

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

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Legislative Document

No. 566

S.P. 236

In Senate, March 6, 1989

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator CAHILL of Sagadahoc.

Cosponsored by Senator CLARK of Cumberland, Representative PRIEST of Brunswick and Representative SMALL of Bath.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act Relating to Tax Exemptions.

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(EMERGENCY)



1           **Emergency preamble.** Whereas, Acts of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted  
3 as emergencies; and

5           Whereas, clarifications of state tax laws are necessary in  
6 order to improve the fairness of the state tax system; and

7  
8           Whereas, it is necessary to enact these clarifications  
9 without delay in order to avoid continuation of unnecessary  
10 inequities; and

11  
12           Whereas, in the judgment of the Legislature, these facts  
13 create an emergency within the meaning of the Constitution of  
14 Maine and require the following legislation as immediately  
15 necessary for the preservation of the public peace, health and  
16 safety; now, therefore,

17  
18           **Be it enacted by the People of the State of Maine as follows:**

19           **Sec. 1. 36 MRSA §1752, ¶6-A,** as enacted by PL 1985, c. 767,  
20 §1, is amended to read:

21  
22           6-A.   **Manufacturing facility.** "Manufacturing facility"  
23 means a site at which is located machinery and equipment used  
24 directly and primarily in either the production of tangible  
25 personal property intended to be sold or leased ultimately for  
26 final use or consumption, or the production of tangible personal  
27 property pursuant to a contract with the United States Government  
28 or any agency thereof. It includes the machinery and equipment  
29 and all machinery, equipment, structures and facilities located  
30 at the site and used in support of production or associated with  
31 the production.

32  
33           **Sec. 2. 36 MRSA §1752, sub-§11,** as repealed and replaced by PL  
34 1987, c. 497, §22, is amended to read:

35  
36           11.   **Retail sale.** "Retail sale" means any sale of tangible  
37 personal property, in the ordinary course of business, for  
38 consumption or use, or for any purpose other than for resale,  
39 except resale as a casual sale, in the form of tangible personal  
40 property. "Retail sale" also means any sale of a taxable service  
41 in the ordinary course of business for any purpose other than for  
42 resale, except resale as a casual sale. "Retail sale" includes  
43 conditional sales, installment lease sales and any other transfer  
44 of tangible personal property when the title is retained as  
45 security for the payment of the purchase price and is intended to  
46 be transferred later. "Retail sale" includes sale of products  
47 for internal human consumption to a person for resale through  
48 coin-operated vending machines when sold to a retailer whose  
49 gross receipts from the retail sale of tangible personal property  
50 derived through sales from vending machines are more than 50% of  
51 his the retailer's gross receipts, which tax shall be paid by the

1 retailer to the State. "Retail sale" does not include any sale  
2 by a personal representative in the settlement of an estate,  
3 unless the sale is made through a retailer, or unless the sale is  
4 made in the continuation or operation of a business; nor does the  
5 term include any other casual sale. "Retail sale" does not  
6 include the sale of tangible personal property which becomes an  
7 ingredient or component part of, or which is consumed or  
8 destroyed or loses its identity directly and primarily in either  
9 the production of, tangible personal property for later sale or  
10 lease, other than lease for use in this State, or the production  
11 of tangible personal property pursuant to a contract with the  
12 United States Government or any agency thereof, but shall include  
13 fuel and electricity, but shall not include electricity  
14 separately metered and consumed in any electrolytic process for  
15 the manufacture of tangible personal property for later sale, nor  
16 any fuel oil or coal, the by-products from the burning of which  
17 become an ingredient or component part of tangible personal  
18 property for later sale. Tangible personal property is "consumed  
19 or destroyed" or "loses its identity" in that production, if it  
20 has a normal physical life expectancy of less than one year as a  
21 usable item in the use to which it is applied. "Retail sale"  
22 does not include the sale, to a person engaged in the business of  
23 renting automobiles, of automobiles, or integral parts of  
24 automobiles or accessories to automobiles, for rental or for use  
25 in an automobile rented, on a short-term basis. "Retail sale"  
26 does not include the sale of containers, boxes, crates, bags,  
27 cores, twines, tapes, bindings, wrappings, labels and other  
28 packing, packaging and shipping materials when sold to persons  
29 for use in packing, packaging or shipping tangible personal  
30 property sold by them or upon which they have performed the  
31 service of cleaning, pressing, dyeing, washing, repairing or  
32 reconditioning in their regular course of business and which are  
33 transferred to the possession of the purchaser of such that  
34 tangible personal property. "Retail sale" does not include the  
35 provision of meals or lodging to employees at their place of  
36 employment when the value of those meals or that lodging is  
37 allowed as a credit toward the wages of those employees.

