

**Maine Revenue Services
Property Tax Division
October 10, 2007**

Guidance: Retail Business Equipment

**Tax Treatment under the Business Equipment Property Tax Exemption (BETE)
And
Eligibility for Reimbursement under the Business Equipment Tax Reimbursement (BETR)
Program**

Introduction

Beginning with property placed in service after April 1, 2007, certain narrowly-defined retail business equipment will qualify for the new BETE exemption while most other retail property will continue to qualify for the BETR program. PL 2005, Chapter 623.

This document clarifies which retail business equipment qualifies for which, or neither, program.

BETE applies to eligible business equipment first subject to local property taxes as of April 1, 2008. The BETR program applies to eligible business equipment placed in service in Maine after April 1, 1995. Under the recent BETR amendments, the ONLY business equipment newly placed in service after April 1, 2007 eligible for BETR will be qualified retail business equipment; all other property newly placed in service after that date that was previously eligible for BETR will be eligible for BETE (except, as described below, in the case of certain very large retailers). 36 MRSA 6651(1) (property qualifying under BETE not eligible for BETR). Therefore, except for certain retail business equipment, BETR reimbursements will be phased out as old business equipment is replaced with new property eligible for the new property tax exemption.

The definition of eligible business equipment is generally the same for both programs: property that is subject to depreciation and used specifically for a business purpose in Maine. Certain persons involved in public utilities, telecommunications, and cable television, and certain property such as office furniture, lighting, gambling equipment and some pollution control and cogeneration equipment do not qualify for either program.

Generally, otherwise eligible business equipment used at a retail sales facility will continue to qualify for BETR, even if placed into service after April 1, 2007, with two exceptions. First, business equipment located in a large retail facility (one that exceeds 100,000 square feet of interior selling space) in most circumstances will not be eligible. 36 MRSA 6652(1-D). Second, any property eligible for the BETE exemption will not be eligible for BETR. 36 MRSA 6651(1).

I. Retail Property Exclusion from BETE

Retail business equipment eligible for the new exemption under BETE is very limited. All other retail property that otherwise meets BETR criteria remains eligible under the BETR program.

Retail business equipment EXCLUDED from BETE is:

- (1) property located at a retail sales facility; and
- (2) which is used primarily (more than 50% of the time) in a retail sales activity.

A “retail sales facility” is all or a portion of a structure used to serve customers who are physically present at the retail facility for the purpose of selecting and purchasing goods or services at retail or for renting tangible personal property. “Retail” means a transaction between the seller and the purchaser for consumption or use, and not for resale, by the purchaser.

“Located at” the retail sales facility means in or near the facility, but within the parcel of land upon which the structure is situated. A “structure” means a building or other freestanding architectural construction at which an individual can be present in order to select and purchase goods or services or to rent tangible personal property.

Retail business equipment includes tangible personal property located in or near the structure and also includes property located within the parcel when that property is associated with the conduct of the sales activity. Retail property also includes all property that is affixed or attached to a retail facility or other real estate on the parcel if it is used to further the retail sales activity taking place at the retail sales facility. Retail property in a parcel includes property located at the retail facility that is used to store inventory, property stored in the open air (such as heavy-equipment rental property), or property associated with recreational services (such as amusement rides or similar equipment located in the open air or in buildings other than where tickets were purchased).

“Retail sales activity” is business activity associated with the selection and purchase of goods or services or the rental of tangible personal property by on-site retail customers. Retail sales activity does not include “production” of tangible goods under 36 MRSA 1752(9-B), wholesale distribution activities undertaken in warehouses, activities at call centers or other remote retail operations (such as mail order activities). In addition retail sales activity does not include the performance of services where the delivery of the services is not near contemporaneous (very close together in time) with the selection and purchase of the services by retail customers or clients who are physically present at the

facility; for example, the drafting of legal documents or the provision of accounting services are not considered retail sales activity. Production does not include cooking or preparing drinks, meals, food or food products by a retailer for retail sale, nor does it include any other activity specifically excluded from the definition of production under 36 MRSA 1752(9-B).

Only property that is used primarily in retail sales activity is excluded from the exemption. If property located at or near a retail sales facility is not used primarily in a retail sales activity then it is eligible for exemption. Thus each piece of property at the facility must be examined in order to determine whether or not it is used “primarily” in a retail sales activity.

