



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 15

AUCTIONEERS

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 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.

An auctioneer who makes sales of tangible personal property in this State is required by the Sales and Use Tax Law to register as a seller and to collect and report sales tax on taxable sales. It makes no difference whether the goods sold belong to the auctioneer, or whether the sales are made at the premises of the auctioneer or another location.

1. EXEMPT SALES

- a. Government Agencies.** Sales made directly to the federal government, the State of Maine or any political subdivision of the State of Maine (such as counties, cities, towns or plantations), or to any agency or instrumentality of the above governments, are exempt from sales tax. No evidence of exemption is required other than the invoice of the seller indicating sale to the government or government agency. Sales to other states or foreign countries or their subdivisions are not exempt from Maine sales tax.
- b. Exempt Organizations.** The Sales and Use Tax Law provides exemptions for various organizations, such as hospitals, schools, regularly organized churches or houses of religious worship, and certain other organizations. When selling to exempt organizations, the seller should require the customer to furnish a certificate of exemption in accordance with Rule 302.
- c. Livestock.** Sales of livestock, the products of which ordinarily constitute food for human consumption, are presumed to be for resale and therefore nontaxable. These sales may be made free of tax without obtaining resale certificates. Examples of nontaxable sales are sales of hatching eggs, sales of poultry, and sales of cattle, swine, and sheep.

This presumption does not apply to sales of livestock, the products of which ordinarily do not constitute food for human consumption. Sales of birds and animals customarily sold only as pets, horses, and animals sold only for fur are taxable.

d. Sales for Resale. A sale for resale in the form of tangible personal property is not taxable. When selling for resale, the auctioneer should require the customer to furnish a resale certificate in substantially the form set forth in Rule 301. Otherwise, the burden of proving that a sale was for resale is upon the person making the sale. More detailed information regarding sales for resale will be found in Rule 301.

e. Charity Auctions. Sales tax does not apply to charity auctions where the services of the auctioneer are donated without charge, unless the sales are in the ordinary course of business by the person or organization for whom the sales are made.

f. Commercial Agricultural Production and Commercial Fishing. Sales of depreciable machinery and equipment for use directly and primarily in commercial agricultural production or commercial fishing, and sales of repair parts for that machinery and equipment, are exempt when made to a person who has been issued a Certificate of Exemption card by Maine Revenue Services. The seller must obtain a completed affidavit of exemption signed by the purchaser and a copy of the exemption card to document the exempt sale. More detailed information regarding sales of farming and fishing equipment will be found in Instruction Bulletins No. 44 and No. 45 and Rule 323.

3. GOVERNMENT PROPERTY

Liquidation sales of tangible personal property conducted by an auctioneer by order of the bankruptcy court, the Small Business Administration or the Internal Revenue Service are subject to the sales tax. In addition, sales by an auctioneer of seized or surplus tangible personal property for an agency of the State of Maine or a local government are subject to the sales tax.

4. BUILDINGS

A sale of a building separately from the land upon which it sits is considered a sale of real property if the terms of the sale are that the building will be removed by the purchaser. In this situation, the sale is not subject to sales tax.

If the building is to be removed by the seller for conveyance to the purchaser as tangible personal property, the sale is considered a sale of tangible personal property, and is subject to sales tax.

5. COMBINED SALES OF REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY

If an auctioneer also holds a real estate license and sells a building along with its contents as a realtor, the sale is considered a sale of real property and the auctioneer is not required to collect any sales tax. If the sale is made through auction, the auctioneer must reasonably estimate a breakdown between the real property and the tangible personal property and collect sales tax on the portion of the sale price attributable to the tangible personal property.

6. SALES PRICE

The sales price on which sales tax is based includes:

- i. The full price, valued in money, whether paid in money or otherwise and
- ii. The amount charged for any services that are part of the sale, such as broker fees and buyer premiums.

7. ADDING TAX TO SALE PRICE

A seller may not advertise or hold out to the public that the tax will not be charged or that it will be absorbed by the seller or that, if charged, it will be refunded. However, the law does not require that the sales tax be separately stated as such, nor does it prohibit the use of a tax-included price. The terms of a sale at auction may indicate that sales tax will be added to the amount bid or that the amount bid will include sales tax.

8. 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 taken from 36 M.R.S.A.

36 §1752. Definitions

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section 1754-A or 1754-B or who is registered under section 1756.

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

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) Services which 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.

17. Tangible personal property. "Tangible personal property" means personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program.

36 §2013. Refund of sales tax on depreciable machinery and equipment purchases

1. Definitions. As used in this section, unless the context otherwise indicates, the following words shall have the following meanings.

A. "Agricultural production" means commercial production of crops for human and

animal consumption, including the commercial production of sod, the commercial production of seed to be used primarily to raise crops for nourishment of humans or animals and production of livestock.

B. "Commercial fishing" means attempting to catch or cultivate fish or any other marine animals or organisms with the intent of disposing of them for profit or trade in commercial channels and does not include subsistence fishing for personal use, sport fishing or charter boat fishing where the vessel is used for carrying sport fishermen to available fishing grounds.

C. "Depreciable machinery and equipment" means that part of the following machinery and equipment for which depreciation is allowable under the United States Internal Revenue Code and repair parts for that machinery and equipment:

(1) New or used machinery and equipment for use directly and primarily in commercial agricultural production, including self-propelled vehicles, but excluding motor vehicles as defined in section 1752, subsection 7; attachments and equipment for the production of field and orchard crops; new or used machinery and equipment for use directly and primarily in production of milk, animal husbandry and production of livestock, including poultry; and new or used machinery and equipment not used directly and primarily in commercial agricultural production, but used exclusively to transport potatoes from a truck into a storage location;

(2) New or used watercraft used directly and primarily for commercial fishing; and nets, traps, cables, tackle and related equipment necessary to the operation of a commercial fishing venture, but excluding motor vehicles as defined in 1752(7).

3. Exemption for large purchase after certification. Sales tax is not paid on the purchase of a single item of machinery or equipment if the purchaser has the certification of the State Tax Assessor that the purchaser is engaged in commercial agricultural production or commercial fishing, and that the purchaser may purchase depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the State Tax Assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the depreciable machinery or equipment must be used directly in commercial agricultural production or commercial fishing.

Relevant Rules:

#301 - Sales for Resale and Sales of Packaging Materials

#302 - Government Agencies, Exempt Organizations and Sales Thereto

#305 - Reports and Payments

#322 - Commercial Agricultural Production and Commercial Fishing