



# MAINE REVENUE SERVICES PROPERTY TAX DIVISION BULLETIN NO. 28

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## BUSINESS EQUIPMENT TAX EXEMPTION

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REFERENCE: 36 M.R.S. §§ 691 – 700-B  
January 31, 2023; replaces July 3, 2019, revision

### 1. General

The Business Equipment Tax Exemption (“BETE”) program exempts eligible business equipment from property tax.

### 2. Definitions

- A. Assessor. “Assessor” means a sworn municipal assessing authority, whether an individual assessor, a board of assessors, or a chief assessor of a primary assessing area. With respect to the unorganized territory, “assessor” means the State Tax Assessor.
- B. Certified ratio. “Certified ratio” means the level of municipal assessed value, expressed as a percentage of just value, as certified by the assessor pursuant to 36 M.R.S. § 383.
- C. Increased assessed value. “Increased assessed value” means the amount by which the current assessed value of a Tax Increment Financing (“TIF”) district exceeds the original assessed value. The increased assessed value cannot be less than zero.
- D. Municipal tax commitment date. “Municipal tax commitment date” means the date that the property tax documents are signed over to the tax collector. This date usually occurs about the time that tax bills are mailed.
- E. Municipality. “Municipality” means any city, town, plantation, or that portion of a county in the unorganized territory.
- F. Original assessed value. “Original assessed value” means the municipal assessed value as of March 31 of the tax year preceding the year in which the TIF district was designated. For example, a district is designated on February 2, 2019, effective April 1, 2019. The original assessed value would be the taxable value on March 31, 2018, which is the municipally assessed value as of April 1, 2017. The value of exempt property in a TIF district is not included in the original assessed value.
- G. Person. “Person,” as defined in 36 M.R.S. § 111(3), means an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.

- H. Retail sales activity. “Retail sales activity,” as defined in 36 M.R.S. § 691(1)(A)(6)(b), means an act associated with the selection and either the purchase or rental of tangible personal property. Generally, a “retail sale activity occurs” when a customer selects, purchases, and receives an item of tangible personal property that the customer takes with them when they leave. “Retail sales activity” does not include “production” as defined in 36 M.R.S. § 1752(9-B).
- I. Retail sales facility. “Retail sales facility,” as defined in 36 M.R.S. § 691(1)(A)(6)(c), means a structure used to serve customers who are physically present at the facility to select and either purchase or rent tangible personal property. “Retail sales facility” does not include a separate structure that is used as a warehouse or call center facility.
- J. Structure. “Structure” means a building or other freestanding architectural construction at which an individual can be present to select and purchase or rent tangible personal property.
- K. Tax increment. “Tax increment” means the municipal-assessed property tax associated with the increased assessed value of property in a TIF district, as stated in the official TIF district documents. The tax increment does not include taxes associated with any special district tax. The tax increment for an affordable housing TIF district does not include tax on personal property. Depending on the wording of the financial plan, all or part of the tax increment may be used by the municipality to pay for project costs.

### 3. Eligible Business Equipment

“Eligible business equipment,” as defined in 36 M.R.S. § 691(1)(A), means tangible personal property that was first placed in service in Maine after April 1, 2007, regardless of the equipment’s age, and that was first subject to assessment on or after April 1, 2008.

Example: A piece of machinery is purchased and placed in service in New Hampshire in 1961. In 2018, the machinery is then sold to a Maine business, moved to Maine, and placed in service in Maine for the first time. This machinery satisfies the requirement for property to be first placed in service in Maine after April 1, 2007.

Eligible business equipment includes, without limitation, repair parts, replacement parts, replacement equipment, additions, accessions and accessories to other eligible business equipment. Eligible business equipment also includes inventory parts.

Eligible business equipment must be:

- A. Used exclusively for a business purpose by the business, for construction-in-progress or as inventory parts intended to be used exclusively for a business purpose by the business; and
- B. Subject to an allowance for depreciation under the Internal Revenue Code (the “Code”) or would be subject to an allowance for depreciation under the Code for the appropriate property tax year if not already fully depreciated.

In the case of construction-in-progress and inventory parts, eligible business property when placed in service must be subject to an allowance for depreciation under the Code or would be if not already fully depreciated.

Eligible business equipment includes property attached to real estate if the attachment is used primarily to further a particular business activity taking place in or on that real estate. Eligible business equipment does not include attachments to real estate if used primarily to serve that building as a building (or serve the land as land).

Example: An air conditioning system is not eligible for exemption because it serves the building generally and would be used by most businesses in that building. A specialized refrigeration unit, however, could be considered eligible for exemption if it is used primarily in the specific business activity located in that building.

See Section 9 for additional examples.

