



MAINE REVENUE SERVICES

SALES, FUEL & SPECIAL TAX DIVISION

INSTRUCTIONAL BULLETIN NO. 60

SALES OF MEDICAL CANNABIS AND RELATED PRODUCTS

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 persons who make sales of medical cannabis and related products pursuant to the Maine Medical Use of Marijuana Program (“MMMP”), including registered caregivers and registered dispensaries.

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.”). Title 36, MRS rules, MRS Instructional Bulletins, applications, and affidavits referenced in this bulletin can be viewed on the MRS website, www.maine.gov/revenue.

The Maine Medical Use of Marijuana Act is found in 22 M.R.S., Chapter 558-C. Title 22, related rules, and other forms and applications related to the MMMP are available on the Maine Office of Cannabis Policy’s (“OCP’s”) website, www.maine.gov/dafs/ocp/.

Medical cannabis dispensaries and caregivers registered with OCP are retailers involved in making taxable sales of harvested cannabis, and in some cases other products. Registered caregivers and dispensaries (referred to throughout this bulletin as “MMMP sellers”) are required to register as retailers with MRS and are responsible for collecting and remitting Maine sales tax. (See Section 2 below.)

The activities described in this bulletin are considered a violation of federal law. Persons operating in activities allowed under the MMMP may be subject to federal sanctions for what is otherwise considered authorized conduct in the State of Maine. Compliance with this bulletin does not exempt caregivers, their employees, or customers from possible federal prosecution. MRS is not responsible or liable for the actions of program participants under this bulletin.

1. RELEVANT STATUTORY DEFINITIONS

The following terms used in this bulletin are defined in 22 M.R.S. § 2422 and OCP Rule 18-691, Chapter 2, “Maine Medical Use of Marijuana Program Rule.”

Caregiver. A “caregiver,” as defined in 22 M.R.S. § 2242(8-A), means a person or an assistant of that person that provides care for a qualifying patient in accordance with 22 M.R.S. § 2423-A, subsection 2.

Caregiver retail store. “Caregiver retail store,” as defined in 22 M.R.S. § 2422(1-F), means a store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer cannabis plants or harvested cannabis for sale to qualifying patients.

Dispensary. A “registered dispensary” or “dispensary,” as defined in 22 M.R.S. § 2422(6), means an entity registered under 22 M.R.S. § 2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses cannabis plants or harvested cannabis or related supplies and educational materials to qualifying patients and the caregivers of those patients.

Edible cannabis product. “Edible cannabis product,” as defined in 22 M.R.S. § 2422(3-B), means a cannabis product intended to be consumed orally, including, but not limited to, any type of food, drink or pill containing harvested cannabis. “Edible cannabis product” does not include an edible product containing hemp as defined in 7 M.R.S. § 2231.

Harvested cannabis. “Harvested cannabis,” as defined in 22 M.R.S. § 2422(3-C), means the plant material harvested from a mature cannabis plant, except the stalks, leaves and roots of the plant that are not used for a qualifying patient’s medical use. “Harvested cannabis” includes cannabis concentrate and cannabis products. “Harvested cannabis” does not include plant material harvested from hemp as defined in 7 M.R.S. § 2231.

Cannabis. “Cannabis,” as defined in OCP Rule 18-691, Chapter 2, Section 1.J, means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Cannabis concentrate. “Cannabis concentrate,” as defined in 22 M.R.S. § 2422(4-S), means the resin extracted from any part of a cannabis plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. “Cannabis concentrate” does not include resin extracted from hemp as defined in 7 M.R.S. § 2231 or any compound, manufacture, salt, derivative, mixture or preparation therefrom.

Cannabis manufacturing facility. “Cannabis manufacturing facility,” as defined in 22 M.R.S. § 2242(4-R), means a registered tier 1 or tier 2 manufacturing facility or a person authorized to engage in cannabis extraction under 22 M.R.S. § 2423-F.

