



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 32

RENTAL OF LIVING QUARTERS

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 the rental of living quarters. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although Maine Revenue Services (“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 MRSA (“Maine Revised Statutes Annotated”) Title 36. The Service Provider Tax Law is found in Part 4, Chapter 358. Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

Note that Title 36 section 1811 imposes sales and use tax on the value of rental of living quarters at a higher rate than the generally applicable sales tax rate. The use of the term “hotel” in this bulletin means hotel, motel, rooming house, cottage, camp, condominium unit, vacation home, tourist camp, trailer camp, watercraft and campground and any building or structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants.

1. TAXABLE RENTALS

The Maine Sales and Use Tax Law imposes a tax on “rental of living quarters in any hotel, rooming house, tourist or trailer camp” including casual rentals. (See 36 MRSA § 1811) (See 36 MRSA §§ 1751(4), (6), (12), (19) and (20) for definitions of these terms.) Every person who owns, manages or operates, in the regular course of business or on a casual basis, a hotel or who collects or receives rental payments on behalf of the owner, manager or operator, must register for and collect Maine sales tax on the rentals. A property does not have to be advertised or held out to the public at large in order for rentals of the property to be taxable. (See 36 MRSA § 1754-B)

2. EXEMPTIONS

A. Casual Rentals for fewer than 15 days. In most cases, a person who has only one rental unit, such as a room, a single camp or a condominium unit for rent and rents it for fewer than 15 days each calendar year is not considered a “retailer” and is not required to collect sales tax on those rentals. (See 36 MRSA § 1764) However, if the property has been placed in the hands of a real estate agent or other person engaged in the business of renting or managing rentals of living quarters, that agent must collect and report sales tax on the rental, regardless of the length of time the property is rented.

B. Occupancy for 28 days or more. Rental charged to any person who rents continuously for 28 days or more in the same hotel is exempt from sales tax if the living quarters are a person's primary residence, or if the rental is in connection with education or employment. (See 36 MRSA § 1760(20)) An affidavit of exemption for 28-days continuous rental should be completed by the tenant and by the hotel. The affidavit is attached to this bulletin and may be found on the Maine Revenue Services website. If tax has been paid by the person during the initial 28-day period, the tax should be refunded by the retailer (lessor). If the retailer (lessor) has reported and paid the tax to the State, the retailer should take a corresponding credit on the Sales and Use Tax Return filed for the period in which the refund or credit occurred by adjusting the "Taxable Rentals" figure shown on the return.

(1) "Continuous residence" is determined by continuous rental of the quarters, rather than by actual occupancy of the quarters. Continuous residence is not interrupted merely by changing rooms within the same facility. Continuous residence is also not interrupted by the fact that the rental unit may be occupied at various times by different individuals, such as when an airline or construction company rents a room or block of rooms for employees who may come and go for work purposes, provided that the unit is rented and paid for by one person (i.e., the airline or construction company) for the qualifying 28 days.

(2) "Primary residence" means the residence maintained at the location in which the individual is domiciled. "Domicile" is the place where an individual has his or her true, fixed and permanent home, which is typically the location where an individual has the most significant legal ties (e.g. driver's license, voting registration, vehicle registration, ownership of real property, enrollment of children in school systems, etc.).

Examples of situations where the tenant's primary residence is not the facility being rented are an out-of-state resident vacationing in Maine or a Maine resident with a home in Bangor who is vacationing on the coast. An example of a situation where the tenant's primary residence is the facility being rented is an individual who is renting a house, condominium, or apartment and does not maintain a primary residence elsewhere.

(3) "In connection with education" means in connection with education from an accredited secondary school or college at which the person is enrolled in a diploma or degree program. If a person claims that the rental is in connection with education, that person must provide the facility with a statement from the school that the tenant is enrolled in a program.

(4) "In connection with employment" means that the tenant is residing away from the tenant's primary residence due to job requirements such as an electrical contractor in northern Maine who has a job in southern Maine, a professor who is temporarily reassigned to another college, or a representative of a company who is temporarily assigned to Maine to oversee the installation and operation of its product. A person who is residing away from a primary residence while seeking employment does not meet the exemption, nor would a person who is making occasional business contacts while vacationing in Maine. If a person claims that

the rental is in connection with employment, that person must provide the facility with a statement from the employer that the rental is required by the person's employment.

