



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION GENERAL INFORMATION BULLETIN

November 1, 2022

NO. 112

This bulletin contains important information about legislation enacted during the Second Regular Session of the 130th Legislature and other recent developments that affect everyone who reports Maine sales, use, service provider, and other special taxes. **Please read it carefully.** The changes contain a variety of effective dates and apply to sales occurring on or after the applicable effective date.

What you will find in this publication:

SALES AND USE TAX

- ❖ **Pesticide Container Fee Repealed**
- ❖ **Exclusion from Retail Sale Updated**
- ❖ **Updated Sales Tax Exemptions**
- ❖ **New Refund Provision**

TRIBAL RELATED PROVISIONS

- ❖ **Relevant Definitions**
- ❖ **New Sales Tax Exemptions**
- ❖ **Sales Tax Revenue Attributable to Sales Occurring on Tribal Land**
- ❖ **Changes to the Blueberry Tax and the Potato Tax**

ADDITIONAL RESOURCES

Maine Revenue Services Website www.maine.gov/revenue
Laws and Rules www.maine.gov/revenue/rules/homepage.html
Sales Tax Website www.maine.gov/revenue/salesuse/salestax/salestax.html

For general assistance, call (207) 624-9693, 9 AM to Noon, Monday through Friday (state holidays excepted), or email sales.tax@maine.gov.

Sales and Use Tax

Pesticide Container Fee Repealed



PESTICIDE CONTAINER FEE

36 M.R.S. § 4941

EFFECTIVE JULY 1, 2022

Pursuant to P.L. 2021, c. 635, the Pesticide Container Fee (15¢ per container) is repealed, effective July 1, 2022. For sales of certain pesticide containers beginning on or after July 1, 2022, retailers shall no longer collect and remit the Pesticide Container Fee imposed by 36 M.R.S. § 4941. Line 19, referencing the Pesticide Container Fee, was removed from the Maine Sales and Use Tax return, beginning with the July 2022 filing period (due August 15, 2022). **(P.L. 2021, c. 635)**

Exclusion From Retail Sale Updated



SALES OF A TRUCK OR VAN FOR SHORT TERM RENTAL

36 M.R.S. §§ 1752(11)(B)(A-3); 1752(14)(A)(4); 1752(17-B);

AND 1811(1)(D)(4)(b)

EFFECTIVE AUGUST 8, 2022

The exclusion from the definition of “retail sale” for the sale of pickup trucks or vans with a gross vehicle weight of less than 26,000 pounds to a person primarily engaged in the business of renting automobiles for a period of less than one year has been amended by removing the modifier “pickup” from “pickup truck.” The definitions of “sale price” and “taxable service,” as well as the imposition of the 10% sales tax rate on these rentals, were similarly amended by removing the modifier “pickup” from “pickup trucks.” These changes allow sales, without collecting sales tax, to a person primarily engaged in the business of renting automobiles for a period of less than one year of trucks and vans with a gross vehicle weight of less than 26,000 pounds. Instead, the person primarily engaged in this rental business must collect sales tax at the 10% rate on the value of the rental to the lessee when renting those trucks and vans for a period of less than one year. **(P.L. 2021, c. 578)**

Amended Exemptions



RESIDENTIAL ELECTRICITY

36 M.R.S. § 1760(9-B)
EFFECTIVE JANUARY 1, 2023

The sales tax exemption for the consumption of residential electricity has been amended to provide an additional exemption from sales tax on all residential electricity consumed by eligible customers enrolled in either a low-income assistance program administered by the Maine State Housing Authority under 35-A M.R.S. § 3214(2), or in an arrearage management program administered by electric transmission and distribution utilities under 35-A M.R.S. § 3214(2-A). This exemption applies to kilowatt (KWH) hours of residential electricity consumed beyond the current exemption provided to the first 750 KWH per month of residential electricity. **(P.L. 2021, c. 713)**



NONPROFIT HOUSING DEVELOPMENT ORGANIZATION

36 M.R.S. § 1760(72)
EFFECTIVE AUGUST 8, 2022

The sales tax exemption for nonprofit housing development organizations has been amended to define “low-income.” For the purposes of this exemption, “low-income” means “having income that is less than 120% of the median income for the area, adjusted for family size, as established by the United States Department of Housing and Urban Development or its successor organization.” **(P.L. 2021, c. 695)**

New Refund Provision



BATTERY ENERGY STORAGE SYSTEMS

36 M.R.S. § 2021
EFFECTIVE AUGUST 8, 2022

Refunds of sales or use tax are available on purchases of qualifying battery energy storage systems made between January 1, 2023, and December 31, 2025.

