

Chapter 325: SALES TO TRIBES, TRIBAL MEMBERS, AND TRIBAL ENTITIES

SUMMARY: Provides definitions of terms, and explanations and examples of taxable and non-taxable transactions related to sales to the Houlton Band of Maliseet Indians, the Passamaquoddy Indians, the Penobscot Nation, tribal members, and tribal entities, and sales sourced to tribal lands. The transactions and exemptions described in this rule are effective for purchases made on or after January 1, 2023.

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.01 Definitions.

- A. Assessor.** “Assessor” means the State Tax Assessor as defined in 36 M.R.S. § 111(1).
- B. Days of use.** “Days of use” means days that property or services are used by the purchaser during the first year after the property or service is placed in service. For any portion of a day that property or services are used by the purchaser on tribal land, the property or service will be considered used on tribal land for the entire day.
- C. Period of time.** “Period of time,” as used for purposes of defining “primarily,” means days of use.
- D. Primarily.** “Primarily” means more than 50% of that period of time that begins on the date on which the property or service is first placed in service by the purchaser and ends one year from that date or at the time that the property or service is sold, scrapped, destroyed, or otherwise permanently removed from service, whichever occurs first.

E. Qualified tribal entity. “Qualified tribal entity” is a tribal entity that has been issued a certificate of qualification from Maine Revenue Services that identifies the entity as able to make certain purchases exempt from Maine sales and use tax.

F. Tribal entity. “Tribal entity” has the same meaning as in 36 M.R.S. § 111(8), and means:

1. A business entity wholly owned by the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation, a tribal member or tribal members, or some combination thereof. For purposes of determining ownership of an entity, a married couple including at least one tribal member is treated as one tribal member, regardless of which spouse owns the entity; or

2. A business entity where 75% of the ownership interests are held in aggregate by a tribe or tribes, and the entity is controlled and managed by the tribe or tribes consistent with the requirements of Title 13 of the Code of Federal Regulations (“C.F.R.”) § 124.109(c)(4) (2022); as determined by the federal Small Business Administration (“SBA”) or the Assessor as consistent with 13 C.F.R. § 124.109(c)(4)(i)(A) (2022); or as determined by the SBA as consistent with 13 C.F.R. § 124.109(c)(4)(i)(B) (2022).

A tribal entity must be a separate and distinct legal entity organized or chartered by federal, state, or tribal authorities.

G. Tribal land. “Tribal land,” as defined in 36 M.R.S. § 111(9), means land within the Houlton Band Trust Land, the Passamaquoddy Indian territory, or the Penobscot Indian territory.

H. Tribal member. “Tribal member,” as defined in 36 M.R.S. § 111(10), means an enrolled member of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, or the Penobscot Nation.

I. Tribe or tribes. As used in this rule, the terms “tribe” or “tribes” refer, either individually or collectively, to the Houlton Band of Maliseet Indians, as defined in 36 M.R.S. § 111(1-D), the Passamaquoddy Tribe, as defined in 36 M.R.S. § 111(2-B), or the Penobscot Nation, as defined in 36 M.R.S. § 111(2-D).

J. Use. For purposes of sales to tribal members under 36 M.R.S. § 1760(113) and sales to tribal entities under 36 M.R.S. § 1760(114), “use” means the exercise of any right or power over tangible personal property incident to its ownership, including storage of the property and the derivation of income from the rental of the property, whether received in money or in the form of other benefits. “Use” of a taxable service listed in 36 M.R.S. § 1752(17-B) is determined in accordance with Maine sales and use tax laws and rules.

.02 Sales to tribes.

Sales to tribes are exempt from sales and use tax, pursuant to 36 M.R.S. §§ 1760(112), and 1861. For the purposes of 36 M.R.S. § 1760-C, sales made to the tribes for any purpose are exempt. Unlike sales to a tribal member or a tribal entity, a sale to a tribe does not need to be sourced to a location on tribal land in order to qualify for exemption.

Maine Revenue Services issues exemption certificates to tribes in the same manner as certificates issued to an exempt organization, pursuant to MRS Rule 18-125, Chapter 302, “Sales to Governmental Agencies and Exempt Organizations.”

.03 Qualification of tribal entities.

A business entity that believes it is entitled to the tax exemption for tribal entities under 36 M.R.S. § 1760(114) may submit an application (Qualified Tribal Entity Application - APP-170) to Maine Revenue Services for a certificate of qualification. The certificate of qualification identifies to retailers that the tribal entity meets the definition of “tribal entity” as found in 36 M.R.S. § 111(8). The applicant must provide the information and any required documentation specified on the application form (Qualified Tribal Entity Application - APP-170).

