18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

125 MAINE REVENUE SERVICES

Chapter 318: INSTRUMENTALITIES OF INTERSTATE OR FOREIGN COMMERCE

SUMMARY: Explains the application of the exemption from Maine sales or use tax provided in 36 M.R.S. § 1760(41-A) for a vehicle, railroad rolling stock, aircraft, or watercraft placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days after purchase and used by the purchaser not less than 80% of the days in use for the next two years as an instrumentality of interstate or foreign commerce. The exemption is effective for purchases made on or after January 1, 2012.

SECTION 1. Definitions

For purposes of this rule, the terms "bona fide payload" and "dispatch" have the same meanings ascribed to those terms in 36 M.R.S. § 1760(41-A). The terms "aircraft," "vehicle," and "watercraft" have the same meanings ascribed to those terms in 36 M.R.S. § 1752. Except as otherwise provided, the term "trailer" has the same meaning ascribed to that term in 36 M.R.S. § 1752.

SECTION 2. Qualifying and Non-qualifying Use

A. Generally. Property is placed in use as an instrumentality of interstate or foreign commerce (1) by its carrying of, or providing the motive power for the carrying of, a bona fide payload in interstate or foreign commerce; or (2) by being dispatched to a specific location at which it will be loaded with, or will be used as the motive power for the carrying of, a bona fide payload in interstate or foreign commerce.

B. Leased property; equipment interchange agreements. Personal property is not used as an instrumentality of interstate or foreign commerce by a person who leases that property to another person who in turn uses that property as an instrumentality of interstate of foreign commerce. However, when a trailer, semitrailer, or tow dolly (as those terms are defined in 29-A M.R.S § 101) is used by an authorized motor carrier in interstate or foreign commerce pursuant to, and is specifically described in, a written interchange agreement pursuant to 49 Code of Federal Regulations, Section 376.31, or successor regulation, between that carrier and the purchaser of the property, it is treated for purposes of the sales tax exemption as being used by the purchaser in interstate or foreign commerce. Use of property other than a trailer, semitrailer, or tow dolly pursuant to such an agreement does not qualify for such treatment.

C. Cargo originating and terminating in Maine; certain buses. Personal property is not used as an instrumentality of interstate or foreign commerce for the purposes of the sales tax exemption when it is carrying, providing the motive power for carrying, or being dispatched to carry only cargo that both originates and terminates within the State of Maine. However, the statute also provides an exemption for certain buses. Specifically, when the personal property in question is a bus with a capacity of at least 47 passengers that is engaged in transporting within the State a bona fide payload of travelers on an interstate or foreign cruise that originates outside the State and terminates outside the State and the transportation is provided pursuant to a contract between the interstate or foreign cruise provider and the person providing the transportation, the bus is considered to be used in interstate or foreign commerce for the purpose of the sales tax exemption.

SECTION 3. Calculation of the 80% use test

A. Generally. The time period to which the 80% use test is applied begins on the date the property is placed into service and ends either two years from that date or on the date the property is sold, scrapped, destroyed, or otherwise removed from service, whichever occurs first. Property meets the requirements of the exemption when the number of days of qualifying use, divided by the total number of days of use (days of qualifying use plus days of non-qualifying use) is 80% or more. Disregarded days are not counted in the calculation of the 80% use test.

> **1. Disregarded days.** Any full day during which the property in question is not being used in commerce (for example, any full day during which it is being stored, repaired, or maintained).
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> **2. Days of qualifying use.** Any full day or portion of a day from the date of dispatch of property for the carrying of or providing the motive power for the carrying of a bona fide payload in interstate or foreign commerce through the day the property returns to its principal place of business or the property is dispatched in connection with a new payload.
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> **3. Days of non-qualifying use.** Any full day that does not qualify as a disregarded day under Paragraph 1 or a day of qualifying use under Paragraph 2.

B. Examples.

> **Example 1:** A trailer is dispatched by the purchaser to a location in Maine where it will be loaded with a bona fide payload. The trailer then sits idle at this location, waiting to be loaded, for 30 days, after which the payload is loaded and delivered to an out of state location. These 30 days are counted as days of qualifying use when calculating the 80% use test.
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> **Example 2:** A trailer is dispatched by the purchaser to a location in Maine where it will be loaded with a bona fide payload. The trailer then sits idle at this location, waiting to be loaded, for 30 days, after which the payload is loaded and delivered to another location within this State. These 30 days are counted as days of non-qualifying use when calculating the 80% use test.

Example 3: On Day 1, a tractor and trailer are dispatched by the purchaser to pick up a bona fide payload in Maine that will be carried to Ohio. The tractor and trailer deliver the payload to Ohio, then begin their return trip to Maine. On Day 7, while the tractor and trailer are en route to Maine, they are dispatched to pick up a bona fide payload in New Jersey for transport to Maine. On Day 10, the payload loaded in New Jersey is delivered in Maine. On Day 11, the tractor and trailer return to their principal place of business. All 11 days are counted as days of qualifying use when calculating the 80% use test.

