

**Chapter 326: LEASES AND RENTALS OF TANGIBLE PERSONAL PROPERTY**

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**SUMMARY:** Sets forth requirements for leases and rentals of tangible personal property relating to Maine Sales and Use Tax Law. This Rule is effective for lease and rental transactions occurring on and after January 1, 2025.

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**SECTION 1. Definitions.**

**1. Custom computer software program.** “Custom computer software program,” which has the same meaning as in 36 M.R.S. § 1752(1-E), means any computer software that is written or prepared exclusively for a particular customer. “Custom computer software program” does not include a “canned” or prewritten software program that is held or exists for a general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. An existing prewritten software program that has been modified to meet a particular customer’s needs is a “custom computer software program” to the extent of the modification, and to the extent that the amount charged for the modification is separately stated.

**2. Lease or rental.** “Lease or rental,” which has the same meaning as in 36 M.R.S. § 1752(5-D) and includes the terms “lease” and “rental,” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase the property or extend the lease or rental. “Lease or rental” includes a sublease and subrental.

“Lease or rental” does not include:

- A.** Leases and contracts payable by rental or license fees for the right of possession and use when such leases and contracts are determined by the assessor to be “in lieu of purchase;”
- B.** A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- C.** Providing tangible personal property along with a person to operate that property, for a fixed or indeterminate period of time, when that person is necessary for the tangible personal property to perform as designed and the person does more than maintain, inspect or set up the tangible personal property; or
- D.** The lease or rental of property that is subject to the provisions of the service provider tax imposed pursuant to Title 36, chapter 358.

The characterization of a transaction as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law does not affect a determination that a transaction is a lease or rental under chapters 211 through 225 of Title 36 of the Maine Revised Statutes.

**3. Lessee.** “Lessee” means a person who leases or rents tangible personal property located in this State from a lessor.

**4. Lessor.** “Lessor,” which has the same meaning as in 36 M.R.S. § 1752(5-E), means a person who leases or rents tangible personal property located in this State to another person.

**5. Prewritten software program.** “Prewritten software program,” also known as “canned” software or commercial off-the-shelf (COTS) software, means computer software, including prewritten upgrades, that is not designed and developed by the author, developer or other creator to the specifications of a specific purchaser. “Prewritten software program” includes video games.

**A.** The combining of two or more prewritten software programs or prewritten parts of the programs does not necessarily cause the combination to be something other than a prewritten software program.

**B.** “Prewritten software program” includes computer software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.

**C.** If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person’s modifications or enhancements.

**D.** A prewritten software program, or a prewritten part of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains a prewritten software program. However, when the value of such modification or enhancement to the prewritten software program is separately stated from that of the prewritten software program, such modification or enhancement is considered custom computer software.

**6. Primary property location.** For the purposes of sourcing leases and rentals of tangible personal property pursuant to 36 M.R.S. § 1819, “primary property location” means an address for the tangible personal property that is provided by the lessee that is available to the lessor from the lessor’s records and maintained in the ordinary course of business, when use of this address does not constitute bad faith. A primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips or service calls.

**7. Product transferred electronically.** “Product transferred electronically,” which has the same meaning as in 36 M.R.S. § 1752(9-E), means a digital product transferred to the purchaser electronically the sale of which in nondigital physical form would be subject to tax under Part 3 of Title 36 of the Maine Revised Statutes as a sale of tangible personal property.

**8. Tangible personal property.** “Tangible personal property,” which has the same meaning as in 36 M.R.S. § 1752(17), means personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. “Tangible personal property” includes electricity. “Tangible personal property” includes prewritten computer programs. “Tangible personal property” includes any product transferred electronically.

## **SECTION 2. Registrants.**

**1. Every lessor engaged in the leasing of tangible personal property located in this state must register with Maine Revenue Services (MRS) and collect and remit the sales tax in connection with the lease or rental of that property.**

**2. An out-of-state lessor of equipment shall register and comply with the provisions of 36 M.R.S. § 1754-B when its tangible personal property is located in Maine in the possession of a lessee.**

**3. Each time period for which a lease or rental payment is charged is considered a separate sale in determining whether a retailer is responsible for the tax in accordance with Maine Sales and Use Tax Law.**

## **SECTION 3. Sale price.**

For the calculation of the taxable sale price of the lease or rental of an automobile, see Section 7 of this Rule.

