



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 46

FABRICATION SERVICES

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. From July 16, 1986 to June 30, 2004, "fabrication services" were subject to the 5% sales/use tax. Effective July 1, 2004 the imposition of the tax was changed to the "service provider tax". Portions of the Sales and Use Tax and Service Provider Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

1. FABRICATION SERVICES IN GENERAL

"Fabrication services" means the production of tangible personal property for consideration for a person who furnishes, either directly or indirectly, the materials used in that production. Fabrication services are now taxable under Maine's Service Provider Tax law, but until the enactment of that statute, they were included as a "taxable service" under the Sales Tax law. The Legislature recognized that without a tax on fabrication services, a person could unfairly avoid sales tax on the production of certain items of tangible personal property. For example, if a desk was manufactured and sold in Maine, the entire sales price would be subject to sales tax. When the manufacturer determines what the selling price will be, the manufacturer takes into consideration the material, labor and overhead costs. Prior to the legislation that made fabrication services taxable, if a customer provided the materials to the manufacturer, the manufacturer's labor to construct the desk was exempt. It was easy to avoid sales tax, therefore, by simply having the customer provide the materials. This underlying rationale for the taxation of fabrication services will generally answer the question of whether a particular service is taxable as a fabrication service or not: if the service would otherwise qualify as part of the "production" of tangible personal property, then it is a taxable fabrication service.

"Fabrication services", then, includes those services that result in the production of tangible personal property or that constitute a step in a process or series of operations that result in the production of tangible personal property that did not originally exist. "Fabrication services" includes any process whereby raw materials, components, sub-assemblies or parts that are owned or furnished by the purchaser are assembled to create a new functioning unit. Charges for fabrication services are subject to the service provider tax whether the purchaser or a third party, at the direction of the purchaser, furnishes the materials.

The following are examples of the types of services that constitute fabrication services subject to the service provider tax.

Examples:

- A customer supplies a carpenter with lumber and wants cabinets made from this lumber.
- A customer supplies a quilt top, backing and batting and wants a quilt made from this material.
- A customer supplies fabric to a seamstress and asks for drapes to be made from the material.
- A customer brings logs to a mill and wants boards made from the logs.
- A customer supplies the head of a moose to a taxidermist to be stuffed and mounted.
- A customer supplies green pottery to a person to be fired and cured.
- A customer supplies wool from a sheep and wants yarn to be carded and spun.
- A customer supplies steel and wants it cut, shaped, drilled and formed.
- A customer supplies paper to a printer to produce an advertising pamphlet.
- A paper mill supplies logs to a chipper and requests that the logs be chipped into biomass fuel.
- A customer supplies a ring to a jeweler and asks that it be made into a broach.

All fabrication services performed in Maine are subject to the service provider tax. This applies to out-of-state customers who send a product into Maine upon which fabrication labor is performed, even though the product is returned to the customer at an out-of-state location because the service on which the tax is based occurs in Maine.

The following are examples of the types of services that would not constitute a change in the form, composition or character of the materials provided by the customer, and, as a result, would not constitute fabrication services:

- Engraving services – a customer's ring is engraved with the person's initials
- Tinting windows – tinting material is added to a customer's car window
- Monogramming/Embroidery – a customer's shirt is monogrammed with the customer's business logo.
- Lettering/painting/drawing on vehicles – a customer's business name is painted on the side of the customer's vehicle.

Neither of the above lists is intended to be all-inclusive, and failure to include a particular service in these lists should not be construed as creating a presumption that the service is or is not subject to tax. Doubtful cases should be referred to Maine Revenue Services for an advisory ruling.

For services associated with the sale of tangible personal property, please refer to Instructional Bulletin # 39 for additional information.

2. REPAIR SERVICES

"Fabrication services" does not include the repair, refurbishing or reconditioning of tangible personal property to refit it for the use for which it was originally produced as long as such services are separately stated from the charge for repair parts or other tangible personal property sold in connection with the repair service.

The following are examples of the types of services that constitute repair services rather than fabrication services and are not subject to the service provider tax:

- Reupholstering furniture
- Refinishing furniture
- Rust removal
- Sanding and/or repainting tangible personal property
- Sharpening saw blades

3. APPLICATION OR INSTALLATION SERVICES

"Fabrication services" does not include a charge for attaching, affixing, installing or applying a completed item of tangible personal property to other tangible personal property or to real property as long as such services are separately stated from the charge for tangible personal property sold in connection with the service.

