



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION SERVICE PROVIDER TAX INSTRUCTIONAL BULLETIN 55

Service Provider Tax

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 intended to address issues commonly faced by persons subject to the Maine Service Provider Tax.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although Maine Revenue Services (MRS) bulletins 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 an underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Service Provider Tax Law is found in Part 4 of Title 36 of the Maine Revised Statutes Annotated (“MRS”). Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” on the MRS website. Affidavits referenced in this bulletin can be viewed on MRS’ website at <http://www.maine.gov/revenue/forms/sales/salesforms.htm> while bulletins can be viewed at <http://www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm>.

1. SERVICES TAXABLE; RATE

The Maine Service Provider Tax is imposed upon the value of the following services sold in Maine:

- extended cable and satellite television services;
- fabrication services;
- rental of video media and video equipment;
- rental of furniture, audio media, and audio equipment pursuant to a rental-purchase agreement;
- telecommunications services and ancillary services;
- installation, maintenance, or repair of telecommunications equipment;
- private nonmedical institution or personal care services;
- community support services for persons with mental health diagnoses;
- community support services for persons with intellectual disabilities or autism;
- group residential services for persons with brain injuries; and
- home support services.

The final five services on the list above are taxable only when provided by a designated provider that is under contract with the Maine Department of Health and Human Services (“DHHS”) or licensed by DHHS.

Unlike the sales tax, the Service Provider Tax is not levied on the consumer, but is instead imposed upon the provider (seller). The law allows the provider to pass the tax on to the

consumer, but only if it is separately stated and identified on the invoice to the consumer as a “service provider tax.”

2. DESCRIPTION OF TAXABLE SERVICES; FILING OF RETURNS

Most taxpayers that make sales of the six services discussed below will be filing both a Maine Sales/Use Tax return and a Maine Service Provider Tax return. When preparing the Sales/Use Tax Return, all sales, including sales of services subject to the Service Provider Tax, should be reported on Line 1 “Gross Sales”. Sales of services subject to the Service Provider Tax should then be included in Line 2a “Exempt Sales” to ensure that none of those sales are subject to the Sales Tax. Likewise, when preparing the Service Provider Tax Return, all sales, including sales subject to the Sales Tax, should be reported on Line 1 “Gross Services”. Sales subject to Sales Tax should then be included in Line 2 “Exempt Services” to ensure that none of those sales are subject to the Service Provider Tax. Since the amount of gross sales is a factor in issuing resale certificates, this method of reporting provides accurate information to MRS regarding the gross sales of a taxpayer.

A. EXTENDED CABLE AND SATELLITE TELEVISION SERVICES

The tax on cable and satellite television services applies only to charges for services over and above the minimum service offered to consumers, which is typically the package offering the fewest number of channels. Taxable services include, but are not limited to, extended packages containing additional channels, movie or sports channels, pay-per-view programming, connection fees to additional sets, and rental fees for use of associated equipment such as converter boxes.

B. FABRICATION SERVICES

“Fabrication services” means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. Fabrication services, as defined by 36 MRSA § 2551(3), may be distinguished from manufacturing by identifying the person who furnishes the raw materials to be used in production. In order for a service to be considered “fabrication,” the raw materials must be supplied by the purchaser of the services (the customer), not the supplier of the services (the fabricator). If the purchaser of the service, or a third party at the direction of the purchaser, supplies the raw materials upon which the fabrication service will occur, then these services qualify as fabrication services and are subject to the Service Provider Tax. See Instructional Bulletin No. 46 for more detailed information.

C. RENTAL OF VIDEO MEDIA AND VIDEO EQUIPMENT

“Video media” includes video tapes (VHS), video games, digital video discs (DVDs), and Blu-ray discs. “Video equipment” includes VCRs, DVD players/recorders, Blu-ray disc players, camcorders, and video game equipment such as Sony Playstation® and Xbox®. LCD projectors are not considered video equipment. Late fees and the sale of prepaid video rental passes are also taxable as they represent payment for rentals of video media or equipment rentals. Damage protection fees are not subject to tax, provided they are optional to the customer and separately stated.

D. RENTAL OF FURNITURE, AUDIO MEDIA, AND AUDIO EQUIPMENT

The Service Provider Tax applies to the rental of furniture, audio media, and audio equipment, but only when such rentals are made pursuant to rental-purchase agreements as defined by 9-A MRSA § 11-105(7). Furniture is defined by statute and includes home electronic devices, such as home appliances and computers. (See 36 MRSA § 2551(4)). The tax applies to each rental payment as it is made.

