



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 1

SERVICE STATIONS AND AUTO REPAIR SHOPS

(Other than Vehicle Dealers)

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law (Title 36, Part 3) referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

This bulletin does not include information regarding the sale of vehicles. See Instructional Bulletin No. 24 (Vehicle Dealers) for additional information.

The Sales and Use Tax Law requires persons engaged in the business of selling tangible personal property and taxable services to register as sellers with the State Tax Assessor, to collect the tax from their customers, and to report and pay the tax to the State on the basis of their total taxable sales multiplied by the applicable sales tax rate. See Rule 304 (Sales Tax Returns and Payments).

1. SALES

a. Nontaxable Sales. Sales of the following items are not subject to sales tax:

- i. Sales of gasoline;
- ii. Sales of special fuels (such as diesel, LPG and propane) on which a Maine excise tax is imposed;
- iii. Sales of heating oil and kerosene when sold for home cooking and heating;
- iv. Sales of kerosene or home heating oil that is prepackaged or dispensed from a tank for retail sale in containers with a capacity of 5 gallons or less;
- v. Sales of any kind to the Federal Government, the State of Maine and political subdivisions of the State of Maine; and
- vi. Sales to exempt organizations.

When making sales to government agencies, no evidence of exemption is required other than the invoice of the seller indicating a sale to an exempt governmental entity. Sales to other states or foreign countries or their subdivisions are not exempt from Maine sales tax.

The Maine Sales and Use Tax Law provides exemptions for sales to hospitals, regularly organized churches, schools and a number of other types of organizations. Organizations that qualify for exemption must obtain exemption certificates from Maine Revenue Services in accordance with Rule 302; and sales should be made tax free to these organizations only when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does not apply to the clergy, staff, or employees of exempt organizations.

b. Taxable Sales. Sales of the following items are subject to tax:

- i. Sales of tires, batteries, parts, accessories, lubrication oils or any other tangible personal property except as noted above.
- ii. Sales of LPG and propane for use in motor homes, travel trailers, gas grills, etc.
- iii. Sales of kerosene in containers with a capacity of more than five gallons.
- iv. Sales of heating oil and kerosene for commercial use. Certain commercial uses are exempt. Please refer to Instruction Bulletin No. 13 for more information on this subject.
- v. Sales of diesel fuel, propane or any special fuel for off-highway use.

The federal tax on tires, etc., is included in the sale price on which the sales tax is based. The sale price includes the total amount of the sale, even though part of it is paid by property traded in.

Sales of LPG and propane in 20 lb tanks or similar containers, and the sale of kerosene in containers with a capacity of more than five gallons are not considered to be purchased for cooking or heating in homes or residences. However, if the customer provides an affidavit indicating that the fuel qualifies for exemption under Sections 1760(9) or 1760(9-C) of the Sales and Use Tax Law, the sale is exempt.

c. Core Charges. Customers who purchase property that can be reconditioned and resold by the seller are sometimes encouraged to bring their used property to the seller by the imposition of a “core charge” on the original purchase, which may then be refunded or credited to the customer when the used property is brought back to the seller. The core charge is considered part of the selling price of the new property being purchased and is subject to the sales tax. For instance, an alternator may be sold for \$80.00 with a core charge being stated in the amount of \$10.00. The total selling price subject to tax is \$90.00. If a used alternator is traded-in at the same time as the purchase of the new alternator, the selling price subject to tax remains at \$90.00 even though a \$10.00 credit is allowed. If the used alternator is returned to the seller at a later date and the customer is refunded the \$10.00 core charge, no refund of sales tax is allowed. The definition of "sale price" does not exclude an allowance of this sort nor are core charges allowable as trade-in credits.

2. SERVICES

Service stations and auto repair shops may perform services where no sale of tangible personal property is involved, such as car washing, storage, towing charges, battery recharging, etc. Sales tax does not apply to these services. Tangible personal property such as rags, detergents, jumper cables, tools and equipment, etc., used in performing such services, is taxable at the time of purchase.

Some services, however, may include both parts and labor as discussed below:

a. Repair Work. When repairs are made to tangible personal property, and the sale of parts and labor are separately stated, sales tax applies only to the sale of parts. If no separation is made with respect to parts and labor, the entire charge is subject to tax. When repairs do not include the sale of parts, no tax is charged to the customer.

