



# MAINE TAX ALERT

A Publication of Maine Revenue Services for Tax Professionals

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Public Communications Tel: (207) 626-8475

## The TAX ALERT

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### Audit Proof Your Documentation of Exempt Sales

by R. Washburn, Principle Revenue Agent

For most nontaxable sales transactions, the seller is required to get appropriate documentation showing why an exemption was allowed. There are several types of documentation that should be collected from the customer, depending on the reason the transaction is exempt.

If the transaction involves selling an item to a customer, who will in turn take the item and then sell it to someone else, we say this item will be 'resold'. In order for you not to charge tax, your customer must provide you with a 'resale certificate'. This resale certificate is a statement basically saying, "I have sales tax number and the items I am purchasing from you will be resold and I will charge my customers tax."

If the transaction is to a customer that is exempted by law, then your customer should provide you with a copy of their 'permanent certificate of exemption'. This is basically a certificate issued by Maine Revenue Services (MRS) that indicates that this taxpayer is exempt for sales and use tax. Customers that are part of the government, Federal, State, County, S.A.D. or municipality, do not require a certificate. If it is not clear that the customer is part of the government get a letter from the customer stating that they are part of the government.

If the transaction is with a manufacturer, there are two possible types of documentation. The first would be a Direct Payment Permit. Direct Payment Permit holders are some of the largest manufacturers and they have been given permission to remit all their sales and use taxes directly to the State. This is because several of the manufacturing sales

and use tax laws are quite complex. These customers are given a certificate issued by

MRS indicating that they have permission to pay the State directly.

Some manufacturers who do not have a direct pay permit, will give you a "manufacturer's certificate". This certificate has several check boxes, and the customer should check the appropriate reason why they shouldn't be charged tax.

If the transaction is with a contractor who has a construction contract with an exempt organization, they should give you a copy of the permanent certificate of exemption of their customer (unless it is a government agency) and a contractor's exempt certificate. This is a statement from the contractor that they are working for an exempt organization. Contractors should only give this certificate if they are purchasing materials that will remain with the construction project, and not for tools, consumables or other supplies that will be used by the contractor and not become part of the project.

If the exempt transaction is recorded using a cash register it is important to document the identity of the customer who claimed to be exempt and the transaction amount. If the exempt customer is not identified than MRS cannot consider the transaction exempt.

In a sales and use tax audit the auditor will examine the exemption certificates that have been collected, make a list of them, and then examine the sales transactions. If tax was not charged on a transaction, and no exemption certificate is found in your files, the auditor will list that transaction as an adjustment. They will give you an opportunity to get any exemption certificates that were not collected. In those cases where you cannot get the certificate, you will be asked to pay the tax (along with interest and penalties) yourself.

To protect against exposure to an unexpected tax burden always charge the tax until you have been given adequate certification of exemption. If the customers cannot comply with the certification requirements at the point of sale, it is always best to charge them the tax, and refund them the tax when they supply the certification. It is always easier to

make a refund then to make an additional billing and collect it.

## **Programs for Small Businesses**

Many resources are available to small business owners through state government. Now a new brochure released by the State's Department of Economic and Community Development (DECD) provides pertinent information about these worthwhile programs.

The brochure is called *Programs for Small Business* and is available by calling DECD's Business Answers at 1-800-872-3838. Within the brochure, you'll find descriptions of programs ranging from environmental, energy and technical assistance to tax relief, training and marketing. Financial resources including both local and state financial options are also outlined as well as sales tax exemptions.

According to Brian Dancause, Small Business Advocate for the Office of Business Development, the brochure is definitely designed for small business. "While our goal was to be inclusive as possible, we intentionally excluded programs which do not apply to small business," he said. "This brochure was designed with one purpose in mind - to assist the thousands of small businessmen and women in Maine who want to learn more about state programs that mean something to them, and which can help them further their business objectives."

Demand for the brochure, which has been available since January, has been very high and the response favorable.

## **A Guide to Doing Business in Maine**

Updated in January, *A Guide to Doing Business in Maine* is an important resource for anyone who is currently operating or considering starting a business in the state. The book is published by the Department of Economic and Community Development and is available for \$4 by calling Business Answers at 1-800-872-3838 in state or 1-800-541-5872 outside Maine.

The guide addresses a variety of business-related topics. New entrepreneurs will find the section on how to start a business in Maine useful. This section includes a business startup check -list, advice in writing a business plan, sample documents and even a glossary.

