



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 13

SALES OF FUEL AND UTILITIES (Coal, Oil, Wood, Electricity, Gas, and Water)

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 of fuel and utilities.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although Maine Revenue Services (“MRS”) bulletins 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.”). Both Title 36 and all MRS rules may be seen by clicking on “Laws and Rules” on the MRS website: www.maine.gov/revenue. Certificates referenced in this bulletin can be found at www.maine.gov/revenue/forms/sales/salesforms.htm. Informational bulletins can be found at www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm.

1. ELECTRICITY

Electricity service in Maine is provided by two separate companies: an electricity supplier and a transmission and distribution company (“T&D”). The electricity supplier sells electricity to consumers in a competitive market. The T&D delivers the electricity over transmission lines that it maintains and services. The sale of electricity is a taxable sale of tangible personal property. The sale of electricity transmission and distribution is a taxable service and is likewise subject to tax. See 36 M.R.S. §§ 1752(17), 1752(17-B), and 1811. The same exemptions that exist for the sale of electricity also apply to charges for transmission and distribution.

A. EXEMPT SALES

(1) Residential sales. “Residential electricity” means electricity furnished to buildings designed and used for both human habitation and sleeping, with the exception of hotels. See 36 M.R.S. § 1760(9-B).

(a) 750 KWH per month residential exemption. The sale of the first 750 kilowatt hours (KWH) per month of “residential electricity” is exempt from sales tax. See 36 M.R.S. § 1760(9-B)(A). The exemption applies to charges for the sale of electricity, as well as any charges for transmission and distribution and fuel adjustment charges, whether or not those charges are separately stated. The following uses of electricity qualify under this exemption:

(i) Electricity used in homes, mobile homes, boarding homes, and nursing homes.

(ii) Electricity provided through common meters in apartment houses for the purpose of lighting hallways, laundry rooms, and other common spaces. If two or more apartment units are billed on the same meter and the electric utility applies its tariff on a per-unit basis, each unit is allowed a 750 KWH per month exemption. If two or more apartment units are billed on the same meter and the electric utility does not apply its tariff on a per-unit basis, only one 750 KWH allowance applies for all of the units collectively.

(iii) Electricity used in seasonal dwellings, except a “tourist camp” or “trailer camp” as defined in 36 M.R.S. §§ 1752(19) and (20).

(iv) A “minimum residential billing” charge, even though no electricity is used.

(b) Thermal storage devices. The sale of off-peak residential electricity used for space heating or water heating by means of an electric thermal storage device is exempt from sales tax. See 36 M.R.S. § 1760(9-B)(B). This exemption is in addition to the first 750 KWH per month exemption discussed in subparagraph (a) above. The exemption only applies when the utility company separately accounts for off-peak usage and separately meters electricity used in connection with the user’s thermal storage device. For purposes of this exemption, “off-peak residential electricity” means the off-peak delivery of residential electricity pursuant to tariffs on file with the Public Utilities Commission.

(2) Exemption for certain commercial activities. Electricity used by commercial farmers, commercial fishermen, commercial wood harvesters, and commercial aquacultural businesses in their respective commercial activities or support operations may be purchased exempt from sales tax. See 36 M.R.S. § 2013. This exemption is applied on a meter-by-meter basis. If a single meter is supplying electricity that will be used in both qualifying and non-qualifying activities, tax should be paid to the utility provider and the taxpayer should apply directly to MRS for a refund based on a pro-rata portion of the electricity used in the qualifying activity.

For purposes of this provision, the term “support operations” includes storage operations, maintenance operations, and related administrative activities. “Support operations does not include activities conducted by a separate business; construction activities; reselling products procured or produced by someone else; or unrelated administrative activities. See Rule 323 (“Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing, and Commercial Wood Harvesting”).

See Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.

B. TAXABLE SALES

The residential use exemption does not apply to the following uses of electricity:

- (1) Hotels, tourist and trailer camps, and overnight cabins.
- (2) The commercial portion of a Bed and Breakfast. See Section 5(B)(6) below.
- (3) Mobile home parks. See paragraph A above regarding electricity used in a mobile home.
- (4) Outside area lighting when separately metered or charged at a flat rate.
- (5) A home that is being constructed and has not yet been sold and is therefore not yet used for human habitation and sleeping.
- (6) All commercial users except those listed in subsection A above.