Example 4: A tractor and trailer carrying a bona fide payload from another state stop overnight at a rest stop in southern Maine. The next day, the tractor and trailer resume the trip to deliver the cargo to its destination in Maine. Both days are counted as days of qualifying use when calculating the 80% use test.

Example 5: A trailer carrying a bona fide payload enters Maine and arrives at its destination where the trailer sits for 20 days waiting to be unloaded. The 20 days are counted as days of qualifying use when calculating the 80% use test.

Example 6: Tractor #1 and a trailer carrying a bona fide payload enter Maine from another state and arrive at a location where they sit for 10 days. On Day 11, the trailer is detached from Tractor #1 and hooked to Tractor #2 for final delivery in Maine, which occurs later that day. Days 1 through 11 are counted as days of qualifying use for the trailer when calculating the 80% use test. Days 1-10 are counted as days of qualifying use for Tractor #1. Day 11 is counted as a day of qualifying use for Tractor #2.

Example 7: On Day 1, the purchaser dispatches a tractor and trailer from Maine to New Jersey with a bona fide payload. On Day 3, the trailer is unloaded in New Jersey. On Day 4, the tractor and empty trailer leave New Jersey to return to Maine. Upon the tractor and trailer returning to Maine on Day 5, the trailer returns to its principal place of business in Maine and immediately goes to a maintenance facility for mechanical work that is finished at the end of Day 10. Days 1 through 5 are counted as days of qualifying use for both the tractor and the trailer when calculating the 80% use test. Days 6 through 10 are disregarded days for the tractor for purposes of the 80% use test.

C. Extension of time. Maine Revenue Services may, for good cause, extend by up to 60 days the time for placing a vehicle or other property in use as an instrumentality of interstate or foreign commerce. The purchaser need not apply for the extension, but good cause must be documented in the purchaser's records. Good cause will not be found when the purchaser has been negligent or otherwise failed to make a good faith effort to place the property in use in interstate or foreign commerce within 30 days from the date of purchase.

SECTION 4. Repair Parts, Operating Supplies, and Accessories

The sales and use tax exemption for instrumentalities of interstate or foreign commerce applies only to the purchase of vehicles, railroad rolling stock, aircraft, and watercraft. Repair parts, operating supplies, and accessories are not exempt, regardless of whether they are purchased at the same time as the vehicle, railroad rolling stock, aircraft, and watercraft or purchased separately. Accessories purchased as part of a vehicle are exempt from sales or use tax if the vehicle qualifies for exemption. A so-called "glider kit" is considered a repair part, and its purchase is subject to tax whether or not the vehicle on which it will be mounted is used by the purchaser as an instrumentality of interstate or foreign commerce.

SECTION 5. Purchases subject to exemption.

A. Generally. The purchaser of a vehicle, railroad rolling stock, aircraft, or watercraft may claim the 36 M.R.S. § 1760(41-A) exemption at the time of purchase or use or pay the sales or use tax due and later request a refund.

B. Purchases from a dealer registered to collect Maine sales tax. When the sale of a vehicle, railroad rolling stock, aircraft, or watercraft is claimed to be exempt as an instrumentality of interstate or foreign commerce, the seller must submit, with the sales tax report on which the sale is claimed to be exempt, an affidavit of exemption that has been properly completed and signed by both the seller and the purchaser, on a form prescribed by Maine Revenue Services.

C. Purchases at casual sale or outside the State. When a vehicle is purchased at casual sale or from a dealer outside the state, the purchaser must indicate on the vehicle use tax certificate that the property qualifies for exemption as an instrumentality of interstate or foreign commerce. Maine Revenue Services may subsequently require the purchaser to complete and submit an affidavit of exemption. Failure to return a properly completed affidavit of exemption when requested may subject the purchaser to assessment of use tax.

D. Affidavit of Exemption. The affidavit of exemption must either indicate a currently valid Interstate Operating Authority number issued by the Federal Motor Carrier Safety Administration to the person shown as the purchaser of the vehicle, or be accompanied by a complete explanation of how the vehicle is used as an instrumentality of interstate or foreign commerce without such authority.

E. Payment of tax. If the purchaser who has claimed the exemption finds that the vehicle does not qualify for the exemption because it was not placed in use as an instrumentality of interstate or foreign commerce within 30 days (90 days with good cause) from the date of purchase, or because it was not or will not be used 80% of the days in use as an instrumentality of interstate or foreign commerce during the first two years from the date the property is placed in service, the purchaser is liable for use tax plus all accrued interest. In the case of a vehicle purchased from a dealer registered to collect Maine sales tax, interest accrues from the 15th day of the month that follows the month the vehicle was purchased. In the case of a vehicle purchased outside Maine or at casual sale, interest accrues from the 15th day of the month that follows the month of first use of the vehicle in Maine. 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.

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