



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 13

SALES OF FUEL AND UTILITIES (Coal, Oil, and Wood; Electricity; Gas, Water)

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 sales of fuel and utilities. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) 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. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

1. ELECTRICITY

A. 750 KWH per Month Residential Exemption. All charges by an electric utility for the first 750 kilowatt-hours (KWH) per month of “residential electricity” are exempt, including charges for transportation and delivery and fuel adjustment charges whether or not those charges are separately stated. (See 36 MRSA § 1760, sub-§ 9-B) “Residential electricity” means electricity furnished to buildings designed and used for both human habitation and sleeping, with the exception of hotels.

i. Exempt Sales. For the purposes of this exemption, residential means:

a. Homes, mobile homes, boarding homes and apartment houses (see subsection iii below);

b. Common meters in apartment houses for the purpose of lighting hallways, laundry rooms, etc.;

c. Seasonal dwellings (except a tourist camp or trailer camp as defined in 36 MRSA § 1752, sub-§§ 19 and 20); and

d. Minimum residential billing with no usage of electricity.

See Sections 5 and 6 of this Bulletin for partial exemptions and other exempt sales.

- ii. **Taxable Sales.** The residential use exemption does **not** apply to the following:
 - a. Hotels, tourist and trailer camps, and overnight cabins;
 - b. The commercial aspect of a “Bed and Breakfast”;
 - c. Nursing homes (unless the nursing home is exempt from sales tax generally pursuant to 36 MRSA, § 1760, sub-§ (16)(B));
 - d. Mobile home parks;
 - e. Outside area lighting when separately metered or charged at a flat rate;
 - f. A home that is being constructed and has not yet been sold and is therefore not yet used for human habitation and sleeping; or
 - g. All commercial users except those listed in subparagraph i above.

iii. **Apartment Houses.** If two or more apartment units are billed on the same meter and the electric utility applies its tariff on a per-unit basis, each unit is allowed a 750 KWH per month exemption.

If two or more apartment units are billed on the same meter and the electric utility does not apply its tariff on a per-unit basis, only one 750 KWH allowance applies for all of the units collectively.

iv. **Water Heaters - Separately Metered.** A user of electricity who qualifies for exemption of the first 750 KWH per month and has an electric water heater on a separate meter is entitled to only one 750 KWH exemption per month. For example, if a user consumes 300 KWH for water heating and 600 KWH for other residential uses during a given month, sales tax applies to 150 KWH for that month (the amount by which the total usage exceeds 750 KWH).

v. **Billings Other Than Monthly.** In the case of bi-monthly and irregular billings, the following rules apply:

a. **Bi-monthly.** If the utility company bills once every two months, the first 1500 KWH for the two-month period are exempt.

b. **Initial and Final Billings.** If an initial or final billing is issued for a period of less than one month, the first 750 KWH on that bill are exempt. If the billing is for more than one month but less than two months, the first 1500 KWH for that period are exempt.

c. **Other Frequency Billings.** If a utility company regularly bills for periods other than monthly or bi-monthly, the exemption must be prorated. For example, a billing for a 45-day period would exempt the first 1,125 KWH.

d. **Multiple Vendors.** If more than one utility company bills a residential customer for portions of the same month, each utility company may exempt the first 750 KWH of electricity billed to the customer.

B. **Thermal storage devices.** Effective May 21, 2012, the law provides a sales tax exemption for off-peak residential electricity used for space heating or water heating by

means of an electric thermal storage device. (See 36 MRSA §1760(9-B)) This exemption is in addition to the “first 750 KWH per month” exemption discussed in Paragraph A above, but as a practical matter will only apply (and will therefore only need to be documented) in cases where (1) a residential user purchases more than 750 KWH of electricity in a given month; (2) the user employs an electric thermal storage device for space heating and/or water heating; and (3) the utility company that provides electricity to the user separately accounts for off-peak usage and separately meters electricity used in connection with the user’s thermal storage device. For purposes of this exemption, “off-peak residential electricity” means the off-peak delivery of residential electricity pursuant to tariffs on file with the Public Utilities Commission.

