



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN 36

Exempt Organizations and Government Agencies

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 taxpayers with respect to sales to exempt organizations and government agencies. 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 (“M.R.S.”). 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.

The Sales and Use Tax Law and the Service Provider Tax Law provide specific exemptions for a number of different kinds of organizations and institutions, such as hospitals, schools, churches and libraries. **Neither law provides that all entities that qualify as a tax-exempt organization by Internal Revenue Code standards (i.e., 501(c)(3) organizations) are exempt from the Maine sales, use, or service provider tax.** There are many legitimate civic, charitable, and fraternal organizations in Maine that do **not** qualify for exemption under 36 M.R.S. § 1760 or § 2557 and that consequently must pay sales, use, and service provider tax. If no specific statutory exemption applies to an organization, its purchases are not exempt.

NOTE: All retailers and exempt organizations should carefully review Rule 302 (“Sales to Government Agencies and Exempt Organizations”). **Reference in this bulletin to “tax” means sales, use, and service provider taxes.**

1. EXEMPTION CERTIFICATE APPLICATION PROCESS

Organizations and institutions that are entitled to tax exemption under 36 M.R.S. § 1760 or § 2557 may submit an application to MRS for a certificate of exemption. See Rule 302 for more information. The applicant must provide the information and any required documentation specified on the application form. The requirements for exempt status vary. The specific statutory provision must be reviewed in order to determine the criteria that must be met for each type of organization. Different supporting documents are required to accompany the application form for each specific organization. An organization may be asked to submit additional documentation before a determination can be made.

If MRS determines that an organization qualifies for a tax exemption, a numbered exemption certificate is issued with the name and address of the organization. The certificate also identifies the exempt activity. When an otherwise qualifying entity is engaged in both exempt and nonexempt activities, the exemption certificate will be issued only if it has been established to the satisfaction of the State Tax Assessor that the applicant has adequate accounting controls in place to limit the use of the certificate to exempt purchases.

If MRS determines that the organization does not qualify for a tax exemption, a denial letter is issued. A decision by MRS to deny an application for issuance of an exemption certificate, or to revoke a certificate, constitutes a determination of the State Tax Assessor. The applicant may submit a petition for reconsideration of the decision pursuant to 36 M.R.S. § 151(1).

2. USE OF EXEMPTION CERTIFICATE

The exemption certificate may be used only to purchase items that will be used **exclusively** by the exempt organization. Tax must be collected on the sale of any item that is not intended to be used by the organization primarily in the activity identified in the statutory exemption for which it qualifies and identified on the face of the certificate. An exemption certificate may **not** be used:

- By members or employees of the exempt organization (including clergy) to purchase items for personal use;
- To purchase items for resale by the organization; or
- To purchase items for use by the organization in activities that are primarily commercial enterprises, such as a thrift store, gift store or vending machine.

If the holder of an exemption certificate furnishes the certificate to a person for use in purchasing tangible personal property or taxable services that are physically incorporated in, and become a permanent part of, real property that is **not** used by the holder of the certificate primarily in the exempt activity, the State Tax Assessor may assess the unpaid tax against the holder of the exemption certificate.

An exempt organization may not authorize an affiliated organization or contractor to use its exemption certificate. See Section 4 below for one exception involving contractors.

Sales to organizations that do not hold and provide to the vendor an exemption certificate issued by MRS are taxable. Misuse of exemption certificates by individuals or organizations may be subject to criminal prosecution.