In summary, most retail business equipment placed in service after April 1, 2007 will not be eligible for the BETE exemption, but will remain eligible for BETR reimbursement. Examples of businesses whose property is excluded from BETE in most circumstances are barber shops and hair salons, recreational/entertainment vendors (such as bowling lanes, video arcades, and amusement parks), restaurants, hotels, convenience and “mom and pop” stores, and most large retailers of tangible goods. Examples of businesses whose property under most circumstances will qualify for the BETE exemption, are engineering firms, accounting firms, medical laboratories, and law firms. Typical business equipment excluded from the exemption may include, depending on the retail establishment and the amount of time the property is used in retail activity, the following: cash registers, inventory storage equipment, cooking appliances in restaurants or other providers of prepared food directly to on-site customers, and movie projectors and seating in movie theaters. For more examples of retail businesses and equipment, see section IV below.

II. Certain Retail Property Eligible for BETE

Despite the exclusion of most retail property from the BETE exemption, retail business equipment used by a limited class of very large retailers may fall within the exemption. The BETE exemption applies only to business equipment at retail sales facilities that exceed 100,000 square feet of interior customer selling space (i.e., space that is used by, and accessible to, customers) that is used primarily for retail sales and whose Maine-based operations derive less than 30% of their total annual revenue from sales that are made at retail facilities located throughout Maine. Again, any retail property falling within the exemption may not be reimbursed under BETR.

III. Large Retailer Exclusion from BETR – Only for property placed in service after April 1, 2006

Reimbursement will not be allowed for taxes paid on business equipment property that is (1) located in a retail sales facility exceeding 100,000 square feet of interior customer selling space, and (2) is used primarily (more than 50% of the time) in a retail sales activity. 36 MRSA 6652(1-D). “Interior selling space” for purposes of the exclusion includes all space related only to the selection and purchase of goods or the rental of personal property by customers at the facility.

IV. Certain Retail Property Not Eligible for Either BETE or BETR

Certain business equipment placed in service after April 1, 2007 and used by very large retailers (those with 100,000 or more square feet of interior customer selling space) who “export” sales below 50% will not be eligible either for BETR or the exemption. 36 MRSA 6652(1-D).

V. Examples of Non-retail and Retail Businesses and Equipment

A. Examples of non-retail businesses whose property under most circumstances will qualify for the BETE exemption:

- Accounting Firms
- Computer consultant services
- Law Firms
- Engineering Firms
- Medical Laboratories
- Insurance Companies
- Banks

B. Examples of retail businesses whose property is excluded from BETE in most circumstances but would be eligible for BETR, if otherwise qualified for BETR:

- Hair Salons/Barber Shops
- Chairs
- Clippers

Dryer
Displays
Steamer
Mirrors
cabinets

Restaurants

Dish dollies
Beverage/bar coolers dispensers
Broiler
Condiment stand
Dishwasher
Fryer
Food displays
Mixers
Microwave
Ovens
Range (hoods)
Refrigerator
Salad bar
Slicer
Toaster
Ice cream machine

Automotive Repair Shops

Aligner (frame, wheel)
Battery charger
Diagnostic equipment (emission, electrical, scope analyzer)
Lube equipment
Compressor
Steam cleaner
Tire changer
Wheel balancer

Gasoline Stations

Gas pumps

Tanks

Fire abatement equipment

Retail equipment (cash register, shelves)

Dry Cleaners

Extractor

Ironer

Presser

Sewing machine

Dry cleaning machine

Washer

Tumbler

Conveyor

Laundromats

Washer

Dryer

Carts

Vending (soap)

Water softener

Hotels/Motels

Lobby and registration equipment

Ice machines

Maid/housekeeping carts, vacuums

Bowling Lanes

Pins, balls, shoes, scoring tables

Pin setters and ball returns

Lockers

Bar, food service

Auto scorers

Movie Theatres

Screen

Sound systems

Projectors

Ticket/food services

Arcade games

Health clubs:

Chinning bars

Climbers

Dumbbells

Multi-stations gyms

Rowers

Stair climbers

Steppers

Treadmills

Weight benches