Cannabis product. “Cannabis product,” as defined in 22 M.R.S. § 2422(4-L), means a product composed of harvested cannabis and other ingredients that is intended for medical use. “Cannabis

product” includes, but is not limited to, an edible cannabis product, a cannabis ointment and a cannabis tincture. “Cannabis product” does not include cannabis concentrate or a product containing hemp as defined in 7 M.R.S. § 2231.

Cannabis tincture. “Cannabis tincture,” as defined in 22 M.R.S. § 2422(4-U), means a solution that is intended to be consumed orally and is prepared from harvested cannabis blended with an edible solvent.

Qualifying patient. “Qualifying patient” or “patient,” as defined in 22 M.R.S. § 2422(9), means a person who has been a resident of the State for at least 30 days and who possesses a valid written certification regarding medical use of cannabis in accordance with 22 M.R.S. § 2423-B.

Registered caregiver. “Registered caregiver” means a caregiver who is registered by the department pursuant to 22 M.R.S. § 2425-A.

2. SALES

MMMP sellers may act as retailers and be engaged in the sale of cannabis, tinctures, topical treatments and other preparations, and paraphernalia. Retail sales of all of these products are subject to sales and use tax at the “general sales tax rate.” The statutory exemption for sales of prescription medicines does not apply to sales of medical cannabis. See 36 M.R.S. § 1760(5). See Section 7 below for information on sales tax returns and payments.

Sales tax is calculated on the sale price of the item being sold. “Sale price” means “the total amount of a retail sale valued in money, whether received in money or otherwise,” and includes “any consideration for services that are part of a retail sale.” See 36 M.R.S. § 1752(14)(A). See Instructional Bulletin No. 39 (“Sale Price Upon Which Tax is Based”) for more information.

A. CANNABIS AND RELATED PRODUCTS. Sales tax at the general sales tax rate must be collected on the value of harvested cannabis and all other cannabis products sold at retail by an MMMP seller, including tinctures, ointments, salves, and paraphernalia.

B. FOOD PRODUCTS. Retail sales of food prepared by a MMMP seller, including so-called “medibles,” are subject to sales tax at a separate “prepared food rate.” “Prepared food” includes food products that are prepared by the retailer and are designed for immediate consumption “without further preparation.” “Without further preparation” does not include combining an item with a liquid or toasting, microwaving, or otherwise heating or thawing a product for palatability rather than for the purpose of cooking the product.

Examples of prepared food are cookies, pies, cakes, muffins, breads, bars, butters, and oils prepared by the retailer. A cannabis tincture is not prepared food. See Instructional Bulletin No. 27 (“Sales of Prepared Food”) for more information.

Although many food products are considered “grocery staples” and are exempt from sales tax, food products containing any amount of cannabis or cannabis product are excluded from the definition of “grocery staples” and are therefore taxable. See 36 M.R.S. § 1752(3-B)(H).

C. EXCLUSIONS FROM SALE PRICE. The taxable sale price does not include separately stated charges for shipping goods to the purchaser by common or contract carrier. For more information, see Instructional Bulletin No. 39 (“Sale Price upon Which Tax is Based”).

D. RETURNED MERCHANDISE. When an item is returned by a customer, the sales tax is generally refundable to the retailer only when a full refund of the sale price has been provided to the customer. If a product is returned and the customer receives only a partial refund of the sale price, no sales tax is refundable to the customer, unless the partial refund is made pursuant to a warranty. See 36 M.R.S. § 1752(14)(B)(3).

E. SALE OF TANGIBLE PERSONAL PROPERTY VERSUS SALE OF A SERVICE. As noted above, “sale price” includes “any consideration for services that are part of a retail sale,” including growing services.

A customer may provide seeds to an MMMP seller, who then grows and harvests the mature plants. The customer receives tangible personal property (e.g., buds or flower). In this situation, the taxable sale price is the total amount charged for cultivating, harvesting, and selling tangible personal property to the customer.

