



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 61

SALES OF ADULT USE MARIJUANA 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 adult use marijuana and related products pursuant to the Marijuana Legalization Act (“MLA”).

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 date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of Title 36 the Maine Revised Statutes (“M.R.S.”). Title 36, MRS rules, MRS Instructional Bulletins, and applications referenced in this bulletin may be viewed on the MRS website, www.maine.gov/revenue.

The MLA is found in 28-B M.R.S., Chapter 1. Title 28-B, related rules, and other forms and applications related to the MLA are available on the Office of Marijuana Policy’s (“OMP’s”) website, www.maine.gov/dafs/omp.

A person or business entity must first apply for and be issued a license from the OMP in order to operate a marijuana establishment. The specific requirements for licensure are set forth in OMP Rule 18-691, Chapter 1.

Licensed marijuana establishments are retailers involved in making sales of adult use marijuana, adult use marijuana products, and other tangible personal property. Marijuana establishments are required to register as retailers with MRS and are responsible for collecting and remitting Maine sales and use tax (see Sections 6 and 7 below).

The activities described in this bulletin are considered a violation of federal law. Persons operating in activities allowed under the MLA 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 licensees, 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 28-B M.R.S. § 102 and OMP Rule 18-691, Chapter 1, “Adult Use Marijuana Program Rule.”

Adult use marijuana. “Adult use marijuana,” as defined in 28-B M.R.S. § 102(1) and OMP Rule 18-691, Chapter 1, Section 1.4.3, means marijuana cultivated, manufactured, tested, distributed or sold by a marijuana establishment.

Adult use marijuana product. “Adult use marijuana product,” as defined in 28-B M.R.S. § 102(2) and OMP Rule 18-691, Chapter 1, Section 1.4.4, means a marijuana product that is manufactured, distributed, or sold by a marijuana establishment.

Cultivation facility. A “cultivation facility,” as defined in 28-B M.R.S. § 102(13) and OMP Rule 18-691, Chapter 1, Section 1.4.26, means a facility licensed under Title 28-B and OMP Rule 18-691, Chapter 1 to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare, and package adult use marijuana; to collect and transport samples of marijuana cultivated by that facility for mandatory testing; to sell adult use marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores. A “cultivation facility” includes a “nursery cultivation facility.”

Marijuana. “Marijuana,” as defined in 28-B M.R.S. § 102(27) and OMP Rule 18-691, Chapter 1, Section 1.4.53, means the leaves, stems, flowers, and seeds of a marijuana plant, whether growing or not. “Marijuana” includes marijuana concentrate, except where context indicates otherwise, but does not include hemp as defined in 7 M.R.S. § 2231 or a marijuana product.

Marijuana establishment. “Marijuana establishment,” as defined by 28-B M.R.S. § 102(29) and OMP Rule 18-691, Chapter 1, Section 1.4.56, means a cultivation facility, a products manufacturing facility, a testing facility, a sample collector or a marijuana store licensed under Title 28-B and OMP Rule 18-691, Chapter 1.

Marijuana product. “Marijuana product,” as defined by 28-B M.R.S. § 102(33) and OMP Rule 18-691, Chapter 1, Section 1.4.60, means a product composed of marijuana or marijuana concentrate and other ingredients that is intended for use or consumption. “Marijuana product” includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. “Marijuana product” does not include marijuana concentrate or a product containing hemp as defined in 7 M.R.S. § 2231.

Marijuana store. A “marijuana store,” as defined by 28-B M.R.S. § 102(34) and OMP Rule 18-691, Chapter 1, Section 1.4.61, means a facility licensed under Title 28-B and OMP Rule 18-691, Chapter 1 to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase adult use marijuana and adult use marijuana products from a products manufacturing facility, to collect and transport samples of marijuana, marijuana concentrate and marijuana products in that marijuana store’s possession for mandatory testing, and

to sell adult use marijuana, adult use marijuana products, immature marijuana plants, and seedlings to consumers.

Products manufacturing facility. A “products manufacturing facility,” as defined by 28-B M.R.S. § 102(43) and OMP Rule 18-691, Chapter 1, Section 1.4.79, means a facility licensed under Title 28-B and OMP Rule 18-691, Chapter 1 to purchase adult use marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; to collect and transport samples of marijuana, marijuana concentrate and marijuana products manufactured by that facility for mandatory testing; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities.

