



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 58

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## COMMERCIAL WOOD HARVESTING

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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 addresses issues commonly faced by taxpayers involved in commercial wood harvesting.

Taxpayers are responsible for complying with all applicable tax statutes and rules. While bulletins issued by Maine Revenue Services (MRS) do not have the same legal force and effect as rule, 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 the Maine Revised Statutes, Title 36, Part 3. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

### 1. GENERAL INFORMATION

Persons engaged in commercial wood harvesting are authorized by 36 MRSA §2013 and by Maine Revenue Services Rule 323 to use a certificate of exemption in order to purchase electricity and depreciable machinery and equipment without paying Maine sales and use tax. Rule 323 includes definitions of qualifying activities, establishes guidelines for the issuance of the certificate and places restrictions on the use of the certificate. This bulletin does not address the sales tax exemptions for certain products used in commercial agricultural production, animal agricultural production, and aquacultural production; see Instructional Bulletin No. 14.

“Commercial wood harvesting” means the commercial severance and yarding of trees for sale or for processing into logs, pulpwood, bolt wood, wood chips, stud wood, poles, pilings, biomass or fuel wood or other products commonly known as forest products. 36 MRSA §2013(1)(B-1).

A lessor that purchases items to be leased for use directly and primarily in commercial wood harvesting must pay tax to the seller and apply to Maine Revenue Services for refund of the tax paid.

### 2. CERTIFICATE OF EXEMPTION

#### A. Issuance

A certificate of exemption will be issued to qualifying persons who submit a properly completed application to Maine Revenue Services. As proof that the person is engaged in commercial wood harvesting, the application must be accompanied by one of the following from the person’s most recent filing under the United States Internal Revenue Code:

- \_ If a sole proprietor, Schedule C
- \_ If a corporation, Form 1120 or Form 1120S, Pages 1 -3
- \_ If a partnership, Form 1065, Pages 1 & 2
- \_ If Canadian, Form T2042 or T2125

Upon the issuance of an exemption certificate, the purchaser may use the card to purchase electricity and qualifying machinery, equipment and repair parts free of tax (but see Paragraph C below for restrictions). The purchaser must provide the seller with a copy of the exemption certificate and a completed affidavit of exemption (see Paragraph B below).

Exemption certificates are valid for four years and may only be used by the person or persons named on the certificate.

### **B. Burden of Proof – Affidavit of Exemption**

A completed affidavit of exemption, together with a copy of the exemption certificate, must be presented to the seller in order to document that the purchase is exempt from tax.

The burden of proving that a sale is to a person that has been issued an exemption certificate is on the person making the sale. This burden of proof will be met if the seller obtains from the purchaser a signed affidavit and a copy of a valid certificate of exemption issued by Maine Revenue Services.

The seller must retain an affidavit and a copy of the exemption certificate held by each person to whom exempt sales are made, but need not obtain a separate affidavit or copy of the certificate for each individual sale. Invoices must be appropriately marked to indicate that they are exempt sales. This requirement is satisfied by the purchaser's exemption certificate and the words "Maine Sales Tax Exempt."

By signing this affidavit, the purchaser is attesting to the fact that the items being purchased from the seller qualify for exemption. If non-exempt items are purchased, the purchaser will be subject to a use tax assessment. Misuse of the affidavit may result in the cancellation of the exemption certificate and may subject the purchaser to criminal prosecution.

### **C. Exceptions**

Certificates of exemption will not be issued to the following persons:

1. Wood harvesters who are in their first year of operation and cannot provide a copy of their applicable federal form. Persons in this category must pay tax to their suppliers on all purchases. When the Federal Income Tax Return is filed and a copy of the applicable federal form is available, the person may apply to Maine Revenue Services for an exemption certificate. Once the certificate is issued, the person may begin using the certificate on an ongoing basis. The person may apply to MRS to obtain a refund of tax paid on qualifying purchases made during the first year of operation.