C. BILLING, COLLECTION AND REMITTANCE OF SALES TAX

(1) **Billings other than monthly.** In the case of bi-monthly and irregular billings, the following guidelines apply to determine the amount of the residential use exemption:

(a) **Bi-monthly.** If the utility company bills once every two months, the first 1,500 KWH for the two-month period are exempt.

(b) **Initial and final.** If an initial or final billing is issued for a period of less than one month, the first 750 KWH on that bill are exempt. If the billing is for more than one month but less than two months, the first 1,500 KWH for that period are exempt.

(c) **Other frequencies.** If a utility company regularly bills for periods other than monthly or bi-monthly, the exemption must be prorated. For example, a billing for a 45-day period would exempt the first 1,125 KWH.

(d) **Multiple vendors.** If more than one utility company bills a residential customer for portions of the same month, each utility company may exempt the first 750 KWH of electricity billed to the customer.

(2) **Standard Offer Service.** Electricity is automatically provided by way of the Standard Offer Service, unless a customer chooses to purchase electricity from a competitive electricity provider (“CEP”). The Standard Offer Service electricity is provided by a number of producers making up the standard offer pool. The Standard Offer Service contract requires the T&D to “calculate, bill, collect and remit” sales tax on sales of

electricity through the Standard Offer Service. The T&D will be held liable for the sales taxes collected. Tax attributable to the sales of electricity and the transmission and distribution of electricity should be reported on the sales and use tax return of the T&D for each period. The T&D will be held liable for any tax that was required to be collected and subsequently determined to be due.

(3) Sales by competitive electricity providers. Where electricity is purchased from a competitive electricity provider (“CEP”), the CEP is the retailer selling the electricity and is responsible for registering, collecting, and remitting sales tax. If a CEP bills its customers directly, it should calculate the tax and remit the tax directly to MRS. If a CEP contracts with a T&D to provide billing functions, the T&D should calculate and collect the appropriate tax on the entire sale. Tax attributable to sales of electricity, along with detailed supporting documentation, should be forwarded to the CEP, which must complete the sales and use tax return for each period. The CEP is liable for any collections made on its behalf by the T&D, as well as for any tax that was required to be collected and is subsequently determined to be due. If upon audit it is determined that tax was erroneously not collected on taxable transactions, the CEP will be assessed for the additional tax and applicable interest and penalties.

(4) Changing suppliers during a billing period. Customers may choose to stop receiving electricity through the Standard Offer Service and begin purchasing from a CEP, or vice-versa. The change may not always occur at the beginning of a billing period for purposes of the application of the sales tax exemption for the first 750 KWH for residential customers. Each CEP may apply the 750 KWH exemption to each residential customer for the month or portion of the month for which it is billing. Similarly, each T&D can apply the 750 KWH exemption to each residential customer for the month or portion of the month for which they are billing.

2. GAS

A. EXEMPT SALES

(1) Residential sales. The law provides a sales tax exemption for the sale of gas when bought for heating or cooking in buildings designed and used for both human habitation and sleeping, with the exception of hotels. See 36 M.R.S. § 1760(9-C). Exempt sales include sales for use in homes, mobile homes, boarding homes, nursing homes, apartment houses, and seasonal dwellings, except a “tourist camp” or “trailer camp” as defined in 36 M.R.S. §§ 1752(19) and (20). Gas consumed by a whole-house generator to create electricity in the event of a power outage for exempt residential users is exempt.

(2) Exemption for certain commercial activities. Fuel used by commercial farmers, commercial fishermen, commercial wood harvesters, and commercial aquacultural businesses in their commercial activities or support operations may be purchased exempt from sales tax. See 36 M.R.S. § 2013. If a single source of fuel is supplying both qualifying and non-qualifying activities, tax should be paid to the utility provider and the taxpayer

should apply directly to MRS for a refund based on a pro-rata portion of the fuel used in the qualifying activity.

For purposes of this provision, the term “support operations” includes storage operations, maintenance operations, and related administrative activities. “Support operations” does not include activities conducted by a separate business; construction activities; reselling products procured or produced by someone else; or unrelated administrative activities. See Rule 323 (“Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing, and Commercial Wood Harvesting”).

See Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.