E. TELECOMMUNICATIONS SERVICES & ANCILLARY SERVICES

“Telecommunications services” means the electronic transmission of voice, data, audio, or video to one point or between or among two or more points. “Telecommunications services” includes internet telephone service (voice over internet protocol or “VOIP”). “Telecommunications services” does not include internet access services, directory advertising services, charges for leasing telecommunications equipment, or prepaid calling services. Sales of interstate telecommunications service, i.e., a telecommunications service that originates in one state and terminates in a different state, are exempt from the Service Provider Tax. Mobile telecommunications services sold to a customer whose place of primary use is within the State of Maine are subject to the Service Provider Tax. Sales of ancillary services, such as detailed telecommunications billing service, directory assistance, voice mail service, and conference bridging services, are also subject to the Service Provider Tax. For more information, see Instructional Bulletin No. 56 (“Telecommunications”).

F. INSTALLATION, MAINTENANCE, & REPAIR OF TELECOMMUNICATIONS EQUIPMENT

The sale of services for the installation, maintenance, or repair of telecommunications equipment is subject to the Service Provider Tax. This provision includes installation and repair of telephone systems, facsimile machines, two-way radios, and transmission media such as copper wire, coaxial cable and optical fiber lines. “Telecommunications equipment” does not include computers or most computer equipment, but does include modems and other computer components used directly and primarily as a two-way interactive communications device capable of exchanging audio, video, data, or textual information. “Telecommunications equipment” also does not include transmission media designed and primarily used to transmit electricity.

The Service Provider Tax as it applies to telecommunications equipment affects not only telecommunications companies, but also electricians and other contractors who install telecommunication wiring. Since copper wire, coaxial cable, and optical fiber are all capable of being used in the provision of two-way interactive communications, the installation contractor must accrue the Maine Service Provider Tax on the charges for installing these products.

For multi-functioning machines, only the labor charged to install, maintain, or repair the telecommunications equipment portion of the item is subject to the Service Provider Tax. For example, with a fax/printer/copier combined unit, only the labor charge for installing, maintaining, or repairing the modem is subject to tax. For more information, see Instructional Bulletin No. 56 (“Telecommunications”).

3. SERVICES ADMINISTERED BY DHHS

The services described below are subject to the Service Provider Tax when the person providing the services is licensed by DHHS or has a contract with DHHS. If you offer these services but are not licensed by or under contract with DHHS, then the sale of these services is not subject to the Service Provider Tax.

If you are licensed by or under contract with DHHS, then all the services described below are subject to the Service Provider Tax, even those services provided to “private pay” clients. Sales of services for MaineCare residents that are paid by DHHS are taxed based on the number of billing units billed out for the reporting period multiplied by the rate assigned to the provider by DHHS, net of the amount of tax included in the payment. (Note: This rate paid by DHHS includes the 5% allowance for reimbursement of this tax.) For “private pay” clients, the sales of services described below are taxed based on the total amount billed out for the services.

The “Gross Services” line on the Service Provider Tax return should not include the amount paid by DHHS for the tax portion of the services provided. The sum of the “Taxable Services” and “Total Tax” lines of the Service Provider Tax return should equal the total amount received from DHHS and the sale price and tax received from “private pay” clients.

A. PRIVATE NONMEDICAL INSTITUTION OR PERSONAL HOME CARE SERVICES

“Private nonmedical institution or personal home care services” means services, including food, shelter and treatment, that are provided by a private nonmedical institution or personal home care. “Private nonmedical institution or personal home care” means a person licensed by DHHS to provide care to four or more MaineCare-eligible and other residents in single or multiple facilities under a written agreement with DHHS. This term does not include a health insurance organization, hospital, nursing home, or community health care center.

B. COMMUNITY SUPPORT SERVICES FOR PERSONS WITH MENTAL HEALTH DIAGNOSES

These are community support services offered by a provider that is licensed by DHHS to provide rehabilitative services for adults at least 18 years of age or emancipated children with mental health diagnoses pursuant to an individual support plan that promote a person’s recovery and integration into the community and that sustain the person’s current living situation or another living situation of the person’s choice.

C. COMMUNITY SUPPORT SERVICES FOR PERSONS WITH INTELLECTUAL DISABILITIES OR AUTISM

These are community support services (A) that are provided by community-based agencies to children or adults with intellectual disabilities or autism and include assistance with the acquisition, retention, or improvement of self-help, socialization, and adaptive living skills; and (B) that take place in a nonresidential setting separate from the home or facility in which the individual resides, except when a physician has ordered that such services be provided in the individual’s home, and focus on enabling the individual to attain or maintain maximum functionality.

D. GROUP RESIDENTIAL SERVICES FOR PERSONS WITH BRAIN INJURIES

These are services provided to adults with acquired brain injuries, including direct assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living.

E. HOME SUPPORT SERVICES

Home support services means services provided to adults with intellectual disabilities or autism, including direct assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. Such services may include assistance with instrumental activities of daily living, such as assistance with the preparation of meals, but not the cost of the meals. If specified in the adult's care plan, home support services may also include assistance with housekeeping chores that are incidental to the care furnished, or essential to the health and welfare of the recipient of the services. The services may not be provided by the recipient's spouse and may not be provided in the same setting where residential training is provided.

4. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Service Provider Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

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