A person, including an MMMP seller or cannabis manufacturing facility, who produces medical cannabis products (including cannabis extract) from harvested cannabis that has been provided to that person by a qualifying patient, caregiver, or dispensary, is engaged in fabrication services. (See Section 5 below.)

3. SALES FOR RESALE

An MMMP seller may make sales for resale to another MMMP seller, such as a registered caregiver operating a caregiver retail store. Sales for resale to a purchaser that holds a valid resale certificate are not taxable. When making sales for resale, the seller must obtain a copy of the purchaser’s current resale certificate. For more information, see MRS Rule 301 (“Sales for Resale and Sales of Packaging Materials”) and MRS Instructional Bulletin No. 54 (“Resale Certificates”).

4. COMMERCIAL AGRICULTURAL PRODUCTION

An MMMP seller may be engaged in “commercial agricultural production” and may be eligible for a sales tax exemption on some of its purchases.

“Commercial agricultural production” means the commercial production of crops (including seeds), maple syrup, honey, plants, trees, compost and livestock. See 36 M.R.S. § 2013(1)(A). Commercial agricultural production includes growing and harvesting cannabis plants pursuant to

the MMMP. MMMP sellers engaged in commercial agricultural production may qualify to purchase certain items exempt from sales tax. The purchaser must provide the retailer with a copy of a valid commercial agricultural certificate of exemption issued by MRS and a properly completed exemption affidavit.

MRS Rule 323 (“Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing, and Commercial Wood Harvesting”) and MRS Instructional Bulletin No. 59 (“Farming, Fishing, and Wood Harvesting”) provide detailed information regarding the commercial agricultural production exemption, including information on how to obtain an exemption certificate. The rule includes definitions, explains exclusions to qualifying activities, establishes guidelines for the issuance of the certificate, and places restrictions on the use of the certificate. Although the seller is relieved from the burden of charging a tax at the time of sale (provided that copies of the exemption card and affidavit are on file) the purchaser is subject to audit and will be assessed use tax, including interest and penalties, on any non-qualifying purchases.

A. MACHINERY AND EQUIPMENT. Retail sales of machinery and equipment used directly and primarily in commercial agricultural production qualifies for exemption from sales tax, and sales and/or use tax paid on purchases of such machinery and equipment may be eligible for refund, provided that the machinery and equipment is depreciable for federal income tax purposes. See 36 M.R.S. § 2013 and MRS Rule 323 for the definitions of “commercial agricultural production,” “directly,” “primarily,” “depreciable,” and “depreciable machinery and equipment.”

Machinery and equipment commonly used by MMMP sellers that may qualify for this exemption include, but are not limited to, grow lights and tents, timers, fans, soil mixers, sprayers, various tools, transplant machines, and grading tables.

B. FUEL AND ELECTRICITY. Fuel and electricity used in commercial agricultural production and support operations may be purchased exempt from sales tax. See 36 M.R.S. § 2013(3). This exemption is applied on an account basis for fuel purchases and a meter-by-meter basis for electricity purchases. If a single fuel tank or single meter supports both qualifying and non-qualifying activities, tax must be paid to the fuel or utility provider and the purchaser must apply directly to MRS for a refund based on a pro-rated portion of the fuel or electricity used in the qualifying activities.

For purposes of this provision, “support activities” include storage operations, maintenance operations, and related administrative activities. Support activities do not include activities conducted in, or related to, a retail store, by a separate business, or in unrelated administrative activities.

C. SEED, FEED, AND FERTILIZER. Purchases of seed, fertilizer, defoliants, pesticides, insecticides, fungicides, and weed killers for use in commercial agricultural production are exempt from sales tax. See 36 M.R.S. § 1760(7-B). The exemption does not apply to purchases of items that are not for use in commercial agricultural production. Items purchased for use in a home garden or other noncommercial use are subject to tax. The exemption does

not apply to the sale of a growing medium, such as potting soil. For more information, see MRS Instructional Bulletin No. 14 (“Seed, Feed, Fertilizer and Other Items Used in Agricultural and Aquacultural Production”).

