



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 44

COMMERCIAL FISHING

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 persons involved in the commercial fishing industry. 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 the Maine Revised Statutes, 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. General Information

Persons engaged in commercial fishing activities are authorized to use an exemption card to purchase electricity and depreciable machinery and equipment exempt from Maine sales and use tax. See Title 36 Section 2013(3). Effective October 1, 2011, the exemption card may also be used for the tax-free purchase of fuel for use in a commercial fishing vessel.

See Maine Revenue Services Rule 323 for definitions of qualifying activities, guidelines for the issuance of the exemption card, and restrictions on the use of the card.

2. Certificate of Exemption

A. Issuance

A certificate of exemption (“exemption card”) will be issued to qualifying persons who submit a properly completed application to Maine Revenue Services. An application may be obtained electronically at <http://www.maine.gov/revenue/forms/sales/salesforms.htm> or by contacting Maine Revenue Services at the address found at the end of this bulletin. As proof that the person is engaged in commercial fishing, the application must be accompanied by the person’s current commercial fishing license and boat registration, together with one of the following, from the person’s most recent income tax filing:

- If a sole proprietor: Complete federal income tax return, including Schedule C, (including Part III – “Cost of Goods Sold”)
- If a corporation: Federal Form 1120 or Form 1120S, Pages 1-3

- If a partnership: Federal Form 1065, Pages 1 & 2
- If Canadian, Complete Form T2121

Upon the issuance of an exemption card, the purchaser may use the card when making qualified tax-free purchases of fuel, electricity, machinery, equipment and repair parts. The purchaser must provide the seller with a copy of the exemption card and a completed affidavit of exemption.

Exemption cards are valid for a maximum of four years and may be used only by the person named on the card.

B. Exceptions

Exemption cards will not be issued to the following persons:

(1) Persons who are in their first year of commercial fishing operations and cannot provide a copy of their applicable federal income tax return. Persons in this category must pay tax to their suppliers on all purchases. When the federal income tax return is filed and a copy of the return with all relevant attachments is available, the person may apply to Maine Revenue Services for an exemption card and for refunds on qualifying purchases made during the first year of operation.

(2) Persons who are primarily engaged in a related but non-qualifying business activity. Persons in this category must pay tax to their suppliers on all purchases and may apply to Maine Revenue Services for refunds on qualifying purchases.

(3) Lessors of fishing equipment. There is no provision in the law under which lessors may purchase items for lease to commercial fishermen exempt from tax. Accordingly, exemption cards will not be issued to lessors of fishing equipment. A lessor that purchases items to be leased for use directly and primarily in commercial fishing must pay tax to the seller and apply to Maine Revenue Services for refund of the tax paid.

See Section 4 below for information on applying for refunds.

3. Use of Exemption Card

A. Qualifying machinery and equipment

In order to qualify for this exemption, machinery or equipment must meet three tests. Machinery or equipment must:

- (1) Be used directly in commercial fishing;
- (2) Be used primarily in commercial fishing; and
- (3) Be depreciable for Federal Income Tax purposes. See C(6) below for certain restrictions.

Definitions of “commercial fishing”, “directly”, “primarily” and “depreciable” can be found in Rule 323, Section .01. The definition of “commercial fishing” and

“depreciable machinery and equipment” as it relates to commercial fishing can be found in Title 36 Section 2013, subsection 1(B) and 1(C)(2).

Some of the more common items that typically qualify for exemption are the following:

Anchors	Fire Extinguisher	Nets
Antennas-CB	First Aid Kits	Paint (Boat Building)
Bait Bags	Fish Scanner	Plotter
Batteries	Fish Totes	Pneumatic Controls
Boats	Flares	Pot Haulers
Bow Thruster	Foghorn	Pumps & Parts
Buckets	Foul Weather Gear	Radar Equipment
Buoys	Gloves	Resin
Cables	Haulers	Rope
CB Radio	Heaters-Boat	Rub Rails
Chains	Hooks	Rubber Mats
Color Sounder	Hoops	Scanners
Communication Radios	Horns	Screws, bolts, nuts, washers
Depth Finder	Hoses	Seine Nets
Depth Sounder	Hydraulics	Shackles
Draggers	Insulation-Boat	Survival Suits
Engine Parts	Life Equipment	Tackle
Engines	Life Rafts	Tags
Fasteners	Lights	Trap Stock
Fiberglass	Long Lines	Traps
(Boat Building)	Lorans	Vents
Fiberglass Cloth	Lumber (Boat Building)	
(Boat Building)	Motors	
Filters	Net Floats	

