



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 55

SERVICE PROVIDER TAX

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 intended to address issues commonly faced by persons subject to the Service Provider Tax.

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 an underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Service Provider Tax Law is found in Part 4 of Title 36 of the Maine Revised Statutes ("M.R.S."). Title 36, MRS rules and instructional bulletins referenced in this bulletin may be viewed on the MRS website, www.maine.gov/revenue.

1. TAXABLE SERVICES

Service provider tax is imposed upon the value of the following services sold in Maine:

- Cable and satellite television or radio services;
- Fabrication services;
- Rental of video media and video equipment;
- Rental of furniture, audio media, and audio equipment pursuant to a rental-purchase agreement;
- Telecommunications services;
- Installation, maintenance, or repair of telecommunications equipment;
- Ancillary services;
- Private nonmedical institution services;
- Community support services for persons with mental health diagnoses;
- Community support services for persons with intellectual disabilities or autism;
- Group residential services for persons with brain injuries; and
- Home support services.

The final five services on the list above are taxable only when provided by a designated provider that is under contract with the Maine Department of Health and Human Services ("DHHS") or licensed by DHHS.

Unlike the sales tax, service provider tax is not levied on the consumer, but is instead imposed upon the provider (seller). If a seller includes the tax on a customer's bill, it must be shown as a separate line item and identified as a "service provider tax".

2. DESCRIPTION OF TAXABLE SERVICES

A. CABLE AND SATELLITE TELEVISION OR RADIO SERVICES. Taxable cable and satellite television services include, but are not limited to, basic programming, extended packages containing additional channels, movie or sports channels, pay-per-view programming, connection fees to additional sets, and rental fees for use of associated equipment such as converter boxes.

Taxable radio services include, but are not limited to, fees for receiving music, sports, news, and other programming transmitted by cable or satellite.

"Cable and satellite television or radio services" does not include streaming subscription services over the internet.

B. FABRICATION SERVICES. "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. Fabrication services, as defined by 36 M.R.S. § 2551(3), is distinguished from manufacturing by identifying the person who furnishes the raw materials to be used in production. In order for a service to qualify as "fabrication," the raw materials must be supplied by the purchaser of the services (the customer), not the supplier of the services (the fabricator). If the purchaser of the service, or a third party at the direction of the purchaser, supplies the raw materials upon which the fabrication service will occur, the services qualify as fabrication services and are subject to service provider tax. See Instructional Bulletin No. 46 ("Fabrication Services") for more detailed information.

C. RENTAL OF VIDEO MEDIA AND VIDEO EQUIPMENT. "Video media" includes video games, digital video discs (DVDs), and Blu-ray discs. "Video media" does not include streaming subscription services over the internet. "Video equipment" includes VCRs, DVD players/recorders, Blu-ray disc players, camcorders, and video game equipment such as Sony Playstation® and Xbox®. LCD projectors are not considered video equipment. Late fees and the sale of prepaid video rental passes are also taxable as they represent payment for rentals of video media or equipment rentals. Damage protection fees are not subject to tax if they are optional to the customer and separately stated.

D. RENTAL OF FURNITURE, AUDIO MEDIA, AND AUDIO EQUIPMENT. Service provider tax applies to the rental of furniture, audio media, and audio equipment, but only when such rentals are made pursuant to rental-purchase agreements as defined by 9-A M.R.S. § 11-105(7). Furniture is defined by statute and includes home electronic devices, such as home appliances and computers. See 36 M.R.S. § 2551(4). The tax applies to each rental payment as it is made. For additional information regarding rentals of tangible personal property, see Instructional Bulletin No. 20 ("Lease and Rental Transactions").

E. TELECOMMUNICATIONS SERVICES. "Telecommunications services" means the electronic transmission of voice, data, audio, or video to one point or between or among two or more points. "Telecommunications services" includes traditional telephone service (both local and long distance service) and internet telephone service (voice over internet protocol or "VoIP"). "Telecommunications services" does not include internet access services, directory advertising services, charges for leasing telecommunications equipment, or prepaid calling services. Sales of interstate telecommunications service, i.e., a telecommunications service that originates in one state and terminates in a different state, are exempt from service provider tax when provided to a business for use directly in that business. Mobile telecommunications services sold to a customer whose place of primary use is within the State of Maine are subject to service provider tax. For more information, see Instructional Bulletin No. 56 ("Telecommunications").

F. INSTALLATION, MAINTENANCE, AND REPAIR OF TELECOMMUNICATIONS EQUIPMENT. The sale of services for the installation, maintenance, or repair of telecommunications equipment is subject to service provider tax. This provision includes installation and repair of telephone systems, facsimile machines, two-way radios, and transmission media such as copper wire, coaxial cable and optical fiber lines. "Telecommunications equipment" does not include computers or most computer equipment, but does include modems and other computer components used directly and primarily as a two-way interactive communications device capable of exchanging audio, video, data, or textual information. "Telecommunications equipment" does not include transmission media designed and primarily used to transmit electricity.