5. PRODUCTION (MANUFACTURING)

As used in this bulletin, the term “manufacturer” means a person engaged in the production of tangible personal property for later sale or lease. An MMMP seller or cannabis manufacturing facility that prepares cannabis products, including tinctures and ointments for sale pursuant to the MMMP, may be engaged in the production of tangible personal property and certain purchases may be eligible for exemption as items used directly and primarily in production.

“Production” does not include the acquisition of raw materials, storage and handling (pre- and post-production), transportation, or biological processes. (But see Section 3 above for information on “commercial agricultural production.”)

Purchasers of machinery and equipment used “directly and primarily” in production, items consumed and destroyed in the production process, and ingredient or component parts of the product being produced may qualify for exemption from sales and use tax. See 36 M.R.S. §§ 1760(31), 1752(2-A), 1752(9-A), and 1760(74). Manufacturers may also claim a sales tax exemption on 95% of the cost of fuel and electricity purchased for use at a manufacturing facility. See Paragraph D below.

Note: "Production" does not include the preparation of food products by a retailer for retail sale. Items of machinery or equipment used by a retailer in the preparation of food to be sold by the retailer are taxable. This category of taxable items includes refrigerators, ovens, and blenders used in the preparation of edible items.

For more information on the manufacturing exemptions, including when the production process begins and ends, what types of equipment qualify, and which types of products are considered to be consumed and destroyed in the production process, see MRS Instructional Bulletin No. 22 (“Manufacturers”) and MRS Rule 303 (“Sales to Industrial Users”).

A. DIRECTLY AND PRIMARILY. To qualify for exemption, production machinery and equipment must be used directly and primarily in the production process. Generally, this means the machinery or equipment will be acting on the raw materials used in production. Depending on the process, exempt machinery and equipment may include, but are not limited to, items such as drying racks.

B. CONSUMED AND DESTROYED. Tangible personal property, other than fuel or electricity, that is consumed or destroyed or loses its identity in the production process is exempt from tax. This exemption includes items that have a normal life expectancy of less than one year in the use to which they are applied.

C. INGREDIENTS AND COMPONENT PARTS. Ingredient or component parts of the item being produced are exempt from tax. This category includes all raw materials that get physically converted into, or physically attached to the finished product, including tags and labels.

D. FUEL AND ELECTRICITY USED AT A MANUFACTURING FACILITY. Ninety-five percent of the cost of fuel and electricity that is purchased and used at a “manufacturing facility” is exempt from tax. The remaining 5% is subject to the general sales tax rate. For purposes of this exemption, a manufacturing facility is a site where production machinery is located. See 36 M.R.S. § 1752(6-A). This partial exemption includes not only the machinery and equipment used directly in production, but all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production. This partial exemption applies to all types of fuel, including #2 heating fuel, diesel fuel, oxygen, acetylene, and wood chips.

A manufacturing facility does not include a site at which a retailer is primarily engaged in making retail sales of items that it does not produce itself.

6. FABRICATION

“Fabrication services” means the production of tangible personal property for consideration for a person who furnishes, either directly or indirectly, the materials used in that production. Any person, including a registered caregiver, dispensary, or a cannabis manufacturing facility, may be a fabricator if the person extracts cannabis concentrate or produces cannabis products from cannabis provided by and returned to their customer.

Unlike the sales and use tax, the service provider tax is a levy on the seller of the service, not 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.”

Any person who fabricates cannabis concentrate or cannabis products is required to register with MRS for the service provider tax. See 36 M.R.S. § 2552(2) and MRS Instructional Bulletin No. 46 (“Fabrication Services”) for more information on fabrication services.