39 **Sec. 3. 36 MRSA §1752, sub-§11, as amended by PL 1985, c. 767,**  
40 **§§2 and 4, is further amended to read:**

41  
42 **11. Retail sale or sale at retail.** "Retail sale" or "sale  
43 at retail" means any sale of tangible personal property, in the  
44 ordinary course of business, for consumption or use, or for any  
45 purpose other than for resale, except resale as a casual sale in  
46 the form of tangible personal property, any rental of living  
47 quarters in any hotel, rooming house, tourist or trailer camp,  
48 any rental of automobiles on a short-term basis, other than  
49 rental to a person engaged in the business of renting  
50 automobiles, the sale of telephone or telegraph service and the  
51 sale of extended cable television service. The term "retail  
sale" or "sale at retail" includes conditional sales, installment

1 lease sales, and any other transfer of tangible personal property  
when the title is retained as security for the payment of the  
3 purchase price and is intended to be transferred later. The term  
"retail sale" or "sale at retail" also means sale of products for  
5 internal human consumption to a person for resale through  
coin-operated vending machines when sold to a retailer whose  
7 gross receipts from the retail sale of tangible personal property  
derived through sales from vending machines are more than 50% of  
9 his the retailer's gross receipts, which tax shall be paid by the  
retailer to the State. The term "retail sale" or "sale at  
11 retail" does not include any sale by an executor or administrator  
in the settlement of an estate, unless such that sale is made  
13 through a retailer, or unless such that sale is made in the  
continuation or operation of a business; nor does the term  
15 include any other isolated transaction in which any tangible  
personal property is sold, transferred, offered for sale or  
17 delivered by the owner of the property, such that sale, transfer,  
offer for sale, or delivery not being made in the ordinary course  
19 of repeated and successive transactions of a like character by  
such that owner, such those transactions being elsewhere  
21 sometimes referred to as "casual sales." "Casual sales" includes  
transactions by a civic, religious or fraternal organization,  
23 which is not a registered retailer, at bazaars, fairs, rummage  
sales, picnics or similar events but not exceeding 8 days in a  
25 calendar year. The sale by a registered retailer of tangible  
personal property, which that retailer has used in the course of  
27 ~~his-or-its~~ business, is not a casual sale and is a retail sale  
subject to taxation under this Part, if that property is of a  
29 like character to that sold in the ordinary course of repeated  
and successive transactions. "Casual sale" shall not include any  
31 transaction in which tangible personal property is sold,  
transferred or offered for sale by a representative for the  
33 owner's account when such that representative is a registered  
retailer, in which event such that registered retailer shall have  
35 the same duties respecting such that sale as if he the retailer  
had sold on his the retailer's own account. "Retail sale" and  
37 "sale at retail" do not include the sale of tangible personal  
property which becomes an ingredient or component part of, or  
39 which is consumed or destroyed or loses its identity directly and  
primarily in either the production of, tangible personal property  
41 for later sale or lease, other than lease for use in this State,  
or the production of tangible personal property pursuant to a  
43 contract with the United States Government or any agency thereof,  
but shall include fuel and electricity. "Retail sale" and "sale  
45 at retail" do not include the sale, to a person engaged in the  
business of renting automobiles, of automobiles, or integral  
47 parts of automobiles or accessories to automobiles, for rental or  
for use in an automobile rented, on a short-term basis. It shall  
49 be considered that tangible personal property is "consumed or  
destroyed" or "loses its identity" in such that manufacture, if  
51 it has a normal physical life expectancy of less than one year as  
a usable item in the use to which it is applied. "Retail sale"

