

**MAINE REVENUE SERVICES
SALES, FUEL AND SPECIAL TAX DIVISION
RULE NO. 301**

SALES FOR RESALE AND SALES OF PACKAGING MATERIALS

SUMMARY: Establishes procedures for making sales for resale, certain sales to lessors and service providers and sales of packaging materials exempt from sales tax, and sets forth requirements for certification of exempt sales.

SECTION 1. Definitions

1. “Active registered retailer” means a person that is registered with the State Tax Assessor as a retailer and that has been issued a currently valid resale certificate as provided in 36 MRSA §1754-B.

2. “Gross sales” means the total amount of all sales of goods and services, whether or not subject to tax, including sales for resale and all other exempt sales. It does not include sales tax charged to customers or the value of returned merchandise for which a full credit or refund was given to the customer.

3. “Nonresident retailer” means a person that is not registered as a seller under 36 MRSA §1754-B or 36 MRSA §1756 or required to register as a seller by 36 MRSA §1754-B, and that is authorized in another state or country to make retail sales of tangible personal property in that state or country.

4. “Purchasing retailer” means a retailer that is the purchaser with respect to a particular transaction.

5. “Resale certificate” means a provisional resale certificate issued by the State Tax Assessor pursuant to 36 MRSA §1754-B, sub-§2-B or a resale certificate issued by the State Tax Assessor pursuant to 36 MRSA §1754-B, sub-§2-C.

6. “Selling retailer” means a retailer that is the seller with respect to a particular transaction.

SECTION 2. Relief from Liability

1. A selling retailer that follows the procedures set forth in this Rule when making sales for resale, certain sales to lessors and service providers or sales of packaging materials is relieved of responsibility for payment of any tax otherwise applicable if it is subsequently determined by the State Tax Assessor that the purchaser improperly claimed an exemption. This relief from liability does not apply to a selling retailer that fraudulently fails to collect the tax or that solicits purchasers to participate in the unlawful claim of an exemption.

2. A purchaser whose sales and use tax registration certificate has been revoked or whose registration status has been inactivated or canceled by the State Tax Assessor is prohibited from making tax-exempt purchases for resale. However, a selling retailer that

accepts a resale certificate that appears valid on its face will not be held liable for tax on a transaction if it is later determined that the purchaser was not an active registered retailer at the time of the transaction. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.

SECTION 3. Sales to Active Registered Retailers

1. A sale for resale is exempt from the tax imposed by 36 MRSA §1811 only when the sale is made in compliance with the provisions of Title 36 and this Rule. The selling retailer will be held liable for any applicable sales tax on a sale for resale not made in compliance with Title 36 and this Rule, whether or not the selling retailer has collected the tax from the purchaser.

2. The sale of taxable tangible personal property to an active registered retailer for resale is exempt from Maine sales tax under the following circumstances:

A. The purchaser must specifically state in the order, whether written or oral, that the property is purchased for resale.

B. The property purchased must be of the type or types ordinarily purchased for resale by that purchaser, identified as such on the resale certificate issued to the purchaser by the State Tax Assessor.

C. The selling retailer must obtain, or have on file, a copy of the purchaser's resale certificate valid on the date of the sale.

D. The copy of the resale certificate must be signed by the purchaser or the purchaser's authorized representative.

3. If the selling retailer fails to obtain a copy of a currently valid resale certificate from the purchaser prior to the sale, the retailer bears the burden of proving that the sale was in fact a nontaxable sale for resale. If the sale was made to a person who was an active registered retailer at the time of the sale and the property purchased was of the type or types ordinarily purchased for resale by that purchaser, the presumption that the sale was a taxable retail sale can be overcome during an audit or upon reconsideration.

4. Invoices of sales for resale must be appropriately marked or stamped to indicate that they are exempt from tax. The words "Maine sales tax exempt, for resale" will satisfy this requirement.

5. Resale certificates issued by purchasers based on the suggested format provided in Rule 301 as adopted June 1, 1951 and replaced December 31, 1979 are not valid for certification of exempt sales for resale made after August 15, 2004.

6. An active registered retailer does not have the option of paying tax to its suppliers and claiming a credit on its sales and use tax return for the tax paid, when purchasing items for resale that are of the type or types ordinarily purchased for resale by that purchaser.

SECTION 4. Sales to Other Registered Dealers

1. Registered retailers reporting annual gross sales less than \$3,000 will not be issued a resale certificate, and will therefore be required to pay Maine sales tax when they purchase items for resale. These retailers may claim a credit on their sales and use tax return for the tax they paid on items that are placed in inventory for resale, subject to the limitations provided in 36 MRSA §1811-B.

2. If a retailer does not qualify to receive a resale certificate at the time of registration or reissuance, but subsequently experiences annual gross sales of \$3,000 or more, the retailer may petition the State Tax Assessor to review its eligibility for a resale certificate.

SECTION 5. Sales to Nonresident Retailers

1. The sale of taxable tangible personal property to a nonresident retailer for resale is exempt from Maine sales tax when the selling retailer obtains a statement from the nonresident retailer that includes all of the following information:

A. The nonresident retailer's name and address.

B. A declaration that the tangible personal property is being purchased for resale outside the State and for no other purpose.

C. Evidence that the nonresident retailer is engaged in making retail sales of tangible personal property of the type purchased, such as a sales tax registration certificate or equivalent document issued by the nonresident retailer's home state or country and evidence that the purchaser is engaged in a line of business consistent with the resale, at retail sale in the form of tangible personal property, of the items purchased.

D. An affirmation, made under penalties of perjury, that the information provided in the statement is true and correct as to every material matter.

E. The signature of the purchaser executing the statement.

2. The Uniform Sales and Use Tax Certificate – Multijurisdiction developed by the Multistate Tax Commission may be used for this purpose.

SECTION 6. Certain Sales to Lessors and Service Providers

1. Sales that are excluded from sales tax under the provisions of 36 MRSA §1752, subsection 11, paragraph B, sub-paragraphs 3 through 7 and 16 may be made in substantially the same manner as sales for resale.

2. If the purchaser is an active registered retailer and the items purchased are of the type or types ordinarily purchased for rental by that purchaser, the selling retailer must obtain or have on file a copy of the resale certificate issued to the purchaser by the State Tax Assessor, valid on the date of the sale.

3. If the purchaser is not an active registered retailer or the items purchased are not of the type or types ordinarily purchased for rental by that purchaser, the selling retailer must obtain from the purchaser at the time of the sale a signed statement in a form prescribed by the State Tax Assessor.

SECTION 7. Sales of Packaging Materials

1. Sales of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials that are exempt from sales tax under the provisions of 36 MRSA §1760(12-A) may be made in substantially the same manner as sales for resale.

2. The seller of exempt packaging materials must obtain from the purchaser at the time of the sale a signed statement in a form prescribed by the State Tax Assessor.

SECTION 8. Intentional Evasion of Tax

A person that uses a resale certificate to purchase property or services without payment of tax or that signs a written statement claiming an exemption from sales tax, knowing that tax is due on the property or services at the time of purchase, commits a crime as provided in 36 MRSA §184-A.

AUTHORITY: 36 MRSA §112
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