7. PURCHASES

Items purchased by a retailer for use in its business are subject to tax unless a specific exemption applies. An MMMP seller or cannabis manufacturing facility must therefore either pay sales tax, or accrue use tax, on items that do not fall within one of the exempt categories explained elsewhere in this bulletin. Taxable items will include, for example, gloves and other articles of clothing, scales and balances, and containers used for storing medical cannabis.

A. PURCHASES FOR RESALE. Retailers may make purchases of items for resale to customers. Items that will be resold in the form of tangible personal property may be purchased exempt from tax by providing a copy of a properly completed resale certificate to the seller of such items. See MRS Instructional Bulletin No. 54 (“Resale Certificates”) for more information on obtaining a resale certificate and making purchases for resale.

B. PURCHASES OF PACKING, PACKAGING, AND SHIPPING MATERIALS. Certain packaging and shipping materials that go with the product to the customer may be purchased exempt from tax. See 36 M.R.S. § 1760(12-A). Examples include bags, twine, tape, containers, and labels. Retailers should provide the seller of such materials with a resale or exemption certificate to make a tax-exempt purchase of packaging materials.

Purchases of packaging materials used by a business to transport its own goods from one location of the business to another location of the business or used to store goods in inventory are taxable to the retailer. For more information, see MRS Rule 301 (“Sales for Resale and Sales of Packaging Materials”) and MRS Instructional Bulletin No. 23 (“Packing, Packaging and Shipping Materials”).

C. WITHDRAWALS FROM INVENTORY. When tangible personal property purchased for resale is withdrawn from inventory for the retailer’s own use, use tax accrues at the time of withdrawal and the retailer’s cost would be reported as “other taxable purchases” on the retailer’s sales tax return. See MRS Instructional Bulletin No. 39 (“Sale Price upon Which Tax is Based”).

D. FREE GIFTS TO CUSTOMERS. Retailers such as MMMP sellers may give away promotional products. For example, a retailer may give a free T-shirt to a new customer. In these instances, the retailer is responsible for paying use tax on the cost of the goods given away. Gifts of general merchandise are subject to use tax at the general sales tax rate. Gifts of prepared food are subject to use tax at the prepared food rate.

A registered caregiver may transfer cannabis plants and harvested cannabis to a qualifying patient, another caregiver or a dispensary for no remuneration (see 22 M.R.S. § 2423-A(2)(K)). These transfers are subject to use tax at the general sales tax rate, based on the caregiver's cost of the item. Edible cannabis products prepared by the retailer would be subject to use tax at the prepared food rate on the retailer's cost of ingredients when they are withdrawn from inventory and transferred for no remuneration. See MRS Instructional Bulletin No. 39 (“Sale Price upon Which Tax is Based”).

7. REPORTING AND PAYMENT OF TAX

Sales and Use Tax returns must be filed on a monthly basis, except that those retailers whose average tax liability is less than \$600 per month may request authorization to file on a less frequent basis. Tax returns are due on the 15th of the month immediately following the reporting period. If the 15th of the month falls on a weekend or holiday, the return is due on the next business day.

Payment of the amount due must be made when the return is filed. See MRS Rule 304 (“Sales Tax Returns and Payments”) for more information.

Tax returns are required to be filed electronically. Go to www.maine.gov/revenue and click “File and Pay.” Retailers unable to electronically file may request a waiver from MRS to file paper returns. See MRS Rule 104 (“Filing of Maine Tax Returns”) for more information.

8. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law as it applies to sales of medical cannabis and related products. It is not intended to be all-inclusive. Guidance for specific situations related to Sales and Use Tax can be obtained by contacting the Sales Tax Division at (207) 624-9693 or sales.tax@maine.gov.

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MMMP regulations and application materials are available at www.maine.gov/dafs/ocp/medical-use. Questions regarding the Maine Medical Use of Marijuana Act and the MMMP should be directed to the Office of Cannabis Policy at (207) 287-3282. A written request can be mailed to:

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Issued: August 1, 2016
Amended: February 24, 2020
March 12, 2021
Last Revision: May 11, 2022

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