B. TAXABLE SALES

The following sales of gas are taxable:

- (1) Sales for use in hotels, tourist and trailer camps, and overnight cabins.
- (2) Sales for use in motor homes and travel trailers.
- (3) Sales to all commercial users except those listed in subsection 2(A)(2) above.
- (4) Sales of gas for heating a residential outdoor pool or detached garage.
- (5) Sales to a contractor for use in a home that is being constructed and has not yet been sold and is therefore not yet used for human habitation and sleeping.
- (6) The commercial portion of a Bed and Breakfast. See Section 5(B)(6) below.
- (7) Sales of gas in 30-lb. or smaller containers, including the refilling of such containers. A dealer may make tax-free sales of such containers only when the customer informs the dealer that the container is being purchased for use in a residential building and the dealer has accepted an affidavit or has recorded the sale in a running log of all such sales made by that dealer. The dealer must take the customer’s representation in good faith – that is, the dealer must not believe, and the circumstances must be such that the dealer does not have any reason to believe, that the customer is not purchasing the container for residential use. The dealer’s log must be available for inspection and review by MRS upon audit.

C. BOTTLED GAS RETURN/EXCHANGE PROGRAM

Gas and/or propane can be purchased in a returnable container. When a customer returns an empty container and purchases a full container and is billed a single non-itemized charge, sales tax applies to the entire charge. If the value of the fuel and the value of the container are separately stated, sales tax only applies to the value of the fuel.

3. OTHER FUELS

For specific information about Gas and Electricity, see Sections 1 and 2 above.

A. EXEMPT SALES

The sale of all other fuels (e.g., coal, oil, and wood), except gas and electricity, is exempt from sales tax when purchased for cooking and heating in buildings designed and used for human habitation and sleeping. See 36 M.R.S. § 1760(9). Exempt sales include sales of fuel to homes, mobile homes, boarding homes, nursing homes, apartment houses, overnight cabins, and hotels. Fuel consumed by a whole-house generator to generate electricity in the event of a power outage for exempt residential users is also exempt.

(1) Small volume sales of kerosene and home heating oil. Kerosene and home heating oil that is prepackaged or dispensed from a tank for retail sale is presumed to be exempt from sales tax when sold in containers with a capacity of 5 gallons or less. A dealer may make tax-free sales containers with a capacity greater than 5 gallons only when the customer informs the dealer that the fuel is being purchased for use in a residential building and the dealer has accepted an affidavit or has recorded the sale in a running log of all such sales made by that dealer. The dealer must take the customer's representation in good faith – that is, the dealer must not believe, and the circumstances must be such that the dealer does not have any reason to believe, that the customer is not purchasing the fuel for residential use. The dealer's log must be available for inspection and review by MRS upon audit.

(2) Wood. A purchase of wood pellets, firewood, or 100% compressed wood product intended for use in a wood stove or fireplace is presumed to be a purchase for use in residential cooking or heating when it is received by the purchaser at the retail location, and is therefore exempt.

See Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.

B. TAXABLE SALES

The following sales of fuels, other than gas and electricity, are taxable:

(1) Sales to commercial users other than those listed in subsection A above.

(2) Sales of kerosene or home heating oil when dispersed from a retail tank into containers larger than 5 gallons. See subsection A above for exceptions.

(3) Sales of fuel for heating a residential outdoor pool or detached garage.

(4) Sales to a contractor for use in a home that is being constructed and has not yet been sold and is therefore not yet used for human habitation and sleeping.

4. WATER

A. EXEMPT SALES

Residential Sales. The law provides a sales tax exemption for sales of water (including bottled water delivered to the residential location) when purchased for use in buildings designed and used for human habitation and sleeping, with the exception of hotels. See 36 M.R.S. § 1760(39). Exempt sales include deliveries to homes, mobile homes, boarding homes, nursing homes, and apartment houses. Sales of water to trailer parks for use by the park tenants in the tenants' home are also exempt, as are sales to seasonal dwellings, other than "tourist camps" and "trailer camps" as defined in 36 M.R.S. § 1752(19) and (20).

See Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.

B. TAXABLE SALES

Sales of water are taxable when sold to hotels, tourist and trailer camps, overnight cabins, or to any commercial user other than those listed in subsection A above. All sales of bottled water sold from retail locations are subject to tax.

5. PARTIAL EXEMPTIONS

A. ELECTRICITY

When electricity for both commercial and residential uses is sold through the same meter, the tax may be prorated based on a square footage calculation. Tax applies to the percentage of the electric bill that is attributable to the commercial use of the building, unless the commercial use is primarily for one of the purposes listed in Section 1(A)(2) above. The 750 KWH residential exemption applies to the percentage of the bill that applies to the residential use.