An “energy storage system” is defined as commercial machinery or equipment that is capable of absorbing energy, storing the energy for a period of time and discharging the energy after it has been stored. A “qualifying battery energy storage system” is an energy storage system that is a battery energy storage system with a capacity of 50 megawatts or greater that is located at a single site in the State, as evidenced by an interconnection agreement that applies to the battery energy storage system. The “qualifying energy storage system” also includes all parts and accessories that are integral to such a battery energy storage system.

A claim for reimbursement of sales or use tax paid on the purchase of a qualifying battery energy storage system and all integral parts and accessories may not be submitted to Maine Revenue Services before July 1, 2023. The claim for reimbursement must be filed within three years of the payment of sales or use tax. (P.L. 2021, c. 758)

Tribal Related Provisions

P.L. 2021, c. 681, “An Act To Enhance Tribal-State Collaboration, To Revise the Tax Laws Regarding the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and To Authorize Casinos, Off-track Betting Facilities, Federally Recognized Indian Tribes and Certain Commercial Tracks To Conduct Sports Wagering” was enacted in May.

The law enacts sales tax exemptions for the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, and their tribal members and tribal entities. The law also expands a provision that returns the sales tax attributable to sales occurring on Passamaquoddy Indian territory back to the Passamaquoddy Tribe, and also returns the sales tax revenue attributable to sales occurring on tribal lands of the Houlton Band of Maliseet Indians and the Penobscot Nation back to the Houlton Band of Maliseet Indians and the Penobscot Nation. The law also enacts exemptions related to the Blueberry Tax and the Potato Tax.

This section of this Bulletin includes the definitions, amendments, and newly enacted statutes from P.L. 2021, c. 681 that affect the sales, use, Blueberry, and Potato taxes, as follows:

Relevant Definitions



Definitions for “Houlton Band of Maliseet Indians,” “Passamaquoddy Indian territory,” “Passamaquoddy Tribe,” “Penobscot Indian territory” and “Penobscot Nation” can all be found in 30 M.R.S. § 6203. The definition for “Houlton Band Trust Land” has the same meaning as in the federal Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986, Public Law 99-566, Section 2(2).



Tribal member. “Tribal member” means an enrolled member of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe or the Penobscot Nation.



Tribal land. “Tribal land” means land within the Houlton Band Trust Land, the Passamaquoddy Indian territory or the Penobscot Indian territory.



Tribal entity. “Tribal entity” means a business entity:

A. Wholly owned by the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation, a tribal member or tribal members or some combination thereof. For purposes of determining ownership of an entity, a married couple including at least one tribal member is treated as one tribal member, regardless of which spouse owns the entity; or

B. Where 75% of the ownership interests are held in aggregate by the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe or the Penobscot Nation and the entity is controlled and managed by the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe or the Penobscot Nation, consistent with the requirements of 13 Code of Federal Regulations, Section 124.109(c)(4)(i)(A); or as determined by the federal Small Business Administration as consistent with 13 Code of Federal Regulations, Section 124.109(c)(4)(i)(B).

A tribal entity must be a separate and distinct legal entity organized or chartered by federal, state or tribal authorities.



