



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 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. PRESCRIPTION MEDICINES

The Sales and Use Tax Law provides an exemption for sales of medicines for human beings sold on a doctor’s prescription. (See 36 MRSA § 1760, sub-§ 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 the medicine is dispensed or administered by a medical professional authorized by law to prescribe medicines for human beings or sold by a licensed pharmacist in accordance with a prescription issued by a medical professional authorized to prescribe medicines for human beings.

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, but that are not medicines, are subject to tax when sold to any non-exempt purchaser. (However, sales of items used only in the diagnosis or treatment of diabetes are exempt; see Section 6 below). 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. However, there is no tax on nonprescription medicines purchased by a doctor for use in the doctor’s medical practice.

Sales of medicines originally prescribed by a doctor on a refillable prescription are exempt when the prescription is refilled.

2. MARIJUANA

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

3. PROSTHETIC AIDS

Sales of “prosthetic aids” are exempt from sales tax. (See 36 MRSA § 1760, sub-§ 5-A) “Prosthetic aids” means devices, including repair and replacement parts, that are worn on or in the human body to replace a missing portion of the body or to correct physical malformity or malfunction. The term “prosthetic aids” includes but is not limited to artificial limbs and eyes; 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 .

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.

Orthopedic or therapeutic devices and appliances that do not replace a functioning part of the human body or do not correct physical malformity 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 mouthguards, even if they are custom-made from an impression of an individual’s teeth.

A. Hearing Aids. Sales of hearing aids and sales of batteries and repair and replacement parts for hearing aids are exempt from sales tax.

B. Eyeglasses. Sales of corrective eyeglasses and contact lenses are exempt from sales tax. Sales of repair or replacement parts and lenses for corrective eyeglasses are also covered by this exemption.

Sales of noncorrective safety glasses, sport glasses and goggles, noncorrective sunglasses, opera glasses, magnifying glasses, platform magnifiers 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.

4. ARTIFICIAL DEVICES

The Sales and Use Tax Law provides an exemption from sales tax for sales of “artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity.” (See 36 MRSA § 1760, sub-§ 5-A) A device is “designed for the use of” a particular individual with a physical incapacity, and therefore qualifies for exemption, 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.

Unless meeting the requirements in the paragraph above, 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.

5. CRUTCHES AND WHEELCHAIRS

Crutches and wheelchairs sold for the use of sick, injured or disabled persons are exempt. (See 36 MRSA § 1760, sub-§ 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. Purchases of crutches, canes, walkers and wheelchairs for rental use are not covered by this exemption. Sales of other items purchased to alleviate or compensate for impaired mobility are not covered by this exemption, including wheelchair lifts, modifications to motor vehicles to make them operable by handicapped persons and motor vehicles that have been so modified, and materials used in the construction of wheelchair ramps or other alterations to real property to make it accessible to handicapped persons.

6. DIABETIC SUPPLIES

The sale of all equipment and supplies, whether medical or otherwise, used in the diagnosis or treatment of diabetes are exempt from tax. This includes sales of insulin, antidiabetic drugs, diabetes testing supplies, and other items used only in the treatment of diabetes. (See 36 MRSA § 1760, sub-§ 33)

Sales of items that are not used only in the diagnosis or treatment of diabetes, such as hypodermic syringes and needles, and that are not prescription medicines, are not covered by this exemption unless the purchaser provides to the retailer 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.

7. SEEING EYE DOGS

The Sales and Use Tax Law provides an exemption from sales tax for “sales of tangible personal property and taxable services essential for the care and maintenance of seeing eye dogs used to aid any blind person.” (See 36 MRSA § 1760, sub-§ 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

Effective January 1, 2012, the Sales and Use Tax Law provides an exemption for positive airway pressure (“PAP”) equipment and supplies sold or leased for personal use. (see 36 MRSA §1760(94)) “Positive airway pressure equipment and supplies” means continuous positive air pressure and bilevel 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 in contrast with purchases for use by a business, such as a doctor’s office. Retailers are exempt from sales tax when purchasing PAP equipment and supplies for resale and would not charge sales tax on sales of qualifying equipment and supplies to their customers. Likewise, persons engaged in the business of renting PAP equipment are exempt when purchasing PAP equipment for rental for personal use.

9. SALES TO 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.

10. 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) 624-9653
V/TTY: 7-1-1**

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission, to access to, or operation of its programs, services or activities.

Issued: October 3, 1973

Last Revised: September 1, 2012

(Published under Appropriation 010-18F-0002-07)