MAINE REVENUE SERVICES
PROPERTY TAX DIVISION
PROPERTY TAX BULLETIN NO. 27

BUSINESS EQUIPMENT TAX REIMBURSEMENT

REFERENCE: 36 M.R.S. §§ 6651-6665
April 9, 2020

1. General

The Business Equipment Tax Reimbursement ("BETR") program reimburses taxpayers for property taxes paid on certain business property.

2. Eligible Property

Reimbursement under the BETR program is based on property taxes paid on eligible property. "Eligible property," as defined in 36 M.R.S. § 6651(1), means business property that (1) was first placed in service in Maine on or after April 2, 1995, and (2) does not qualify for the Business Equipment Tax Exemption ("BETE") program. See Bulletin No. 28 – Business Equipment Tax Exemption, for information on the BETE program.

For the majority of taxpayers, only property placed in service between April 2, 1995, and April 1, 2007, is eligible for BETR reimbursement. Business property placed into service after April 1, 2007, would instead be eligible for the BETE program. Retail property, however, is generally ineligible for the BETE program. Thus, the retail property is eligible for reimbursement under the BETR program, even if placed in service after April 1, 2007.

Eligible property includes property of any age, as long as it was first placed in service in Maine during the relevant time period.

> Example: A piece of machinery is purchased and placed in service in New Hampshire in 1961. In 2005, the machinery was sold to a Maine manufacturing 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 between April 2, 1995 and April 1, 2007.

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

Eligible property must be:

A. Used or held for use 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

B. 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 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 property 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 property does not include attachments to real estate if used primarily to serve that building as a building (or serve the land as land).

> <u>Example:</u> An HVAC system is not eligible for reimbursement because it serves the building generally and would be used by most businesses in that building. A specialized refrigeration unit, however, might be considered eligible for reimbursement if it is used primarily in the specific business activity located in that building.

3. <u>Retail Property</u>

As discussed above, retail property is generally ineligible for the BETE program. However, eligible property under BETR includes retail property, i.e. property located at a retail sales facility and used primarily in a retail sales activity.

A. <u>Retail Sales Facility.</u> "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.

B. <u>Structure.</u> “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.

C. <u>Retail Sales Activity.</u> “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.

Retail property is <u>not</u> eligible for BETR if it is located at a retail sales facility exceeding 100,000 square feet of interior customer selling space, unless the facility is owned by a business whose Maine-based operation derives less than 50% of its total annual revenue on a calendar-year basis from sales that are subject to Maine sales tax.

4. Excluded Property

A. General. Property owned by an excluded person, certain excluded property, and property exempted from taxation by another provision of law are generally ineligible for reimbursement under the BETR program.

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

(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; or

(6) A provider of multichannel, multipoint television distribution services.

C. Excluded property. The following property does not qualify for BETR:

(1) Office furniture;

(2) Lamps and lighting fixtures;

(3) Property used to support a telecommunications antenna used by a telecommunications business subject to tax under 36 M.R.S. § 457;

(4) Gambling machines or devices;

(5) 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;

(6) Property used to produce or transmit energy primarily for sale (although cogeneration facilities may be eligible for a partial reimbursement under the BETR program, see 36 M.R.S. § 6652(1-C)); and

(7) Property against which excise tax under Title 36, chapter 111 (aircraft, house trailers, and motor vehicles) or chapter 112 (watercraft) has been assessed.

E. Property Otherwise Exempt from Taxation. Property that is exempt from property tax under another area of law is not eligible for BETR. 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. See 20-A M.R.S. § 4001(3)(C).

(5) Property exempt pursuant to 36 M.R.S. § 656.

5. <u>How to Apply</u>

Businesses seeking reimbursement under the BETR program must file an annual application, first with the local assessor where the property is taxed, then with the State Tax Assessor. Applications must be made on forms either provided by or approved by the State Tax Assessor. The steps in the application process are:

A. The applicant must submit to the local assessor a list of property subject to tax that is eligible for reimbursement, including, for each item, the original cost, date placed in service, and whether acquired new or used;

B. The local assessor must respond to the applicant's list with the just value of each item and the associated tax assessed by the date of the first tax bill or within 60 days of the applicant's request, whichever is later; and

C. The applicant must submit to the State Tax Assessor the information from steps A and B, including the amount of tax paid on the eligible property during the previous calendar year, and proof of payment. The applicant must submit the reimbursement request to the State Tax Assessor between August 1 and December 31 in the year following the calendar year in which the tax payments were made. The State Tax Assessor may, for good cause, extend the filing deadline by no more than 60 days. If the applicant requests reimbursement for an amount different than the associated tax reported by the local assessor, the applicant must include an explanation of the difference. If the local assessor does not provide the just value and tax assessed on the eligible property, the applicant must submit the incomplete application with an explanation to the State Tax Assessor.