TRIBES DEEMED AS ACTING IN A GOVERNMENTAL CAPACITY

36 M.R.S. § 194-E

EFFECTIVE AUGUST 8, 2022

For the purposes of the sales and use taxes, the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians are deemed to act in a governmental capacity and not in a business capacity. **(P.L. 2021, c. 681)**

New Sales and Use Tax Tribal Exemptions



SALES TAX EXEMPTION FOR TRIBES

36 M.R.S. § 1760(112)

EFFECTIVE JANUARY 1, 2023

Beginning January 1, 2023, sales to the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nations are exempt from tax. Sales made to a tribe identified in this exemption for any purpose are exempt for purposes of 36 M.R.S. § 1760-C. **(P.L. 2021, c. 681)**



SALES TAX EXEMPTION FOR TRIBAL MEMBERS AND TRIBAL ENTITIES

36 M.R.S. §§ 1760(113) and (114)

EFFECTIVE JANUARY 1, 2023

Beginning January 1, 2023, sales to tribal members or tribal entities that are sales sourced to tribal lands will be exempt from sales tax.

Use tax may apply to such sales if the property or service is used by the purchaser, including any lessee, primarily outside of tribal land. For the purposes of this exemption, “primarily” means “more than 50% of the period of time that begins on the date in which the property or service is first placed in service by the purchaser and ends one year from that date or at the time the property or service is sold, scrapped, destroyed, or otherwise permanently removed from service, whichever occurs first.”

“Sales sourced to tribal land” means a sale sourced pursuant to 36 M.R.S. § 1819 to a location on tribal land. **(P.L. 2021, c. 681)**

Sales Tax Revenue Attributable to Sales Occurring on Tribal Land



TAX FROM SALES OCCURRING ON TRIBAL LAND

36 M.R.S. § 1815

EFFECTIVE JANUARY 1, 2023

36 M.R.S. § 1815, which returns sales tax revenue attributable to sales occurring on the Passamaquoddy reservation at either Pleasant Point or Indian Township, has been expanded. Beginning January 1, 2023, the Passamaquoddy Sales Tax Fund will now return sales tax revenue attributable to sales occurring on the entire Passamaquoddy Indian territory. Additionally, new funds have been established for returning sales tax revenue attributable to sales occurring on Penobscot Indian territory to the Penobscot Nation, and for sales occurring on the Houlton Band Trust Land to the Houlton Band of Maliseet Indians. Any attributable funds will be returned to the respective tribes on a monthly basis.

A sale occurs on Passamaquoddy Indian territory, the Penobscot Indian territory, or the Houlton Band Trust Land if both: (A) the business location of the seller from which the purchase is made is on Passamaquoddy Indian territory, Penobscot Indian territory or Houlton Band Trust Land, respectively; and (B) the tangible personal property or taxable service is received by the purchaser also on Passamaquoddy Indian territory, Penobscot Indian territory, or Houlton Band Trust Land. **(P.L. 2021, c. 681)**

Changes to the Blueberry Tax and the Potato Tax



EXEMPTION FROM BLUEBERRY TAX

36 M.R.S. § 4303-B

EFFECTIVE JANUARY 1, 2023

Beginning January 1, 2023, wild blueberries grown on tribal lands will be exempt from the Blueberry Tax, effective for the Blueberry Tax return due November 1, 2023.

A blueberry processor or shipper who receives wild blueberries that have been grown on tribal lands will not be required to charge and collect half of the 1½¢-per-pound tax that would otherwise be due on those wild blueberries from the grower. Additionally, the processor or shipper will not include any pounds of any wild blueberries grown on tribal lands that they have processed or shipped on their annual Blueberry Tax return or supplemental schedule. **(P.L. 2021, c. 681)**



EXEMPTION FROM POTATO TAX

36 M.R.S. § 4605(1-A)

EFFECTIVE JANUARY 1, 2023

Beginning January 1, 2023, potatoes grown on tribal lands will be exempt from the Potato Tax, effective for the Potato Tax return due February 28, 2023.

A potato shipper who purchases, ships, receives, processes, handles or sells potatoes grown by another on tribal lands will not be required to charge and collect half of the 6¢-per-hundredweight tax that would otherwise be due on those pounds of potatoes from the seller. Additionally, the shipper shall not include any pounds of potatoes grown on tribal lands as taxable on their monthly Potato Tax return. **(P.L. 2021, c. 681)**