

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1 (EMERGENCY)  
2 (New Draft of S.P. 62, L.D. 88)  
3 FIRST REGULAR SESSION  
4

---

5 ONE HUNDRED AND TWELFTH LEGISLATURE  
6

---

7 Legislative Document

No. 1139

8  
9 S.P. 420

In Senate, March 28, 1985

10 Reported by Majority Report from the Committee on Taxation and  
11 printed under Joint Rule 2. Original bill sponsored by Senator Kany of  
12 Kennebec. Cosponsored by Representative Joseph of Waterville,  
Representative Jacques of Waterville and Representative Lacroix of Oakland.

JOY J. O'BRIEN, Secretary of the Senate

13  
14 STATE OF MAINE  
15

---

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-FIVE  
18

---

19 AN ACT to Provide a Sales Tax Exemption for  
20 Electricity used in an Electrothermal  
21 Manufacturing Process.  
22

---

23 Emergency preamble. Whereas, Acts of the Legis-  
24 lature do not become effective until 90 days after  
25 adjournment unless enacted as emergencies; and

26 Whereas, electricity used in an electrothermal  
27 process for the manufacture of molded fiber dishes  
28 and trays is subject to the sales tax; and

29 Whereas, this situation creates inequity which  
30 may result in the loss of business and jobs in the  
31 State; and

32 Whereas, in the judgment of the Legislature,  
33 these facts create an emergency within the meaning of  
34 the Constitution of Maine and require the following  
35 legislation as immediately necessary for the preser-

1 vation of the public peace, health and safety; now,  
2 therefore,

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

5 36 MRSA §1752, sub-§11, as amended by PL 1983, c.  
6 859, Pt. M, §§2 and 13, is repealed and the follow-  
7 ing enacted in its place:

8 11. Retail sale or sale at retail. "Retail  
9 sale" or "sale at retail" means the following.

10 A. "Retail sale" or "sale at retail" means any  
11 sale of tangible personal property, in the ordi-  
12 nary course of business, for consumption or use,  
13 or for any purpose other than for resale, except  
14 resale as a casual sale, in the form of tangible  
15 personal property, any rental of living quarters  
16 in any hotel, rooming house, tourist or trailer  
17 camp, any rental of automobiles on a short-term  
18 basis, other than rental to a person engaged in  
19 the business of renting automobiles, the sale of  
20 telephone or telegraph service and the sale of  
21 extended cable television service. The term "re-  
22 tail sale" or "sale at retail" includes condi-  
23 tional sales, installment lease sales, and any  
24 other transfer of tangible personal property when  
25 the title is retained as security for the payment  
26 of the purchase price and is intended to be  
27 transferred later. The term "retail sale" or  
28 "sale at retail" also means sale of products for  
29 internal human consumption to a person for resale  
30 through coin-operated vending machines when sold  
31 to a retailer whose gross receipts from the re-  
32 tail sale of tangible personal property derived  
33 through sales from vending machines are more than  
34 50% of his gross receipts, which tax shall be  
35 paid by the retailer to the State. The term "re-  
36 tail sale" or "sale at retail" does not include  
37 any sale by an executor or administrator in the  
38 settlement of an estate, unless such sale is made  
39 through a retailer, or unless such sale is made  
40 in the continuation or operation of a business;  
41 nor does the term include any other isolated  
42 transaction in which any tangible personal prop-  
43 erty is sold, transferred, offered for sale or