Materials incorporated in the construction of a boat used in commercial fishing also qualify for exemption. Maine Revenue Services provides an affidavit form that can be used for purchasing construction materials for a qualifying commercial fishing vessel.

Care should be exercised in determining whether a particular item qualifies for exemption. Although the seller is relieved from the burden of charging tax at the time of sale when a copy of the exemption card and purchaser’s affidavit are on file, the purchaser is subject to audit and will be assessed tax, including interest and penalties, on the purchase of non-qualifying machinery and equipment. If you have any doubt as to whether tax is due on a particular item, contact Maine Revenue Services for a determination.

B. Electricity and fuel

Electricity used by commercial fishermen in commercial fishing activities or support operations may be purchased exempt from sales tax. This exemption is applied on a meter-by-meter basis. If a single meter supplies electricity that will be used in both qualifying and non-qualifying activities, tax should be paid to the utility provider and the fisherman 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, support activities include storage operations, maintenance operations, and related administrative activities. Support activities **do not** include: activities conducted by a separate business; reselling products procured or produced by someone else; and unrelated administrative activities.

Effective October 1, 2011, purchases of fuel for use in a commercial fishing vessel may also be made exempt from tax. This includes fuel used in the fishing vessel for propulsion as well as fuel used in the fishing vessel to operate machinery and equipment. Fuel used to propel a skiff that is used as a means of transportation from the dock to the fishing vessel also qualifies for exemption.

C. Restrictions of Use of Exemption Card

The exemption card may not be used to purchase any of the following items:

- (1) Non-qualifying machinery and equipment;
- (2) Motor vehicles, trailers, snowmobiles, and ATV's;
- (3) Consumable tools and supplies such as lubricants, coolants, solvents, and cleaning supplies;
- (4) Fuels (other than fuel for use in a commercial fishing vessel);
- (5) Items incorporated in real property such as docks, fencing, storage buildings, special purpose buildings, heating or ventilation systems and construction materials;
- (6) Items that are not 100% depreciable as commercial fishing equipment;
- (7) Items that are not commonly used in commercial fishing; or
- (8) Electricity servicing separate businesses or non-qualifying activities.

See also Rule 323, Sections 1, 4 and 5.

D. Burden of Proof - Affidavit of Exemption

A completed affidavit of exemption, as provided in this bulletin, along with a copy of the exemption card, must be presented to the seller and retained in the seller's file in order to document that the purchase is exempt from tax. It is not necessary to present an affidavit for each purchase.

The burden of proving that a sale is to a person that has been issued an exemption card and is for use in commercial fishing is on the person making the sale.

Invoices must be appropriately marked to indicate that they are exempt sales. This requirement is satisfied by the purchaser's exemption card and the words "Maine Sales Tax Exempt."

By signing the affidavit of exemption, the purchaser is attesting to the fact that the items being purchased from the seller qualify for exemption. If non-exempt items are purchased without payment of sales tax, the purchaser will be subject to a use tax assessment. Misuse of the affidavit will result in the cancellation of the exemption card and may subject the purchaser to prosecution.