C. Gratuities and Service Charges. When a customer provides a tip for an employee of a seller, the tip is not part of the sale price and is exempt from sales tax whether given directly to the employee in cash or added by the customer to a charge account, as long as the tip is separately stated from the sale price and is provided wholly in the discretion or judgment of the customer. If added to a charge account, the tip is exempt only if the full amount of the tip is turned over to the employee by the seller.

A separately stated amount or flat percentage charged or collected in lieu of a gratuity, and designated as a service charge by the seller, is not part of the taxable sale price when it is disbursed by the seller to employees as wages. Otherwise, service charges must be included in the rental receipts subject to sales tax even though a portion of the flat percentage may be paid over as wages to the employees.

D. Living Quarters Furnished to Employees. When living quarters are furnished by an employer to an employee at the place of employment and the value of the rental is allowed as a credit toward the wages of the employee, the rental is exempt from sales tax. See Title 36 § 1760(75). This occurs only when the living quarters are provided at the place of employment and an amount for the rental is credited toward the wages of the employee, regardless of whether the living quarters are actually used. The furnishing of these employee living quarters will be considered exempt from sales tax if the employer was required by the Internal Revenue Code and IRS regulations to report the value of the living quarters as taxable wages, regardless of whether or not the employer actually did. If no amount is credited for the rental and the employer charges the employee for the living quarters, the charge is subject to sales tax, whether paid in cash or by payroll deduction.

Example 1: Employee receives wages in the amount of \$400 and has a payroll deduction of \$70 for payment of room rentals for the week. The rentals are subject to sales tax.

Example 2: Employee receives gross earnings in the amount of \$450. Included in gross earnings is \$50, the value of the lodging. The \$50 lodging rental is not taxable.

E. Other Exemptions. The following rentals are exempt from tax:

(1) Rentals of living quarters at a camp that is entitled to exemption from property tax as a literary and scientific or benevolent and charitable institution. (See 36 MRSA § 1760(17))

(2) Rentals of living quarters at an institution licensed by the State for hospitalization or nursing care of human beings. (See 36 MRSA § 1760, (18))

(3) Rentals of living quarters to a student necessitated by the student's attendance at a primary or secondary school or college. (See 36 MRSA § 1760(19))

(4) Rentals of living quarters to any Maine sales tax exempt organization, provided that the documentation requirements of Rule 302 are met. These include

governmental agencies (which are not required to have a Maine exemption certificate) and exempt organizations that hold a Maine exemption certificate. For more information, see Rule 302 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”).

(5) Rentals by a children’s summer camp when an entire lump sum admission fee is charged and the provision of living quarters is only incidental to a bona fide, organized, and disciplined program of instruction and recreation.

3. **COMPLIMENTARY ROOMS AND ROOMS PROVIDED AT REDUCED PRICES**

A. Room provided to dissatisfied customer. When a dissatisfied customer is not charged at all for a room, it is considered a canceled sale and no sales tax is due. If a dissatisfied customer is given a free room in the future, that subsequent transaction is considered a tax-free complimentary room. If a dissatisfied customer is given a discount on the next visit, a discounted sale occurs and sales tax must be collected on the reduced amount.

B. Complimentary rooms. If a complimentary room is provided when one or more rooms are rented or more than one night’s rental is purchased, a discounted sale occurs and sales tax must be collected on the reduced amount.

Examples:

- Complimentary room on a special occasion, such as an anniversary or reunion
- Complimentary room to a tour group, such as a bus driver, tour guide, banquet planner
- Complimentary room to a special guest, such as an actor or entertainer
- A two-nights-for-one special.

If a complimentary room is provided without the purchase of any other tangible personal property or taxable service, for instance a dignitary or public official being provided a free room for the night, the complimentary room is not taxable.

C. Rooms to contracted entertainers. When a retailer hires an entertainer and provides a room to the entertainer as part of the contractual arrangement between the two parties, the room is subject to sales tax; rather than paying cash, the entertainer is providing consideration in the form of services rendered. When a complimentary room is provided to a hired entertainer outside of any contractual obligation, no sales tax is due.

D. Gift Certificates. When a person purchases a gift certificate, the person is simply exchanging cash for a form of credit. No sales tax applies to the sale of a gift certificate because no taxable service is being purchased at that time. When the certificate is later redeemed for occupancy of a room, sales tax is collected at that time (unless a specific exemption applies).

