

SUMMARY: Establishes administrative rules regarding tax-exempt sales and explains the circumstances under which a retailer will be relieved of its burden of proving that sales to an entity described in Title 36, section 1760, including an agency or instrumentality of the Federal Government or of the State of Maine, are exempt from Maine Sales and Use Tax.

SECTION 1. Exempt sales generally; burden of proof

36 MRSA §1760 provides for exemption from the sales or use tax for sales to certain organizations (“exempt organizations”) and to certain government agencies. The tax exemptions provided by section 1760 to a person based upon its charitable, nonprofit or other public purposes apply only if the property or service purchased is intended to be used by the person primarily in the activity identified by the particular exemption. The burden of proving a sale is to an organization that is exempt under section 1760 is upon the person making the sale. The retailer is relieved of this burden of proof if it satisfies the provisions of this rule.

SECTION 2. Exemption certificates

A non-governmental entity must hold a Sales/Use Tax Exemption Certificate issued by Maine Revenue Services in order to make tax-free purchases. If the State Tax Assessor determines that an applicant qualifies for a Maine sales tax exemption, the assessor issues a numbered exemption certificate that identifies the name and address of the exempt organization together with the relevant exempt activity or activities and that states that the certificate may be used by the holder only when purchasing property or services intended to be used by the holder primarily in the exempt activity. A decision by the State Tax Assessor to deny an application for issuance of an exemption certificate constitutes a determination of the assessor that is subject to a petition for reconsideration pursuant to Title 36 §151.

SECTION 3. Responsibilities of retailer – sales to exempt organizations

Sales tax must be collected by the retailer on sales to entities that have not provided an exemption certificate to the retailer, and on sales of tangible personal property or services that are not related to the activity identified on the certificate issued to the entity. Retailers must maintain in their files a copy of the exemption certificate issued to any exempt organization to which they make a tax-exempt sale. Separate invoices of all tax-exempt sales must be retained by the retailer and appropriately

marked. The words “Maine Sales Tax Exempt,” together with a notation of the applicable exemption number, will satisfy this requirement.

Regardless of the specific method of payment, a retailer is not relieved of its burden of proving that a sale is exempt if the retailer has, at the time of the sale, knowledge of facts that give rise to a reasonable inference that the purchaser is not the holder of the exemption certificate, that the exemption certificate has been revoked or is otherwise invalid as of the time of the sale, or that the merchandise is not to be used exclusively by the exempt organization primarily in the activity identified on the exemption certificate.

1. Direct billing. Sales that are billed directly to an exempt organization may be made tax-exempt without a purchase order or any additional documentation.

2. Cash, personal check or personal bank card. Purchases paid for with cash or with a personal check, personal credit card or personal debit card may not be made tax-exempt unless the purchaser presents a purchase order issued by the exempt organization that identifies the specific item or items to be purchased. The retailer must retain the purchase order (or a copy) in its records.

Notwithstanding the above paragraph, sales made to employees or representatives of exempt organizations that are paid for with cash or with a personal check, personal credit card or personal debit card may be made exempt from tax if a magnetic customer card issued by the retailer to the exempt organization and identifying it as tax-exempt is presented at the time of the sale by the individual making the purchase and is recorded electronically by the retailer. The retailer must retain the digital information identifying the transaction and the purchaser. The customer card must:

A. Bear the name and signature of the specific individual authorized by the exempt organization to use it to make purchases; and

B. Contain a statement substantially identical to the following: “This card is to be used only by the individual named hereon for purchases authorized by [NAME OF EXEMPT ORGANIZATION]. If this card is used by the individual named hereon for any other purpose, the individual may be held liable for any applicable sales tax, together with associated interest and penalties, and, if used to intentionally evade sales tax due, may also be subject to criminal prosecution.”

3. Other credit or debit cards. Purchases paid for with a credit card or debit card that is issued to a tax-exempt organization and that has the name of the organization on the face of the card may be used for exempt sales only if the retailer retains documentation that identifies the exempt organization and the sale transaction date, sale price, item or items purchased and last four digits of the credit or debit card.

SECTION 4. Responsibilities of retailer – Government sales

Sales made directly to the Federal Government or the State of Maine or any of its political subdivisions are exempt from sales tax. Sales made directly to any unincorporated agency or instrumentality of either the Federal Government or the State of Maine, or to any of their wholly-owned incorporated agencies or instrumentalities, are also exempt. See Title 36, section 1760, subsection 2. In addition to any county, city,

town or plantation in the State of Maine, this exemption applies to sales to Maine School Districts and so-called “60-40” schools; water, power, parking and other districts in Maine established by legislative act as quasi-municipal corporations; village corporations; and the Maine Turnpike Authority. Governmental subdivisions, units, agencies and instrumentalities covered by Title 36, section 1760, subsection 2 are referred to in this rule as “governmental agencies.”

Governmental agencies are not required to obtain a Maine Sales/Use Tax Exemption Certificate. A retailer must always document tax-free sales to governmental agencies by listing the name of the governmental agency on the invoice or sales slip.

Regardless of the specific method of payment, a retailer is not relieved of its burden of proving that a sale to a governmental agency is exempt if the retailer has, at the time of the sale, knowledge of facts that give rise to a reasonable inference that the card is being used to make a personal purchase that is not tax-exempt or for any other purpose other than an official government purpose.

1. Direct billing. Sales that are billed directly to a governmental agency may be made tax-exempt without a purchase order or any additional documentation.

2. Cash, personal check or personal bank card. Purchases paid for with cash or with a personal check, personal credit card or personal debit card may not be made tax-exempt unless the individual making the purchase presents a purchase order issued by the governmental agency that identifies the specific item or items to be purchased. The retailer must retain the purchase order (or a copy) in its records and must identify the sale transaction on that document.

Notwithstanding the above paragraph, sales made to employees or representatives of governmental agencies that are paid for with cash, personal check, personal credit card or personal debit card may be made exempt from tax if a magnetic customer card issued by the retailer to the governmental agency is presented at the time of the sale by the individual making the purchase. The retailer must retain the digital information identifying the transaction and the purchaser. The customer card must:

A. Bear the name and signature of the specific individual authorized by the governmental agency to use it to make purchases; and

B. Contain a statement substantially identical to the following: “This card is to be used only by the individual named hereon for purchases authorized by [NAME OF GOVERNMENTAL AGENCY]. If this card is used by the individual named hereon for any other purpose, the individual may be held liable for any applicable sales tax, together with associated interest and penalties, and, if used to intentionally evade sales tax due, may also be subject to criminal prosecution.”

3. Other credit or debit cards. Purchases paid for with a credit card or debit card of the type described in paragraphs A and B may be made tax-exempt, but only if the retailer retains documentation that identifies the governmental agency and the sale transaction date, sale price, item or items purchased and the complete card number.

A. State of Maine. State of Maine Procurement Cards that are billed directly to the State of Maine.

B. United States Government. GSA SmartPay or SmartPay 2 cards that are billed directly to the U.S. Government.

STATUTORY AUTHORITY: 36 MRSA §1901

EFFECTIVE DATE:

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REPEALED and REPLACED:

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