The following are examples of the types of services that constitute application or installation services rather than fabrication services and are not subject to the service provider tax:

- Framing services –the labor charge for attaching a customer's piece of art to a frame
- Installing kitchen cabinets in a residence –the labor charge by a carpenter to install kitchen cabinets that were provided by the customer
- The labor charge associated with painting a building

4. EXEMPT SALES OF FABRICATION SERVICES

The service provider tax does not apply to sales of fabrication services in the following situations:

- a. Fabrication of exempt commodities.** The tax does not apply to charges for fabrication of tangible personal property where a sale to the consumer of the tangible personal property being fabricated is exempt or otherwise not subject to tax. Examples of exempt fabrication services are fabrication of machinery or equipment for use directly and primarily in production of tangible personal property for later sale or lease, and production or processing of food products for home consumption.

b. Fabrication for exempt organizations. The tax does not apply to sales of fabrication services to the federal government, this State or political subdivisions of this State (such as counties, cities, or towns) or any agency of any of the above governments; or to any other entity (such as a school, church or hospital) that has been issued an exemption certificate by Maine Revenue Services.

c. Fabrication of tangible personal property for resale. The tax does not apply to fabrication of tangible personal property for a purchaser who will resell it in the form of tangible personal property, unless the subsequent resale of the property will be at casual sale. Persons making sales of fabrication services for resale should require the purchaser to furnish a resale certificate.

d. Additions to real property. "Fabrication services" does not include the transformation of tangible personal property by a person that incorporates the transformed property into real property. Fabrication of tangible personal property that is to be incorporated into real property by the fabricator will be treated as follows:

i. Passage of title prior to incorporation into real property. Where the contractor passes title to the tangible personal property before incorporating it into the real property, fabrication services are subject to the tax. For example, a cabinetmaker contracts to fabricate and install kitchen cabinets. If the contract provides that the purchaser takes title to the cabinets before installation, the full amount of the sale, including fabrication services, is subject to the tax. A sheet metal shop contracts to fabricate and install ductwork into real property. If the contract provides that the purchaser takes title to the ductwork before installation, the full amount of the sale is subject to the tax. In both cases, installation service is not subject to the tax if it is separately stated on the invoice to the customer.

ii. Passage of title after incorporation into real property. Where the contractor passes title to the tangible personal property after incorporating it into the real property, fabrication services are not subject to the tax. (The State Tax Assessor will assume that title to the tangible personal property does not pass until after it has been installed, unless the contract specifically states otherwise.) For example, a cabinetmaker contracts to build and install kitchen cabinets. If there is no title provision in the contract, or if the contract states that title will pass after installation, the cabinetmaker will be liable for tax on the tangible personal property. The cabinet maker will also be liable for the tax on any fabrication services that it may purchase. The same holds true for a sheet metal shop that contracts to fabricate ductwork and install it into real property.

Charges for fabrication of tangible personal property that will be incorporated into real property are subject to tax unless the property is incorporated by the fabricator.

e. **Casual or isolated sales of fabrication services.** Sales of fabrication services made by a person who does not engage in making such sales in the ordinary course of repeated and successive transactions of a like character do not fall within the definition of "retail sale" and are therefore exempt.

5. PURCHASES BY FABRICATORS

a. **Machinery and equipment.** The Sales and Use Tax Law provides an exemption for purchases of machinery and equipment and repair parts for machinery and equipment used directly and primarily in the production of tangible personal property for sale or lease. This exemption is applicable not only when the tangible personal property being produced is for ultimate sale or lease by the producer, but also when the tangible personal property is being fabricated for ultimate sale or lease by another. In order to qualify for exemption on the basis of use in the provision of fabrication services, machinery or equipment must meet all of the following qualifications:

i. **The property produced must be intended ultimately for sale or lease,** not for use by the owner. For example, use of printing equipment to produce catalogs for a department store that supplies the materials is not a qualifying use, because the catalogs are not intended for sale or lease by the store.

ii. **The property produced must be intended for sale or lease as tangible personal property,** not as real estate. For example, use of machinery to fabricate structural steel for a contractor who will erect it is not a qualifying use because the steel is not intended for sale or lease in the form of tangible personal property.

iii. **The machinery or equipment must be used directly in production** of tangible personal property, not in procurement or storage operations or any other activities that are simply incidental, convenient or remote to production.

iv. **The machinery or equipment must be used primarily (more than 50% of the time) in production** that meets all of the above qualifications, or in production of tangible personal property intended ultimately for sale or lease by the producer. Machinery or equipment used 50% or more of the time in fabricating tangible personal property that will not be sold or leased is subject to tax.

b. **Ingredient or component part.** Items that will be physically incorporated in tangible personal property and actually pass to the purchaser of fabrication services as an ingredient or component part of tangible personal property may be purchased tax-free by the fabricator since they are effectively being purchased for resale, whether the property is intended ultimately for sale or lease or for use by the customer. Some examples of purchases which would be exempt are staples used by a printer to assemble catalogs; nails and glue used by a cabinetmaker to assemble cabinetry; and sheet metal screws used by a sheet metal shop to fabricate ductwork.