**1. Included within sale price.** The sale price of the lease or rental of tangible personal property shall include:

- A. The total amount of payment received for the leasing of tangible personal property, whether received in money or otherwise, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses;**
- B. All charges, including but not limited to maintenance and service contracts, setup, hook-up, assembly or disassembly, erection and dismantling, cancellation charges and early termination charges, transportation charges for delivery completed or arranged by the lessor to the lessee, pickup and other handling charges,**

administrative charges, fuel charges, surcharges, and late return charges, whether or not such amounts are separately stated;

C. Payments paid by the lessee to a third party for the benefit of the lessor that are required by the terms of the lease or rental agreement; and

D. All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement, including but not limited to finance or interest charges, property tax, or inspection fees.

**2. Exclusions from sale price.** The sale price of the lease or rental of tangible personal property shall not include:

A. The price charged for labor or services used in installing, applying, or repairing the tangible personal property leased or rented, if separately charged or stated;

B. The price charged for the cost of transportation from the lessor's place of business or other point from which shipment is made directly to the lessee, provided that those charges are separately stated, and the transportation occurs by means of common carrier, contract carrier, or the United States mail;

C. Separately stated charges for optional insurance coverage for the protection of the lessee or of the lessee's personal property, such as liability insurance, personal accident insurance, or personal effects protection; or

D. Charges for goods and services sold after the lease or rental has terminated, including a disposition fee.

#### **SECTION 4. Exclusions from "lease or rental."**

The following are excluded from the definition of "lease or rental."

**1. Leases "in lieu of purchase."** If tangible personal property is, for all intents and purposes, sold but the transaction is designated as a lease or rental for the purpose of retaining title in the seller and as security for payment of the purchase price, the lease or rental will be deemed to be "in lieu of purchase." A lease shall be deemed to be in "in lieu of purchase" when, once the lessee enters into the so-called lease agreement, the lessee must acquire title to the tangible personal property under the terms of the agreement. The total value of the lease or rental payments charged will be considered to constitute the sale price upon which tax is based. Separately stated finance charges and personal property taxes shall be excluded from the sale price. A lease "in lieu of purchase" does not include a so-called T.R.A.C. (Terminal Rental Adjustment Clause) lease.

The Assessor may review the specific terms of a particular lease in order to determine whether it is a lease “in lieu of purchase.” A lease will generally be a lease “in lieu of purchase” under the following circumstances if any of the following conditions are satisfied:

- A. If the terms of the lease create a security interest as defined by 11 M.R.S. § 1-1201(35);
- B. If the lease contains an option to purchase the leased property for \$1.00 or other nominal consideration; or
- C. If the lessee must assume responsibility for the disposition of the property at the end of the lease term.

**2. Transfer of possession or control of property under a security agreement.** A retailer may purchase tangible personal property and subsequently transfer possession to a customer under an agreement or deferred payment plan that requires monthly or other recurring periodic payments by the customer for a specific period of time. Upon completion of the required payments and pursuant to the agreement or deferred payment plan, title of the property is transferred by the retailer to the customer who then becomes the owner of the tangible personal property. No tax is due on the periodic payments that the retailer receives from the customer; however, the sales or use tax is payable to the retailer at the time of purchase by the customer of the tangible personal property.

**3. Providing tangible personal property along with an operator.** The provision of tangible personal property for a fixed or indeterminate period of time along with an operator for that tangible personal property is not considered a “lease or rental” for purposes of Maine Sales and Use Tax Law. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this exclusion, an operator must do more than maintain, inspect, or set up the tangible personal property.

**4. Leases and rentals subject to the service provider tax.** The rental of video media and video equipment, and the rental of furniture, audio media, and audio equipment pursuant to a rental-purchase agreement as defined in 9-A M.R.S. § 11-105, are services taxable under the service provider tax. A rental-purchase agreement of furniture, audio media, and audio equipment is not a transfer of possession or control of property under a security agreement as described above in Section 4.2.

## **SECTION 5. Purchases for resale.**

**1. A lessor that purchases tangible personal property intended for subsequent lease or rental tax-free must present a valid resale certificate.**

**2. Parts and accessories purchased for use in the repair or maintenance of tangible personal property used exclusively for leasing purposes may be purchased by the lessor tax-free**

by presenting a valid resale certificate. Purchases of repair parts by lessees are not purchases for resale and are taxable unless another exemption or exclusion from tax applies.

3. Tangible personal property purchased for resale without payment of the tax where the property is intended to be utilized exclusively for lease or rental, and is so used, but then is subsequently used by the lessor for some purpose other than for lease or rental, is subject to the sales and use tax upon this subsequent use. The tax shall be measured by the purchase price of the tangible personal property and is in addition to the tax due on the lease or rental payments.

4. Tangible personal property purchased for both lease or rental and for use by the purchaser may not be purchased tax-free as a sale for resale and is subject to tax.

