



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 2

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## FUNERAL DIRECTORS

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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.

### 1. GENERALLY

Maine law provides that "sales of funeral services" are exempt from the Maine Sales and Use Tax. The State Tax Assessor construes "sales of funeral services" to mean sales of tangible personal property by a funeral director insofar as such sales are a necessary part of the preparation of a human body for burial or cremation, or a necessary part of the ceremony conducted by the funeral director prior to or in connection with the burial or cremation of a human body.

### 2. EXEMPT SALES

Sales by funeral directors of caskets, vaults, boxes, clothing, crematory urns, or other similar items generally referred to as "funeral furnishings", are exempt from tax.

### 3. TAXABLE SALES

Sales by a funeral director of items of tangible personal property that are not an integral part of the funeral service, or preparation for the service, are taxable. Every funeral director should be registered with Maine Revenue Services as a retailer for this purpose; see MRS Rule 301 (Sales for Resale and Sales of Packaging Materials) and Rule 304 (Sales Tax Returns and Payments). Common taxable items sold by funeral directors include flowers, keepsakes, pendants, register books, prayer cards, and acknowledgement cards.

Sales by other retailers in connection with funerals are also subject to sales tax. Examples of such sales would be sales of flowers by florists for delivery to a funeral and sales of tombstones by memorial works.

#### 4. PURCHASES

**a. Purchases for Own Use.** Purchases by a funeral director of materials and equipment used in preparing for and conducting a funeral service, rather than resold to a customer, are subject to Maine sales and use tax. Taxable items include but are not limited to furniture, motor vehicles, and materials and tools used in embalming (including fluids, chemicals, cosmetics and instruments). Funeral directors should pay sales tax on these items at the time of purchase. For items purchased from vendors located outside the State of Maine where tax was not paid to the supplier, the funeral director should report and pay the use tax on its monthly sales tax return.

**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. See also Instruction Bulletin No. 54 (“Resale Certificates”). 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 the purchase is for resale or not and will be held responsible for the tax on any item purchased for resale but subsequently used for any other purpose by the retailer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates may be subject to criminal prosecution.**

#### 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**

**§1752. Definitions**

**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.

**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) 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, 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;
- (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.

**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.

### **§1760. Exemptions**

Subject to the provisions of section 1760-C, no tax on sales, storage or use may be collected upon or in connection with:

...

**24. Funeral services.** Sales of funeral services.

### **1861. Imposition [of Use Tax]**

A tax is imposed, at the respective rate provided in section 1811, on the storage, use or other consumption in this State of tangible personal property or a service, the sale of which would be subject to tax under section 1764 or 1811. Every person so storing, using or otherwise consuming is liable for the tax until the person has paid the tax or has taken a receipt from the seller, as duly authorized by the assessor, showing that the seller has collected the sales or use tax, in which case the seller is liable for it. Retailers registered under section 1754-B or 1756 shall collect the tax and make remittance to the assessor. The amount of the tax payable by the purchaser is that provided in the case of sales taxes by section 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for the retailer's own use, use tax liability accrues at the date of withdrawal.