



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 43

REGISTRATION OF OUT-OF-STATE SELLERS AND OTHER PERSONS

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 provide guidance to business entities located outside of Maine in determining whether they are required to register as a retailer with Maine Revenue Services (“MRS”).

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although MRS bulletins 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.”). Title 36, MRS rules, instructional bulletins, and applications referenced in this bulletin may be viewed on the MRS website, www.maine.gov/revenue.

Section 1754-B of Title 36 sets forth the mandatory Sales and Use Tax registration provisions for sellers (and certain agents and contractors of sellers) of tangible personal property or taxable services.

Businesses that are subject to mandatory registration or wish to register voluntarily should obtain an “Application for Sales and Use Tax Registration” from MRS.

1. MANDATORY SELLER AND LESSOR REGISTRATION

The following persons must register with MRS as a retailer and collect and remit sales and use taxes if they make sales of tangible personal property or taxable services in Maine.

A. PLACE OF BUSINESS IN MAINE. Every seller that maintains a place of business in Maine. A “place of business” includes, but is not limited to, any office, manufacturing facility, distribution facility, warehouse or storage facility, or sales or sample room.

B. RETAIL SALES MADE OR SOLICITED WITHIN MAINE. Every seller that does not maintain a place of business in Maine but makes retail sales in Maine, or solicits orders for such sales through salespeople in Maine. “Salespeople” includes employees as well as any persons who act as representatives, solicitors, salespersons, or independent selling agents for the seller.

C. LEASES OF TANGIBLE PERSONAL PROPERTY LOCATED IN MAINE. Every lessor engaged in the leasing of tangible personal property that is located in Maine who does not maintain a place of business in Maine but makes retail sales to purchasers in Maine. A lessor is engaged in making retail sales in Maine when it executes a “lease in lieu of purchase” in Maine, accepts a lessee’s option to purchase in Maine, or sells previously rented property in Maine.

D. OTHER SUBSTANTIAL PHYSICAL PRESENCE IN MAINE. Every seller that has a substantial physical presence in Maine sufficient to satisfy the requirements of the due process and commerce clauses of the U.S. Constitution. Substantial physical presence includes, but is not limited to, the seller’s ownership of, or leasehold interest in, real property in Maine; the seller’s purposeful use in Maine of personal property to conduct any part of its business; or activity in Maine by the seller’s employees, contractors, or other persons that is associated with maintaining a market for the seller’s products. Examples of such activities include:

- Delivery of tangible personal property by the seller into Maine by means of the seller’s own vehicles, or by means of a third-party carrier other than an interstate common carrier.
- Repair or installation of tangible personal property by the seller’s own employees or by a third party contracted by the seller.

2. MANDATORY REGISTRATION BY OTHER PERSONS

The following persons must also register with MRS as a retailer and collect and remit sales and use taxes accordingly.

A. Every person that has a substantial physical presence in Maine and makes sales of tangible personal property or taxable services in Maine on behalf of a seller outside of Maine that does not hold a valid registration certificate.

B. Every person that has a substantial physical presence in Maine that engages in sales or distribution activity in Maine on behalf of a seller and who receives compensation by reason of the principal’s sales of tangible personal property or taxable services made outside Maine for use or other consumption in Maine.

C. Every person that acts as a manager or operator of, or who otherwise collects rents on behalf of, a hotel, rooming house, or tourist or trailer camp in Maine, including operators of transient rental platforms and room remarketers. For more information on the registration requirement for transient rental platforms and room remarketers, see Instructional Bulletin No. 32 (“Rentals of Living Quarters”).

D. Every person that acts as a consignment agent and makes retail sales of tangible personal property or taxable services in Maine on behalf of the owner of the property or provider of the services.

E. Every person required to register as a condition of doing business with the State pursuant to 5 M.R.S. § 1825-B(14).

F. Every person that holds a wine direct shipper license issued under 28-A M.R.S. § 1403-A.

3. REMOTE SELLER REGISTRATION

A person making sales of tangible personal property, products transferred electronically, or taxable services is required to register with MRS as a retailer and must collect and remit sales tax on sales delivered into Maine if the person's total gross sales in Maine of tangible personal property or taxable services in the previous calendar year or current calendar year exceed \$100,000.

