

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 354

6
7 H.P. 284

House of Representatives, February 1, 1985

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

9 EDWIN H. PERT, Clerk

10 Presented by Representative Cashman of Old Town.

Cosponsored by Senator Diamond of Cumberland, Representative
Zirnkilton of Mount Desert and Senator Twitchell of Oxford.

11
12 STATE OF MAINE
13

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

17 AN ACT to Phase Out the Sales and Use Tax on
18 Energy Used in Manufacturing.
19

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

22 Sec. 1. 36 MRSA §1752, sub-§11, as amended by PL
23 1983, c. 859, Pt. M, §§2 and 13, is further amended
24 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 any fuel oil or
7 coal, the by-products from the burning of which be-
8 come an ingredient or component part of tangible per-
9 sonal property for later sale. "Retail sale" and
10 "sale at retail" do not include the sale, to a person
11 engaged in the business of renting automobiles, of
12 automobiles, or integral parts thereof or accessories
13 thereto, for rental or for use in an automobile
14 rented, on a short-term basis. It shall be consid-
15 ered that tangible personal property is "consumed or
16 destroyed" or "loses its identity" in such manufac-
17 ture, if it has a normal physical life expectancy of
18 less than one year as a usable item in the use to
19 which it is applied. "Retail sale" or "sale at re-
20 tail" do not include the sale of containers, boxes,
21 crates, bags, cores, twines, tapes, bindings,
22 wrappings, labels and other packing, packaging and
23 shipping materials when sold to persons for use in
24 packing, packaging or shipping tangible personal
25 property sold by them or upon which they have per-
26 formed the service of cleaning, pressing, dyeing,
27 washing, repairing or reconditioning in their regular
28 course of business and which are transferred to the
29 possession of the purchaser of such tangible personal
30 property.

31 Sec. 2. 36 M RSA §1811, first ¶, as amended by PL
32 1983, c. 859, Pt. M, §§7 and 13, is further amended
33 to read:

34 A tax is imposed at the rate of 5% on the value
35 of all tangible personal property, on telephone and
36 telegraph service and on extended cable television
37 service sold at retail in this State, and upon the
38 rental charged for living quarters in hotels, rooming
39 houses, tourist or trailer camps and the rental
40 charged for automobiles rented on a short-term basis,
41 other than a rental charged to a person engaged in
42 the business of renting automobiles, measured by the
43 sale price, except as in chapters 211 to 225 pro-
44 vided. Retailers shall pay such tax at the time and
45 in the manner provided, and it shall be in addition

1 to all other taxes. Anything in this section or section
 2 1812 to the contrary notwithstanding, retail
 3 sales of fuel or electricity which are otherwise sub-
 4 ject to tax under this section shall be taxed in the
 5 following years at the following percentages of the
 6 sale price, rounded to the nearest dollar, where the
 7 fuel or electricity is purchased for consumption in
 8 the manufacture of tangible personal property for later
 9 sale or lease:

10	<u>Year of Purchase</u>	<u>Percentage Rate</u>
11	<u>1986</u>	<u>4 3/4%</u>
12	<u>1987</u>	<u>4 1/2%</u>
13	<u>1988</u>	<u>3 1/2%</u>
14	<u>1989</u>	<u>2%</u>
15	<u>1990</u>	<u>1%</u>

16 Sec. 3. 36 MRSA §1861, as amended by PL 1969, c.
 17 295, §4, is further amended to read:

18 §1861. Purchase of tangible personal property

19 A tax is imposed on the storage, use or other
 20 consumption in this State of tangible personal prop-
 21 erty, purchased at retail sale, at the rate of 5% of
 22 the sale price. Every person so storing, using or
 23 otherwise consuming is liable for the tax until he
 24 has paid the same or has taken a receipt from his
 25 seller, thereto duly authorized by the Tax Assessor,
 26 showing that the seller has collected the sales or
 27 use tax, in which case the seller shall be liable for
 28 it. Retailers registered under section 1754 or 1756
 29 shall collect such tax and make remittance to the
 30 State Tax Assessor. The amount of such tax payable by
 31 the purchaser shall be that provided in the case of
 32 sales taxes by section 1812. When tangible personal
 33 property purchased for resale is withdrawn from in-
 34 ventory by the retailer for his own use, use tax lia-
 35 bility accrues at the date of withdrawal. Anything in
 36 this section or section 1812 to the contrary notwith-
 37 standing, the storage, use or other consumption of
 38 fuel or electricity which is otherwise subject to tax
 39 under this section shall be taxed in the following
 40 years at the following percentages of the sale price,
 41 rounded to the nearest dollar, when the fuel or elec-
 42 tricity is purchased for consumption in the manufac-
 43 ture of tangible personal property for later sale or
 44 lease:

<u>Year of Purchase</u>	<u>Percentage Rate</u>
<u>1986</u>	<u>4 3/4%</u>
<u>1987</u>	<u>4 1/2%</u>
<u>1988</u>	<u>3 1/2%</u>
<u>1989</u>	<u>2%</u>
<u>1990</u>	<u>1%</u>

7 Sec. 4. Effective date. Section 1 of this Act
8 shall become effective January 1, 1991.

9 STATEMENT OF FACT

10 Many states either do not tax sales of fuel or
11 electricity consumed in manufacturing, provide relat-
12 ed tax credits or tax fuel and electricity at lower
13 rates than does Maine. As a result, Maine manufac-
14 turers are placed at a competitive disadvantage. In
15 addition, all electric customers ultimately incur the
16 cost of the sales tax on fuel consumed by Maine util-
17 ities in manufacturing electricity. This bill would
18 phase out over a 6-year period the sales and use tax
19 on fuel and electricity used in manufacturing, with
20 total elimination of the tax in 1991. This would,
21 for example, include the various forms of fuel used
22 to power boilers which produce electricity or steam
23 used in manufacturing, electricity purchased to power
24 machines or otherwise used in manufacturing and fuel
25 purchased by utilities to manufacture electricity
26 sold to their customers. This bill allows Maine man-
27 ufacturers to be more competitive with manufacturers
28 in other states and also reduce the fuel costs of
29 Maine utilities which are passed on to their custom-
30 ers.

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