C. Exemption for Certain Commercial Activities. Electricity used by commercial farmers, commercial fishermen and commercial aquacultural businesses in their respective commercial activities or support operations may be purchased exempt from sales tax. (See 36 MRSA § 2013) This exemption is applied on a meter-by-meter basis. If a single meter is supplying electricity that will be used in both qualifying and non-qualifying activities, tax should be paid to the utility provider and the taxpayer should apply directly to Maine Revenue Services for a refund based on a pro-rata portion of the electricity used in the qualifying activity.

For purposes of this provision, the term “support activities” includes storage operations, maintenance operations, and related administrative activities, but does **not** include activities conducted by a separate business; wood harvesting and/or processing activities; construction activities; reselling products procured or produced by someone else; or unrelated administrative activities.

D. Billing, Collection and Remittance of Sales Tax

Electricity in Maine is provided by two separate companies; an electricity supplier, and a transmission and distribution (“T&D”) company. The electricity supplier sells electricity to consumers in a competitive market. The T&D company delivers the electricity over transmission lines that it maintains and services.

i. Sales by Competitive electricity providers. Where electricity is purchased from a competitive electricity provider (“CEP”), the competitive provider is the retailer selling the electricity and is responsible for registering, collecting and remitting sales and use tax. Even though the CEP may contract with a T&D company to provide billing functions, the CEP is liable for any collections made on its behalf by T&D companies, as well as for any tax that was required to be collected and is subsequently determined to be due.

a. Direct billings. If a CEP bills its customers directly, it should calculate the tax and remit the tax directly to the State Tax Assessor.

b. Contracting with T&D to provide billing functions. If a CEP contracts with a T&D company to provide billing functions, the T&D company should calculate and collect the appropriate tax on the entire sale. Tax attributable to sales of electricity, along with detailed supporting documentation, should then be forwarded to the CEP who must then complete the sales and use tax return for each period. If upon audit it is determined that tax was erroneously not collected on taxable transactions, the CEP will be assessed for the additional tax and applicable interest and penalties.

ii. Standard Offer Service. Electricity is automatically provided by the Standard Offer Service when a customer chooses not to purchase from a competitive electricity provider. This electricity is provided by a number of producers making up the standard offer pool. The Standard Offer Service contract requires the T&D company to “calculate, bill, collect and remit” sales tax on sales of electricity through the standard offer service. The T&D company will be held liable for the sales taxes collected.

Tax attributable to the sales of electricity and the transmission and distribution of electricity should be reported on the sales and use tax return of the T&D company for each period. The T&D company will be held liable for any tax that was required to be collected and subsequently determined to be due. If upon audit it is determined that tax was erroneously not collected on taxable transactions, Maine Revenue Services will assess the T&D company for the additional tax and applicable interest and penalties.

iii. Transmission and distribution of electricity. Separate charges for the transmission and distribution of electricity are subject to sales and use tax. (See 36 MRSA § 1752, sub-§ 17-B) The same exemptions that exist for the sale of electricity also apply to T&D charges.

iv. Changing suppliers during a billing period. Customers may choose to terminate receiving electricity through the standard offer service and begin purchasing from a competitive electricity provider, or vice-versa. In either event, such a change may not always occur at the beginning of a billing period that would affect the application of the sales tax exemption for the first 750 KWH for residential customers. Each CEP may apply the 750 KWH exemption to each residential customer for the month or portion of the month for which it is billing. Similarly, each T&D can apply the 750 KWH exemption to each residential customer for the month or portion of the month for which they are billing.

2. GAS

A. Exempt Residential Sales. Sales of gas are exempt from sales tax when bought for heating or cooking in buildings designed and used for both human habitation and sleeping. (See 36 MRSA § 1760, sub-§ 9-C) Exempt sales include sales to homes, mobile homes, boarding homes and apartment houses, and seasonal dwellings (except a tourist camp or trailer camp as defined in 36 MRSA § 1752, sub-§§ 19 and 20).

See Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.