2. Persons who are primarily engaged in a related but non-qualifying business activity. Persons in this category must pay tax to their suppliers on all purchases and apply to Maine Revenue Services for refunds on qualifying machinery and equipment.

3. Lessors of wood harvesting equipment. There is no provision in the law whereby lessors may purchase items for lease to persons engaged in commercial wood harvesting exempt from tax. Accordingly, no certificate of exemption will be issued to equipment lessors. When a lessor purchases items to be leased for use directly and primarily in commercial wood harvesting, the lessor must pay tax to the seller and apply to Maine Revenue Services for refund of the tax paid.

4. Persons who are engaged primarily in any activity that does not constitute commercial wood harvesting. (See Rule 323, Section 2.)

### **3. USE OF EXEMPTION CERTIFICATE**

#### **A. Qualifying machinery and equipment**

In order to qualify for this exemption, machinery or equipment must meet three tests. Machinery or equipment must be:

1. Used directly in commercial wood harvesting;
2. Used primarily in commercial wood harvesting; and
3. Depreciable for Federal Income Tax purposes.

See 36 MRSA §2013 and MRS Rule 323 for the definitions of “directly”, “primarily”, “depreciable” and “depreciable machinery and equipment”.

Some common items of machinery and equipment that typically qualify for exemption are:

Feller bunchers  
Felling heads  
Harvesters  
Skidders  
Mulchers (also known as masticators or brushcutters)  
Chainsaws  
Delimbers and chippers  
Forwarders  
Slashers

Repair and replacement parts for exempt machinery and equipment, including items such as batteries, filters, tires, starters, alternators and belts are also exempt.

Care should be exercised in determining whether a particular item qualifies under this exemption. Although the seller is relieved from the burden of charging a tax at the time of sale (provided that a copy of the exemption certificate and affidavit are on file) the purchaser is subject to audit and will be assessed tax, including interest and penalties, on

the purchase of non-qualifying machinery and equipment. The purchaser should write to Maine Revenue Services for a determination on questionable items.

## **B. Electricity**

Electricity used in commercial wood harvesting, and in support operations, may be purchased exempt from sales tax. This is true even if the electricity is used at a location remote from the woodland site where the actual wood harvesting is done – for example, at a business headquarters where equipment maintenance activities are performed. The exemption is applied on a meter-by-meter basis. If a single meter is supplying electricity that will be used in both qualifying and non-qualifying activities, tax should be paid to the utility provider and the purchaser should apply directly to Maine Revenue Services for a refund based on a pro-rata portion of the electricity used in the qualifying activity.

For purposes of this provision “support activities” include storage operations, maintenance operations, and related administrative activities. Support activities **do not** include activities conducted by a separate business, construction activities, and unrelated administrative activities.

## **C. Restrictions on Use of Exemption Card**

The certificate of exemption may not be used to purchase any of the following items:

1. Non-qualifying machinery and equipment;
2. Motor vehicles, trailers, attachments for motor vehicles or trailers, motor vehicle repair parts, snowmobiles, and ATVs and utility vehicles;
3. Consumable tools and supplies, other than repair parts, such as motor oil and other lubricants, coolants, solvents, cleaning supplies, clothing, hydraulic fluid, welding supplies and welding gases;
4. Fuels;
5. Items incorporated in real property such as fencing, storage buildings, silos, special purpose buildings, heating or ventilation systems and construction materials;
6. Items that are not 100% depreciable as commercial wood harvesting equipment (but see Section 4, Paragraph A below);
7. Items that are not (as determined by Maine Revenue Services) commonly used in or not solely designed for commercial wood harvesting, such as lawn and garden tractors, construction equipment, farming equipment, fork lift trucks, log loaders and computers (but see Section 4, Paragraph A below); or
8. Electricity servicing separate businesses or non-qualifying activities.

