



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION GENERAL INFORMATION BULLETIN

September 25, 2019

NO. 109

This bulletin contains important information about legislation enacted during the First Regular Session of the 129th Legislature and other recent developments that affect everyone who reports Maine sales, use, service provider, and other special taxes. **Please read it carefully.** The changes contain a variety of effective dates and apply to sales occurring on or after the applicable effective date.

What you will find in this publication:

NEW STATUTES

- ❖ Reporting and registration requirements for marketplace facilitators
- ❖ Sourcing rules established

AMENDED

- ❖ Registration requirements for sellers
- ❖ Purchase of camper trailers and motor homes for rental or lease
- ❖ Provisional resale certificates – period of validity equalized

EXEMPTIONS

- ❖ NEW: Watercraft sold to certain incorporated nonprofit transportation companies
- ❖ EXPANDED: Commercial agricultural production
- ❖ EXPANDED: Positive airway pressure equipment
- ❖ CONSOLIDATED: Use tax exemptions for the donation of merchandise

TOBACCO TAX

- ❖ Electronic smoking devices added to definition of "tobacco products"
- ❖ Tobacco Products excise tax rate adjusted to 43% of wholesale sale price to equalize the rate with that imposed on cigarettes.
- ❖ Equalization of tobacco tax based on future increases to cigarette excise taxes

NEW STATUTES

MARKETPLACE FACILITATORS

Required to Report and Remit Sales Tax Collected on Facilitated Sales Delivered into Maine

36 M.R.S. § 1951-C

EFFECTIVE OCTOBER 1, 2019

Marketplace facilitators, including those with no physical presence in Maine, are required to register with MRS, and to collect and remit Maine sales tax on all taxable sales facilitated through the marketplace. A "marketplace facilitator" is any person that facilitates a retail sale by providing a marketplace that lists, advertises, stores, or processes orders for tangible personal property or taxable services for sale by marketplace sellers, and directly, or indirectly through one or more agents, contractors or affiliated persons, does any of the following:

- (a) transmits or otherwise communicates an offer by the marketplace seller or an acceptance between the customer and a marketplace seller;
- (b) collects payment from the customer and transmits that payment to the marketplace seller; or
- (c) engages in fulfillment or storage services, customer service, or accepting or assisting with returns or exchanges with respect to the marketplace seller's products or taxable services.

A marketplace facilitator, including a facilitator with no physical presence in Maine, is required to register if either:

- (1) The marketplace facilitator's gross sales from delivery of tangible personal property or taxable services into this State in the previous calendar year or current calendar year exceeds \$100,000; or
- (2) The marketplace facilitator sold or facilitated sales of tangible personal property or taxable services for delivery into this State in at least 200 separate transactions in the previous calendar year or the current calendar year.

For the purposes of these thresholds, the marketplace facilitator's gross sales and total number of transactions include sales facilitated on behalf of marketplace sellers and any sales of tangible personal property or taxable services made directly by the marketplace facilitator.

The application for tax registration is available on the MRS website, www.maine.gov/revenue.

Marketplace sellers who make sales through a marketplace facilitator will not be required to collect and remit sales tax on sales made through the facilitator as long as they receive a written statement from the facilitator that explicitly provides that the facilitator will collect and remit the Maine sales tax on all taxable sales facilitated through the marketplace. **(PL 2019, c. 441)**

SOURCING
New Statute
36 M.R.S. § 1819
EFFECTIVE OCTOBER 1, 2019

Title 36, section 1819 establishes sourcing rules for sales of tangible personal property and taxable services delivered into the State of Maine. The new provision aligns Maine's practice with that of the Streamlined Sales and Use Tax Agreement and codifies Maine's existing delivery rule. **(PL 2019, c. 401)**

AMENDED STATUTES

REGISTRATION REQUIREMENTS

Repealed and Replaced to Better Align With Nexus Requirements
36 M.R.S. § 1754-B
EFFECTIVE SEPTEMBER 19, 2019

Title 36, section 1754-B, which governs the registration of sellers doing business in this State, has been repealed and replaced to align with the 2018 United States Supreme Court decision in *South Dakota v. Wayfair, Inc., et. al.*, which overturned the long-standing rule that an out-of-state seller must have physical presence in a state before it can be required to register and collect sales and use tax. The provisions that governed the registration requirements for remote sellers, enacted in PL 2017, c. 245 have also been incorporated into section 1754-B. **(PL 2019, c. 401)**