A remote seller is required to register with MRS and begin collecting and remitting the sales tax on their sales on or before the first day of the first month that begins at least thirty days after the remote seller exceeds the nexus-establishing threshold in Maine.

Example: ABC Corporation's gross sales in Maine in the current calendar year exceed \$100,000 on May 15. ABC Corporation must register with MRS and begin collecting the sales tax on Maine sales on or before July 1.

A remote seller may cancel their registration with Maine when their gross sales or transactions into Maine do not exceed the threshold for two consecutive calendar years following their registration.

Example: ABC Corporation registered with Maine on July 1, 2021, after exceeding the \$100,000 gross sales threshold. During calendar year 2022, ABC Corporation's sales into Maine did not exceed \$100,000, but ABC Corporation is still required to remain registered because they exceeded the \$100,000 threshold in the prior calendar year. ABC Corporation does not exceed the \$100,000 threshold in calendar year 2023. Therefore, ABC Corporation may cancel their registration with an end date of December 31, 2023, as they had not exceeded the \$100,000 threshold in either the previous or current calendar year.

ABC Corporation would need to newly register should the company exceed the \$100,000 threshold in a future calendar year.

4. MARKETPLACE FACILITATOR REGISTRATION

A marketplace facilitator is required to register with MRS as a retailer for the purposes of collecting and remitting the sales tax on all sales of tangible personal property or taxable services made through the marketplace in Maine, including those sales facilitated on behalf of a marketplace seller and direct sales made by the marketplace facilitator, if the marketplace facilitator's gross sales from delivery of tangible personal property or taxable services into Maine in the previous calendar year or current calendar year exceeds \$100,000.

For the purposes of determining if the marketplace facilitator exceeds this threshold, the marketplace facilitator's gross sales include sales facilitated on behalf of marketplace sellers and any sales of tangible personal property or taxable services made directly by the marketplace facilitator.

A marketplace facilitator is required to register with MRS and begin collecting and remitting the sales tax on their sales on or before the first day of the first month that begins at least thirty days after the marketplace facilitator exceeds the nexus-establishing threshold in Maine.

Example: ABC Marketplace's gross sales – including facilitated sales – in Maine in the current calendar year exceed \$100,000 on May 15, 2021. ABC Marketplace must register with MRS and begin collecting the sales tax on Maine sales on or before July 1, 2021.

A marketplace facilitator may cancel their registration with Maine when their gross sales do not exceed the threshold for two consecutive calendar years following their registration.

Example: ABC Marketplace registered with Maine on July 1, 2021, after exceeding the \$100,000 gross sales threshold. During calendar year 2022, ABC Marketplace's sales did not exceed \$100,000, but ABC Marketplace is required to remain registered because they did exceed the \$100,000 threshold in the previous calendar year. ABC Marketplace does not exceed the \$100,000 threshold in calendar year 2023. Therefore, ABC Marketplace may cancel their registration with an end date of December 31, 2023, as they had not exceeded the \$100,000 threshold in either the previous or current calendar year.

ABC Marketplace would need to newly register should the company exceed the \$100,000 threshold in a future calendar year.

5. LIMITED EXCLUSIONS

The seller registration statute provides limited exclusions from the obligation to register as a retailer if the seller engages in certain activities that, by themselves, do not establish a presence in Maine sufficient to require registration. See 36 M.R.S. § 1754-B(1-C). These limited “safe harbor” activities are:

A. Solicitation of business in Maine through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the U.S. mail or by an interstate third-party common carrier.

Example: ABC Corporation is an out-of-state corporation with no activity in Maine other than soliciting orders worldwide via catalogs mailed into Maine, and its sales to Maine customers are delivered to customers in Maine by common carrier.

B. Attending trade shows, seminars or conventions in Maine.

Example: ABC Corporation is an out-of-state corporation that sends employees annually to a seminar in Maine for training purposes only. The employees do not solicit sales while in Maine.

C. Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in Maine.

D. Maintaining a bank account or banking relationship in Maine.

E. Using a vendor in Maine for printing.

6. VOLUNTARY REGISTRATION

Businesses not subject to mandatory registration may voluntarily register under 36 M.R.S. § 1756. Section 1756 provides that the liability of voluntary registrants may be limited to tax actually collected. In order to take advantage of this provision, the business should make clear in its application that registration is being made voluntarily under section 1756.

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:

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