When a gift certificate is purchased for less than its face value, the difference between the face value and the purchase value may be treated as a retailer discount since that value will not be recovered from any other source. When the certificate is later redeemed, the retailer discount would reduce the taxable sale price of the transaction provided the retailer is able to document or otherwise reliably establish the value paid for the certificate and is treating the difference as a retailer discount.

Example 1: Customer purchases a “Deal of the Day” certificate, valued at \$100, for \$75. When the certificate is redeemed, the retailer, having made prior arrangements for this offer to occur, has documentation that the amount paid for the certificate was \$75. If the rental transaction amounted to \$150, \$25 of the certificate (\$100 less the amount paid of \$75) is treated as a retailer discount, reducing the taxable sale price to \$125 (\$150 - \$25). The amount paid for the certificate, \$75, is treated as cash toward payment of this transaction.

Example 2: A non-profit organization is given a \$50 certificate free of charge to use in a raffle contest. The winner of the raffle redeems the certificate on a rental valued at \$125. Provided the retailer has documentation that this certificate was provided free of charge and will not be reimbursed for the certificate value from any other source, the retailer can treat the \$50 as a retailer discount and reduce the taxable sale price to \$75 (\$125-\$50).

For more information on coupons and rebates, see Instructional Bulletin No. 25 (“Coupons and Gifts”)

4. OTHER CHARGES IN CONNECTION WITH RENTALS OF LIVING QUARTERS

A. Incidental Charges at Hotels. When a hotel offers separate facilities or services (such as a golf course, tennis courts, telephones, internet access and pay-per-view movies) that are not a part of the rental of living quarters, and where any charges for those facilities or services are in fact extra and are paid only by persons who make use of them, those charges are not subject to sales tax. However, if a rental fee is inclusive of these services and the customer has no option to exclude some or all of the services, the entire rental fee is subject to tax. For instance, if a hotel charges \$149.99 per night for a room, but the fee includes access to the facility’s spa, exercise room, pool and tennis courts, the entire \$149.99 is subject to sales tax. Also, if a hotel charges a “resort fee” in addition to the rental of the room, and the customer has no option but to pay this fee, the fee is a part of the sale price and subject to tax.

Sales tax does apply to the amount billed for extra services that are a part of the rental of a room in a hotel, whether or not separately stated. Some examples of services that are considered a part of the rental of living quarters include extra charges for the use of a cot or crib or for use of cooking facilities, pet fees, damage or cleaning fees, and fees or “penalties” imposed for smoking in a nonsmoking room. Service fees charged by property management firms are also subject to sales tax.

B. Forfeited deposits or cancellation fees. A deposit is typically required in order to hold a room that is booked in advance. If the patron cancels or fails to show up on the scheduled day, the deposit, or a portion of the deposit, is generally forfeited. When a patron cancels his or her reservation on or prior to the scheduled date of arrival and the establishment retains a “cancellation fee,” that fee is not subject to Maine sales tax. However, if a patron simply fails to show on the scheduled date of arrival, any amount forfeited to the establishment is treated as rental of living quarters and is subject to sales tax. (See 36 MRSA § 1752(14)(B)(11))

C. Rentals of Public Rooms. Rental by a hotel of a dining room, assembly room, or other area not designed for use as living quarters is not taxable. When a hotel rents a room designed as living quarters, the rental is considered taxable regardless of the use actually made of the room by the person renting it.

D. Rentals of Video Media and Video Equipment. The Maine Service Provider Tax applies to rentals of video media, video games, and video equipment for noncommercial playback. (See 36 MRSA §§ 2552 and 2551(21)) A hotel that rents any of these items must calculate and pay to the State the service provider tax on the charge for these rentals. Taxable rentals not only include rentals to hotel guests, but also rentals to persons for use at business conferences, seminars, and the like.

Hotels engaged in both the rental of video media and video equipment and the rental of living quarters are required to obtain a Maine Service Provider account as well as a Maine Sales Tax account. Rentals of video products are subject to the service provider tax (not the sales tax imposed on lodging) and should be reported on a service provider tax return rather than on the sales tax return. Purchases of video media and video equipment for rental by a hotel are not taxable. For more information on the Maine Service Provider Tax, see Instructional Bulletin No. 55.

E. Tent and Trailer Space. The rental of space for the pitching of tents or the parking of motor homes, travel trailers, and camper trailers is taxable. The rental price includes all service charges paid to the lessor, whether or not those charges are separately collected or stated. If the tents or trailers themselves are rented, that rental is also taxable.