6. Reimbursement

If an applicant qualifies for reimbursement, the State Tax Assessor will pay the applicant within 90 days from receipt of the application. Reimbursement for the first 12 years that property is included in the application is 100%. After 12 years, the reimbursement percentage reduces until it reaches 50% for the 18th year and beyond. The reimbursement schedule is:

Year	Reimbursement
1-12	100%
13	75%
14	70%
15	65%
16	60%
17	55%
18 and later	50%

Several limitations to reimbursements exist in certain circumstances:

A. Outstanding personal property tax debt. If an applicant qualifies for reimbursement but owes $10,000 or more in personal property tax to a single municipality or the unorganized territory, the State Tax Assessor will withhold that reimbursement until the applicant pays the outstanding tax. The municipal tax collector must notify the State Tax Assessor of any outstanding personal property tax debt of $10,000 or more between July 1 and July 15 of the year in which reimbursement will be requested. Within 10 days of the notification to the State Tax Assessor, the municipal tax collector must also notify the applicant that reimbursement may be suspended unless the past due taxes are paid. If the applicant does not pay the outstanding tax by the end of the application period, the reimbursement for that year is forfeited.

B. Subsequent changes. If, after the submission of an application for reimbursement, the applicant learns of a reduction in property tax due to abatement or any other reason, the applicant must file an amended application with the State Tax Assessor within 60 days of the reduction. If the applicant has already received a reimbursement, the portion of the reimbursement relating to the reduction must be returned to the State Tax Assessor within 60 days of the reduction. A supplemental tax paid after the application date may be included in the following year's reimbursement claim.

C. Successor-in-interest. Only the owner of a business as of August 1 of the application year is eligible for reimbursement. If a business is sold before August 1 of a claim year, the new owner is eligible for reimbursement of taxes paid during the previous calendar year, even if the tax was assessed against the previous owner and even if the previous owner paid the taxes.

D. <u>Tax increment financing.</u> The reimbursement for property placed in service after April 1, 2007, and property for which reimbursement has been claimed for more than 12 years may be limited if the property is part of a tax increment financing ("TIF") district. If the owner of such property receives reimbursement of taxes on the property through a TIF agreement, the amount of BETR reimbursement is limited to the actual taxes paid less the TIF reimbursement received with respect to the eligible property.

E. <u>Payments to a lessor.</u> When a lessee pays property taxes to a lessor and the lessor receives reimbursement under the BETR program for those taxes, the lessor must forward the reimbursement to the lessee.

F. <u>Cessation of operations.</u> When a business has permanently ceased all productive operations, reimbursement may not be allowed. Reimbursement will be denied if an applicant has ceased all productive operations on April 1 of the year taxes are assessed and if there have been no productive operations for at least 12 months prior to the date of the application for reimbursement. Reimbursement will be allowed, however, if the owner of a business that has ceased all productive operations has publicly advertised that the facility is for sale or lease and has made a good faith effort to market and sell or lease the facility within that 12-month period.

7. <u>Appeals</u>

An applicant denied reimbursement or receiving a reduced reimbursement from the State Tax Assessor may appeal that decision through the reconsideration process in 36 M.R.S. § 151. The applicant must request reconsideration from the State Tax Assessor, in writing, within 60 days of receipt of the notice of denial/reduction. Decisions of the State Tax Assessor on reconsideration are subject to independent review by either the Maine Board of Tax Appeals (if the amount in controversy is $1,000 or more) or the Maine Superior Court (regardless of the amount in controversy). For additional information, see 36 M.R.S. §§ 151 and 151-D.

8. <u>Unorganized Territory</u>

For the purposes of this bulletin, the word "municipality" is inclusive of all jurisdictions located within the unorganized territory.

9. <u>Questions</u>

For questions regarding the BETR program, please contact the Maine Revenue Services Property Tax Division using the contact information 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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