A residential user who has more than one electric meter is entitled to only one 750 KWH exemption per month. For example, if a user consumes 300 KWH for water heating through one meter and 600 KWH for other residential uses through a second meter during a given month. Sales tax applies to 150 KWH for that month, the amount by which the total usage exceeds 750 KWH. See Section 1(A)1(b) for an exception for separately metered electric thermal storage devices.

B. DUAL OR MULTIPLE USE OF FUELS; WATER

In situations where a portion of the use is taxable and a portion is exempt, the owner of the building must break down to the nearest 10% the taxable and nontaxable portions. The seller or utility may accept in good faith the estimate of the customer and should retain a copy of the letter or notification giving this breakdown. Examples of dual or multiple uses are:

(1) A hotel with publicly accessible areas such as a restaurant, coffee shop, meeting or convention hall, pool, hot tub, sauna or fitness center, retail shop, or garage. A lounge or sitting room within the hotel is considered part of the exempt residential space. Facilities located outside the four walls of the hotel building are not considered part of the residential space.

(2) An apartment building that contains a store and/or management offices or other purely commercial areas. Laundry rooms and other common areas are part of the area designed and used for human habitation and sleeping.

(3) A residence that has a heated outdoor pool or detached garage, or a commercial business room or attachment. If the fuel is delivered into a separate tank that is only used to heat the outdoor pool or detached garage, or the commercial portion of the residence, the entire amount of that fuel is subject to sales tax. A heated indoor pool is considered part of the residence used for human habitation and sleeping.

(4) A residence that contains a daycare business, if the daycare business is served by the same fuel tank that serves the residence and is either (A) conducted in a space that is reserved for, and used solely by, the daycare business; or (B) physically separated from the rest of the residence. If the space used for the operation of the daycare business is served by a separate dedicated fuel tank, the entire amount of fuel delivered into the tank is subject to sales tax. If the daycare is using the residential rooms and other common areas of the house, no proration is necessary and the entire amount of the fuel is exempt from sales tax.

(5) A building that is used primarily for human habitation but that also contains a manufacturing site. See subsection C below for more information on manufacturing.

(6) A Bed and Breakfast. Areas dedicated to guests at a “Bed and Breakfast” are not part of the exempt residential space.

C. MANUFACTURING

(1) **Fuel and electricity.** The sale of fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale, is exempt from sales tax. See 36 M.R.S. § 1760(9-G).

The sale of all other fuel and electricity used at a manufacturing facility is 95% exempt from sales tax. See 36 M.R.S. § 1760(9-D). The remaining 5% is subject to the general sales and use tax rate. In the dual-use context, the customer must break down to the nearest 10% the taxable and nontaxable portions.

(2) **Water.** The sale of water to industrial users is exempt from sales tax if the water will become an ingredient or component part of tangible personal property produced for sale, or if the water is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale. See 36 M.R.S. § 1760(74). The seller of water claimed exempt under one of these provisions should require the customer

to furnish a blanket certificate of exemption in accordance with Rule 303 (“Sales to Industrial Users”).

D. CERTAIN GREENHOUSE FACILITIES

Effective January 1, 2016, the sale of all fuel purchased for use at a greenhouse facility occupying at least 1,000,000 square feet of indoor space operated by an agricultural employer that employs at least 100 employees and is engaged in the year-round commercial production of fruits or vegetables is 95% exempt from sales tax. This exemption is repealed December 31, 2019. See 36 M.R.S. § 1760(9-H).

6. OTHER EXEMPT SALES

A. GOVERNMENT AGENCIES

The law provides a sales tax exemption for sales made directly to the Federal Government, the State of Maine, and political subdivisions of the State of Maine. See 36 M.R.S. § 1760(2). Sales to other states and their agencies and subdivisions are taxable. Sales to foreign countries and their missions and personnel may or may not be exempt from Maine sales tax. For more information on this subject, see the web site maintained by the US Department of State, Office of Foreign Missions, Tax Program at www.state.gov/ofm/tax/. For more information on government and exempt organization sales generally, see Rule 302 (“Sales to Government Agencies and Exempt Organizations”) and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”).

B. EXEMPT ORGANIZATIONS

The law provides a sales tax exemption for sales to various organizations such as hospitals, schools, regularly organized churches or houses of religious worship, and a number of other types of organizations. For more information, see Rule 302 (“Sales to Government Agencies and Exempt Organizations”) and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”). Organizations that qualify for exemption must obtain exemption certificates from MRS. Sales should be made tax-free to these organizations only when the purchaser furnishes a copy of its exemption certificate to the seller and meets the other requirements of Rule 302.

7. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

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