F. Package plans. Rental facilities may offer a variety of packages of a night’s lodging, together with entertainment services; e.g. movie passes, ski lift tickets, plays, concerts, cruises, etc. These packages are typically offered for one price and do not provide a breakdown of the cost between the room rental and the other activity or activities. In cases where a bundled transaction contains both taxable and exempt components, the entire amount is subject to sales tax. However, if the taxable and exempt values are separately stated, either on the invoice to the customer or in the books

and records of the business, sales tax would only apply to the taxable amount. (Note that incidental services remain subject to tax, see paragraph 4(A) above.)

Example 1: A ski package offers a two-day lift ticket, 2 nights' rental and two breakfasts for \$350. The customer's receipt displays the package as \$350 and the business does not separately account for the values of each item. The entire \$350 is subject to sales tax at the meals and lodging rate.

Example 2: A hotel package offers 2 concert tickets and one night's lodging for \$250. The customer's receipt shows the value of the tickets as \$150 and the room as \$100. The room rental of \$100 is subject to sales tax, while the ticket value is exempt.

Example 3: Same as Example 2, but the customer's receipt does not provide a breakdown. However, the business, in its books and records, separately accounts for the exempt and taxable values. The taxable amount remains at \$100.

5. PURCHASES

Sales tax should be paid to the supplier on the purchase by a hotel of tangible personal property used in the business, including items such as soap, towels, and paper products intended for use by hotel occupants as well as office supplies, cleaning and maintenance supplies, and similar items. If sales or use tax is not collected by the supplier, use tax on these items must be reported on the hotel's sales and use tax return.

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 1060
AUGUSTA, ME 04332-1060
TEL: (207) 624-9693
TTY: 1-888-577-6690**

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MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION

AFFIDAVIT OF EXEMPTION FOR 28 DAY CONTINUOUS RENTAL AT A HOTEL, ROOMING HOUSE, TOURIST, OR TRAILER CAMP

36 MRSA §1760(20) of the Maine Sales and Use Tax Law provides a sales tax exemption for:

Rental charged to any person who resides continuously for 28 days or more at any one hotel, rooming house, tourist camp or trailer camp if:

- A. *The person does not maintain a primary residence at some other location; or*
- B. *The person is residing away from that person's primary residence in connection with employment or education.*

Tax paid by such a person to the retailer under section 1812 during the initial 28-day period must be refunded by the retailer. If the tax has been reported and paid to the State by the retailer, it may be taken as a credit by the retailer on the return filed by the retailer covering the month in which the refund was made to the tenant.

This section to be completed by the tenant

I, _____, hereby certify that my primary residence is _____,
_____ and that my rental of living quarters is exempt from sales tax for the following reason:

Rental of living quarters constitutes my primary residence ("Primary residence" means the residence maintained at the location in which the individual is domiciled. "Domicile" is the place where an individual has his or her true, fixed and permanent home, which is typically the location where an individual has the most legal ties, i.e. driver's license, voting registration, vehicle registration, ownership of real property, enrollment of children in school systems, etc.)

Tenant: Please complete the following questionnaire:

My previous address was _____

Date that I left previous address _____

Current mailing address _____

Drivers License Number _____ Vehicle Plate Number _____

Current Telephone Number _____

Social Security Number _____ Date of Birth _____

Rental is in connection with Education ("In connection with education" means in connection with education from an accredited secondary school or college at which the person is enrolled in a diploma or degree program.)

Tenant: Please provide the facility with a statement from the school that you are enrolled in such a program.

Rental is in connection with employment

Tenant: Please provide the facility with a statement from the employer that the travel is necessitated by your employment and the purpose of your employment.

I make this statement to allow the renting of the living quarters to me without payment of the Maine sales tax, otherwise applicable. I declare under the penalties of perjury that the statements made herein are true to the best of my knowledge and belief.

Signature of Tenant Date _____

This section to be completed by the facility

(Note: Any break in the rental period will result in a new stay. A new affidavit must be completed for each stay that a tenant claims a sales tax exemption.)

First Day of current rental period (mm/dd/yy) ____/____/____

Tenant states to me at the time of sale that the rental of living quarters at this facility constitutes one of the following:

- Tenant's primary residence
- Rental is in connection with Education
- Rental is in connection with employment

Tenants Name – (please print) last name first middle

The tenant has provided documentation, as outlined above, verifying the reason for the exemption from sales tax. I declare under the penalties of perjury that all statements made by me herein are true, to the best of my knowledge and belief.

Signature (Hotel Employee) Title _____