

## Commission To Increase Housing Opportunities in Maine by Studying Land Use Regulations and Short-term Rentals

October 17, 2022

### Lodging Tax<sup>1</sup>

The Sales and Use Tax Law is found in Title 36 of the Maine Revised Statutes in Part 3: Sales and Use Tax. Title 36, section 1811 imposes sales and use tax on the value of rental of living quarters at a higher rate (currently 9%) than the generally applicable sales tax rate (5.5%).

The Maine Sales and Use Tax Law imposes a tax on “rental of living quarters in any hotel, rooming house, tourist or trailer camp” including casual rentals. Every person who owns, manages or operates, in the regular course of business or on a casual basis, a hotel, rooming house, tourist or trailer camp or who collects or receives rental payments on behalf of the owner, manager or operator, must register for and collect Maine sales tax on the rentals. A property does not have to be advertised or held out to the public at large in order for rentals of the property to be taxable.

- See 36 MRSA section 1811:  
<https://legislature.maine.gov/legis/statutes/36/title36sec1811.html>.
- See 36 MRSA section 1752, subsections 4, 6, 12 and 19 for definitions  
<https://legislature.maine.gov/legis/statutes/36/title36sec1752.html>.

### Exemptions:

- Casual rentals for fewer than 15 days. In most cases, a person who has only one rental unit, such as a room, a single camp or condominium unit for rent and rents it for fewer than 15 days each calendar year is not considered a “retailer” and is not required to collect sales tax on those rentals. See 36 MRSA section 1764:  
<https://legislature.maine.gov/legis/statutes/36/title36sec1764.html>.

However, if the property has been placed in the hands of a real estate agent or other person engaged in the business of renting or managing rentals of living quarters, that agent must collect and report sales tax on the rental, regardless of the length of time the property is rented.

- Occupancy for 28 days or more. Rent charged to any person renting continuously for 28 days or more in the same hotel, rooming house, tourist or trailer camp is exempt from sales tax if:
  - The living quarters are a person’s primary residence;
  - The rental is to an individual who is residing away from the individual’s primary residence in connection with education or employment; or
  - The living quarters are rented to a person whose employees use them in connection with their employment. (See 36 MRSA section 1760, subsection 20:  
<https://legislature.maine.gov/legis/statutes/36/title36sec1760.html>.)

The application of the sales tax on short-term lodging rentals goes back to 1959. Prior to 2005, casual sales were not subject to the sales tax. “Casual sale” is defined in 36 MRSA section 1752, subsection 1-D; generally, “casual sale” means rentals which are not in the regular course of business.

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<sup>1</sup> <https://www.maine.gov/revenue/sites/maine.gov/revenue/files/inline-files/IB32RentalLivingQuarters%2020171101.pdf>

**1-D. Casual sale.** "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sale" includes transactions at a bazaar, fair, rummage sale, picnic or similar event by a civic, religious or fraternal organization that is not a registered retailer. The sale by a registered retailer of tangible personal property that that retailer has used in the course of the retailer's business is not a casual sale if that property is of like character to that sold by the retailer in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which a retailer sells tangible personal property or a taxable service on behalf of the owner of that property or the provider of that service.

**2005:**

PL 2005, c.12 (General Fund Biennial Budget Bill) provided that a sales tax must be levied upon all casual rentals of living quarters in a hotel, rooming house or tourist or trailer camp with the exception of rental of living quarters when that rental is for fewer than 15 days each calendar year.

PL 2005, c. 218 (DAFS/MRS omnibus tax bill) provided that a person who owns property and offers for rental more than one property in the State during the calendar year is liable for collecting tax with respect to the rental of each unit regardless of the number of days for which it is rented.

**2018:**

PL 2017, c. 375 (DAFS/MRS omnibus tax bill) expands the provision for sellers required to register to collect and report sales taxes to include online real property rental platforms and expands definitions to facilitate administration. The law defines "room remarketer" and "transient rental platform." Again, regardless of the number of days for which it is rented, if it is a "room remarketer" (e.g. Expedia) or "transient rental platform" (e.g. VRBO or Airbnb), they must collect the sales tax.

**11-B. Room remarketer.** "Room remarketer" means a person who reserves, arranges for, offers, furnishes or collects or receives consideration for the rental of living quarters in this State, whether directly or indirectly, pursuant to a written or other agreement with the owner, manager or operator of a hotel, rooming house or tourist or trailer camp.

**20-C. Transient rental platform.** "Transient rental platform" means an electronic or other system, including an Internet-based system, that allows the owner or occupant of living quarters in this State to offer the living quarters for rental and that provides a mechanism by which a person may arrange for the rental of the living quarters in exchange for payment to either the owner or occupant, to the operator of the system or to another person on behalf of the owner, occupant or operator.