- B. Taxable Sales.** The following sales of gas are taxable:
- i.** Sales to hotels, tourist and trailer camps, and overnight cabins;
 - ii.** Sales to nursing homes (unless the nursing home is exempt from sales tax generally pursuant to 36 MRSA § 1760 sub-§ (16)(B));
 - iii.** Sales to motor homes and travel trailers;
 - iv.** Sales to all commercial users except the exempt residential users listed in subsection A above;
 - v.** Sales of gas for heating a residential pool and/or garage;
 - vi.** Sales to a contractor for use in a home that is being constructed and has not yet been sold and is therefore not yet used for human habitation and sleeping; and
 - vii.** Sales of gas in 30-lb. or smaller containers, including the refilling of such containers. A dealer may make tax-free sales of such containers only when:
 - a.** The customer states that the container is being purchased for use in a residential building, and the dealer is able to accept the customer's representation in good faith – that is, the dealer does not believe or have any reason to believe that the customer is not purchasing the container for residential use; and
 - b.** The dealer has recorded the sale in a running log of all such sales made by that dealer. The log must be available for the inspection and review of the State Tax Assessor upon audit.
 - viii.** The commercial aspect of a “Bed and Breakfast”;

C. Bottled Gas Return/Exchange Program. Gas and/or propane can be purchased in a returnable container. When a customer returns an empty container and purchases a full container, and is billed a single non-itemized charge, sales tax applies to that entire charge. If the value of the fuel and the value of the container are separately stated, sales tax only applies to the value of the fuel.

3. COAL, OIL, WOOD & OTHER FUELS (EXCEPT GAS AND ELECTRICITY)

A. Exempt Residential Sales. Sales of coal, oil, wood and all fuels, other than gas and electricity, are exempt when purchased for cooking and heating in buildings designed and used for human habitation and sleeping. (See 36 MRSA § 1760, sub-§ 9) This includes homes, mobile homes, apartment houses, boarding homes, nursing homes, overnight cabins, and hotels; it also includes sales to a “bed and breakfast” that has both a permanent residence and rooms for rent.

- i.** Kerosene or home heating oil that is prepackaged or dispensed from a tank for retail sale is exempt from sales tax when sold in containers with a capacity of 5 gallons or less. A dealer may make tax-free sales of amounts in excess of 5 gallons if:

a. The customer states that the fuel is being purchased for residential use, and the dealer is able to accept the customer's representation in good faith – that is, the dealer does not believe or have any reason to believe that the customer is not purchasing the fuel for residential use; and

b. The dealer has accepted an affidavit or has recorded the sale in a running log of all such sales made by that dealer. The log must be available for the inspection and review of the State Tax Assessor upon audit.

ii. Over-the-counter sales of wood pellets and other 100% compressed wood products intended for use in a wood stove or fireplace are exempt when purchased in quantities of 1,000¹ pounds or less. A retailer may make tax-free over-the-counter sales of amounts in excess of 1,000 pounds if the same requirements as outlined in subsection i above are followed.

iii. A purchase of less than one cord of wood is presumed to be a purchase for use in residential cooking or heating and is therefore exempt².

See Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.

B. Taxable Sales. The following sales of coal, oil, wood and all fuels other than gas and electricity are taxable:

i. Sales to commercial users other than the exempt residential users listed in subsection A above.

ii. Sales of kerosene or home heating oil when dispersed from a retail tank into containers larger than 5 gallons. See subsection A above for exceptions.

iii. Sales of fuel for heating a residential outdoor pool and/or garage; and

iv. Sales to a contractor for use in a home that is being constructed and has not yet been sold and is therefore not yet used for human habitation and sleeping.

4. WATER

A. Exempt Residential Sales. Sales of water (including bottled water) are exempt when purchased for use in buildings designed and used for human habitation and sleeping, with the exception of hotels. (See 36 MRSA § 1760, sub-§ 39) Exempt sales include deliveries to homes, mobile homes, apartment houses, boarding homes, and nursing homes. Sales of water to trailer parks for use by the park tenants are also exempt, as are sales to owners of seasonal dwellings (other than tourist camps and trailer camps as defined in 36 MRSA § 1752, sub-§§ 19 and 20).

See Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.

B. Taxable Sales. Sales of water (including bottled water) are taxable when sold to hotels, tourist and trailer camps, overnight cabins, or to any commercial user other than the exempt residential users listed in subsection A above.

¹ Prior to May 21, 2012, the 1000 pound threshold was 200 pounds.

² Effective May 21, 2012.