Even experienced business people will appreciate the guide's section on regulations and permits which includes not only state requirements, but looks at federal and local regulations as well. Also included are descriptions of a number of

sources of help and information for business people. Business management counseling, business training, recruitment and education programs are also described. Public sources of business financing including state, federal and others are also described.

## **Court Decisions**

### State v. Kevin A. King

Kevin A. King of Cape Elizabeth, Maine pleaded guilty to five counts of failure to file Maine income tax returns in the Portland District Court. These five charges represented Mr. King's failure to file returns for the years 1992-1996. King was a partner in the Bonanza restaurants in Bangor and Augusta. Mr. King stated he decided not to file the returns because he did not have the money to pay the amount owed and did not expect criminal prosecution.

Pursuant to a plea agreement Mr. King was sentenced to 18 months all but five days suspended, with two years probation on the first two counts. On each of the three remaining counts he received a fine of \$250. Mr. King must pay restitution within 90 days in the amount of \$490.59 in addition to the tax previously paid. He must also file and pay all future taxes in a timely fashion. Mr. King will begin his jail sentence during the last weekend of March.

### State v. Gregory F. Stillman

Gregory F. Stillman of Portland, Maine pleaded guilty to two counts of Failure to Pay Maine Income Tax and one count of a Probation Violation in the Portland District Court on December 1, 1998. Mr. Stillman was sentenced to 10 days in the county jail concurrent on each of the Class D offenses for Failure to Pay Maine Income Tax and also received a concurrent 10 day sentence for the probation violation.

This case stemmed from Mr. Stillman's previous convictions in 1996 for Failure to File Maine Income Tax Returns. Mr. Stillman did not pay the fine or restitution ordered in this case, filed his 1996 and 1997 income tax returns, but simply ignored his probation and paid none of the money due. At the time of the plea Mr. Stillman paid the restitution in full, all past taxes, the 1996 and 1997 taxes.

### State v. David V. Miller

David V. Miller of Turner, Maine entered guilty pleas in the Androscoggin County Superior Court on December 2, 1998 to two counts of Income Tax Evasion, Class C and one count of Forgery, Class C before Justice Kirk Studstrup. Mr. Miller had been charged by indictment with numerous counts of Income Tax Evasion and Filing Fraudulent Income Tax Returns relating to his corporate income tax for his business, "A" Plus Cleaning, and for his personal income tax. The Forgery charge arose when Mr. Miller put his now ex-wife

on payroll without her knowledge and forged her signature on these paychecks when they were issued.

A plea to three felony counts resulted from plea negotiations between the State and the defendant's attorney. Mr. Miller was sentenced for three years to the Department of Corrections with all but 60 days suspended and four years probation on each of the Income Tax Evasion Counts, these sentences being served concurrently. He also received a 45 day jail sentence also concurrent on the Class C Forgery Counts. As a condition of probation and as a part of his sentence the defendant must pay \$29,000 restitution which represents his total tax liability for the evaded tax in years 1992-1996. As special conditions of probation he must also file all future tax returns in an accurate and timely fashion and pay all future taxes when due.

#### State v. Marion Townsend

Marion Townsend pleaded guilty in the Penobscot County Superior Court before Justice Kravchuk on December 14, 1998. Guilty pleas were entered on two counts of Failure to Truthfully Account For and Pay over Collected Tax. She was sentenced on each count to 60 days all dismissed and one year of probation. Restitution in the amount of \$15,000 was ordered.

Ms. Townsend along with her husband operated a jewelry store in Dexter called Olmstead Jewelers. Mr. Townsend was previously convicted on one count of Operating Without a Valid Sales Tax Certificate (see the November issue of TAX ALERT).

#### State v. Robert Leighton

Robert Leighton pleaded guilty in the Penobscot County Superior Court by Information in front of Justice Kravchuk on December 20, 1998. Mr. Leighton entered guilty pleas to four counts of Failure to Truthfully Account For and Pay Over Collected Sales Tax in conjunction with his business, R. L. Leighton Enterprises, a used car business in Milford, Maine. This was a case which originally came from the joint task force on violent crime in the Bangor area because Mr. Leighton was believed to be involved with some other individuals that were under Federal Investigation. Pursuant to a search warrant, Mr. Leighton's records were seized and later audited by Maine Revenue Services.

Mr. Leighton was sentenced to 18 months in jail all but 45 days suspended and 18 months probation on the first two counts. Fines totaling \$1000 were given on the third and fourth counts. Mr. Leighton was ordered to pay restitution in the amount of \$30,000.

