

**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, including leases or rentals and certain sales to service providers, and sales of packaging materials without collecting sales tax, and sets forth requirements for certification of such 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 M.R.S. § 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 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. “Lessor,” which has the same meaning as in 36 M.R.S. § 1752(5-E), means a person who leases or rents tangible personal property located in this State to another person.

4. “Nonresident retailer” means a person that is not registered with the State Tax Assessor as a retailer under 36 M.R.S. §§ 1754-B or 1756 or required to register as a retailer by 36 M.R.S. § 1754-B, and that is authorized in another state or country to make retail sales of tangible personal property in that state or country.

5. “Registered retailer” means a retailer that is registered with the State Tax Assessor as a retailer under 36 M.R.S. §§ 1754-B or 1756 but has not been issued a currently valid resale certificate.

6. “Resale certificate” means a resale certificate issued by the State Tax Assessor pursuant to 36 M.R.S. § 1754-B(2-B) or a resale certificate issued by the State Tax Assessor pursuant to 36 M.R.S. § 1754-B(2-C).

7. “Retailer,” which has the same meaning as in 36 M.R.S. § 1752(10), means a person who makes retail sales or who is required to register by 36 M.R.S. § 1754-B or who is registered under 36 M.R.S. § 1756. “Retailer” includes a lessor.

8. “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, sales for subsequent lease or rental, and certain sales to service providers as set forth below, or sales of packaging materials, is relieved of responsibility

for collecting or paying any tax otherwise applicable if the State Tax Assessor subsequently determines the purchaser engaged in unauthorized use of a resale certificate at the time of the transactions. 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 misuse of their resale certificate.

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-free purchases for resale. However, a selling retailer that accepts a resale certificate that appears valid on its face will not be liable for tax on a transaction if the State Tax Assessor later determines that the purchaser was not an active registered retailer at the time of the transaction. This relief from liability does not apply to a selling retailer that fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful misuse of their resale certificate.

SECTION 3. Sales to Active Registered Retailers

1. Selling retailers that make sales to an active registered retailer for resale need not collect the tax imposed by 36 M.R.S. § 1811 when the sale is excluded from sales tax under 36 M.R.S. § 1752(11)(B) or this Rule. The selling retailer is liable for any applicable sales tax due on a sale for resale that is not excluded from sales tax under 36 M.R.S. § 1752(11)(B) and this Rule, whether or not the selling retailer has collected the tax from the purchaser.

2. Selling retailers that make sales to an active registered retailer for resale need not collect sales tax when all the following conditions are met:

A. The purchaser specifically states in the order, whether written or oral, that the property or service is purchased for resale;

B. The property or service purchased is 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 obtains, or has on file, a copy of the purchaser's resale certificate valid on the date of the sale; and

D. The copy of the resale certificate in the selling retailer's records is 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 selling 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 not taxable. The words "No Maine sales tax due, for resale" will satisfy this requirement.

SECTION 4. Sales to Retailers Without Active Resale Certificates

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 M.R.S. § 1811-B.

2. 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.

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

SECTION 5. Sales to Nonresident Retailers

1. Selling retailers that make sales to a nonresident retailer for resale need not collect sales tax when the sale is excluded from sales tax under 36 M.R.S. § 1752(11)(B) and is made in compliance with this Rule. The selling retailer is liable for any applicable sales tax due on a sale that is not made in compliance with this Rule, whether or not the selling retailer has collected the tax from the purchaser. The selling retailer should obtain 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 property or service 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 or taxable services in the form of the type purchased for resale, 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 same form of tangible personal property or taxable services, 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; and
- 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. Sales to Service Providers Registered Under the Service Provider Tax

Selling retailers that make sales that are excluded from sales tax under 36 M.R.S. §§ 1752(11)(B)(4), (6) and (7) need not collect sales tax if the sales are made in

substantially the same manner as sales for resale, as set forth in Section 3 above, to a person registered under the service provider tax (36 M.R.S. § 2553), and the selling retailer obtains or has on file, for an active registered retailer, the resale certificate issued to the purchaser by the State Tax Assessor, valid at the time of the sale or, for a person other than an active registered retailer, a signed statement from the purchaser in a form prescribed by the State Tax Assessor.

SECTION 7. Sales of Packaging Materials

Selling retailers that make 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 36 M.R.S. § 1760(12-A) need not collect sales tax if the sales are made in substantially the same manner as sales for resale, as set forth in Section 3 above, and the selling retailer obtains from the purchaser at the time of the sale a completed Exemption Certificate for Packaging Materials (Form ST-A-120).

SECTION 8. Intentional Evasion of Tax

A person who intentionally attempts in any manner to evade or defeat any tax imposed by Title 36 or the payment of the assessed tax, in addition to any other penalties provided by law, commits a crime under 36 M.R.S. § 184-A.

STATUTORY AUTHORITY: 36 M.R.S. § 112

EFFECTIVE DATE: June 1, 1951

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