4. Refunds

Applications for refund of tax paid on fuel, electricity and depreciable machinery and equipment used directly and primarily in commercial fishing may be made when:

- i. Items purchased under Section 3, sub-section C (6) & (7) above qualify as depreciable machinery and equipment but can not be purchased exempt with the exemption card. If during its total time in use a unit of machinery and equipment is used more than 50% of the time but less than 100% of the time directly in commercial fishing, and is only partially depreciable under the United States Internal Revenue Code because it is used the remainder of the time for personal reasons, and reimbursement of the sales tax will be prorated accordingly. **EXAMPLE:** If a unit of machinery or equipment is 60% depreciable under the Internal Revenue Code because it is only used 60% of the time in commercial fishing, 60% of the sales tax will be refunded, provided that the other requirements are satisfied. If the unit is depreciable at 50% or less under the Internal Revenue Code because it is used 50% or less of the time in commercial fishing, the purchaser will not be entitled to any refund of sales or use tax paid;
- ii. Electricity and depreciable machinery and equipment was purchased for use in commercial fishing by a person who does not qualify for an exemption card;
- iii. Fuel was purchased for use in a commercial fishing vessel by a person who does not qualify for an exemption card;
- iv. Lessors purchase depreciable machinery and equipment for lease to persons engaged in commercial fishing.
- v. One meter is supplying electricity for both qualifying and non-qualifying activities;
- vi. Qualifying items are purchased during the first year of a commercial fishing operation while the person was not the holder of a valid exemption card; and
- vii. Qualifying items are purchased by a person primarily engaged in a related but non-qualifying business activity.

A. Refund to user

An application for a partial or total refund of sales tax must be submitted on a form supplied by Maine Revenue Services within 36 months of the date of purchase. The application must be completely filled out and must include a copy (duplicate) of the

invoice showing that the tax was paid, to whom it was paid, and the date of payment. A copy of the purchaser's most recent relevant tax form filed with the Internal Revenue Service must be attached, showing that the purchaser is in fact engaged in commercial fishing and that the purchased machinery or equipment is depreciable for those purposes. Applications for refund may be obtained on our website at <http://www.maine.gov/revenue/forms/sales/salesforms.htm> or by contacting Maine Revenue Services at the address found at the end of this bulletin.

Persons who have previously received a refund of tax paid on depreciable machinery or equipment, or who have been issued an exemption card valid on the date of purchase, need not submit a copy of the applicable form with subsequent applications unless there has been a change in the business, or unless specifically requested to do so by Maine Revenue Services.

Supporting documents such as invoices and schedules will not be returned to the applicant (but the applicant may request copies).

B. Refund to Lessor

Lessors of machinery and equipment for use directly and primarily in commercial fishing may submit an application for refund of Maine sales and use tax in the same manner as persons purchasing such machinery or equipment for their own use. The application must be accompanied by a copy of the lease agreement as well as a copy of the invoice showing that the tax was paid and to whom, a copy of the lessee's exemption card valid on the date of execution of the lease and a properly executed affidavit of exemption. If the lessee has not been issued an exemption card, a copy of the applicable form from the lessee's most recent filing under the Internal Revenue Code must be submitted in support of the lessor's application for refund, either by the lessor or by the lessee directly to Maine Revenue Services.

Support documents such as invoices and schedules will not be returned to the applicant (but the applicant may request copies).

Application for refund must be filed with the State Tax Assessor within 36 months of the date of execution of the lease.

5. Items Purchased Outside of Maine

Persons who purchase tangible personal property outside the State of Maine on which Maine sales or use tax would normally be due, but which would qualify for refund as machinery and equipment for use directly and primarily in commercial fishing must submit an application indicating that Maine sales or use tax has not been paid and requesting a ruling as to taxability. The sales tax refund application may be used for this purpose. The purchaser will be notified whether or not a tax liability exists.

A request for ruling is not necessary if the person is the holder of a valid exemption card and the purchase would have qualified for exemption had the purchase occurred in Maine.

There is no provision in the Maine Sales and Use Tax Law for refund of sales or use tax paid to another state or a foreign country and no such refunds will be made. Such a refund must be obtained from the state in which the item was purchased, if allowable in that state.

6. 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 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: 1-888-577-6690**

Or visit our website at www.state.me.us/revenue

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MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

AFFIDAVIT OF EXEMPTION

For purchases of electricity or depreciable machinery or equipment for use in commercial agricultural production, commercial fishing or commercial aquacultural production, and fuel used in a commercial fishing vessel pursuant to Section 2013 of the Maine Sales and Use Tax Law.