3. PURCHASES BY (AND SALES TO) NON-GOVERNMENTAL EXEMPT ORGANIZATIONS

A. Responsibilities of retailer; good-faith requirement. Invoices of sales made to exempt organizations must be appropriately marked to indicate that they are exempt sales. The words “Maine Sales Tax Exempt” or “Maine Service Provider Tax Exempt” and the purchaser’s exemption number will satisfy this requirement. The retailer must keep a copy of the purchaser’s exemption certificate on file, but does not need to obtain a copy for each subsequent sales transaction. Exemption certificates must be taken by the retailer in good faith in order for the

sale to be exempt from tax. “Good faith” means the seller must know or reasonably believe that the sale is exempt. The retailer has not met 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: 1) the purchaser is not the rightful holder of the exemption certificate, 2) the exemption certificate has been revoked or is otherwise invalid as of the time of the sale, or 3) the merchandise is not being purchased for the exclusive use of the organization primarily in the activity identified in the statutory exemption for which it qualifies and as identified on the face of the certificate. See Rule 302 for important additional information regarding specific documentation requirements that apply depending on the method of payment.

B. Responsibilities of purchaser. An exempt organization should make copies of its exemption certificate. In order to make a tax-exempt purchase, the organization must complete the bottom part of the exemption certificate and give a completed copy to the vendor. The vendor must retain a completed copy of the certificate on file to properly document all qualifying exempt purchases. Tax-exempt purchases made using the exemption certificate may be paid for directly by the exempt organization with a check drawn on the organization’s account or a credit or debit card issued in its name. A tax-exempt purchase may also be paid for with cash, personal check, or personal credit or debit card only if payment is accompanied by a purchase order in the name of the exempt organization. The purchase order must be kept by the vendor to document the exempt sale. See Section 5(B) below for important information regarding sales to employees of exempt organizations.

4. SALES TO (OR PURCHASES BY) CONTRACTORS PERFORMING WORK FOR EXEMPT ORGANIZATIONS

Contractors, including those from outside the State of Maine, are often employed by Maine tax exempt organizations to perform work that results in additions or improvements to real property or that provide services to the organization.

A contractor may purchase items exempt from tax that will be **incorporated into the real estate** of an exempt organization only if a Contractor’s Exemption Certificate (STA-119) is completed by the contractor and supplied to the vendor. The Exemption Certificate number of the exempt organization should be supplied on the Contractor’s Exemption Certificate. An exemption number for governmental agencies need not be supplied, but the governmental agency should be written on the Contractor’s Exemption Certificate.

Any other purchases made by the contractor for use on such a job are taxable. Taxable purchases include, but are not limited to: consumables, tools, supplies, equipment, equipment rentals, fuel, safety equipment, apparel, and temporary structures. **Any purchases made by the contractor that are not to be incorporated into the real estate owned by the Maine tax-exempt organization are taxable.**

Out of state contractors that bring property into Maine without having paid any Maine sales/use tax must register with MRS and report and remit any use tax due. Tools and equipment that have been previously owned and used by the contractor for more than 12 months outside the State of Maine are not subject to Maine sales/use tax.

A contractor that provides services to the organization must pay tax on any item used in the performance of their service. For instance, if a janitorial service contract requires the janitorial company to replenish the bathroom supplies, the janitorial company would pay tax

when purchasing those supplies. Or if under a maintenance service contract of a photocopier, the repair person is required to replace worn out parts or replenish consumable products such as toner, the repair person would pay tax when purchasing those items. In both of these situations, the purchases by the repair persons are taxable items used by them in the performance of their services even if the customer is a sales tax exempt organization.

5. SALE TO INDIVIDUAL VS. SALE TO EXEMPT ORGANIZATION

A. Generally. Vouchers or similar official documents are sometimes issued by tax-exempt organizations or government agencies to needy individuals or students for items such as books, clothing, and appliances. Purchases made with these vouchers are taxable sales from the retailer to the individual redeeming the voucher. Tax must be collected, reported and remitted by the retailer. The voucher is treated as a form of payment by the individual to the vendor and not as a sale to the exempt organization.