PURCHASES OF CAMPER TRAILERS AND MOTOR HOMES FOR RESALE

Clarifies Subsequent Rental of Vehicle as Tangible Personal Property
36 M.R.S. § 1752(14)(B)(16)
EFFECTIVE SEPTEMBER 19, 2019

The exclusion from retail sale for the purchase of camper trailers and motor homes to be rented or leased has been clarified to require the subsequent rental be as tangible personal property. If a camper trailer or motor home is rented out as living quarters, such as at a campground, the exclusion does not apply, and the purchase of the camper trailer or motor home by the lessor is a taxable purchase. **(PL 2019, c. 401)**

RESALE CERTIFICATES

Initial Resale Certificates No Longer Deemed "Provisional"
36 M.R.S. § 1754-B(2-B)
EFFECTIVE SEPTEMBER 19, 2019

The law amends the provisions governing the issuance of resale certificates to remove the "provisional" resale certificate designation. New resale certificates issued *before* October 1 will be valid for the remainder of the calendar year in which it was issued and for the next three calendar years. New resale certificates issued *on or after* October 1 will be valid for the remainder of the

calendar year in which it was issued and for the next four calendar years. Renewed certificates will continue to be valid for five calendar years. **(PL 2019, c. 401)**

EXEMPTIONS

NEW EXEMPTION

Certain Watercraft Purchased by Incorporated Nonprofit Transportation Companies
36 M.R.S. § 1760(26-A)
RETROACTIVE TO JANUARY 1, 2019

The law enacts a sales tax exemption for watercraft purchased by an incorporated nonprofit transportation company that has a written understanding with a municipality that the watercraft will be available at all times to transport emergency medical patients from an island to a licensed ambulance service on the mainland. **(PL 2019, c. 343)**

EXPANDED EXEMPTION

Commercial Agricultural Production
36 M.R.S. § 2013
EFFECTIVE JULY 1, 2019

The definition of "commercial agricultural production" has been amended to include the production of maple syrup and honey, thereby qualifying those producers for the sales tax exemption and refund for depreciable machinery and equipment used in the production of those products. **(PL 2019, c. 7)**

EXPANDED EXEMPTION

Positive Airway Pressure Equipment
36 M.R.S. § 1760 (94)
RETROACTIVE TO JANUARY 1, 2012

The sales tax exemption for positive airway pressure equipment and supplies has been amended to include oxygen delivery equipment and supplies, retroactive for purchases made on or after January 1, 2012. **(PL 2019, c. 401)**

CONSOLIDATED EXEMPTIONS

Merchandise Donated to Tax-Exempt Organizations
36 M.R.S. § 1864
EFFECTIVE SEPTEMBER 19, 2019

Two separate yet similar exemptions on merchandise donated to tax-exempt organizations (36 M.R.S. §§ 1863 and 1864) have been consolidated into a single exemption. **(PL 2019, c. 401)**

Tobacco Tax

ELECTRONIC SMOKING DEVICES

Added to Definition of "Tobacco Product"

36 M.R.S. § 4401(9)

EFFECTIVE JANUARY 2, 2020

Electronic smoking devices and the liquids used in them have been added to the definition of "tobacco products." An "electronic smoking device" is a device used to deliver nicotine or any other substance intended for human consumption that may be used to simulate smoking through inhalation of vapor or aerosol, and includes without limitation, electronic cigarettes, electronic cigars, electronic pipes, electronic hookahs, and so-called "vape pens." **(PL 2019, c. 530)**

TOBACCO AND CIGARETTE TAX EQUALIZATION

36 M.R.S. §§ 4403(2), (5)

EFFECTIVE JANUARY 2, 2020

Beginning January 2, 2020, the tax imposed on tobacco products (except those taxed as smokeless tobacco products) is adjusted to 43% of the wholesale sales price to equalize the rate with the tax imposed on cigarettes. Should the rate of excise tax imposed on cigarettes be increased after January 2, 2020, the State Tax Assessor will calculate a rate of excise tax to be imposed on the tobacco products that is equivalent to the same percentage change in the tax rate for one cigarette. The adjusted rates for tobacco tax will take effect at the same time as the increase in the tax on cigarettes. **(PL 2019, c. 530)**