Purchases of items that will become an ingredient or component part of fabricated property **to be incorporated into real estate by the fabricator** are subject to sales and use tax.

c. Consumed or destroyed. The Sales and Use Tax Law also provides an exemption for tangible personal property that is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale or lease, other than lease for use in this State. Fuel and electricity are specifically excepted from this exemption. In order to qualify for this exemption, an item that is "consumed or destroyed" must have an actual physical life expectancy of less than one year in the use to which it is applied without regard to obsolescence.

In order to be exempt under this provision, items must be consumed or destroyed directly and primarily in production meeting the qualifications set forth in paragraph a, "Machinery and equipment", above.

6. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales, Use, and Service Provider 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 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693 FAX: (207) 287-6628
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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

Service Provider Tax

36 MRSA §2551, sub-§3. Fabrication services. "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. "Fabrication services" does not include the production of tangible personal property if a sale to the consumer of the tangible personal property so produced would be exempt or otherwise not subject to tax under Part 3.

36 MRSA §2551, sub- §12. Production. "Production" means an operation or integrated series of operations engaged in as a business or segment of a business that transforms or converts personal property by physical, chemical or other means into a form, composition or character different from that in which it originally existed. "Production" includes manufacturing, processing, assembling and fabricating operations that meet the definitional requisites, including biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology. "Production" does not include biological processes except as otherwise provided by this subsection, wood harvesting operations, the severance of sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, or activities such as cooking or preparing drinks, meals, food or food products by a retailer for retail sale.

36 MRSA §2551, sub-§15. Sale price. "Sale price" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the cost of materials used, labor or service cost, interest, losses and any other expense of the seller. "Sale price" does not include:

- A. Discounts allowed and taken on sales;
- B. Allowances in cash or by credit made upon the return of services pursuant to warranty;
- C. The price of services rejected by customers when the full sale price is refunded either in cash or by credit; or
- D. The amount of any tax imposed by the United States or the State on or with respect to the sale of a service, whether imposed upon the seller or the consumer.

36 MRSA § 2552. Tax imposed

1. Rate. A tax at the rate of 5% is imposed on the value of the following services sold in this State:

- A. Extended cable television services;
- B. Fabrication services;

- C. Rental of video media and video equipment;
- D. Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;
- E. Telecommunications services;
- F. The installation, maintenance or repair of telecommunications equipment; and
- G. Private nonmedical institution services.

Sales Tax

36 MRSA §1752, sub-§7-B. Machinery and equipment. "Machinery and equipment" means machinery, equipment and parts and attachments for machinery and equipment, but excludes foundations for machinery and equipment and special purpose buildings used to house or support machinery and equipment.

36 MRSA §1752, sub- §17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a customer computer software program.

36 MRSA §1760, sub-§31. Machinery and equipment. Sales of machinery and equipment:

- A. For use by the purchaser directly and primarily in the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or in the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof, or, in the case of sales occurring after June 30, 2005, in the generation of radio and television broadcast signals by broadcast stations regulated under 47 Code of Federal Regulations, Part 73. This exemption applies even if the purchaser sells the machinery or equipment and leases it back in a sale and leaseback transaction. This exemption also applies whether the purchaser agrees before or after the purchase of the machinery or equipment to enter into the sale and leaseback transaction and whether the purchaser's use of the machinery or equipment in production commences before or after the sale and leaseback transaction occurs; and

36 MRSA §1760, sub-§74. Property used in production. Sales of tangible personal property, other than fuel or electricity, that becomes an ingredient or component part of, or that is consumed or destroyed or loses its identity directly and primarily in either the production of tangible personal property for later sale or lease, for use in this State, or the production of tangible personal property pursuant to a contract with the United States Government or any agency of the United State Government. Tangible personal property is "consumed or destroyed" or "loses its identity" in that production if it has a normal physical life expectancy of less than one year as a usable item in the use to which it is applied.