#### 4. Excluded Property.

- A. General. Property owned by an excluded person, certain excluded property, certain retail sales property, and property exempted from taxation by another provision of law are generally ineligible for exemption under the BETE program.
- B. Excluded person. As enumerated in 36 M.R.S. § 691(1)(B), the following persons are excluded from BETE:
  - (1) A public utility;
  - (2) A provider of radio paging services;
  - (3) A provider of mobile telecommunications services;
  - (4) A cable television company;
  - (5) A provider of satellite-based direct television broadcast services;
  - (6) A provider of multichannel, multipoint television distribution services; or
  - (7) A pollution control facility, except:
    - a. Property that would be subject to exemption under 36 M.R.S. § 656(1)(E) but has not yet been certified may be qualified for BETE;
    - b. Property that has been placed in service between the immediately preceding December 2 and April 1 of the year for which exemption is sought may be qualified for BETE; and
    - c. Property for which the taxpayer has submitted a certification application to the Commissioner of the Department of Environmental Protection prior to April 1 may be qualified for BETE.
- C. Certain excluded property. The following property, as defined in 36 M.R.S. § 691(1)(B), does not qualify for BETE:
  - (1) Office furniture;
  - (2) Lamps and lighting fixtures used primarily for general office lighting;
  - (3) Telecommunications personal property subject to tax under 36 M.R.S. § 457;
  - (4) Gambling machines or devices;

- (5) Natural gas pipeline (except pipelines less than one mile in length and owned by a consumer), pumping or compression stations, storage depots, and appurtenant facilities used for natural gas; and
- (6) Property used to produce or transmit energy primarily for sale.

D. Certain retail sales property. Property located at a retail sales facility and used primarily in a retail sales activity does not qualify for BETE. Property is located at a retail sales facility if it is in or near the facility, as long as the property is within the parcel of land upon which the structure is situated. In addition, while retail property is not eligible for exemption under BETE, it may be eligible for reimbursement under the Business Equipment Tax Reimbursement (“BETR”) program. For more information, see Bulletin No. 27 – Business Equipment Tax Reimbursement.

E. Property exempted by another provision of law. Property that is exempt from property tax under another area of law is not eligible for BETE. This includes, but is not limited to, the following:

- (1) Public property exempt pursuant to 36 M.R.S. § 651.
- (2) Personal property exempt pursuant to 36 M.R.S. § 655.
- (3) Property of Institutions and Organizations exempt pursuant to 36 M.R.S. § 652, including, but not limited to, the following:
  - a. Benevolent and charitable organizations;
  - b. Literary and scientific institutions;
  - c. American Legion, Veterans of Foreign Wars, American Veterans, Sons of Union Veterans of the Civil War, Disabled American Veterans, and Navy Clubs of the U.S.A.;
  - d. Chambers of commerce and boards of trade;
  - e. Houses of religious worship;
  - f. Fraternal organizations, except college fraternities; and
  - g. Hospitals, health maintenance organizations, and blood banks.
- (4) Property leased to public schools, pursuant to 20-A M.R.S. § 4001(3)(C).

## 5. Application Process

An applicant must file a BETE application by April 1 of each year with the local assessor where the property would be subject to taxation, or to the State Tax Assessor for property located in the unorganized territory. If the application is not filed by April 1, the filing deadline is automatically extended to May 1 without the need for the taxpayer to request, or an assessor to grant, an extension. On written request, an assessor may grant the applicant an additional extension of time to file the application but an extension may not go beyond the municipal tax commitment date. Applicants are required to file annually, even if there are no changes in their eligible business equipment.

## 6. Assessor Requirements

- A. Recording. All eligible business equipment exempted from property tax by the assessor must be included in the municipal commitment book, valued as if it were subject to taxation, depreciated, and adjusted by the certified ratio.
- B. Retention. All applications must be kept on file as required by the rules set forth by the State Archives Advisory Board and be available for inspection by Maine Revenue Services (“MRS”).
- C. Determination. An assessor must review, approve, and sign all applications. If an assessor determines that property is ineligible, the assessor must provide a written notice of denial, including the reason for the denial, to the applicant by certified mail prior to the commitment date. Taxpayers may appeal the decision of the assessor as described in 36 M.R.S. §§ 841 - 849. For more information see Bulletin No. 10 - Property Tax Abatement and Appeals Procedures.
- D. Tax rate calculation. The value of the portion of all eligible business equipment for which the municipality is entitled to reimbursement must be added to the total taxable municipal value when calculating the municipal tax rate. For example, if a municipality is entitled to the 50% standard reimbursement rate for taxes not collected on eligible business equipment, the municipality must include 50% of the value of eligible business equipment in taxable municipal value for calculating the municipal tax rate.