Service provider tax as it applies to telecommunications equipment affects not only telecommunications companies, but also electricians and other contractors who install telecommunication wiring. Because copper wire, coaxial cable, and optical fiber are all capable of being used in the provision of two-way interactive communications, the installation contractor must accrue service provider tax on the charges for installing these products.

For multi-functioning machines, only the labor charged to install, maintain, or repair the telecommunications equipment portion of the item is subject to service provider tax. For example, with a fax/printer/copier combined unit, only the labor charge for installing, maintaining, or repairing the modem is subject to tax. For more information, see Instructional Bulletin No. 56 ("Telecommunications").

G. ANCILLARY SERVICES. The sale of ancillary services, such as detailed telecommunications billing service, directory assistance, voice mail service, and conference bridging services, is subject to service provider tax. For more information, see Instructional Bulletin No. 56 ("Telecommunications").

3. SERVICES ADMINISTERED BY DHHS

The services described in Paragraphs A through E below are subject to service provider tax when the person providing the services is licensed by DHHS or has a contract with DHHS. This includes services provided by the person to "private pay" clients. If a person offers one or more of the

following services but is not licensed by or under contract with DHHS, then the sale of the services is not subject to service provider tax.

Sales of services provided to MaineCare residents and paid for by DHHS are taxed based on the number of billing units billed out for the reporting period multiplied by the rate assigned to the provider by DHHS, excluding any amount of tax included in the DHHS payment. For "private pay" clients, the sales of services described in Paragraphs A through E below are taxed based on the total amount billed out for the services.

Report amounts billed to private pay clients for services provided and amounts billed for reimbursement by DHHS for services provided on the "Gross Services" line of the return. Do not include the tax amount in "Gross Services". (NOTE: Amounts reimbursed by DHHS may include both the cost of services and the service provider tax.) Enter the value of any non-taxable services (for example, sales for resale or sales to exempt organizations) on the "Exempt Services" line.

An amended service provider tax return must be filed within 180 days of an audit finding by any agency of the State of Maine or the federal government that changes or corrects any item affecting the provider's service provider tax liability; and within 180 days of the date on which the provider learns of any other change or correction that affects the provider's service provider tax liability. See 36 M.R.S. § 2558.

A. PRIVATE NONMEDICAL INSTITUTION SERVICES. "Private nonmedical institution services" means services, including food, shelter, and treatment, that are provided by a private nonmedical institution. "Private nonmedical institution" means a person licensed by DHHS to provide care to four or more MaineCare-eligible and other residents in single or multiple facilities under a written agreement with DHHS. This term does not include a health insurance organization, hospital, nursing home, or community health care center.

B. COMMUNITY SUPPORT SERVICES FOR PERSONS WITH MENTAL HEALTH DIAGNOSES. These are community support services offered by a provider that is licensed by DHHS to provide rehabilitative services for adults at least 18 years of age or emancipated children with mental health diagnoses pursuant to an individual support plan that promote a person's recovery and integration into the community and that sustain the person's current living situation or another living situation of the person's choice.

C. COMMUNITY SUPPORT SERVICES FOR PERSONS WITH INTELLECTUAL DISABILITIES OR AUTISM. These are community support services (A) that are provided by community-based agencies to children or adults with intellectual disabilities or autism and include assistance with the acquisition, retention, or improvement of self-help, socialization, and adaptive living skills; and (B) that take place in a nonresidential setting separate from the home or facility in which the individual resides, except when a physician has ordered that such services be provided in the individual's home, and focus on enabling the individual to attain or maintain maximum functionality.

D. GROUP RESIDENTIAL SERVICES FOR PERSONS WITH BRAIN INJURIES. These are services provided to adults with acquired brain injuries, including direct assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living.

E. HOME SUPPORT SERVICES. Home support services means services provided to adults with intellectual disabilities or autism, including direct assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. Such services may include assistance with instrumental activities of daily living, such as assistance with the preparation of meals, but not the cost of the meals. If specified in the adult's care plan, home support services may also include assistance with housekeeping chores that are incidental to the care furnished, or essential to the health and welfare of the recipient of the services. The services may be provided by an adult relative of the recipient, but not by the recipient's spouse. The services may not be provided in the same setting where residential training is provided.

4. OVERPAYMENTS; REFUNDS

A. CREDITS OR REFUNDS TO SERVICE PROVIDERS. A service provider may apply to MRS for a credit or refund of overpaid service provider tax or erroneously or illegally computed service provider tax. No credit or refund will be allowed unless the request is made within 3 years of the date of the overpayment or within 3 years of the date the overpayment was discovered on audit.

A service provider that includes service provider tax on its customers' bills must refund any erroneously or illegally computed service provider tax to its customer prior to requesting a refund from MRS. No refund or credit will be given to the service provider until it is able to demonstrate to MRS that the tax has been refunded or credited to its customers.

B. CREDITS OR REFUNDS TO CUSTOMERS OF SERVICE PROVIDERS. A customer of a service provider is a person who purchases one or more services subject to the service provider tax. When a customer is entitled to a refund of erroneously or illegally computed tax that was included on its bill from a service provider, the tax must be refunded or credited to the customer by the service provider. MRS cannot refund service provider tax directly to a service provider's customer.

5. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Service Provider 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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