



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 32

RENTAL OF LIVING QUARTERS

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 is intended to address issues commonly faced by taxpayers with respect to the rental of living quarters. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although 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 any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of MRSA (“Maine Revised Statutes Annotated”) Title 36. The Service Provider Tax Law is found in Part 4, Chapter 358. Title 36 and all Maine Revenue Services rules may be seen by clicking on “laws and rules” at the top of the Maine Revenue Services website.

Note that Title 36 section 1811 imposes sales and use tax on the value of rental of living quarters at a higher rate than the generally applicable sales tax rate.

1. TAXABLE RENTALS

The Maine Sales and Use Tax Law imposes a tax on “rental of living quarters in any hotel, rooming house, tourist or trailer camp” including casual rentals. (See 36 MRSA § 1811) These terms are defined broadly enough to include most buildings or other structures kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants. (See 36 MRSA § 1752, sub-§§ 4, 6, 12, 19 and 20) Every person who owns, manages or operates, in the regular course of business or on a casual basis, a hotel, motel, rooming house, cottage, camp, condominium unit, vacation home, tourist camp or trailer camp, vessel, or other structure or who collects or receives rental payments on behalf of the owner, must register for and collect Maine sales tax on the rentals. A property does not have to be advertised or held out to the public at large in order for rentals of the property to be taxable. (See 36 MRSA § 1754-B)

2. EXEMPTIONS

A. Casual Rentals for less than 15 days. In most cases, a person who has only one room or a single camp for rent and rents it for fewer than 15 days each calendar year is not considered a “retailer” and is not required to collect sales tax on those rentals. (See 36 MRSA § 1764) However, if the property has been placed in the hands of a real estate agent or other person engaged in the business of renting or managing rentals of living quarters, that agent must collect and report sales tax on the rental, regardless of the length of time the property is rented.

B. Occupancy for 28 days or more. Rental charged to any person who rents continuously for 28 days or more in the same hotel, rooming house, tourist camp, or trailer camp is exempt from sales tax if the living quarters are a person’s primary residence, or if the rental is

in connection with education or employment. (See 36 MRSA § 1760, sub-§ 20) An affidavit of exemption for 28-days continuous rental should be completed by the tenant and by the hotel, rooming house, tourist camp or trailer camp. The affidavit is attached to this bulletin and may be found on the Maine Revenue Services website. If tax has been paid by the person during the initial 28-day period, the tax should be refunded by the retailer (lessor). If the retailer (lessor) has reported and paid the tax to the State, the retailer should take a corresponding credit on the Sales and Use Tax Return filed for the period in which the refund or credit occurred by adjusting the “Taxable Rentals” figure shown on the return.

(1) “Continuous residence” is determined by continuous rental of the quarters, rather than by actual occupancy of the quarters. Continuous residence is not interrupted merely by changing rooms within the same facility. Continuous residence is also not interrupted by the fact that the rental unit may be occupied at various times by different individuals, such as when an airline or construction company rents a room or block of rooms for employees who may come and go for work purposes, provided that the unit is rented and paid for by one single person for the qualifying 28 days and all of the other statutory criteria are met.

(2) “Primary residence” means the residence maintained at the location in which the individual is domiciled. “Domicile” is the place where an individual has his or her true, fixed and permanent home, which is the location where an individual has the most significant legal ties (e.g. driver’s license, voting registration, vehicle registration, ownership of real property, enrollment of children in school systems, etc.).

Examples of situations where the tenant’s primary residence is not the facility being rented are an out-of-state resident vacationing in Maine or a Maine resident with a home in Bangor who is vacationing on the coast. An example of a situation where the tenant’s primary residence is the facility being rented is an individual who is renting a house, condominium, or apartment and does not maintain a primary residence elsewhere.

(3) “In connection with education” means in connection with education from an accredited secondary school or college at which the person is enrolled in a diploma or degree program. If a person claims that the rental is in connection with education, that person must provide the facility with a statement from the school that the tenant is enrolled in such a program.

