



MAINE REVENUE SERVICES PROPERTY TAX DIVISION PROPERTY TAX BULLETIN NO. 28

BUSINESS EQUIPMENT TAX EXEMPTION

REFERENCE: 36 M.R.S. §§ 691 – 700-B
July 3, 2019; replaces March 23, 2018 Guidance Document

1. General.

The Business Equipment Tax Exemption (“BETE”) program exempts eligible business equipment from property tax.

2. Eligible Business Equipment. “Eligible business equipment,” as defined in 36 M.R.S. § 691(1)(A), means business equipment that was first placed in service in Maine on or after April 2, 2007 and was first subject to assessment on or after April 1, 2008. Eligible business equipment includes property of any age, as long as it was first placed in service in Maine on or after April 2, 2007.

Example: A piece of machinery is purchased and placed in service in New Hampshire in 1961. In 2018, the machinery is then sold to a Maine business, moved to Portland, and placed in service in Maine for the first time. This machinery satisfies the requirement for property to be first placed in service in Maine on or after April 2, 2007.

Eligible business equipment includes, without limitation, repair parts, replacement parts, replacement equipment, additions, accessions and accessories to other eligible business equipment. Eligible business equipment also includes inventory parts.

Eligible business equipment must be:

- (1) Used exclusively for a business purpose by the business or, for construction in progress or inventory parts, intended to be used exclusively for a business purpose by the business; and
- (2) Subject to an allowance for depreciation under the Internal Revenue Code (the Code) or would be subject to an allowance for depreciation under the Code for the appropriate property tax year (or would be if not already fully depreciated).

In the case of construction in progress and inventory parts, eligible business property must be subject to an allowance for depreciation under the Code when placed in service (or would be if not already fully depreciated).

Eligible business equipment includes property attached to real estate if the attachment is used primarily to further a particular business activity taking place in or on that real estate. Eligible business equipment does not include attachments to real estate if used primarily to serve that building as a building (or serve the land as land).

Example: An air conditioning system is not eligible for exemption because it serves the building generally and would be used by most businesses in that building. A specialized refrigeration unit, however, could be considered eligible for exemption if it is used primarily in the specific business activity located in that building.

See Section 8 for additional examples.

3. Excluded Property.

A. General. Property owned by an excluded person, certain excluded property, property located at a retail sales facility and used in a retail sales activity, and property exempted by another provision of law are generally ineligible for exemption under the BETE program.

B. Excluded Person. Property owned or used by the following persons does not qualify for BETE:

- (1) A public utility;
- (2) A provider of radio paging services;
- (3) A provider of mobile telecommunications services;
- (4) A cable television company;
- (5) A provider of satellite-based direct television broadcast services;
- (6) A provider of multichannel multipoint television distribution services; or
- (7) A pollution control facility, except that property that would be subject to exemption under 36 M.R.S. § 656(1)(E) but that has not yet been certified may be eligible for exemption.

C. Excluded Property. The following property does not qualify for BETE:

- (1) Office furniture;
- (2) Lamps and lighting fixtures used primarily for general office lighting;
- (3) Property owned or used by an excluded person;
- (4) Telecommunications personal property subject to tax under 36 M.R.S. § 457;
- (5) Gambling machines or devices;
- (6) Retail property;
- (7) Natural gas pipeline (except pipeline less than one mile in length and owned by a consumer), pumping or compression stations, storage depots, and appurtenant facilities used for natural gas;
- (8) Property used to produce or transmit energy primarily for sale; and
- (9) Property otherwise exempt from taxation.

D. Retail Property. Property located at a retail sales facility and used primarily in a retail sales activity does not qualify for BETE.

- (1) Retail Sales Facility. "Retail sales facility" means a structure used to serve customers who are physically present at the facility to select and either purchase or rent tangible personal property. Retail sales facility does not include a separate structure that is used

as a warehouse or call center facility.

- (2) Structure. “Structure” means a building or other freestanding architectural construction at which an individual can be present to select and purchase or rent tangible personal property.
- (3) Retail Sales Activity. “Retail sales activity” means an act associated with the selection and either purchase or rental of tangible personal property. Retail sales activity does not include production, manufacturing, or processing. Generally, a retail sale activity occurs when a customer selects, purchases, and receives an item of tangible personal property that the customer takes with them when they leave.

Property is located at a retail sales facility if it is in or near the facility, as long as the property is within the parcel of land upon which the structure is situated. In addition, while retail property is not eligible for exemption under BETE, it may be eligible for reimbursement under the Business Equipment Tax Reimbursement (“BETR”) program.

E. Property Otherwise Exempt from Taxation. Property that is exempt from property tax under another area of law is not eligible for BETE. This includes, but is not limited to, the following:

- (1) Public property exempt pursuant to 36 M.R.S. § 651.
- (2) Personal property exempt pursuant to 36 M.R.S. § 655.
- (3) Property of Institutions and Organizations exempt pursuant to 36 M.R.S. § 652, including, but not limited to:
 - a. Benevolent and charitable organizations;
 - b. Literary and scientific institutions;
 - c. American Legion, Veterans of Foreign Wars, American Veterans, Sons of Union Veterans of the Civil War, Disabled American Veterans, and Navy Clubs of the U.S.A.;
 - d. Chambers of Commerce and Boards of Trade;
 - e. Houses of Religious Worship;
 - f. Fraternal organizations, except college fraternities; and
 - g. Hospitals, health maintenance organizations, and blood banks.
- (4) Property leased to public schools.(20-A M.R.S. § 4001(3)(C)
- (5) Property exempt pursuant to 36 M.R.S. § 656.