5. A retailer who purchases tangible personal property for outright sale but, while holding the property in the retailer's inventory, makes use of the property in the retailer's business through lease or rental, is responsible for collecting the sales and use tax on the lease or rental payments.

#### **SECTION 6. Exempt leases and rentals.**

1. A lessor of tangible personal property shall not charge and collect the tax on the payment for a lease or rental if the lessor takes from the lessee a fully completed certificate of exemption or affidavit as evidence that the tangible personal property to be leased will be used in an exempt manner under Maine Sales and Use Tax Law.

2. Tangible personal property leased or rented by a contractor for use in a construction contract with an organization that has been granted a sales tax exemption under 36 M.R.S. § 1760 or a governmental agency is subject to tax, even if the lease or rental of the tangible personal property is specifically for use on the exempt job.

3. The rental of safe deposit boxes, self-storage units, or baggage lockers is not a rental of tangible personal property but instead constitutes a rental of storage space at the business location of the lessor and is not subject to tax.

#### **SECTION 7. Leases and rentals of automobiles.**

In the case of the lease or rental of an automobile where the lease requires recurring periodic payments, all monthly payments are sourced to the primary property location pursuant to 36 M.R.S. § 1819(4). In the case of a lease of an automobile for one year or more, the primary property location will be in Maine when the address where the automobile is stored, garaged, and maintained is an address in Maine.

For a lease or rental of an automobile that does not require recurring periodic payments – i.e., the total lease payment is due as one lump sum – the payment is sourced the same as a sale of tangible personal property, pursuant to 36 M.R.S. § 1819(2).

The computation of the taxable sale price and the rate of tax imposed on the lease or rental of an automobile differ depending upon the duration of the lease term as specified in this Section.

**1. Short-term lease or rental of an automobile; sale price, rate of tax.** “Short-term” means a lease or rental period of less than one year. Under 36 M.R.S. § 1811, the short-term rental of an automobile is taxed at a higher rate than the general sales tax rate. The short-term rental rate does not apply to vehicles with more than four (4) wheels, motorcycles, motor homes, or trucks and vans weighing more than 10,000 pounds. The short-term rental rate does not apply to the rental of a cargo van.

Separately stated fees that are not part of the taxable sale price of the vehicle include, but are not limited to, reimbursement of tolls, charges for goods and services sold after the rental has terminated (e.g., fuel sales), and sales of optional insurance coverage for the protection of the lessee or of the lessee’s personal property. All fees must be disclosed when an estimated quote is provided to the lessee.

**2. Long-term lease or rental of an automobile; sale price, rate of tax.** In the case of the lease or rental of an automobile for a period of one year or more, the taxable sale price of a lease shall be computed on (A) the value of the total monthly lease payment multiplied by the number of payments in the lease or rental; (B) the amount of equity involved in any trade-in; and (C) the value of any cash down payment, pursuant to 36 M.R.S. § 1752(14)(A)(5). Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee. The full amount of sales tax is due in the month in which the lease begins. The lease or rental of an automobile for a period of one year or more is subject to the general sales tax rate.

**A. Total monthly lease payments.** The amount of total monthly lease payments is determined by multiplying the dollar amount of each lease payment by the number of payments in the lease term. Taxes, such as certain excise taxes and sales taxes, are excluded from the sale price. Certain charges, such as registration fees, life/disability insurance, gap insurance, warranties, and management services are excluded from the sale price only if separately stated from the lease payment. A fee charged when the lessee opts to return an automobile to the lessor rather than exercising the option to purchase it – e.g., a “disposition fee,” or a charge for excess mileage or excess “wear and tear” – is not subject to sales tax.

**B. Equity involved in trade-in.** “The amount of equity involved in any trade-in” is the value of any trade-in that reduces the cost of the lease.

**C. Cash down payment.** “The value of any cash down payment” means any initial cash payment that is applied toward the cost of the lease, including rebates. “The value of any cash down payment” does not include pre-payment of lease payments or of required upfront costs disbursed by the lessor such as sales tax, excise tax, and/or registration fees.

**3. Long-term leases of automobiles by nonresidents.** Nonresidents of Maine that enter into a lease of an automobile for a period of one year or more with a Maine retailer, where the nonresident is going to immediately remove the automobile from Maine, may complete an Affidavit of Exemption for Immediate Removal (Form ST-A-106). If an accurately completed affidavit is accepted by the retailer in good faith, the retailer is not required to collect sales tax on the lease transaction. If the retailer knew or had reason to know that the lessee did not intend to immediately remove the automobile from the State, or was not a nonresident at the time of the commencement of the lease, the retailer may be liable for the tax.