1 delivered by the owner thereof, such sale, trans-  
2 fer, offer for sale, or delivery not being made  
3 in the ordinary course of repeated and successive  
4 transactions of a like character by such owner,  
5 such transactions being elsewhere sometimes re-  
6 ferred to as "casual sales." "Casual sales" in-  
7 cludes transactions by a civic, religious or fra-  
8 ternal organization, which is not a registered  
9 retailer, at bazaars, fairs, rummage sales,  
10 picnics or similar events but not exceeding 8  
11 days in a calendar year. The sale by a registered  
12 retailer of tangible personal property, which  
13 that retailer has used in the course of his or  
14 its business, is not a casual sale and is a re-  
15 tail sale subject to taxation under this Part, if  
16 that property is of a like character to that sold  
17 in the ordinary course of repeated and successive  
18 transactions. "Casual sale" shall not include  
19 any transaction in which tangible personal prop-  
20 erty is sold, transferred or offered for sale by  
21 a representative for the owner's account when  
22 such representative is a registered retailer, in  
23 which event such registered retailer shall have  
24 the same duties respecting such sale as if he had  
25 sold on his own account. "Retail sale" and "sale  
26 at retail" do not include the sale of tangible  
27 personal property which becomes an ingredient or  
28 component part of, or which is consumed or de-  
29 stroyed or loses its identity in the manufacture  
30 of, tangible personal property for later sale or  
31 lease, other than lease for use in this State,  
32 but shall include fuel and electricity but shall  
33 not include electricity separately metered and  
34 consumed in any electrolytic process for the man-  
35 ufacture of tangible personal property for later  
36 sale, nor any fuel oil or coal, the by-products  
37 from the burning of which become an ingredient or  
38 component part of tangible personal property for  
39 later sale. "Retail sale" and "sale at retail"  
40 do not include the sale, to a person engaged in  
41 the business of renting automobiles, of automob-  
42 iles, or integral parts thereof or accessories  
43 thereto, for rental or for use in an automobile  
44 rented, on a short-term basis. It shall be con-  
45 sidered that tangible personal property is "con-  
46 sumed or destroyed" or "loses its identity" in  
47 such manufacture, if it has a normal physical

1 life expectancy of less than one year as a usable  
2 item in the use to which it is applied. "Retail  
3 sale" or "sale at retail" do not include the sale  
4 of containers, boxes, crates, bags, cores,  
5 twines, tapes, bindings, wrappings, labels and  
6 other packing, packaging and shipping materials  
7 when sold to persons for use in packing, packag-  
8 ing or shipping tangible personal property sold  
9 by them or upon which they have performed the  
10 service of cleaning, pressing, dyeing, washing,  
11 repairing or reconditioning in their regular  
12 course of business and which are transferred to  
13 the possession of the purchaser of such tangible  
14 personal property.

15 B. Until May, 1, 1988, "retail sale" and "sale  
16 at retail" do not include electricity separately  
17 metered and consumed directly in an electrother-  
18 mal process for manufacture of molded fiber  
19 dishes and trays for later sale.

20 A taxpayer who purchases electricity which is  
21 subject to exclusion from sales tax under this  
22 paragraph and who, before May 1, 1990, ceases  
23 manufacturing molded fiber dishes and trays in  
24 this State for later sale shall pay an amount  
25 equal to the amount of sales tax that would have  
26 been due during the 5 years preceding the cessa-  
27 tion of manufacturing if the exclusion provided  
28 by this paragraph had not existed, plus interest  
29 at the standard rate. That amount shall be paid  
30 within 90 days following the cessation of manu-  
31 facturing, as determined by the State Tax Asses-  
32 sor. If that amount is unpaid when due, it shall  
33 be subject to the enforcement provisions of chap-  
34 ter 219.

35 **Emergency clause.** In view of the emergency cited  
36 in the preamble, this Act shall take effect when ap-  
37 proved.

#### 38 FISCAL NOTE

39 It is estimated that this bill will result in the  
40 following effect on revenues.

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
General Fund	(\$22,900)	(\$146,000)	(\$146,000)
Local Govern- ment Fund	( 1,100)	( 7,850)	( 7,850)

STATEMENT OF FACT

The original bill excluded from sales tax electricity separately metered and used in an electrothermal process for the manufacture of molded fiber dishes and trays. This new draft sunsets the exclusion on May 1, 1988, and provides that, if a taxpayer benefiting from this exclusion ceases manufacturing molded fiber dishes and trays within 5 years of benefiting from the exclusion, an amount shall be assessed equal to the taxes, plus interest, that would have been paid without the exclusion. Since the purpose of the exclusion is to provide an economic incentive to the industry affected, in order to preserve jobs and other state and local tax revenues, the recoupment of taxes lost is imposed to recover the State's investment should the exclusion fail to provide the incentive that is anticipated.

2853032785