



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 41

MEDICINES, MEDICAL EQUIPMENT AND PROSTHETIC DEVICES

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 medicines, medical equipment and prosthetic devices. 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 Title 36 of the Maine Revised Statutes (“M.R.S.”). Both Title 36 and all MRS rules may be seen by clicking on “Laws and Rules” at the left side of the MRS website (www.maine.gov/revenue). Affidavits referenced in this bulletin can be viewed on the MRS website at www.maine.gov/revenue/forms/sales/salesforms.htm, while bulletins can be viewed at www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm.

1. PRESCRIPTION MEDICINES

Sales of medicines for human beings that are sold on a doctor’s prescription are exempt from sales tax. (See 36 M.R.S. § 1760(5).) “Medicines” means antibiotics, analgesics, antipyretics, stimulants, sedatives, antitoxins, anesthetics, antipruritics, hormones, antihistamines, certain “dermal fillers” (such as BoTox®), injectable contrast agents, vitamins, oxygen, vaccines, and other substances that are used in the prevention, diagnosis, or treatment of disease or injury and that either (1) require a prescription in order to be purchased or administered to the retail consumer or patient; or (2) are sold in packaging that contains a U.S. Food and Drug Administration OTC Drug Facts Label.

“Sold on a doctor’s prescription” means that a medical professional authorized by law to prescribe medicines for human beings dispensed or administered the medicine or a licensed pharmacist sold the medicine in accordance with a prescription issued by a medical professional authorized by law to prescribe medicines for human beings. Sales of medicines originally prescribed by a doctor on a refillable prescription are exempt when the prescription is refilled.

Bandages, dressings, sutures, swabs, hypodermics, diagnostic test kits, instruments, and similar items that may be used in the diagnosis and treatment of injury or disease are subject to tax when sold to any non-exempt purchaser. (Sales of items used only in the diagnosis or treatment of diabetes are exempt; see Section 6 below.) Bandages and dressings that contain medications are not medicines. Sales to individuals of “over-the-counter” drugs without a written prescription are taxable, even if the drug is purchased on the advice or recommendation

of a physician. There is no tax on nonprescription medicines purchased by a doctor for use in the doctor's medical practice.

2. MARIJUANA

Sales of marijuana do not qualify for exemption, even if they are made by a registered dispensary or registered primary caregiver under the Maine Medical Marijuana Act.

3. PROSTHETIC AIDS

Sales of prosthetic aids are exempt from sales tax. (See 36 M.R.S. § 1760(5-A).) "Prosthetic aids" means devices, including repair and replacement parts, worn on or in the human body to replace a missing portion of the body or to correct physical malformation or malfunction. The term "prosthetic aids" includes but is not limited to artificial limbs and eyes, hearing aids, eyeglasses and contact lenses, ostomy appliances, enteral feeding devices, dentures, crowns, caps and materials used in the repair or replacement of teeth such as dental amalgam and cement, and cardiac pacemakers.

Orthopedic or therapeutic devices and appliances that do not replace a functioning part of the human body or do not correct physical malformation or malfunction are not prosthetic aids. Sales of articles of this type are not covered by this exemption unless they constitute "artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity" (see Section 4 below). The exemption also does not cover mouth guards, even if they are custom-made from an impression of an individual's teeth.

Sales of non-corrective safety glasses, sport glasses and goggles, non-corrective sunglasses, opera glasses, magnifying glasses, platform magnifiers, non-corrective contact lenses, and similar items are not covered by this exemption. Sales of cleaning solutions and supplies for contact lenses and eyeglasses are likewise not covered by this exemption.

Sales of items ordinarily worn for cosmetic purposes, such as wigs, false eyelashes and makeup, are not covered by this exemption whether or not the need for them results from a medical condition.

4. ARTIFICIAL DEVICES

Sales of "artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity" are exempt from sales tax. (See 36 M.R.S. § 1760(5-A).) A device is designed for the use of a particular individual with a physical incapacity if the device has been manufactured or fabricated specifically for the individual or if the device has been molded to the individual to such a degree that it can be worn only by that individual. A product that is designed to be merely adjustable does not qualify for the exemption.

Sales of standardized or stock devices such as trusses, supports, neck or back braces, orthopedic shoes, athletic supporters, support hosiery, arch supporters, elastic bandages, and similar items are not covered by this exemption unless they meet the requirements in the paragraph above.

