

MAINE STATE LEGISLATURE

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ONE - HUNDRE DTH LEGISLATURE

Legislative Document

No. 740

H. P. 543

House of Representatives, January 24, 1961

Referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Baxter of Pittsfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Relating to Definition of Retail Sale Under Sales and Use Tax Law.

Be it enacted by the People of the State of Maine, as follows :

R. S., c. 17, § 2, amended. The 12th paragraph of section 2 of chapter 17 of the Revised Statutes which defines "retail sale" or "sale at retail," as amended, is further amended by inserting before the last sentence, a new sentence, as follows :

'It shall be considered that tangible personal property is "consumed or destroyed" or "loses its identity" in such manufacture, 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.'

STATEMENT OF FACTS

The Sales and Use Tax Law has, since its enactment, contained language which exempts from tax the purchase of any item which "is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale. . . ."

A regulation issued by the Bureau of Taxation in 1951 set forth the views of the bureau as to the meaning of this language. Subsequently, in 2 law court decisions (the Hudson Pulp and Paper Company and the Androscoggin Foundry cases), handed down in the spring of 1952, that regulation was declared to be inconsistent with the law.

On August 8, 1953 the regulation was extensively revised in an attempt to make it harmonious with the law and with the court decisions. The substance of the revised regulation was that an item would be considered as "consumed and destroyed" where it had "a normal life expectancy of less than one year in the use to which it is applied" and that this "life expectancy" is "physical life expectancy as a usable item."

For 6 years this interpretation was uniformly followed; and no serious question was raised regarding it. In 1959, however, litigation resulted from an assessment based on purchases of mercury by the Oxford Paper Company. It is fair to say that the litigation arose because the mercury was a "wasting" item, rather than one "worn out" in the usual sense; and did not represent a direct challenge of the one year rule.

However, the law court's opinion, handed down in the early part of November of 1959, stressed the fact that while the item in question was not used up within a year, there was no statutory basis for the one year rule set forth in the revised regulation.

The opinion closed with this language:

"The regulation of the assessor for administrative purposes prescribes a life expectancy stricture which has the virtue of being definite. Some containment of the life expectancy of excludable, usable items for clarity in the law may well be highly desirable if not necessary but it is an enlargement and positive addition to the statute. . . . What time limit can there be? The Legislature has afforded us none and only the Legislature can constitutionally fill the void resulting from such an omission."

Because of the importance of this phase of the sales tax, and because of uncertainty as to how the decision in the Oxford Paper case may affect the taxation of such items, in the opinion of this office it is imperative that the law be amended to fill the void pointed out by the court.

The amendment suggested in the attached bill is intended only to remove any doubt as to continued application of the tax in such cases, as in the past. The added language is taken directly from the regulation issued by this office on which the comments of the court in the Oxford Paper Company case were based.