



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 3

PHOTOGRAPHERS AND PHOTOFINISHERS

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 issues commonly faced by photographers and photofinishers. 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 Title 36 of the Maine Revised Statutes. The Service Provider Tax Law is found in Part 4 of Title 36. Both Title 36 and all MRS rules may be seen by clicking on “Laws and Rules” at the left side of the MRS website (www.maine.gov/revenue). Bulletins referenced below can be viewed at www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm.

Photographers and photofinishers are producers and retailers of tangible personal property. They may also be engaged in the sale of fabrication services. Sales of tangible personal property are subject to sales tax. Sales of fabrication services are subject to service provider tax.

1. TAXABLE SALES

A. Sales of Tangible Personal Property. Photographers and photofinishers are producers and retailers of tangible personal property. Sales of tangible personal property are subject to sales tax. Retailers making sales of tangible personal property must collect and remit sales tax from their customers. Tax must be charged on the entire sale price of the property sold to a customer for use or consumption, including any services that are a part of the sale. For more information on the meaning of the term “sale price,” see Instructional Bulletin No. 39 (“Sale Price Upon Which Tax is Based”). “Use or consumption” includes not only personal consumption, such as family portraits or wedding pictures, but also use in a business activity, such as a sale of a photograph to a newspaper or magazine for publication. A sitting charge by itself is not taxable if no photographs or other tangible personal property are provided to the customer. If a sale of tangible personal property does result, however, the total amount of the sale price, including the sitting charge, is subject to tax.

Examples of taxable sales include, but are not limited to:

- Sales of photographs, portraits and DVDs, including the sale of a digital product delivered electronically;
- Developing and printing of photographs and portraits;
- Printing positives from a customer's negatives;
- Filming weddings, anniversaries, birthdays and other special events, if the film is then provided to the customer on digital storage mediums, such as DVDs and flash drives, or through digital downloads;
- Sales of photographs to be used for publication by a newspaper or magazine; and
- Sales of other tangible personal property such as film, batteries, frames, cameras, and other photographic equipment and supplies.

More specific examples are as follows:

- A portrait photographer photographs a family. The family reviews the proofs, selects and purchases prints. The \$50 sitting fee is included in the taxable sale price of the prints. If after reviewing the proofs the family had declined to purchase any prints, the \$50 sitting fee would have been exempt.
- A photographer is paid \$300 to take pictures at a family reunion. The photographer then uploads all the images onto a website for individual family members to purchase—either digitally or in prints—for a fee. The sale of the images is subject to sales tax. If the person who paid the photographer also purchases prints, the \$300 fee is included in the taxable sale price of that transaction. Otherwise, the \$300 fee is exempt.
- A videographer is paid \$3,000 to film and produce a video of a wedding. The fee includes 50 DVDs of the completed and edited video. This is a sale of tangible personal property and the entire \$3,000 is subject to sales tax.
- A customer provides a videographer with a wedding video on a VHS tape and asks for 50 DVDs to be made. The sale of the DVDs is subject to sales tax.

B. Sales of Fabrication Services. Fabrication services are production activities that transform tangible personal property provided by the customer into a different form, character or composition. Charges for fabrication services are subject to the service provider tax. See 36 M.R.S. § 2552 and § 2551(3). Service provider tax is a levy on the seller of the service, not on the purchaser. The service provider is not required to “pass the tax on” to the purchaser, but is permitted to do so. If a service provider does include the tax on the customer’s bill, it must be shown as a separate line item and identified as “service provider tax.” For more information see Instructional Bulletin No. 46 (“Fabrication Services”).

Examples of fabrication services include, but are not limited to:

- Developing photographic film to make negatives or slides;
- Developing photographic microfilm and microfiche; and
- Production of DVDs furnished by the customer.

A more specific example is as follows:

- A customer provides a videographer with a wedding video and asks for 50 DVDs to be made. The customer also provides the videographer with 50 blank DVDs. The fabrication of the DVDs is subject to service provider tax.

2. EXEMPT SALES

A. Sales for resale. A sale for resale in the form of tangible personal property is not taxable. A retailer, when selling to others for resale, must obtain a resale certificate from the customer. Otherwise, the burden of proving that a sale actually was for resale is upon the person making the sale. More detailed information regarding sales for resale is found in Rule No. 301 (“Sales for Resale and Sales of Packaging Materials”) and Instructional Bulletin No. 54 (“Resale Certificates”).