4. How to Apply. An applicant must file a BETE application by April 1st of each year with the local assessor(s) where the property would be subject to taxation, or to the State Tax Assessor for property located in the Unorganized Territory, reporting all eligible business equipment. If the report is not filed by April 1st, the filing deadline is automatically extended to May 1st without the need for the taxpayer to request – or an assessor to grant – that extension. On written request, an assessor may grant the applicant an additional extension of time to file the application. An extension of time may not extend beyond the municipal tax commitment date. Applicants are required to file annually,

whether or not there are changes in their eligible business equipment.

5. Filing and Appeals.

- A. Recording. All eligible business equipment exempted from property tax by the assessor must be included in the municipal commitment book, valued as if it were subject to taxation, depreciated, and adjusted by the certified municipal assessment ratio annually according to just value.
- B. Records retention. All applications must be kept on file as required by the rules set forth by State Archives Advisory Board and be available for inspection by Maine Revenue Services (“MRS”).
- C. Approvals and Appeals. An assessor must review, approve, and sign all applications. If an assessor determines that property is ineligible, the assessor must provide a written notice of denial, including the reason for the denial, to the applicant by certified mail prior to the commitment date. Taxpayers may appeal the decision of the assessor as described in Title 36, subchapter 8. For additional information on abatement and appeals, please see Bulletin 10 (Property Tax Abatement and Appeals Procedures).
- D. Tax Rate Calculation. The value of all qualified BETE equipment for which the municipality is entitled to reimbursement must be added to the total taxable municipal value when calculating the municipal tax rate.

6. Reimbursement.

A municipality that has appropriately exempted equipment under the BETE program is generally entitled to recover from the State 50% of the property tax revenue lost due to the exemption. This recovery is referred to as the *standard reimbursement*. Municipalities may be entitled to a higher percentage of reimbursement under the following circumstances:

- A. Enhanced reimbursement. If the personal property factor within a municipality exceeds 5%, then the municipality is eligible to receive an enhanced BETE reimbursement from the State. The personal property factor is the total value of all business personal property in the municipality, whether taxable or exempt, divided by the sum of the value of all taxable property in the municipality, plus the value that would have been assessed on BETE qualified equipment if it were taxable. The enhanced reimbursement is 50%, plus an amount equal to ½ of the personal property factor.
- B. Property located in certain tax increment financing (TIF) districts. This reimbursement percentage applies only to TIFs approved prior to April 1, 2008. If the municipal retention percentage in the TIF agreement exceeds the standard (or enhanced, if applicable) reimbursement, the municipality is eligible for reimbursement equal to the municipal retention percentage for property within the TIF district if the reimbursement is placed in a dedicated development program fund.

7. MRS Audits.

MRS may audit and review the records of a municipality with regard to the BETE program. If MRS determines that an exemption was improperly approved, the State will deny reimbursement to the

municipality for the ineligible property. The municipality shall make a supplemental assessment for the property which was improperly exempted. MRS can recapture the improperly distributed funds by a setoff against other payments due to the municipality. The recapture period is up to three years. A municipality aggrieved by a determination of MRS may appeal pursuant to 36 M.R.S. § 151.

8. Examples.

The following is a non-exhaustive list of categories of property and their eligibility under the BETE program:

A. Leased Property.

(1) Property leased to private schools. Property leased to private schools may qualify for the BETE program. However, property owned by a private school, and all property possessed by public schools, including leased property, is exempt from property tax under 36 M.R.S. §§ 651 & 652 and is therefore ineligible for the BETE program.

(2) Property leased to hospitals. Property leased to hospitals is ineligible for BETE because it is already exempt under 36 M.R.S. § 652(1)(K).

(3) Property leased to other exempt entities. Property leased to other exempt entity such as churches, municipalities, State of Maine, etc. are eligible for BETE.

B. Veterinary clinics. Business equipment located at veterinary clinics are eligible for BETE, since they sell services rather than tangible personal property and are therefore not a retail sales facility. While a veterinary clinic will also sell some tangible items such as pet food, the primary purpose of the operation is to sell medical services for animals.

C. Fencing. Security fencing can be used for many different types of businesses, is not unique to a particular business activity, and is not eligible under the BETE program. For example, the security fencing surrounding certain propane distribution facilities is not eligible business equipment despite the fact it is required by regulation.

D. Banking institutions in big box retail stores. Business equipment associated with banking institutions located within a big box store is eligible for exemption because, although it is located in a retail sales facility, it is not being used in a retail sales activity.

E. Recreational related business. Business equipment associated with golf courses, ski facilities, water parks, and amusement parks is generally eligible for exemption. Since the primary business purpose is to sell the service of providing amusement to its customers, such businesses are not considered retail sales facilities.

F. Breweries and distilleries. Brewery and distillery business equipment is eligible for exemption if the primary business purpose is to sell the product wholesale to retailers. If the primary business purpose is to supply an onsite tasting room or a bar or to serve walk-in customers, then the business may be considered a retail sales facility and be ineligible for exemption.

G. Professional services. Business equipment owned by professional services firms such as attorneys, accountants, insurance agents, therapists, physicians and architects is generally eligible for exemption because it is not used in a retail sales activity.

- H. Transient/short-term rentals. Property located at a transient or short-term rental property may be eligible for exemption, but only if it is used exclusively by the renters. If the owner of the property uses the property for personal use at any time it is not eligible.
 - I. Window treatments/interior decorating. Window treatments, curtains, and property used for interior decorating such as artwork, are generally eligible for exemption. Window shades are generally not eligible because the property is “affixed or attached to a building” and is not “used to further a particular trade or business activity.” 36 M.R.S. § 691(1)(F).
9. Unorganized Territory. For the purposes of this bulletin, the word “municipality” is inclusive of all jurisdictions located within the Unorganized Territory.
10. Questions. For questions regarding the BETE program, please contact the MRS Property Tax Division at the numbers or locations below.

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

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