(4) “In connection with employment” means that the tenant is residing away from the tenant’s primary residence due to job requirements. For example, an electrical contractor in northern Maine has a job in southern Maine, a professor is temporarily reassigned to another college, or a representative of a company is temporarily assigned to Maine to oversee the installation and operation of its product. Seeking employment does not meet this requirement, nor would making occasional business contacts while vacationing in Maine. If a person claims that the rental is in connection with employment, that person must provide the facility with a statement from the employer that the rental is necessitated by the person’s employment.

C. Living Quarters Furnished to Employees. Sales tax does not apply to rentals of living quarters that are furnished by an employer to an employee, at premises controlled by the employer, and solely for the convenience of the employer. (See 36 MRSA § 1760, sub-§ 75) It does not matter whether there is any adjustment of the employee's wages for the value of the living quarters. This applies only to living quarters furnished to employees, not to meals sold to employees. (Sales tax does not apply to the value of meals furnished by the employer to

employees at the place of employment if the value of the meals is allowed as a credit toward the wages of the employees.)

D. Specific Exemptions. The following rentals are exempt from tax:

- (1) Rentals of living quarters at a camp that is entitled to exemption from property tax as a literary and scientific or benevolent and charitable institution, or by a children's summer camp when an entire lump sum admission fee is charged and the provision of living quarters is only incidental to a bona fide, organized, and disciplined program of instruction and recreation. (See 36 MRSA § 1760, sub-§ 17)
- (2) Rentals of living quarters at an institution licensed by the State for hospitalization or nursing care of human beings. (See 36 MRSA § 1760, sub-§ 18)
- (3) Rentals of living quarters to a student necessitated by the student's attendance at a primary or secondary school or college. (See 36 MRSA § 1760, sub-§ 19)
- (4) Rentals of living quarters to any Maine sales tax exempt organization, provided that the documentation requirements of Rule 302 are met. These include governmental agencies (which are not required to have a Maine exemption certificate) and exempt organizations that hold a Maine exemption certificate. For more information, see Rule 302 and Instructional Bulletin No. 36 ("Exempt Organizations and Government Agencies").

3. OTHER CHARGES IN CONNECTION WITH RENTALS OF LIVING QUARTERS

A. Incidental Charges at Hotels. When a hotel offers separate facilities or services (such as a golf course, tennis courts, telephones and pay-per-view movies) that are not a part of the rental of living quarters, and where any charges for those facilities or services are in fact extra and are paid only by persons who make use of them, those charges are not subject to tax.

Sales tax does apply to the amount billed for extra services that are a part of the rental of a room in a hotel or boarding house, whether or not separately stated. Some examples of services that are considered a part of the rental of living quarters include extra charges for the use of a cot or crib or for use of cooking facilities, pet fees, damage or cleaning fees, and fees or "penalties" imposed for smoking in a nonsmoking room. Service fees charged by property management firms are also subject to sales tax.

B. Forfeited deposits or cancellation fees. A deposit is typically required in order to hold a room that is booked in advance. If the patron cancels or fails to show up on the scheduled day, the deposit, or a portion of the deposit, is generally forfeited. When a patron cancels his or her reservation on or prior to the scheduled date of arrival and the establishment retains a "cancellation fee," that fee is not subject to Maine sales tax. However, if the patron fails to show on the scheduled date of arrival, any amount forfeited to the establishment is treated as rental of living quarters and is subject to sales tax. (See 36 MRSA § 1752, sub-§ 14(B)(11))

C. Rentals of Public Rooms. Rental by a hotel of a dining room, assembly room, or other area not intended for use as living quarters is not taxable. When a hotel rents a room designed as living quarters, the rental is considered taxable regardless of the use actually made of the room by the person renting it.

D. Rentals of Video Media and Video Equipment. The Maine Service Provider Tax applies to rentals of video media, video games, and video equipment for noncommercial

playback. (See 36 MRSA §§ 2552 and 2551, sub-§ 21) A hotel that rents any of these items must calculate and pay to the State the service provider tax on the charge for these rentals. Such taxable rentals include not only rentals of movie and game video media and video equipment, but also rentals of video equipment for use at business conferences, seminars, and the like.