Tools and equipment used in the repair of a vehicle are subject to tax when purchased by the service station or repair shop. Supplies may or may not be taxable. For Maine sales and use tax purposes, a distinction is drawn between inventories of items that are “used” or consumed by the repairer, and inventories of items that are ultimately transferred to the possession of customers.

i. Consumables

Items that are “used” or consumed in the performance of a service are taxable. If the Maine sales tax is not paid on such items at the time of their purchase, the service station or repair shop must accrue a use tax on the items. Here is a non-exclusive list of items that generally fall in this category:

Adhesives/glue	Aerosol products	Battery cleaner
Brake cleaner	Brake lathe bits	Brushes
Buffing compound/pads	Car wash soap	Choke cleaner
Cleaners	Deodorizer	Disc brake quieter
Drill bits	Engine degreaser/cleaner	Floor dry
Gases/oxygen, acetylene	Glass cleaner	Gloves
Grinder wheels	Hacksaw blades	Hand cleaner
Key tags	Light bulbs – facility	Masks
Paper mats/floor/seat	Paper towels	Protective eyewear
Putty spreaders	Rags	Razor blades
Sandpaper	Soap	Tape/electrical/duct
Wash mitts	Washer/solvent	Wax

ii. Items Transferred to the Customer

For Maine sales/use tax purposes, items that are ultimately transferred to the possession of the customer can be handled one of two ways: (1) they can be itemized and billed to the customer as a part of the sale; or (2) they can be maintained all together as one “inventory” and billed out to the customer as a percentage of labor or other charge, typically as a single line item called “shop supplies”. Either way, sales tax must be charged and collected from the customer. Here is a non-exclusive list of items that generally fall in this category:

A/C & heater treatment	A/C oil	Batteries (small AA)
Body filler	Brake fluid/power steering	Brake line fittings
Coolant	Dyes-oil/A/C	Electrical terminals
Electrical wire	Gasket maker/adhesive	Grease/gear lube
Hardener	Helicoils	Hose clamps
Keylock parts	Light bulbs – vehicle	Nuts & bolts
Paint/thinner	Pipe sealant	Plastic wire ties
Rubber hoses	Rubberized undercoating	Screws
Silicon	Small nuts, bolts, fasteners	Solder
Spray trim adhesive	Strip caulking	Tape
Thread lock	Touch up paint	Vacuum fittings
Valve stem caps	Welding rods	Wheel weights
Wire looms		

b. Tire Retreading, Recapping and Repairs. The business of retreading and recapping tires is considered to involve sales of materials used rather than to constitute rendition of service. The labor in such cases may be itemized and billed separately, in which case the sales tax applies only to the charge for materials. Where such billing is not feasible, Maine Revenue Services will accept reporting on the basis of 50% of the cost reflecting labor, and 50% of the cost reflecting materials. The tax on the retreading or recapping will then be based on 50% of the entire charge for recapping. This formula only applies to tires provided by the customer.

If casings are purchased and processed for sale, the entire sales price is subject to tax.

Ordinary tire repairs, i.e. fixing a flat, balancing, etc., is considered a service. The customer would not be charged sales tax on materials used in the repair but the service station or auto repair shop must pay tax on the purchase of such materials.

c. Greasing, Polishing and Rustproofing. Greasing, polishing and rustproofing are considered to be the rendition of service rather than the sale of personal property unless the provider chooses to state labor and material separately in billing the customer. Where the grease used in a grease job, wax and polish used in a polishing job, or undercoating material used in a rustproofing job are not stated separately in the bill to the customer, the sales tax will not be charged the customer but the tax on such materials will be paid by the service station or auto repair shop, at the time of purchase.

d. Manufacturer's Warranty. Manufacturer's warranties are considered part of the sales price of the item when originally purchased. Since the warranty has been taxed as part of the original purchase, parts associated with repairs pursuant to a manufacturer's warranty are not taxable.

e. Extended Warranties. For transactions entered into on after September 20, 2007, the sale of an extended service contract on an automobile that entitles the purchaser to specific benefits in the service of the automobile for a specific duration is a taxable service. Parts associated with repairs made pursuant to such a warranty are therefore not usually taxable either to the repairer or to the customer, since the parts are considered to be included in the original price of the extended warranty. If a warranty provides for a "deductible" to be paid by the customer at the time of repair or maintenance, the amount paid by the customer is first applied to non-taxable labor. If the deductible exceeds the amount charged for labor, the remaining amount will be applied to parts, on which the customer must pay sales tax.

For extended warranty transactions entered into prior to September 20, 2007, the sale of an optional extended warranty, if separately stated from the sales price, was not taxable, but parts associated with repairs made pursuant to such a warranty are taxable. Where the customer is not responsible for any additional payment for repairs made under warranty, the service provider is liable for use tax on the repair parts based on the cost of the parts. If the customer is responsible under the extended warranty for a portion of the repair, the service provider must charge sales tax to the customer on the portion attributable to repair parts only when the "deductible" amount paid by the customer exceeds the amount charged for labor.

It is important that the repairer know when the extended warranty was sold and/or whether sales tax had been charged on the sale of the extended warranty in order to properly tax or exempt the parts used in the repair.