#### State v. William York

William York plead guilty in the Portland District Court before Justice Paul Eggert on December 21, 1998. He entered guilty pleas to four counts of Failure to Truthfully

Account For and Pay Over Withholding Tax. This case concerned Mr. York's business, Sentinel Security Corporation, which was a business providing security guards for various commercial establishments in Cumberland County. During the period of time from 1994-1996, Mr. York failed almost every month to file and pay the withholding tax due with respect to his employees.

Mr. York was sentenced to 18 months all but seven days suspended with two years probation on the first two counts. On the third and fourth counts a total of \$1,000 in fines was ordered. Restitution was ordered in the amount of \$28,000.

#### State v. Frank N. Keene and Christine F. Keene

Frank N. Keene of Livermore Falls was sentenced in Franklin County Superior Court to eight years in jail with all but 18 months suspended and six years probation on an arson charge in connection to a fire last year that destroyed one of a chain of convenience stores. He was also sentenced to 12 months concurrent on theft by misappropriation charges for failure to submit sales tax receipts from their stores in Jay, Wilton, Livermore Falls, and Auburn. Christine F. Keene pleaded guilty to theft of sales tax revenues. She was sentenced to three years in jail with all but 10 days suspended and four years probation. The Keenes must also pay at least \$120,000 and no more than \$160,000 in restitution to Maine Revenue Services.

Frank Keene confessed to paying two individuals \$6,500 to burn Keene's Quick Stop in North Jay on May 6, 1997. The State Fire Marshal's office immediately ruled the fire suspicious. Lab reports showed an accelerant was used at two sources of ignition.

The Keene's became suspects when civil audits of their convenience stores led to the discovery of financial difficulties. The audit by Maine Revenue Services showed that the defendants had financial problems and also showed the Keenes had seriously under reported sales tax revenues for the three years from January 1, 1995 to October 31, 1997.

#### State v. Arthur Alley

Arthur Alley of Mt. Desert, Maine pleaded guilty in Bar Harbor before Judge Staples on six counts of Failure to File Maine Income Tax Returns. These charges represent Mr. Alley's failure to file his returns for the years 1992 through 1997. Mr. Alley was sentenced pursuant to a plea agreement to 24 months all but 10 days suspended and three years probation on the first three counts. On the remaining counts a fine of \$750 was imposed. Restitution in the amount of \$2,947 was ordered to be paid at a rate of \$100 per week. As a condition of probation, Mr. Alley must file and pay all future taxes on time.

**SUGGESTIONS FOR TAX ALERT?**

**Please contact: Maine Revenue Services  
Public Communications Director  
24 State House Station  
Augusta, ME 04333-0024**

**MAINE REVENUE SERVICES**

**<http://janus.state.me.us/revenue>**

**STATE OF MAINE**

**Angus S. King, Governor**

**Janet E. Waldron, Commissioner  
Administrative and Financial Services**

**Anthony J. Neves, Executive Director**

**...Order tax forms through the WebPage?...YES!**

**TAX QUESTIONS? PLEASE CONTACT US:**

<u>Department</u>	<u>Telephone Numbers</u>	<u>FAX Numbers</u>	<u>E-Mail Addresses</u>
Maine Revenue Services	(207)287-2076	(207) 287-4028	
Central Registration	(207)287-2338	(207) 287-3733	
Collections & Compliance	(207)287-3301	(207) 287-6627	
Corporate Tax	(207)624-9670	(207) 287-6627	corporate_tax@state.me.us
Electronic Funds Transfer	(207)287-8276	(207) 287-6627	electronic_funds_transfer@state.me.us
Estate Tax	(207)626-8480	(207) 287-4028	income_estate_tax@state.me.us
Excise Tax	(207)287-3851	(207) 287-6628	sales_tax@state.me.us
Forms Request Line	(207)624-7894	(207) 622-3517	
Income Tax Assistance	(207)626-8475	(207) 287-4028	income_estate_tax@state.me.us
Paym't Plan/Income Tax	(207)621-4300	(207) 621-4328	
Payment Plan/Other	(207)287-3301	(207) 287-6627	
Practitioners' Hotline	(207)626-8458	(207) 287-4028	
Property Tax	(207)287-2011	(207) 287-6396	property_tax@state.me.us abandoned_property@state.me.us
Sales Tax	(207)287-2336	(207) 287-6628	sales_tax@state.me.us
Taxpayer Advocate	(207)287-4562	(207) 287-6627	
TTY Service	(207)287-4477	-----	
Withholding Tax	(207)626-8475	(207) 287-4028	withholding_tax@state.me.us

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**Augusta ME 04333-0024**

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