A. Business entities wholly owned by tribes, tribal members, or combination thereof. For purposes of determining the ownership of a business entity, a married couple, of which at least one spouse is a tribal member, is treated as one tribal member, regardless of which spouse owns the entity.

A business entity that is wholly owned by a tribe, tribal members, or a combination thereof would need to provide documentation that would demonstrate how the entity is organized, including such documentation as articles of incorporation, a constitution, by-laws, and Tribal Council certified resolution.

For a business entity to qualify as a “tribal entity,” no persons may hold an ownership interest other than tribes or tribal members. “Tribal member” includes a married couple where at least one spouse is a tribal member, regardless of which spouse owns the entity.

B. Business entity ownership interests held in aggregate by the tribes. To qualify as a “tribal entity,” a business entity in which 75% of the ownership interest is held in aggregate by a tribe or tribes, must be controlled and managed by a tribe or tribes:

1. Consistent with the requirements of 13 C.F.R. § 124.109(c)(4) (2022);
2. As determined by the SBA or the Assessor as consistent with 13 C.F.R. § 124.109(c)(4)(i)(A) (2022); or

3. As determined by the SBA as consistent with 13 C.F.R. § 124.109(c)(4)(i)(B) (2022).

In addition to documentation that would demonstrate how the business entity is organized and managed, the business entity would also need to provide Maine Revenue Services, along with their exemption application (Qualified Tribal Entity Application - APP-170), a copy of the business entity's determination of control and/or management as made by the SBA, or a written management development plan, if applicable.

Upon determination that the business entity meets the definition of "tribal entity" as found in 36 M.R.S. § 111(8), Maine Revenue Services will issue a certificate of qualification to the tribal entity.

.04 Sales to qualified tribal entities.

Sales to qualified tribal entities meeting the requirements in this rule shall be exempt from tax, provided that the sale is sourced to a location on tribal land, and that the property or service purchased is not used by the purchaser, including any lessee, primarily outside of tribal land for the first year after the property or service has been placed in service by the purchaser. 36 M.R.S. § 1760(114).

The qualified tribal entity must present a copy of its certificate of qualification to the retailer at the time it purchases the property or services that it expects will be used on tribal land and where the sale is sourced to a location on tribal land along with a completed affidavit (Affidavit of Exemption for Tangible Personal Property or Taxable Services Sold to Tribal Member or Tribal Entity - ST-A-133). A separate affidavit is not required for each individual sale.

The retailer must retain a copy of the qualified tribal entity's certificate and affidavit within their customer files. The burden of proving a sale is to a qualified tribal entity is on the person making the sale. The retailer is relieved of this burden of proof if the retailer satisfies the provisions in MRS Rule 18-125, Chapter 302, "Sales to Governmental Agencies and Exempt Organizations."

.05 Sourcing.

A. Generally. A transaction shall be sourced using the sourcing requirements in 36 M.R.S. § 1819.

B. Taking receipt of property and services. A sale of tangible personal property or a taxable service is sourced as follows. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

1. A sale of tangible personal property is sourced to tribal land when the tribal member or qualified tribal entity takes possession of the tangible personal property on a location on tribal land.
2. A sale of a taxable service is sourced to tribal land when the tribal member or qualified tribal entity makes first use of the service on a location on tribal land.
3. A sale of a product transferred electronically is sourced to tribal land when the tribal member or qualified tribal entity takes possession or makes first use of the product transferred electronically on a location on tribal land, whichever occurs first.

C. Sourcing transactions to tribal land. A sale will be sourced to a location on tribal land if either:

1. The property or service is first received by the purchaser at the business location of the retailer if that business location is located on tribal land; or
2. The property or service is first received by the purchaser on tribal land. The purchaser shall present an affidavit (Affidavit of Exemption for Tangible Personal Property or Taxable Services Sold to a Tribal Member or Tribal Entity - ST-A-133) at the time of purchase to the retailer, to include the delivery address that is located on tribal land. A separate affidavit is not required for each individual sale. The purchaser shall also present either proof of tribal membership or a copy of a certificate of qualification as a qualified tribal entity to the retailer along with the affidavit.

.06 Use test.

- A. Primarily test.** Tangible personal property or service is used by the purchaser primarily outside of tribal land when the number of days of use outside of tribal land, divided by the total number of days of use (days of use on tribal land plus days of use outside of tribal land), is more than 50% for the first year after placing into service.
- B. Payment of tax.** If the property or service does not qualify for the exemption because it was used primarily outside of tribal land during the first year following the property or service being placed in service, the purchaser is liable for use tax plus all accrued interest. The use tax due is based on the original purchase price of the property or service. The purchaser must report and pay use tax directly to Maine Revenue Services. Payment of the use tax should be accompanied by a letter of explanation.
- C. Adequate records.** Purchases by tribal members and tribal entities who are claiming exemption under 36 M.R.S. § 1760(113), (114), respectively, must maintain adequate records for six years documenting that the purchases of property or services are

exempt. See 36 M.R.S. § 135. An example of an adequate record would be a log maintained by a qualified tribal entity accounting for all use of a vehicle by the tribal entity for a period of one year beginning from the date that the vehicle was purchased and placed into service, documenting that the vehicle was used on tribal lands and not used primarily outside of tribal land.