## 7. Reimbursement.

A municipality that has appropriately exempted equipment under the BETE program is generally entitled to recover from the State 50% of the property tax revenue lost due to the exemption. This recovery is referred to as the standard reimbursement. Municipalities may be entitled to a higher reimbursement rate than the standard reimbursement rate under the following circumstances:

- A. Enhanced reimbursement. Enhanced reimbursement is based on a municipality’s personal property factor. The personal property factor is the total value of all business-owned tangible personal property in the municipality, whether taxable or exempt, divided by the sum of 1) the value of all taxable property in the municipality; and 2) the value that would have been assessed on eligible business equipment if it were taxable. If the personal property factor within a municipality exceeds 5%, then the municipality is eligible to receive an enhanced BETE reimbursement from the State. The enhanced reimbursement is 50% plus an amount equal to half of the personal property factor. For example, if a municipality’s personal property factor is 10%, then the enhanced reimbursement percentage is 55% ( $0.50 + (0.10/2)$ ).
- B. Special reimbursement. Eligible business equipment located in a TIF district that was effective prior to April 1, 2008, may qualify for a special reimbursement percentage. The special reimbursement percentage is equal to the tax increment percentage for that pre-2008 TIF district, if the percentage is greater than the standard reimbursement (50%) or the enhanced reimbursement (under subsection A), whichever reimbursement applies. The tax increment percentage is equal to the tax increment divided by the total tax for that TIF district. The special reimbursement percentage applies only to eligible business equipment in that TIF district.

**Example.** Town ABC has a mill rate of 15 and a pre-2008 TIF district with a current assessed value of \$1,000,000 and an original assessed value of \$100,000. The tax increment percentage is calculated as follows:

$$\begin{aligned}\text{Tax increment} &= (\$1,000,000 - \$100,000) \times 0.015 = \$13,500 \\ \text{TIF district tax} &= \$1,000,000 \times 0.015 = \$15,000 \\ \text{Tax increment percentage} &= \$13,500/\$15,000 = 0.90 \text{ or } 90\%\end{aligned}$$

If Town ABC's BETE reimbursement percentage is the standard 50%, the special reimbursement rate for eligible business property in the TIF district is 90%.

## 8. Audits And Appeals

MRS may audit and review the records of a municipality with regard to the BETE program. If MRS determines that an exemption was improperly approved, MRS will deny reimbursement to the municipality for the ineligible property. The municipality must make a supplemental assessment for the property which was improperly exempted. MRS may recapture the improperly distributed funds by a setoff against other payments due to the municipality. The recapture period is up to three years. A municipality aggrieved by a determination of MRS may appeal pursuant to 36 M.R.S. § 151.

## 9. Examples of Eligible Property

The following is a non-exhaustive list of categories of property and their eligibility under the BETE program:

### A. Leased property.

- (1) Property leased to private schools. Property leased to private schools may qualify for the BETE program. However, property *owned* by a private school, and all property possessed by public schools, *including leased property*, is exempt from property tax under 36 M.R.S. §§ 651-652 and is therefore ineligible for the BETE program.
- (2) Property leased to hospitals. Property leased to hospitals is ineligible for BETE because it is already exempt from tax under 36 M.R.S. § 652(1)(K).
- (3) Property leased to other tax-exempt entities. Property leased to other tax exempt entities such as churches, municipalities, State of Maine, etc. is eligible for BETE.

B. Veterinary clinics. Business equipment located at veterinary clinics is eligible for BETE. These entities sell services rather than tangible personal property and are therefore not retail sales facilities. While a veterinary clinic may also sell some tangible personal property such as pet food, the primary purpose of the operation is to sell medical services for animals.

C. Fencing. Security fencing is not eligible under the BETE program, since it can be used for many different types of businesses and is not unique to a particular business activity.

- D. Banking institutions in big box retail stores. Business equipment associated with banking institutions located within a big box store is eligible for BETE because, although it is located in a retail sales facility, it is not being used in a retail sales activity.
- E. Recreational-related business. Business equipment associated with golf courses, ski facilities, water parks, and amusement parks is generally eligible for exemption. Since the primary business purpose is to sell the service of providing amusement to their customers, such businesses are not considered retail sales facilities.
- F. Breweries and distilleries. Brewery and distillery business equipment is eligible for exemption if the primary business purpose is to sell the product wholesale to retailers. If the primary business purpose is to supply an onsite tasting room or a bar or to serve walk-in customers, then the business may be considered a retail sales facility and be ineligible for exemption.
- G. Professional services. Business equipment owned by professional services firms such as attorneys, accountants, insurance agents, therapists, physicians, and architects is generally eligible for exemption because these professional services firms are in the business of selling services.
- H. Transient/short-term rentals. Transient or short-term rental property may be eligible for exemption, but only if it is used exclusively by the renters. If the owner of the property uses the property for personal use or as noneligible business equipment at any time, it is not eligible.
- I. Window treatments/interior decorating. Window treatments, curtains, and property used for interior decorating such as artwork, are generally eligible for exemption. Window shades are generally not eligible because the property is affixed or attached to a building and is not used to further a particular trade or business activity.

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

MAINE REVENUE SERVICES  
PROPERTY TAX DIVISION  
P.O. BOX 9106  
AUGUSTA, ME 04332-9106  
TEL: (207) 624-5600  
EMAIL: [prop.tax@maine.gov](mailto:prop.tax@maine.gov)  
[www.maine.gov/revenue/taxes/property-tax](http://www.maine.gov/revenue/taxes/property-tax)

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