

**MAINE REVENUE SERVICES
SALES/EXCISE TAX DIVISION
RULE NO. 318**

INSTRUMENTALITIES OF INTERSTATE OR FOREIGN COMMERCE

SUMMARY: Explains the application of the exemption from Maine sales or use tax provided in 36 MRSA §1760, sub-§41 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 time for the next 2 years as an instrumentality of interstate commerce.

SECTION 1. Definitions

As used in this rule, the terms “aircraft,” “vehicle” and “watercraft” have the same meanings ascribed to those terms by Title 36, section 1752.

SECTION 2. Leased Property

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 or foreign commerce.

SECTION 3. Intrastate and Local Operations

Personal property is not “used as an instrumentality of interstate or foreign commerce” when carrying only cargo that both originates and terminates within the State of Maine.

SECTION 4. Calculation of the 80% test

The time period to which the statutory 80% test is applied includes every day or portion of a day during which the property in question is actually being used to carry a cargo or being dispatched to a specific location for purposes of being loaded with a cargo. In a case in which two years of actual use of the property is not made, the time period to which the 80% test is applied begins on the date on which the property is first placed into service by the purchaser and ends at the time that the property is sold, scrapped, destroyed or otherwise permanently removed from service by the taxpayer.

Example: A tractor and trailer carried cargo or were en route to be loaded with cargo during 500 days of the 2-year period following the date of purchase. During 400 of those days the cargo was in interstate or foreign transit. The tractor and trailer meet the 80% use requirement.

The State Tax Assessor 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 5. 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. Accessories purchased as part of a vehicle are exempt from sales or use tax if the vehicle qualifies for exemption. Accessories purchased separately from the vehicle itself are taxable. So-called “glider kits” are considered repair parts, and the purchase of a glider kit 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 6. Certification of Exemption

A. Purchases from dealers in Maine. 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 file, with the sales tax report on which the sale is claimed to be exempt, an affidavit properly completed and signed by both the seller and the purchaser, on a form prescribed by the State Tax Assessor.

B. Purchases at casual sale or outside the State. Where vehicles or aircraft are purchased at casual sale or from dealers outside the state, the purchaser must indicate on the motor vehicle use tax certificate that the property qualifies for exemption as an instrumentality of interstate or foreign commerce. The State Tax Assessor 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 the Maine use tax.

The affidavit of exemption must either indicate a currently valid ICC operating authority number issued to the person shown as the purchaser of the vehicle, or provide a full and complete explanation of how the vehicle is used as an instrumentality of interstate or foreign commerce without an ICC number.

If the purchaser later finds that the vehicle has become ineligible 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) or because it was not or will not be used 80% of the time as an instrumentality of interstate or foreign commerce during the first 2 years from the date of purchase, the purchaser is responsible for reporting use tax directly to Maine Revenue Services. Payment of the use tax should be accompanied by a letter of explanation.

AUTHORITY: 36 M.R.S.A. Sec. 112.1

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