2. SALES

Marijuana establishments may act as retailers and be engaged in the sale of adult use marijuana and adult use marijuana products. Retail sales of all adult use marijuana and adult use marijuana products are subject to sales tax at the rate of 10%. 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 MRS Instructional Bulletin No. 39 (“Sale Price Upon Which Tax is Based”) for more information.

A. ADULT USE MARIJUANA AND ADULT USE MARIJUANA PRODUCTS. Sales tax at the rate of 10% must be collected on the sale price of retail sales of adult use marijuana and adult use marijuana products, including but not limited to, marijuana, marijuana concentrate, edible marijuana products, tinctures, topical treatments such as ointments and salves, immature marijuana plants, seedlings, and seeds.

B. FOOD PRODUCTS. Retail sales of edible marijuana products are subject to sales tax at the rate of 10% as an adult use marijuana product. Retail sales of food prepared by the retailer that does *not* contain marijuana or marijuana products 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. See MRS Instructional Bulletin No. 27 (“Sales of Prepared Food”) for more information.

C. RELATED PRODUCTS. A marijuana establishment may sell other products to consumers; for example, a marijuana store may sell paraphernalia and apparel or a nursery cultivation facility may sell agricultural or gardening supplies. Sales tax at the “general sales tax rate” must be collected on the value of such tangible personal property sold.

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 warranty. See 36 M.R.S. § 1752(14)(B).

3. SALES FOR RESALE

A marijuana establishment may make sales for resale to another registered retailer. For example, a marijuana products manufacturing facility may sell adult use marijuana products to a marijuana store for resale to its customers. Sales for resale to a purchaser that holds a valid resale certificate are not taxable. When making sales for resale, the retailer must obtain a signed 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

A cultivation facility 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 the cultivation and harvest of marijuana plants by cultivation facilities. Cultivation facilities, including nursery cultivation facilities, that are 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 Agricultural 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 cultivation facilities 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 services. Support activities do not include activities unrelated to a cultivation facility.

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)

A products manufacturing facility that prepares adult use marijuana products, such as tinctures or edible products, 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.

As used in this bulletin, the term “manufacturer” means a person engaged in the production of tangible personal property for later sale or lease. “Production” does not include the acquisition of raw materials, storage and handling (pre- and post-production), transportation, or biological processes. (But see Section 4 above for information on “commercial agricultural production.”)

Purchases 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.

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 and destroyed or loses its identity in the production process is exempt from tax. These are 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 used at a “manufacturing facility” is exempt from tax. The remaining 5% is subject to the general sales tax rate. For the 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. PURCHASES

Items purchased by a retailer for use in its business are subject to tax unless a specific exemption applies. A marijuana establishment 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 adult use marijuana and adult use marijuana products.

A. PURCHASES FOR RESALE. A marijuana establishment may purchase 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 their vendor 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. Withdrawals of adult use marijuana or adult use marijuana products from inventory, including samples provided to other marijuana establishments for marketing purposes, would be subject to use tax at the rate of 10%. See MRS Instructional Bulletin No. 39 (“Sale Price Upon Which Tax is Based”) for more information.

D. FREE GIFTS TO CUSTOMERS.

Retailers at times 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 higher, “prepared food” rate. See MRS Instructional Bulletin No. 39 (“Sale Price Upon Which Tax is Based”) for more information on free gifts and discounts.

Marijuana stores and nursery cultivation facilities may not give away adult use marijuana, adult use marijuana products, or marijuana plants to consumers. See 28-B M.R.S. §§ 501(2) and 504(2)(A). In addition, marijuana stores may not sell or give away mature marijuana plants or consumable products containing tobacco or alcohol that do not contain marijuana. See 28-B M.R.S. § 504(2)(A).

7. REPORTING AND PAYMENT OF TAX

Sales and Use Tax returns must be filed on a monthly basis, except that those retailers whose total tax liability normally 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 their tax returns 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 adult use marijuana 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.

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1060
AUGUSTA, ME 04332-1060
TEL: (207) 624-9693
TTY: 7-1-1
www.maine.gov/revenue**

Adult Use Marijuana Program regulations and application materials are available at www.maine.gov/dafs/omp. Questions regarding the Marijuana Legalization Act and the Adult Use Marijuana Program should be directed to the Office of Marijuana Policy at (207) 287-3282. A written request can be mailed to:

**Office of Marijuana Policy
162 State House Station
Augusta, ME 04333-0162
TEL: (207) 287-3282
www.maine.gov/dafs/omp**

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