5. CRUTCHES AND WHEELCHAIRS

Crutches and wheelchairs, including repair and replacement parts, sold for the use of sick, injured, or disabled persons are exempt from sales tax. (See 36 M.R.S. § 1760(5-A).) “Crutches” include canes and walkers. Certain electric scooters and power chairs (but not “lift chairs”) fall within the classification of “wheelchairs” when they are designed and used to provide or increase the ability of a sick, injured, or disabled person to move from one place to another.

Sales of other items purchased to alleviate or compensate for impaired mobility are not covered by this exemption, including wheelchair lifts, motor vehicles that have been modified to make them operable by handicapped persons, and materials used in the construction of wheelchair ramps or other alterations to real property to make it accessible to handicapped persons. Sales of certain adaptive equipment for motor vehicles may be exempt under 36 M.R.S. § 1760(95), as explained below.

Purchases of crutches, canes, walkers, and wheelchairs to be rented are not covered by this exemption.

6. DIABETIC SUPPLIES

Sales of all equipment and supplies used in the diagnosis or treatment of diabetes are exempt from sales tax. This includes sales of insulin, antidiabetic drugs, diabetes testing supplies, and other items used only in the treatment of diabetes. (See 36 M.R.S. § 1760(33).)

Sales of items that are not used only in the diagnosis or treatment of diabetes, such as shoes, shoe inserts, compression socks, hypodermic syringes and needles, and that are not prescription medicines, are not covered by this exemption unless the purchaser provides written evidence, such as a statement from a doctor, that the patient has been diagnosed as diabetic, and that the items being purchased are to be used in the treatment of his or her diabetes. The retailer must maintain the written evidence provided by the purchaser to support the sales exemption.

7. SEEING EYE DOGS

Sales of tangible personal property and taxable services essential for the care and maintenance of Seeing Eye dogs used to aid any blind person are exempt from sales tax. (See 36 M.R.S. § 1760(35).)

Sales of dog food, veterinary medicines and supplies, and other items ordinarily used in the care and maintenance of domestic dogs will be presumed to qualify for this exemption when sold for use by a blind person who has a Seeing Eye dog. The retailer must maintain records of exempt sales of tangible personal property for a Seeing Eye dog and must have as a part of that record the name and address of the blind person who owns the Seeing Eye dog.

8. POSITIVE AIRWAY PRESSURE EQUIPMENT

Sales of positive airway pressure (“PAP”) equipment and supplies sold or leased for personal use are exempt from sales tax. (See 36 M.R.S. § 1760(94).) “Positive airway pressure equipment and supplies” means continuous positive air pressure and bi-level positive air pressure equipment and supplies, and repair and replacement parts for such equipment, used in respiratory

ventilation. “Personal use” means for use in a person’s home, as opposed to use by a business, such as a doctor’s office. Retailers are exempt from sales tax when purchasing PAP equipment and supplies for resale. Persons engaged in the business of renting PAP equipment are exempt when purchasing PAP equipment for rental for the personal use by their customer.

9. CERTAIN ADAPTIVE EQUIPMENT

Sales of adaptive equipment for installation in or on a motor vehicle to make that vehicle operable or accessible by a person with a disability are exempt from sales tax. (See 36 M.R.S. § 1760(95).) To qualify for the exemption, the purchase must have been made by a person, or at the direction of a person, who has been issued a disability plate or placard by the Secretary of State pursuant to 29-A M.R.S. § 521.

The exemption applies only to the sale of adaptive equipment to be installed in or on a motor vehicle. The exemption does not apply to the sale of a motor vehicle that will be or has been modified with adaptive equipment.

Purchasers of such equipment must provide an “Affidavit for Purchase of Adaptive Equipment” to the retailer to document the transaction as exempt.

10. SALES TO EXEMPT ORGANIZATIONS

Sales to various organizations such as hospitals, schools, regularly organized churches or houses of religious worship, and a number of other types of organizations are exempt from sales tax. For more information, see Rule 302 (“Sales for Resale and Sales of Packaging Materials”) and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”). Sales would 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 when not made on behalf of the organization.

11. THIRD PARTY PAYMENTS

Payment for medicines, medical equipment, and prosthetic devices is often received from a party other than the consumer of the goods. The third-party payer may be an insurance company, a state agency, a municipality or Medicare/Medicaid. Even though the third-party payer may be an organization that is exempt from sales tax, the transaction is a sale to the consumer, not to the exempt organization. If the transaction is otherwise taxable, sales tax applies even when billed to the exempt organization.

12. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the sales and use tax law faced by taxpayers with respect to sales of medicines, medical equipment and prosthetic devices. It is not intended to be all-inclusive. Requests for information on specific situations must be in writing, must contain full information as to the transaction in question, and must be directed to:

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