Businesses engaged in both the rental of video media and video equipment and the rental of living quarters are required to obtain a Maine Service Provider account as well as a Maine Sales Tax account. Rentals of video products are subject to the service provider tax (not the sales tax imposed on lodging) and should be reported on a service provider tax return rather than on the sales tax return. Purchases of video media and video equipment for rental by a hotel are not taxable. For more information on the Maine Service Provider Tax, see Instructional Bulletin No. 55.

E. Tent and Trailer Space. The rental of space for the pitching of tents or the parking of motor homes, travel trailers, and camper trailers is taxable. The rental price includes all service charges paid to the lessor, whether or not those charges are separately collected or stated. If the tents or trailers themselves are rented, that rental is also taxable.

4. PURCHASES

Sales tax should be paid to the supplier on the purchase by a hotel (or motel, rooming house, or other facility that rents living quarters) of tangible personal property used in the business, including items such as soap, towels, and paper products intended for use by hotel occupants as well as office supplies, cleaning and maintenance supplies, and similar items. If these items are purchased outside the state and the tax is not collected by the supplier, use tax on these items must be reported on the sales and use tax return.

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:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1060
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: 1-888-577-6690**

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MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

AFFIDAVIT OF EXEMPTION FOR 28 DAY CONTINUOUS RENTAL AT A HOTEL, ROOMING HOUSE, TOURIST, OR TRAILER CAMP

36 MRSA §1760(20) of the Maine Sales and Use Tax Law provides a sales tax exemption for:

Rental charged to any person who resides continuously for 28 days or more at any one hotel, rooming house, tourist camp or trailer camp if:

- A. The person does not maintain a primary residence at some other location; or
- B. The person is residing away from that person's primary residence in connection with employment or education.

Tax paid by such a person to the retailer under section 1812 during the initial 28-day period must be refunded by the retailer. If the tax has been reported and paid to the State by the retailer, it may be taken as a credit by the retailer on the return filed by the retailer covering the month in which the refund was made to the tenant.

This section to be completed by the tenant

I, _____, hereby certify that my primary residence is _____,
_____ and that my rental of living quarters is exempt from sales tax for the following reason:

Rental of living quarters constitutes my primary residence ("Primary residence" means the residence maintained at the location in which the individual is domiciled. "Domicile" is the place where an individual has his or her true, fixed and permanent home, which is the location where an individual has the most legal ties, i.e. driver's license, voting registration, vehicle registration, ownership of real property, enrollment of children in school systems, etc.)

Tenant: Please complete the following questionnaire:

My previous address was _____

Date that I left previous address _____

Current mailing address _____

Drivers License Number _____ Vehicle Plate Number _____

Current Telephone Number _____

Social Security Number _____ Date of Birth _____

Rental is in connection with Education ("In connection with education" means in connection with education from an accredited secondary school or college at which the person is enrolled in a diploma or degree program.)

Tenant: Please provide the facility with a statement from the school that you are enrolled in such a program.

Rental is in connection with employment

Tenant: Please provide the facility with a statement from the employer that the travel is necessitated by the your employment and the purpose of your employment.

I make this statement to allow the renting of the living quarters to me without payment of the Maine sales tax, otherwise applicable. I declare under the penalties of perjury that the statements made herein are true to the best of my knowledge and belief.

Signature of Tenant Date _____

This section to be completed by the facility

(Note: Any break in the rental period will result in a new stay. A new affidavit must be completed for each stay that a tenant claims a sales tax exemption.)

First Day of current rental period (mm/dd/yy) _____ / _____ / _____

Tenant states to me at the time of sale that the rental of living quarters at this facility constitutes one of the following:

- Tenant's primary residence Rental is in connection with Education Rental is in connection with employment

Tenants Name -- (please print) last name first middle

The tenant has provided documentation, as outlined above, verifying the reason for the exemption from sales tax. I declare under the penalties of perjury that all statements made by me herein are true, to the best of my knowledge and belief.

Signature _____ Title _____
(Hotel Employee)