

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 88

6
7 S.P. 62

In Senate, January 17, 1985

8 Reference to the Committee on Taxation suggested and ordered printed.

9 JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Kany of Kennebec.

Cosponsored by Representative Joseph of Waterville, Representative
Jacques of Waterville and Representative Lacroix of Oakland.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Provide a Sales Tax Exemption for
18 Electricity used in an Electrothermal
19 Manufacturing Process.
20

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

23 36 MRSA §1752, sub-§11, as amended by PL 1983, c.
24 859, Pt. M, §§2 and 13, is further amended to read:

25 11. Retail sale or sale at retail. "Retail sale"
26 or "sale at retail" means any sale of tangible per-
27 sonal property, in the ordinary course of business,
28 for consumption or use, or for any purpose other than
29 for resale, except resale as a casual sale, in the
30 form of tangible personal property, any rental of
31 living quarters in any hotel, rooming house, tourist
32 or trailer camp, any rental of automobiles on a
33 short-term basis, other than rental to a person en-
34 gaged in the business of renting automobiles, the
35 sale of telephone or telegraph service and the sale
36 of extended cable television service. The term "re-

1 tail sale" or "sale at retail" includes conditional
2 sales, installment lease sales, and any other trans-
3 fer of tangible personal property when the title is
4 retained as security for the payment of the purchase
5 price and is intended to be transferred later. The
6 term "retail sale" or "sale at retail" also means
7 sale of products for internal human consumption to a
8 person for resale through coin-operated vending ma-
9 chines when sold to a retailer whose gross receipts
10 from the retail sale of tangible personal property
11 derived through sales from vending machines are more
12 than 50% of his gross receipts, which tax shall be
13 paid by the retailer to the State. The term "retail
14 sale" or "sale at retail" does not include any sale
15 by an executor or administrator in the settlement of
16 an estate, unless such sale is made through a retail-
17 er, or unless such sale is made in the continuation
18 or operation of a business; nor does the term include
19 any other isolated transaction in which any tangible
20 personal property is sold, transferred, offered for
21 sale or delivered by the owner thereof, such sale,
22 transfer, offer for sale, or delivery not being made
23 in the ordinary course of repeated and successive
24 transactions of a like character by such owner, such
25 transactions being elsewhere sometimes referred to as
26 "casual sales." "Casual sales" includes transactions
27 by a civic, religious or fraternal organization,
28 which is not a registered retailer, at bazaars,
29 fairs, rummage sales, picnics or similar events but
30 not exceeding 8 days in a calendar year. The sale by
31 a registered retailer of tangible personal property,
32 which that retailer has used in the course of his or
33 its business, is not a casual sale and is a retail
34 sale subject to taxation under this Part, if that
35 property is of a like character to that sold in the
36 ordinary course of repeated and successive transac-
37 tions. "Casual sale" shall not include any transac-
38 tion in which tangible personal property is sold,
39 transferred or offered for sale by a representative
40 for the owner's account when such representative is a
41 registered retailer, in which event such registered
42 retailer shall have the same duties respecting such
43 sale as if he had sold on his own account. "Retail
44 sale" and "sale at retail" do not include the sale of
45 tangible personal property which becomes an ingredi-
46 ent or component part of, or which is consumed or de-
47 stroyed or loses its identity in the manufacture of,

1 tangible personal property for later sale or lease,
2 other than lease for use in this State, but shall in-
3 clude fuel and electricity but shall not include
4 electricity separately metered and consumed in any
5 electrolytic process for the manufacture of tangible
6 personal property for later sale, nor electricity
7 separately metered and consumed directly in an elec-
8 trothermal process for manufacture of molded fiber
9 dishes and trays for later sale, nor any fuel oil or
10 coal, the by-products from the burning of which be-
11 come an ingredient or component part of tangible per-
12 sonal property for later sale. "Retail sale" and
13 "sale at retail" do not include the sale, to a person
14 engaged in the business of renting automobiles, of
15 automobiles, or integral parts thereof or accessories
16 thereto, for rental or for use in an automobile
17 rented, on a short-term basis. It shall be consid-
18 ered that tangible personal property is "consumed or
19 destroyed" or "loses its identity" in such manufac-
20 ture, if it has a normal physical life expectancy of
21 less than one year as a usable item in the use to
22 which it is applied. "Retail sale" or "sale at re-
23 tail" do not include the sale of containers, boxes,
24 crates, bags, cores, twines, tapes, bindings,
25 wrappings, labels and other packing, packaging and
26 shipping materials when sold to persons for use in
27 packing, packaging or shipping tangible personal
28 property sold by them or upon which they have per-
29 formed the service of cleaning, pressing, dyeing,
30 washing, repairing or reconditioning in their regular
31 course of business and which are transferred to the
32 possession of the purchaser of such tangible personal
33 property.

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STATEMENT OF FACT

Under Maine sales and use tax law, all sales of electricity consumed in manufacturing are subject to tax except for electricity which is separately metered and used for electrolytic processes. Certain other industrial processes, such as electrothermal drying of molded fiber dishes and trays, are similarly dependent on electricity for heating and drying as part of a manufacturing process. In many other states, this use of electricity is not subject to tax or is taxed at rates lower than those in Maine. Power costs in Maine may escalate rapidly during the next several years, causing severe competitive disadvantage for those Maine firms which are heavily power dependent.

This bill excludes from sales and use tax that portion of electricity used in an electrothermal process for manufacture of molded fiber dishes or trays, provided that the electricity so used is separately metered.

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