B. Sales to exempt organizations. Sales made directly to the federal government, the State of Maine or any political subdivision of the State of Maine (such as counties, cities, or towns), or to any agency or instrumentality of any of the above governments are exempt from sales tax. Also exempt are sales to hospitals, schools, regularly organized churches or houses of religious worship, and certain other organizations. Retailers are required to document sales to exempt organizations. More detailed information regarding making and documenting sales to government agencies and other exempt entities is found in Rule No. 302 (“Sales to Government Agencies and Exempt Organizations”) and in Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”).

C. Delivery to customer outside Maine. When a retailer delivers or ships tangible personal property outside the State, the sale is not subject to sales tax. See 36 M.R.S. § 1760(82). If the customer takes delivery in Maine, the tax must be charged regardless of the ultimate destination of the products. This same rule applies to digital products sent electronically. When the recipient is located outside the State of Maine, the sale is not subject to sales tax. If the recipient is located in Maine, the transaction is taxable. Unless documentation supports the actual location where the file is downloaded, the customer’s billing address with the seller will be considered the recipient’s location.

D. Right to use or license fees. When a photographer charges a customer a fee for the right to use a photograph in newspapers, magazines, or advertisements, the right to use or license fee is not subject to tax. There is no sale of tangible personal property. Rather there is a rental or lease of the photograph for a specific use or specific duration. A lease payable by rental or license fees for the right of possession and use is not a sale unless the lease or contract is deemed by the State Tax Assessor to be in lieu of purchase. A lease in lieu of purchase is a lease with either perpetual payments or a duration of more than 10 years and is subject to sales tax.

3. PURCHASES

As producers and retailers, photographers and photofinishers are not liable for sales or use tax on the following purchases:

- Tangible personal property and fabrication services purchased for resale.
- Machinery and equipment and parts for use by the purchaser directly and primarily in the production of tangible personal property for later sale or lease.
- Tangible personal property that becomes an ingredient or component part of, or that is consumed or destroyed directly and primarily in the production of, tangible personal property for later sale or lease.

A. Purchases for resale. When a retailer purchases tangible personal property for resale, the retailer must furnish the supplier with a resale certificate as provided in Rule No. 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. The retailer must state to the supplier that the purchase is for resale and the retailer will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates may be subject to criminal prosecution.**

B. Machinery and equipment. Purchases of machinery and equipment for use by the purchaser directly and primarily in the production of tangible personal property for later sale or lease are exempt from tax. See 36 M.R.S. § 1760(31). Qualifying machinery and equipment normally purchased by a photographer includes cameras and related equipment; “canned” computer photography software; and equipment used in developing, manipulating, printing and mounting photographs (including digital images) for sale to customers.

This exemption does not apply to machinery and equipment used directly and primarily in fabrication of property provided by the customer when the property being fabricated is to be used by the customer rather than sold or leased. Thus, machinery and equipment that will be used primarily (more than 50% of the time) in an activity that constitutes production of tangible personal property, such as printing of photographs, is exempt from tax when purchased by the photofinisher. Machinery and equipment that will be used 50% or more of the time in performance of fabrication services, such as developing of film furnished by the customer to make negatives or slides, does not qualify for the exemption.

C. Ingredient or component part. Purchases of items that will become an ingredient or component part of the finished product and are actually transferred to the customer, such as photographic paper and slide mounts, are exempt whether used in production or fabrication. See 36 M.R.S. § 1760(74)(A).

D. Consumed or destroyed items. Items that are consumed or destroyed directly and primarily in the production of tangible personal property for later sale may be purchased tax-free by providing the supplier with a blanket certificate of exemption in

substantially the form set forth in Rule No. 303 (“Sales to Industrial Users”). See 36 M.R.S. § 1760(74)(B). Qualifying items used by a photographer include film, developing chemicals, and similar items.

This exemption does not apply to items that are consumed or destroyed directly and primarily in fabrication of property provided by the customer when the property being fabricated is to be used by the customer rather than sold or leased. Thus, items such as developers, fixers, bleaches, stop baths, stabilizers and replenishers are exempt from tax if used in the production of tangible property for sale, but taxable if used in the performance of fabrication services.

Items that are consumed or destroyed other than directly and primarily in production, such as office supplies, cleaning supplies, and protective clothing, are taxable.

4. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the sales, use and service provider tax laws faced by photographers and photofinishers. It is not intended to be all-inclusive. Requests for information on specific situations must be in writing, must contain full information as to the transaction in question, and must be directed to:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1060
AUGUSTA, ME 04332-1060
TEL: (207) 624-9693
TTY: NEXTALK 7-1-1**

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