

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date December 1, 1965

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation  
From Jon N. Boyle, Asst. Attorney General Dept. " " "  
Subject Sawdust Burned for the Purpose of Smoking Hams

## FACTS

A meat pecker purchases hickory sawdust for use in its business. The sawdust is burned for the purpose of producing smoke to smoke hams.

The combustion is a controlled process; the sawdust being moistened to retard combustion and to increase the production of smoke, the increase of temperature in the smokehouse being relatively small.

## QUESTION

Whether the sawdust is to be considered taxable on the ground that it is fuel or nontaxable on the ground it is consumed or destroyed in the manufacture (processing) of tangible personal property for sale.

## LAW

"'Retail sale' and 'sale at retail' do not include the sale of tangible personal property which becomes an ingredient or component part of tangible personal property for later sale, but shall include fuel or electricity." Title 36, M.R.S.A. §1752, subsection 11.

## REASONS

There is no question but that absent a declaration in the statute that "fuel" used in the process of manufacture is taxable the sawdust would be considered as consumed or destroyed within the meaning of those terms as used in section 1752.

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California for example has ruled that:

"Sawdust (burned to smoke meats) and liquid smoke (rubbed on meats) become components of the meats and are resold, not consumed by the meat packer." P.H. Sales & Use Taxes, Calif. par. 21,288.47 and 23-806-F.

However, even though the sawdust may be physically consumed or destroyed we must determine whether it is a "fuel" within the provisions of the sales and use tax law.

" . . . it is seen that purchases of fuel by the ultimate consumer are specifically included within the definition of "retail sale" and "sale at retail" as used in the Act. This is true notwithstanding the fact that the fuel, when used as such, becomes 'an ingredient or component part of' or is 'consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale by the purchaser.'" Androscoffin Foundry Co. v. Johnson, 137 Mo. 452. (Emphasis supplied).

In other words, all sawdust which is a "fuel" is taxable. Cf. Androscoffin Foundry Co. v. Johnson, supra.

The Androscoffin case supra defined fuel as follows:

"Fuel is 'any matter used to produce heat or power by burning.'" Androscoffin v. Johnson, supra. (Emphasis supplied).

"Fuel is 'combustible matter used to kindle fire or sustain fire or produce heat, as oil, wood, etc.'" (Emphasis supplied).

It is clear from an analysis of the Court's opinion and the emphasis given to the "use" of the material as a fuel that, in order to determine taxability, we must not only determine whether the material is normally a fuel but whether under the circumstances it is used as a fuel.

In the Androscoffin case it was clear that under the definitions given the material (coke) was used as a "fuel" since the heat from

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it was necessary to smelt (melt) the iron even though a portion of the carbon in the cokes became a part of the end product.

The situation is less clear under the present factual circumstances since the taxpayer desires the ultimate product of the combustion--smoke--and is not desirous of obtaining heat or other properties of combustion only insofar as they contribute to the emission of smoke which is used in the manufacturing process. We must also remember that in case of doubt a taxing provision will be construed in favor of the taxpayer.

It is my opinion that under the circumstances the sawdust is not used as a "fuel" but is rather a material consumed or destroyed in the process of manufacture; the purchase of which is nontaxable since it is not:

" . . . used to produce heat or power by burning."

nor is it:

" . . . used to kindle or sustain fire or produce heat . . . . "

within the sense of that definition.

The sawdust rather is used solely for its by-product--smoke. Thus used its purchase is nontaxable.

JRD:epd

# STATE OF MAINE

Inter-Departmental Memorandum Date November 8, 1965

To Jon H. Doyle, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Sawdust burned for the purpose of smoking hams

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In the course of an audit of a meat packer, we have come up against the problem of hickory sawdust which is burned for the purpose of producing smoke to smoke hams. We understand that the combustion is a controlled process, the sawdust being moistened to retard combustion and to increase the production of smoke, the increase of temperature in the smoke house being relatively small.

The question is, whether the sawdust is to be considered as taxable on the ground that it is fuel, or nontaxable on the ground that it is consumed or destroyed in the manufacture (processing) of tangible personal property for sale.

Will you please advise.