I hereby certify that I hold a valid exemption certificate, No. _____, issued pursuant to Section 2013 of the Sales and Use Tax Law, that I am engaged in commercial agricultural production of _____ or in the commercial fishing of _____ or commercial aquacultural production of _____ and that the electricity or depreciable machinery or equipment or fuel to be purchased from _____ is exempt for the reason(s) indicated below:

- a. Depreciable machinery or equipment used directly and primarily in commercial agricultural production;
- b. Depreciable machinery or equipment used directly and primarily in commercial fishing;
- c. Depreciable machinery or equipment used directly and primarily in commercial aquacultural production;
- d. Repair parts for depreciable machinery or equipment qualifying for exemption under (a) (b) or (c) above.
- e. Electricity for use in commercial agriculture, commercial fishing or commercial aquaculture. Utility Account No. _____
- f. Fuel purchased for use in a commercial fishing vessel.

I also certify that the depreciable machinery or equipment purchased through this affidavit will be used by me directly and primarily in commercial agricultural production, commercial fishing or commercial aquacultural production and is 100% depreciable for Federal Income Tax purposes; or that the electricity purchased will be used in qualifying activities or support operations; or that the fuel will only be used in a commercial fishing vessel.

I further certify that I assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.

Name of Individual or Corporation

Business Name (if different)

Signature

Title

Date

SEE NEXT PAGE FOR ADDITIONAL INFORMATION

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GENERAL RESTRICTIONS FOR USE OF THIS AFFIDAVIT OF EXEMPTION

This affidavit is to be retained in the records of the seller to document the qualification of exemption of any sale claimed exempt under 36 M.R.S.A. § 2013(3). **It must be accompanied by a copy of the purchaser's Certificate of Exemption issued by Maine Revenue Services, valid at the time of sale.** A copy of the Certificate and Affidavit need to be obtained by the seller on each subsequent purchase. However, if the purchaser indicates that a certain purchase is exempt pursuant to this affidavit, the invoice must be appropriately marked to indicate the exempt sale. The words "Commercial Agricultural Exemption", "Commercial Fishing Exemption" or "Commercial Aquacultural Exemption" will satisfy this requirement.

This affidavit must be taken in good faith by the seller. The good faith of the seller will be questioned if the seller knows, or has reason to know, that the person making the purchase is not the holder of the Certificate of Exemption, or that the machinery or equipment purchased will not be used by the purchaser directly and primarily in commercial agricultural production, commercial fishing or commercial aquacultural production or that the electricity purchased will not be used by the purchaser for qualifying activities or support operations.

This affidavit is valid for purchases of depreciable machinery or equipment, including repair parts for qualifying machinery or equipment, used directly and primarily in commercial agricultural production, commercial fishing or commercial aquacultural production and fuel purchased on or after October 1, 2011 for a commercial fishing vessel. In addition the affidavit should be used when purchasing electricity for commercial agricultural production, commercial fishing, and commercial aquacultural production. This affidavit is not to be used for the purchase of the following items:

- (1) Machinery or equipment not 100% depreciable for Federal Income Tax purposes.
- (2) Items not commonly used in commercial agricultural production, commercial fishing or commercial aquacultural production, such as lawn and garden tractors, fork lift trucks, lag tractors, backhoe tractors, computers etc.
- (3) Motor vehicles including all terrain vehicles (ATVs) and snowmobiles.
- (4) Attachments for motor vehicles such as fertilizer bodies and potato bulk bodies.
- (5) Trailers.
- (6) Materials to be incorporated into real property such as building materials, heating systems and ventilating systems.
- (7) Silos.

Misuse of Affidavit of Exemption

Purchasers who avoid payment of tax through deliberate misuse of this affidavit of exemption will be subject to prosecution.

Additional Information

Please refer to Sales/Excise Tax Section Instruction Bulletin No. 45 (Commercial Agricultural Production), Bulletin No. 44 (Commercial Fishing) or Bulletin No. 49 (Commercial Aquacultural Production) for further details regarding qualifications and requirements. Requests for information on specific situations should be in writing, should contain full information as to the situation in question and should be directed to:

MAINE REVENUE SERVICES
SALES/EXCISE TAX DIVISION
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AUGUSTA, MAINE 04332-1065
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