## **SECTION 8. Lease and rental transactions between related entities or parties and casual leases and rentals.**

**1.** The retail lease or rental of tangible personal property between separate entities with the same or similar ownership is subject to Maine sales and use tax.

**2.** Casual leases and rentals are not retail sales subject to tax, unless the tangible personal property leased or rented is a motor vehicle, aircraft, watercraft, trailer, truck camper, or special mobile equipment. Tax must be collected on the lease or rental payments made on the casual lease or rental of those properties unless the property is leased to a corporation, partnership, trust, limited liability company or limited liability partnership when the lessor is the owner of 50% or more of the common stock of the corporation or of the ownership interest in the partnership, trust, limited liability company, or limited liability partnership.

## **SECTION 9. Computer software and products transferred electronically.**

**1. Products transferred electronically.** When a product transferred electronically is transferred to the purchaser (e.g., downloadable to the purchaser's computer hardware or other device), the sale, lease, rental, or license of the product is a taxable sale of tangible personal property.

**2. Custom computer software programs.** Sales of custom computer software programming are not subject to Maine sales or use tax, as "custom computer software programs" are excluded from the definition of "tangible personal property" in 36 M.R.S. § 1752(17).

**3. Sale or lease of prewritten software programs.** Prewritten software programs for sale, rental, lease, or license are generally subject to the Maine sales tax, regardless of the fact that the prewritten software program may require some modification for a purchaser's computer or device.

**A. Taxable transfers of prewritten software programs.** Taxable transfers of prewritten software programs include, but are not limited to, sales transacted by electronic delivery, "load and leave," licenses and leases, transfers of rights to use computer software installed on an in-state third-party server accessed by the holder of the software license, upgrades, and license upgrades.



**(1) Sold in a tangible medium.** The sale, rental, lease, or license of a prewritten software program stored on a tangible medium – i.e., on a disc or disk, a USB flash drive, etc. – is subject to Maine sales and use tax.

**(2) “Load and leave” method.** The sale, rental, lease, or license of a prewritten software program that is transferred using a “load and leave” method, where the seller or an agent of the seller transfers the prewritten software program from a portable storage device onto the purchaser’s computer(s) at the purchaser’s location, is subject to sales tax, as it is also delivered on a tangible medium.

**(3) Products transferred electronically.** Prewritten software programs transferred electronically are subject to Maine sales and use tax when downloadable in this State or for use in this State and sold, rented, leased, or licensed for consideration. This includes “mobile apps” downloadable to a smartphone, electronic tablet, or other mobile electronic devices.

**(4) License fees.** Paying a license fee to use a prewritten software program for a defined period of time constitutes a lease or rental of the computer software.

**(5) Enhancements to prewritten software programs.** Transactions for enhancements to prewritten software programs, such as upgrades or “in-app” purchases, including “in-game” purchases, are subject to Maine sales and use tax if the prewritten software program is subject to Maine sales and use tax. If the prewritten software program was free, but the customer is charged for enhancements, the enhancements are subject to Maine sales and use tax if the prewritten software program would have been subject to Maine sales or use tax had there been a charge.

**B. Cloud computing; remotely accessed software.** Prewritten computer software that is sold, rented, leased, or licensed for consideration where the computer software is remotely accessed over the Internet from an out-of-state server, over private or public networks, or through wireless media, and no software is downloadable onto the licensee’s computer or device, is not considered a retail sale of a product transferred electronically and is not subject to Maine sales and use tax.

**4. Software maintenance contracts.** A retailer makes a retail sale of tangible personal property when the retailer enters into a computer software maintenance contract with a customer to provide future updates or upgrades to the customer’s computer software. These contracts are therefore subject to Maine sales and use tax at the time of entering into the contract. Additionally, if the computer software maintenance is contracted for and included as part of a transaction for a prewritten software program under a single, non-itemized price, the entire transaction is subject to Maine sales and use tax.

**5. Software sales billed to Maine.** Prewritten software programs billed to a location in Maine will be presumed to be used in Maine. This presumption may be overcome by establishing that the prewritten software program license was used exclusively by the customer at a location outside of Maine. For example, if a business headquartered in Maine bills all purchases of prewritten software programs to Maine, then it is required to pay tax on all those purchases. The business may apply to MRS for a refund of the tax due on licenses not used in Maine under 36 M.R.S. § 2012.

**SECTION 10. Sourcing of leases and rentals of tangible personal property.**

The lease or rental of tangible personal property or products transferred electronically shall be sourced according to 36 M.R.S. § 1819.

STATUTORY AUTHORITY: 36 M.R.S. § 112

EFFECTIVE DATE: January 1, 2025.