1 or "sale at retail" do not include the sale of containers, boxes,  
2 crates, bags, cores, twines, tapes, bindings, wrappings, labels  
3 and other packing, packaging and shipping materials when sold to  
4 persons for use in packing, packaging or shipping tangible  
5 personal property sold by them or upon which they have performed  
6 the service of cleaning, pressing, dyeing, washing, repairing or  
7 reconditioning in their regular course of business and which are  
8 transferred to the possession of the purchaser of such that  
9 tangible personal property.

11 Sec. 4. 36 MRSA §1760, sub-§31, as amended by PL 1985, c.  
12 276, §3, is further amended to read:

13  
14 31. Machinery and equipment. Sales of machinery and  
15 equipment for use by the purchaser directly and primarily in  
16 either the production of tangible personal property, which  
17 property is intended to be sold or leased ultimately for final  
18 use or consumption, or the production of tangible personal  
19 property pursuant to a contract with the United States Government  
20 or any agency thereof.

21 Sec. 5. Retroactivity. The Maine Revised Statutes, Title 36,  
22 section 1752, subsection 9-B, as repealed and replaced by PL  
23 1987, c. 497, §19, shall apply retroactively beginning on January  
24 1, 1985. Sections 1, 2 and 4 of this Act shall apply  
25 retroactively beginning on January 1, 1985.

26  
27 Sec. 6. Effective date; repeal. Section 3 shall take effect on  
28 July 1, 1991. Section 2 is repealed on July 1, 1991.

29  
30 Emergency clause. In view of the emergency cited in the  
31 preamble, this Act shall take effect when approved.

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#### STATEMENT OF FACT

35  
36 The purpose of this bill is to clarify language contained in  
37 certain sales and use tax exemptions and exclusions affecting  
38 manufacturers. Ambiguities in the current language may prevent  
39 certain manufacturers working under government contracts from  
40 receiving the benefit of various exemptions and exclusions which  
41 the tax law was intended to provide them. For instance, the  
42 Bureau of Taxation has recently applied the machinery and  
43 equipment exemption in a fashion which would deny that exemption  
44 to government contractors who have been accorded the exemption  
45 each year since it was enacted. This result conflicts with the  
46 legislative purpose of the exemption to encourage capital  
47 investment in machinery and equipment used in manufacturing.

48  
49

1           The amendments in this bill clarify that manufacturers  
working under government contracts are intended to qualify for  
3 various manufacturing exemptions and exclusions.

5           Specifically, the following provisions are amended to  
accomplish this:

7  
9           Section 1 amends the definition of "manufacturing facility"  
thereby clarifying that manufacturers working under government  
contracts are intended to receive the exemption for fuel and  
11 electricity used in a manufacturing facility.

13           Section 2 moves back to January 1, 1985, the effective date  
of the 1987 amendment to the definition of "production" thereby  
15 clarifying that manufacturers working under government contracts  
are entitled to the exemptions and exclusions amended in sections  
17 1, 3, 4 and 5 during that period.

19           Sections 3 and 4 amend the definition of "retail sale" to  
clarify that manufacturers working under government contracts are  
21 intended to receive the benefit of the exclusion for purchases of  
items which become an ingredient or competent part of or which  
23 are consumed or destroyed or lose their identity in production.

25           Section 5 amends the machinery and equipment exemption to  
clarify that manufacturers working under government contracts are  
27 entitled to the machinery and equipment exemption.