B. Employees. An exempt organization or government agency may authorize its own employee to make a purchase of an item of tangible personal property to be used on the job, such as protective or safety equipment or clothing. When an employee of the exempt organization or agency presents a retailer with a purchase order or other authority issued by the exempt organization and accepted in good faith by the retailer, the sale will generally qualify as an exempt sale to that organization provided that the sale price does not exceed the amount stated in the purchase order. If the retailer is not presented with a purchase order or other authority, the sale is a sale to the individual, not a sale to the exempt organization. The following rules also apply:

- (1) If the sale price exceeds the dollar amount of the purchase order and the employee pays the difference with his or her own funds, the entire sale is a sale to the individual, not a sale to the exempt organization.
- (2) If the employee is making a personal purchase together with a purchase covered by a purchase order or other authority as described above, the retailer should make two separate sales. Even if the retailer includes more than one item in the same transaction, only the item or items that are identified in the purchase order or other authority (and that are within the dollar limit stated thereon) are sold to the exempt organization. For example, if the employee has a purchase order or other authority to purchase “footwear” with a value up to \$100 and actually purchases a pair of shoes for \$80 and a jacket for \$60, only the shoes may be sold exempt from sales tax. The full value of the jacket is taxable since it is sold to the individual employee.

6. SALES TO (OR PURCHASES BY) GOVERNMENTAL AGENCIES

All sales to the federal government, the State of Maine, and any county, city, town or municipality in the State of Maine are exempt from tax. This category also includes school districts; water, power, parking or other districts established by legislative act as quasi-municipal corporations; village corporations; and the Maine Turnpike Authority.

Governmental agencies are not required to obtain a Tax Exemption certificate. Sales made to governmental agencies exempt from tax must be documented by listing the name of the governmental agency on the invoice or sales slip. See Rule 302 for important additional

information regarding specific documentation requirements that apply depending on the method of payment.).

Although governmental agencies are not required to obtain a Tax Exemption Certificate, MRS will issue a certificate to any agency that requests one. Many governmental agencies request that an exemption number be issued to them for the convenience of their vendors. An agency of state or local government may also request a letter from MRS confirming its exempt status.

Sales to other states and their agencies and subdivisions are taxable.

Sales to foreign countries may or may not be exempt from tax depending on the particular country in question, and also possibly depending on the amount of the purchase price. The same is true for sales to foreign diplomatic personnel. When presented with a tax exemption card issued by the U.S. State Department's Office of Foreign Missions (OFM), retailers should verify the card's validity by using the online "lookup tool" available at www.ofmapps.state.gov/tecv/ or by calling the phone number on the back of the tax exemption card.

Pursuant to U.S. law, the Taipei Economic and Cultural Representative Office in the United States ("TECRO"), the Taipei Economic and Cultural Offices ("TECOs"), their designated employees, and their qualifying dependents are also entitled to Maine tax exemption privileges. The American Institute in Taiwan ("AIT") has issued tax exemption cards to TECRO, TECOs, and their eligible personnel and dependents that incorporate the same feature and design elements as OFM's tax exemption cards. These cards read "American Institute in Taiwan" on the front and include AIT's contact information on the back. Card validity may be checked using the same lookup tool cited above.

For more information on sales to foreign missions and their personnel, consult the web site maintained by the U.S. Department of State, Office of Foreign Missions, Tax Program at www.state.gov/ofm/tax/.

7. SALES TO EMPLOYEES OF STATE OR FEDERAL GOVERNMENT

A. Generally. For purchases made with cash, check or personal credit card, see the rules set forth in Section 5(B) above.

B. Government-issued credit cards. Certain employees of State of Maine and federal government agencies are issued specific credit cards that display the name of the employee together with the name of the agency. Sales that are paid for with credit cards that are billed to and paid for directly by the governmental agency are exempt from tax. The retailer has not met 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 card is being used to make a personal purchase that is not tax-exempt or for any other purpose other than an official government purpose. See Rule 302 for important additional information regarding specific documentation requirements that apply depending on the method of payment.