C. Bottled Water. All sales of bottled water sold from retail locations are subject to tax.

5. PARTIAL EXEMPTIONS

A. Coal, Oil and Wood; Gas; Water. In situations where a portion of the use is taxable and a portion is exempt, the owner of the building must break down to the nearest 10% the taxable and nontaxable portions. The seller or utility, acting in good faith, may accept the estimate of the customer and should retain a copy of the letter or notification giving this breakdown.

Examples of dual or multiple uses are:

i. A hotel with publically accessible areas such as a restaurant or coffee shop; a meeting or convention hall; a pool, hot tub, sauna or fitness center; a retail shop; or a garage or other facility that is not located within the four walls of the building itself. A lounge or sitting room within the hotel is considered part of the exempt residential space.

ii. An apartment building that contains a retail store and/or management offices or other purely commercial areas. Laundry rooms and other common areas are part of the area designed and used for human habitation and sleeping.

iii. A residence that has a heated outdoor pool and/or garage, or a commercial business room or attachment. However, if the fuel is delivered into a separate tank that is only used to heat the garage and/or outdoor pool, or the commercial portion of the residence, the entire amount of that fuel is subject to sales tax. A heated indoor pool is considered part of the residence used for human habitation and sleeping.

iv. A residence in which a daycare business is operated, if the daycare business is served by the same fuel tank that serves the residence and is either (A) conducted in a space that is reserved for, and used solely by, the daycare business; or (B) physically separated from the rest of the residence. However, if the space used for the operation of the daycare business is served by a separate dedicated fuel tank, the entire amount of fuel delivered into such a tank is subject to sales tax. If the daycare is using the residential rooms and other common areas of the house, no proration is necessary and the entire amount of the fuel is exempt from sales and use tax.

v. A building that is used primarily for human habitation but that also contains a manufacturing site.

vi. A Bed and Breakfast.

B. Electricity. When electricity for both commercial and residential uses is sold on the same meter, it is considered to be for residential use if it is billed by the electric utility at residential rates, and the first 750 KWH per month are exempt. If it is billed by the electric utility at commercial rates, it is considered to be for commercial use and the exemption does not apply unless the use is primarily for one of the purposes listed in Section 1, subsection C. The tax may be prorated based on a square footage calculation. Tax applies to the percentage of the electric bill that is attributable to the commercial use

of the building. The 750 KWH residential exemption applies to the percentage of the bill that applies to the residential use.

C. Manufacturing.

i. Fuel and electricity. The Maine Sales and Use Tax Law does not totally exempt fuel or electricity sold for industrial purposes, except fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale. 95% of the sale price of fuel and electricity used at a manufacturing facility is exempt. (See 36 MRSA, § 1760, sub-§ 9-D) The remaining 5% is subject to the general sales and use tax rate. In the dual-use context, the owner of the building must break down to the nearest 10% the taxable and nontaxable portions.

ii. Water. Sales of water to industrial users are exempt only if the water will become an ingredient or component part of tangible personal property produced for sale, or if the water is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale. (See 36 MRSA § 1760, sub-§ (74)) The seller of water claimed exempt under one of these provisions should require the customer to furnish a blanket certificate of exemption in accordance with Rule 303.

6. OTHER EXEMPT SALES

A. Government Agencies. Sales made directly to the federal government, the State of Maine and political subdivisions of the State of Maine are exempt from sales tax. (See 36 MRSA § 1760, sub-§ 2) Sales to other states and their agencies and subdivisions are taxable. Sales to foreign countries and their missions and personnel may or may not be exempt from Maine sales tax. For more information on this subject, see the web site maintained by the US Department of State, Office of Foreign Missions, Tax Program at <http://www.state.gov/ofm/tax/> or call Maine Revenue Services. For more information on government and exempt organization sales generally, see Rule 302 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”).

B. Exempt Organizations. The Maine Sales and Use Tax Law provides exemptions for sales to various organizations such as hospitals, schools, regularly organized churches or houses of religious worship and a number of other types of organizations. For more information, see Rule 302 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”). Organizations that qualify for exemption must obtain exemption certificates from Maine Revenue Services in accordance with Rule 302, and sales should be made tax-free to these organizations only when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does not apply to purchases by the clergy, staff or employees of exempt organizations.

7. 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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