.07 Sales of vehicles.

A. Generally. For the purposes of this rule, “vehicle” has the same definition as found in 36 M.R.S. § 1752(7-A). A sale of a vehicle to a tribal member or tribal entity includes the lease of an automobile for the period of one year or more.

B. Sales of vehicles to tribal members.

1. **Affidavit; registration.** The tribal member shall complete the Affidavit of Exemption for a Vehicle Sold to a Tribal Member (ST-A-129, for retail sales, and ST-A-131 for casual sales), indicating delivery of the vehicle to a location on tribal land, to appropriately document the sale or lease as exempt. The person purchasing the vehicle from a vehicle dealer must provide a copy of the completed affidavit to the vehicle dealer at the time of purchase. In the case of a casual sale, the person registering the vehicle must provide a copy of the completed affidavit at the time of the vehicle’s registration.
2. **Rebuttable presumption for tribal members.** When the sale or lease of a vehicle to a tribal member is exempt due to the delivery of the vehicle to a location on tribal land, and the address on the vehicle’s registration is also a location on tribal land, there is a rebuttable presumption that the purchaser uses the vehicle on tribal land and not primarily outside tribal land during the first year after placing into service. For tribal members claiming this exemption for the purchase of vehicles, the registration of that vehicle satisfies the record-keeping requirements discussed in Section .06(C), above.

C. Sales of vehicles to tribal entities: affidavits; registration. A qualified tribal entity shall complete the Affidavit of Exemption for a Vehicle Sold to a Tribal Entity (ST-A-130, for retail sales, and ST-A-132 for casual sales), indicating delivery of the vehicle to a location on tribal land, to appropriately document the sale or lease as exempt at the time of purchase. The qualified tribal entity must provide a completed copy of the affidavit to the vehicle dealer at the time of purchase. In the case of a casual sale, the registrant must provide a completed copy of the affidavit at the time of the vehicle’s registration. Tribal entities claiming this exemption for the purchase of vehicles are still subject to the record-keeping requirements discussed in Section .06(C), above.

.08 Reporting of taxable sales by retailers located on tribal land.

A. Generally. 36 M.R.S. § 1815(2) requires the Assessor to notify the State Controller and the Treasurer of State each month of the amount of revenue attributable to sales tax collected by retailers for sales occurring on tribal land in the previous month to be returned to the respective tribes.

B. Sales occurring on tribal land. A sale occurs on tribal land for purposes of 36 M.R.S. § 1815(2) if:

- 1.** The business location of the retailer from which the purchase is made is on Passamaquoddy Indian territory, Penobscot Indian territory, or Houlton Band Trust Land, respectively; and
- 2.** The tangible personal property or taxable service is received by the purchaser also on Passamaquoddy Indian territory, Penobscot Indian territory, or Houlton Band Trust Land, respectively.

C. Taxable sales of property received outside of tribal land. A retailer located on tribal land may make taxable sales of property or services that are received by the purchaser in Maine but outside of tribal land. In such cases, the revenue attributable to the sales tax collected on those sales is not returned to the respective tribes.

D. Reporting. Retailers located on tribal land will be required, beginning with the sales tax return period that begins January 1, 2023, to report taxable sales occurring on tribal land separately from those taxable sales occurring off of tribal land. Only the sales tax revenue attributable to sales occurring on tribal land will be returned to the respective tribes.

E. Examples.

Example 1: A retailer whose business is located on tribal land makes sales of tangible personal property that are taxable to a person who receives the tangible personal property at the business location of the retailer. The sales tax revenue attributable to that sale will be returned to the respective tribe the following month pursuant to 36 M.R.S. § 1815(2).

Example 2: The same retailer whose business is located on tribal land also makes sales of tangible personal property that are taxable (as no other exemption or exclusion applies), but the property is delivered to the purchaser at a location in Maine that is not on tribal land. The sales tax must still be collected by the retailer, but the sales tax revenue attributable to that sale will not be returned to the respective tribe. This sale must be reported separately from the sale in Example 1 on the retailer's sales tax return.

STATUTORY AUTHORITY: 5 M.R.S. § 11053; P.L. 2021, C. 681, Pt. H; and 36 M.R.S. §§
112-114.

EFFECTIVE DATE: X/X, 2023.