by the State Tax Assessor to deny an application for issuance of an exemption certificate constitutes a determination of the State Tax Assessor that is subject to a petition for reconsideration pursuant to 36 M.R.S. § 151.

SECTION 3. Review and revocation of exempt status

The State Tax Assessor has the authority to review an organization's activities and confirm whether an organization continues to meet the qualifications for exempt status. The State Tax Assessor may also review an organization's activities and confirm whether an organization is properly using an exemption certificate. After providing written notice to an organization, the State Tax Assessor may revoke the exempt status of the organization for any of the following reasons:

- A. The organization was incorrectly certified for exempt status;
- B. The organization no longer meets the qualifications for exempt status;
- C. The organization fails to provide sufficient documentation, upon written request by the State Tax Assessor, demonstrating that the organization meets the qualifications for exempt status; or
- D. The organization has not used its exemption certificate in accordance with Title 36 and this Rule.

A decision by the State Tax Assessor to revoke an organization's exempt status constitutes a determination of the State Tax Assessor that is subject to a petition for reconsideration pursuant to 36 M.R.S. § 151.

SECTION 4. Responsibilities of retailers and service providers – Sales to exempt organizations

Sales tax must be collected by the retailer, ~~or paid by the service provider,~~ on sales to entities that have not provided an exemption certificate to the retailer ~~or service provider,~~ and on sales of tangible personal property or taxable services that are not related to, ~~or not for use in~~ the activity identified on the certificate issued to the entity. Retailers ~~and service providers~~ must maintain in their files a copy of the exemption certificate issued to any

exempt organization to which they make a tax-exempt sale. Separate invoices of all tax-exempt sales must be retained by the retailer ~~or service provider~~ and appropriately marked. The words “Maine Sales Tax Exempt,” ~~or “Maine Service Provider Tax Exempt,”~~ together with a notation of the applicable exemption number, will satisfy this requirement.

Regardless of the specific method of payment, a retailer ~~or service provider~~ is not relieved of its burden of proving that a sale is exempt if it has, at the time of the sale, knowledge of facts that give rise to a reasonable inference that the purchaser is not the holder of the exemption certificate, that the exemption certificate has been revoked or is otherwise invalid as of the time of the sale, or that the tangible personal property or taxable service is not to be used exclusively by the exempt organization and primarily in the activity identified on ~~the~~ that organization’s exemption certificate.

1. Direct billing. Sales that are billed directly to an exempt organization may be made tax-free without a purchase order or other documentation beyond that required by this rule.

2. Cash, personal check or personal bank card. Purchases paid for with cash, personal check, personal credit card, or personal debit card may not be made tax-free unless the purchaser presents a purchase order issued by the exempt organization that identifies the specific item or items, or the specific taxable services, to be purchased. The retailer ~~or service provider~~ must retain the purchase order (or a copy) in its records.

Notwithstanding the previous paragraph, sales made to authorized employees or representatives on behalf of exempt organizations that are paid for with cash, personal check, personal credit card, or personal debit card may be made tax-free if a magnetic customer card issued by the retailer ~~or service provider~~ to the exempt organization ~~and identifying that identifies~~ the organization as tax-exempt is presented at the time of the sale by the authorized individual making the purchase and is recorded electronically by the retailer ~~or service provider~~. The retailer ~~or service provider~~ must retain the digital information identifying the transaction and the purchaser. The customer card must:

A. Bear the name and signature of the specific individual authorized by the exempt organization to use it to make purchases; and

B. Contain a statement substantially similar to the following: “This card is to be used only by the individual named hereon for purchases authorized by [NAME OF EXEMPT ORGANIZATION]. If this card is used by the individual named hereon for any other purpose, the individual may be held liable for any applicable taxes, together with associated interest and penalties, and, if used to intentionally evade Maine tax due, may also be subject to criminal prosecution.”

3. Other credit or debit cards. Purchases paid for with a credit card or debit card that is issued to a tax-exempt organization and that has the name of the organization on the face of the card may be made tax-free only if the retailer ~~or service provider~~ retains documentation that identifies the exempt organization, the sale transaction date, the sale price, the items or taxable services purchased, and the last four digits of the credit or debit card number.

SECTION 5. Responsibilities of ~~retailers and service providers~~ – Government sales

Sales made directly to the federal government or the State of Maine or any of its political subdivisions are exempt from sales tax ~~and service provider tax~~. Sales made directly to any unincorporated agency or instrumentality of either the federal government or the State of Maine, or to any of their wholly-owned incorporated agencies or instrumentalities, are also exempt. This category includes school districts; water, power, parking, sewer and other districts in Maine established by legislative act as quasi-municipal corporations; village corporations; the University of Maine and Maine Community College Systems; and the Maine Turnpike Authority. Governmental subdivisions, units, agencies, and instrumentalities covered by 36 M.R.S. §§ 1760(2) ~~and 2557(2)~~ are referred to in this rule as “governmental agencies.”

Governmental agencies are not required to obtain a tax exemption certificate. A ~~retailer or service provider~~ must document all tax-free sales to governmental agencies by listing the name of the governmental agency on the invoice or sales slip.

Regardless of the specific method of payment, a ~~retailer or service provider~~ is not relieved of its burden of proving that a sale to a governmental agency is exempt if it has, at the time of the sale, knowledge of facts that give rise to a reasonable inference that the card is being used to make a personal purchase that is not tax-exempt or is for any ~~other~~ purpose other than an official governmental purpose.

1. Direct billing. Sales that are billed directly to a governmental agency may be made tax-free without a purchase order or other documentation beyond that required by this rule.

2. Cash, personal check, or personal bank card. Purchases paid for with cash, personal check, personal credit card, or personal debit card may not be made tax-free unless the individual making the purchase presents a purchase order issued by the governmental agency that identifies the specific item or items, or the specific taxable service, to be purchased. The ~~retailer or service provider~~ must retain the purchase order (or a copy) in its records and must identify the sale transaction on that document.

Notwithstanding the previous paragraph, sales made to authorized employees or representatives on behalf of governmental agencies that are paid for with cash, personal check, personal credit card, or personal debit card may be made tax-free if a magnetic customer card issued by the ~~retailer or service provider~~ to the governmental agency is presented at the time of the sale by the authorized individual making the purchase and is recorded electronically by the ~~retailer or service provider~~. The ~~retailer or service provider~~ must retain the digital information identifying the transaction and the purchaser. The customer card must:

- A. Bear the name and signature of the specific individual authorized by the governmental agency to use it to make purchases; and
- B. Contain a statement substantially similar to the following: “This card is to be used only by the individual named hereon for purchases authorized by [NAME OF GOVERNMENTAL AGENCY]. If this card is used by the individual named hereon for any other purpose, the individual may be held liable for any applicable

taxes, together with associated interest and penalties, and, if used to intentionally evade Maine tax due, may also be subject to criminal prosecution.”

3. Other credit or debit cards. Purchases paid for with a credit card or debit card of the type described in paragraphs A and B below may be made tax-free only if the retailer ~~or service provider~~ retains documentation that identifies the governmental agency, the sale transaction date, the sale price, ~~items~~ property or taxable services purchased, and the last four digits of the credit or debit card number.

A. State of Maine. State of Maine Procurement Cards that are billed directly to the State of Maine.

B. United States Government. Cards issued to federal employees pursuant to the GSA SmartPay program and billed directly to the U.S. Government.

STATUTORY AUTHORITY: 36 M.R.S. §112

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December 31, 1979

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