1. State employees. The State of Maine issues two official corporate liability credit cards for the use of State employees, with billing directly to the State. These are known as State of Maine Procurement Cards. Both are MasterCard issued by U.S. Bank. One card is a "standard card" for the purchase of supplies and other forms of tangible personal

property. The other card is a “travel card” for travel expenses such as lodging and automobile rental. The use of State of Maine Procurement Cards is subject to rules established and administered by the State of Maine, Department of Administrative and Financial Services, Division of Purchases. For more information, contact the Maine Division of Purchases. Purchases made by Maine state employees with any other type of credit card are subject to tax.

2. Federal Employees. Certain credit cards issued by the federal government to its employees are direct-billed to the federal government. Purchases made with these cards are exempt from Maine tax. Other federally issued cards are direct-billed to employees who may later be reimbursed for their work related expenses. Purchases made with these cards are taxable. For more information, consult www.smartpay.gsa.gov.

There are several different types of GSA SmartPay cards, issued by Citibank, JPMorgan Chase Bank, or U.S. Bank. The **first four numbers** in the sequence of the card, known as Bank Identification Numbers (“BIN”), are used to identify each type of card. The BINs for each type of card are noted below.

Fleet charge card with notation “For Official Government Fleet Use Only.” Purchases are centrally billed and exempt from tax.

| | |
|------------|--------------|
| MasterCard | 5565 or 5568 |
| Voyager | 8699 |

Purchase charge card with notation “For Official US Government Purchases Only - US Government Tax Exempt.” Purchases are centrally billed and exempt from tax.

| | |
|------------|---------------------|
| MasterCard | 5565 or 5568 |
| VISA | 4486, 4614, or 4716 |

Travel charge card with notation “For Official Government Travel Only.” Purchases with cards that have a 0, 6, 7, 8, or 9 in the sixth digit are exempt; all others are taxable sales.

| | |
|------------|--------------|
| MasterCard | 5565 or 5568 |
| VISA | 4486 or 4614 |

Integrated charge card (combines the functions of Purchase, Travel and Fleet cards) with notation “For Official Government Use Only.”

Debit and Prepaid cards:

| | |
|------------|---------------------|
| MasterCard | 5564, 5565, or 5568 |
| VISA | 4614 |

Facsimiles of these cards, and assistance for businesses and vendors that accept these cards, may be seen at www.smartpay.gsa.gov.

8. CHURCHES AND HOUSES OF RELIGIOUS WORSHIP

A. Generally; criteria applied. The following criteria are applied by the State Tax Assessor in determining whether a religious organization is a “regularly organized church or house of religious worship” for purposes of the exemptions provided by 36 M.R.S. §§ 1760(16) and 2557(3)(M).

1. A distinct legal existence.
2. A recognized creed and form of worship.
3. A definite and distinct ecclesiastical government.
4. A formal code of doctrine and discipline.
5. A distinct religious history.
6. A membership not associated with any other church or denomination.
7. An organization of ordained ministers.
8. Ordained ministers selected after completing prescribed studies.
9. A literature of its own.
10. Established places of worship.
11. Regular congregations.
12. Regular religious services.
13. Sunday schools for religious instruction of the young.
14. Schools for the preparation of its ministers.

These criteria are not exclusive. No single factor is controlling, and all of the listed criteria may not be relevant to a given determination. Any other facts and circumstances that may bear upon an organization's claim that it is a church or house of religious worship are also taken into consideration.

B. Availability to the public. The means by which its religious purposes are accomplished are what separate a church or house of worship from other forms of religious enterprise. To qualify as a church or house of religious worship, an organization must be reasonably available to the public in its conduct of worship, educational instruction, and promulgation of doctrine.

9. 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 retailers, exempt organizations, and governmental agencies. 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: 7-1-1
Or visit our website at www.maine.gov/revenue**

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Re-Issued: October 5, 2007
Last Revised: April 1, 2016

(Published under Appropriation 010-18F-0002-07)