3. PURCHASES

a. Purchases for Own Use. On those items which the retailer uses rather than sells in the form of tangible personal property, tax should be paid to the supplier at the time of purchase. If purchases of such items are made from outside the State and tax was not paid to the supplier, the retailer should report and pay a use tax on such items. Similarly, if the retailer has purchased items tax free for resale, and later withdraws them from stock for use, use tax must be reported and paid at the time of withdrawal. Items used rather than resold will include tools and machines used in the business, fuel used for heating, materials used in tire repairs, lubricants used in grease jobs where no separate charge is made for lubricants, etc.

b. Purchases for Resale. When a retailer purchases tangible personal property for resale, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the supplier whether or not the purchase is for resale and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer.

Purchasers who avoid payment of tax through deliberate misuse of resale certificates may be subject to criminal prosecution.

4. RECYCLING ASSISTANCE FEES

A recycling assistance fee is imposed on the retail sale of **new** tires and **new** lead-acid batteries at the rate of \$1.00 each. Sales of **used** tires and batteries are not subject to the fee. The fee is also specifically excluded from the definition of sales price and is therefore not subject to sales tax.

The fee follows the same exemptions as sales and use tax. Thus, if a sale is exempt from sales tax, it is also exempt from the fee. The fees are remitted in the same manner as sales tax through the Sales and Use Tax return, form ST-7.

The recycling assistance fee is not to be confused with the lead-acid battery deposit required by 38 MRSA §1604, which requires the retailer to charge a \$10.00 deposit to the consumer if no used battery is presented at the time of sale. The \$1.00 recycling assistance fee is in addition to the \$10.00 deposit and applies even though the deposit may not be applicable.

5. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use 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 the:

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ATTACHMENT #1

Excerpts from Maine Revised Statutes, Title 36

36 §1752. Definitions

1-B. Automobile. "Automobile" means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks. "Automobile" includes a pickup truck or van with a registered gross vehicle weight of 6,000 pounds or less.

14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Any consideration for services that are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise pursuant to warranty;
- (3) The price of property returned by customers, when the full price is refunded either in cash or by credit;
- (4) The price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated;
- (5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;
- (6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax;
- (7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;
- (8) The fee imposed by Title 10, section 1169, subsection 11;
- (9) The fee imposed by section 4832, subsection 1;
- (10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B; or
- (11) Any amount charged or collected by a person engaged in the rental of living quarters

as a forfeited room deposit or cancellation fee if the prospective occupant of the living quarters cancels the reservation on or before the scheduled date of arrival;

or

(12) The premium on motor vehicle oil changes imposed by Title 10, section 1020, subsection 6.

36 §1760. Exemptions

8. Certain motor fuels. Sales of:

A. Motor fuels upon which a tax at the maximum rate for highway use has been paid pursuant to Part 5 or a comparable tax of any other state or province;

B. Internal combustion engine fuel, as defined in section 2902, bought and used for the purpose of propelling jet or turbojet engine aircraft; and

D. Diesel internal combustion engine fuel bought and used from July 1, 2007 to June 30, 2008 for the purpose of operating or propelling a commercial groundfishing boat.

9. Coal, oil and wood. Coal, oil, wood and all other fuels, except gas and electricity, when bought for cooking and heating in buildings designed and used for both human habitation and sleeping. Kerosene or home heating oil that is prepackaged or dispensed from a tank for retail sale in containers with a capacity of 5 gallons or less is presumed to meet the requirements of this subsection.

9-C. Residential gas. Sales of gas when bought for cooking and heating in buildings designed and used for both human habitation and sleeping, with the exception of hotels.

36 §4831. Definitions [For Recycling Assistance Fee]

2. Lead-acid battery. "Lead-acid battery" means a device designed and used for the storage of electrical energy through chemical reactions involving lead and acids.

3. Motorized vehicle. "Motorized vehicle" means any self-propelled vehicle, including motorcycles, construction and farm vehicles and other off-road vehicles, not operating exclusively on tracks.

4. Tire. "Tire" means the device made of rubber or any similar substance which is intended to be attached to a motorized vehicle or trailer and is designed to support the load of the motorized vehicle or trailer.

5. Trailer. "Trailer" means any vehicle without motive power that is designed to be drawn by a motorized vehicle.

36 §4832. [Recycling Assistance] Fee imposed

1. Imposition. A fee is imposed on the retail sale in this State of new tires and new lead-acid batteries in the amount of \$1 per tire or lead-acid battery. A fee in the same amount is imposed on the storage, use or other consumption in this State of tires and lead-acid batteries purchased new in this State by the user or purchased outside the State by the user unless either the fee imposed by this section has been paid.