#### 4. REFUNDS OF TAX TO USER

An application for a refund of sales or use tax may be made to a user of depreciable machinery or equipment in any one of the four circumstances described in Paragraphs A through D below. An application for refund must be submitted on an official form supplied by Maine Revenue Services. The application must be completely filled out and must include a copy (duplicate) of the invoice showing that the tax was paid and to whom. A copy of the applicable form that was a part of the purchaser's most recent filing under the Internal Revenue Code must be attached, showing that the purchaser is engaged in commercial wood harvesting and that the purchased machinery or equipment is depreciable for those purposes.

Persons who have previously received a refund of tax paid on depreciable machinery or equipment, or who have been issued an exemption certificate valid on the date of purchase, need not submit a copy of the applicable form with subsequent applications unless there has been a change in the business, or unless specifically requested to do so by Maine Revenue Services.

Supporting documents such as invoices and schedules will not be returned to the applicant unless the applicant specifically requests that they be returned.

Applications for refund must be filed with the State Tax Assessor within 36 months of the date of purchase.

A. Items purchased under Section 3, Paragraph C (6) and (7) above that qualify as depreciable machinery and equipment but cannot be purchased exempt with the exemption certificate. If during its total time in use, a unit of machinery and equipment is used more than 50% of the time but less than 100% of the time directly in commercial wood harvesting, and is only partially depreciable under the United States Internal Revenue Code because it is used the remainder of the time for personal reasons, any reimbursement of the sales tax will be prorated accordingly.

**EXAMPLE:** If a unit of machinery or equipment is 60% depreciable under the Internal Revenue Code because it is only used 60% of the time in commercial wood harvesting, 60% of the sales tax will be refunded, provided that the other requirements are satisfied. If the unit is depreciable at 50% or less under the Internal Revenue Code because it is used 50% or less of the time in commercial wood harvesting, the purchaser will not be entitled to any refund of sales or use tax paid;

B. Electricity and depreciable machinery and equipment used in commercial wood harvesting by a person who does not qualify for an exemption certificate;

C. Lessors of depreciable machinery and equipment used directly and primarily in commercial wood harvesting.

D. Portion of electricity being used in qualifying activities, when one meter is supplying electricity for both qualifying and non-qualifying activities.

## **5. REFUND OF TAX TO LESSOR**

Lessors of machinery and equipment for use directly and primarily in commercial wood harvesting may make application for refund of Maine sales or use tax in the same manner as persons purchasing such machinery or equipment for their own use. The application must be accompanied by a copy of the lease agreement as well as a copy of the invoice showing that the tax was paid and to whom, a copy of the lessee's certificate of exemption valid on the date of execution of the lease and a properly executed affidavit of exemption. If the lessee has not been issued a certificate of exemption, a copy of the applicable form from the lessee's most recent filing under the Internal Revenue Code must be submitted in support of the lessor's application for refund, either by the lessor or by the lessee directly to Maine Revenue Services.

**Supporting documents such as invoices and schedules will not be returned to the applicant unless the applicant specifically requests that they be returned.**

**Application for refund must be filed with the State Tax Assessor within 36 months of the date of execution of the lease.**

## **6. ITEMS PURCHASED OUTSIDE OF MAINE**

Persons who purchase tangible personal property outside this State on which a tax would normally be due to the State of Maine, but which would qualify for refund under §2013, may waive payment of the tax but must submit an application for refund in the same manner as when the tax has been paid. The application should indicate that sales or use tax has not been paid but that a ruling as to taxability is being requested. The purchaser will be notified whether or not a tax liability exists.

With the exception of lessors, this section does not apply if the equipment could have been purchased in this State exempt from tax by using a valid exemption certificate.

## **7. TAX PAID TO ANOTHER JURISDICTION**

There is no provision in the Maine Sales and Use Tax Law for refund of sales or use tax paid to another state or to a foreign country and no such refunds will be made.

## **8. 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 the:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1065  
AUGUSTA, ME 04332-1065  
TEL: (207) 624-9693  
TTY: 7-1-1**

Or visit our website at [www.state.me.us/revenue](http://www.state.me.us/revenue)

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